

THE
ALL INDIA
CRIMINAL DIGEST

(1904-1940)

(In 3 Volumes)

VOL. III

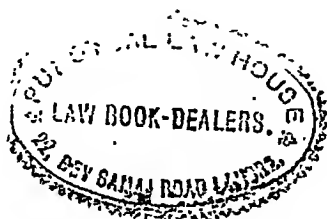
(F to End.)

By

S. K. IYER, B. A., B. L.

Advocate, High Court, Madras.

Author of Law & Practice of Income-tax in India, Excess Profits Tax, Indian Trusts Act,
Indian Workmen's Compensation Act, Indian Factories Act, Indian Electricity Act,
Marriage Laws of India, Revising Editor Rattigan on Divorce, etc.



LAW BOOK DEPOT,
KRISHNA NAGAR, LAHORE.

1941

LIST OF ABBREVIATIONS REPORTS

A. or All.	...	Indian Law Reports, Allahabad.
A. L. J.	...	Allahabad Law Journal.
A. I. R. 1940 All.	...	All India Reporter, 1940, Allahabad.
I. R. (1930) All.	...	Indian Rulings (1930), Allahabad.
12 R. A.	...	Indian Rulings (Vol. 12), Allahabad.
B. or Bom.	...	Indian Law Reports, Bombay.
Bom. L. R.	...	Bombay Law Reporter.
A. I. R. (1940) Bom.	...	All India Reporter (1940), Bombay.
I. R. (1930) Bom.	...	Indian Rulings (1930), Bombay.
12 R. B.	...	Indian Rulings (Vol. 12) Bombay.
Bur. L. J.	...	Burma Law Journal.
Bur. L. T.	...	Burma Law Times.
C. or Cal.	...	Indian Law Reports, Calcutta.
C. L. J.	...	Calcutta Law Journal.
Cr. L. J.	...	Criminal Law Journal.
C. W. N.	...	Calcutta Weekly Notes.
A. I. R. (1940) Cal.	...	All India Reporter (1940), Calcutta.
I. R. (1930) Cal.	...	Indian Rulings (1930), Calcutta.
12 R. C.	...	Indian Rulings (Vol. 12), Calcutta.
I. A.	...	Law Reports, Indian Appeals.
I. C. or Ind. Cas.	...	Indian Cases.
L. or Lah.	...	Indian Law Reports, Lahore.
L. B. R.	...	Lower Burma Rulings.
L. W.	...	Law Weekly (Madras).
Luck.	...	Indian Law Reports, Lucknow.
A. I. R. (1940) Lah.	...	All India Reporter (1940), Lahore.
I. R. (1930) Lah.	...	Indian Rulings (1930), Lahore.
12 R. L.	...	Indian Rulings (Vol. 12), Lahore.
Lah. L. J. or L. L. J.	...	Lahore Law Journal.
M. or Mad.	...	Indian Law Reports, Madras.
M. L. J.	...	Madras Law Journal.
M. L. T.	...	Madras Law Times.
M. W. N.	...	Madras Weekly Notes.
A. I. R. (1940) Mad.	...	All India Reporter (1940), Madras.
I. R. (1930) Mad.	...	Indian Rulings (1930), Madras.
12 R. M.	...	Indian Rulings (Vol. 12), Madras.
N. L. J.	...	Nagpur Law Journal.
N. L. R.	...	Nagpur Law Reports.
A. I. R. (1940) Nag.	...	All India Reporter (1940), Nagpur.
I. R. (1930) Nag.	...	Indian Rulings (1930), Nagpur.
12 R. N.	...	Indian Rulings (Vol. 12), Nagpur.
O. C.	...	Oudh Cases.
O. L. R.	...	Oudh Law Reports.
O. L. J.	...	Oudh Law Journal.
O. W. N.	...	Oudh Weekly Notes.
A. I. R. (1940) Oudh.	...	All India Reporter (1940), Oudh.
I. R. (1930) Oudh.	...	Indian Rulings (1930), Oudh.
12 R. O.	...	Indian Rulings (Vol. 12), Oudh.
P. R.	...	Punjab Record.
P. L. R.	...	Punjab Law Reporter.
P. W. R.	...	Punjab Weekly Reporter.
P. or Pat.	...	Indian Law Reports, Patna.
A. I. R. (1940) Pat.	...	All India Reporter (1940), Patna.
I. R. (1930) Pat.	...	Indian Rulings (1930), Patna.
12 R. P.	...	Indian Rulings (Vol. 12), Patna.
A. I. R. (1940) P. C.	...	All India Reporter (1940), Privy Council.
I. R. (1930) P. C.	...	Indian Rulings (1930), Privy Council.
B. R.	...	Behar Reports.
Pat. L. J. or P. L. J.	...	Patna Law Journal.
Pat. L. W. or P. L. W.	...	Patna Law Weekly.
Pat. L. T. or P. L. T.	...	Patna Law Times.
Pat. L. R.	...	Patna Law Reporter.
R. or Rang.	...	Indian Law Reports, Rangoon.
A. I. R. (1940) Rang.	...	All India Reporter (1940), Rangoon.
I. R. (1930) Rang.	...	Indian Rulings (1930), Rangoon.
12 R. Rang.	...	Indian Rulings (Vol. 12), Rangoon.
R. D.	...	Revenue Decisions.
S. L. R.	...	Sind Law Reporter.
A. I. R. (1940) Sind.	...	All India Reporter (1940), Sind.
I. R. (1930) Sind.	...	Indian Rulings (1930), Sind.
Kar. (I. L. R.)	...	Indian Law Reports, Karachi.
12 R. S.	...	Indian Rulings (Vol. 12), Sind.
U. P. L. R.	...	United Provinces Law Reporter.
U. B. R.	...	Upper Burma Rulings.

10860

TABLE OF CONTENTS Data Entered

17 NOV 2002

Column	Column
Fact	3969
Factories Act (XV of 1871)	3969
Factories Act (XV of 1881)	3969
Factories Act (XII of 1911)	3971
Factories Act (XXV of 1984)	3980
Factory	3983
Facts Discovered	3984
Fair Comment	3984
False Complaint	3984
False Evidence	3984
False Information	3984
Federal Court Rules	3984
Ferries Act (IV of 1878)	3984
Ferries Act (I, B. C. of 1885)	3985
Fine	3985
Finger Impression	3985
Finger Prints	3985
First Information	3986
First Information Report	3986
First Report	3990
Fiscal Statutes	3991
Fisheries	3991
Fishery Rights	3991
Forfeiture of Bond of Sureties	3991
Foreign Jurisdiction Act, 1890	3991
Foreign Jurisdiction and Extradition Act, 1879	3992
Foreigners Act (III of 1864)	3992
Foreigners Ordinance (III of 1914)	3993
Forest Act (VII of 1878)	3994
Forest Act (XVI of 1927)	4000
Forest Offences	4002
Forgery	4002
Found Gaming	4003
Fraud	4003
Fraudulent Transfer	4003
Fresh Complaint	4003
Frontier Crimes Regulation (III of 1901)	4004
Fugitive Offenders Act, 1881, (44 and 45 Vic. Chap. 69)	4004
Further Enquiry	4005
Gambling	4005
Gambling Calcutta Police Act, 1866	4006
Gambling Act (II of 1867, B. C.)	4008
Gambling Act (III of 1867)	4008
Gambling Act (Burma) (I of 1899)	4012
Game of Skill	4013
Gaming	4013
General Clauses Act (X of 1897)	4013
General Repute	4016
Girl	4016
Give Information	4016
Goes Armed	4016
Good Faith	4016
Goondas Act (B. C. I. of 1923)	4017
Gosha Woman	4017
Government Counsel	4017
Government of Burma Act, 1935	4017
Government of India Act, 1915	4017
Government of India Act, 1919 (9 and 10 Geo. V. C. 101)	4024
Government of India Act, 1985, 25 and 26 Geo. 2, Ch. 42)	4028
Government of India (Amendment) Act 1916 (6 and 7 Geo. V. C. 37)	4036
Government Savings Bank Act (V of 1873)	4037
Governor	4037
Grave and Sudden Provocation	4037
Grievous Hurt	4037
Groundless	4037
Groundless Charge	4037
Guardians and Wards Act (VIII of 1800)	4037
Habeas Corpus	4039
Habitual Gang of Thieves	4040
Habitual Offender	4040
Habitually	4041
Hackney Carriage Act (XIV of 1879)	4041
Halting Place	4042
Handwriting	4042
Harbouring Proclaimed Offender	4043
Hat	4043
High Court	4043
High Courts Act, 1861	4045
High Court Rules (Allahabad)	4046
Hindu Joint Family	4046
Hindu Law	4046
Hindu Widows' Re-Marriage Act (XV of 1850)	4048
Hire Purchase Agreement	4049
History Sheet	4049
Home Rule Flag	4049
Home Rule for India	4049
Home Rule or Self-Government for India on Colonial Lines	4050
Homicidal Mania	4050
Hong Kong Ordinance No. 3 of 1873	4050
Honorary Magistrates	4051
Hostile Witness	4051
House-breaking	4051
House Trespass	4051
Hurt	4051
Husband and Wife	4052
Identification	4052
Identification of Prisoners Act (XXXIII of 1920)	4062
Identification Parade	4062
Identification Proceedings	4062
Illegal Arrest	4063
Illegal Confinement	4063
Illegal Gratification	4063
Illegal Order	4063
Illegal Possession	4063
Illegal Search	4063
Illegality	4063
Illicit Possession	4063
Imprisonment	4063
Imputation	4064
Inadmissibility	4064
Income Tax Act (II of 1886)	4064
Income Tax Act (VII of 1918)	4065
Income Tax Act (XI of 1922)	4066

	Column		Column
Indian Christian Marriages Act (XV of 1872) ...	4008	Kathiawar Police Laws ...	4147
Indian Councils Act, 1861 (24 and 25 Vic. Chap. 67) ...	4008	Kidnapping ...	4147
Indian Foreign Jurisdiction Order in Council, 1902 ...	4009	Kirpan ...	4148
Indian Forest Act (VII of 1878) ...	4009	Knowledge and Intention ...	4148
Indian High Court Act (Statutes 24 and 25, Vic. Chap. (CIV) ...	4009	Lahore Conspiracy Case Ordinance (III of 1930) ...	4148
Indian Medical Degrees Act (VII of 1916) ...	4070	Lahore High Court Rules and Orders ...	4140
Indian Press (Emergency Powers) Act (XXIII of 1931) ...	4070	Lambardar ...	4149
Indian States (Protection against Disaffection) Act of 1922 ...	4070	Land Customs Act (XIX of 1924) ...	4149
Indian Works of Defence Act (VII of 1903) ...	4072	Landlord ...	4150
Information ...	4072	Landlord and Tenant ...	4150
Infringement of Copyright ...	4072	Land Registration Act (VII of 1876) Bengal ...	4151
Inherent Jurisdiction ...	4072	Land Registration Act (VII, B. C. of 1876) ...	4151
Inherent Powers ...	4073	Last Resided ...	4151
Inland Steam Vessels Act (VI of 1884) ...	4073	Law Department Manual ...	4151
Inland Steam Vessels Act (I of 1917) ...	4073	Leave to Appeal ...	4151
Inquest ...	4073	Legal Keeping ...	4152
Inquest Report ...	4073	Legal Practitioner ...	4152
Insanity ...	4074	Legal Practitioners Act (XVIII of 1879) ...	4177
Instrument of Gaming ...	4074	Legal Practitioners (Fees) Act (XXI of 1926) ...	4234
Insufficiency of Evidence ...	4074	Legal Proceedings ...	4234
Insurance Act (IV of 1938) ...	4074	Legal Remembrancer ...	4234
Intent and Attempt ...	4074	Legitimacy ...	4234
Intent to Defraud ...	4074	Letters Patent ...	4235
Intention ...	4075	Letters Patent (All.) ...	4236
Intercepted Letters ...	4075	Letters Patent (Bom.) 1865 ...	4237
Interference by P. C. ...	4075	Letters Patent (Calcutta) ...	4243
Interlocutory Order ...	4075	Letters Patent (Lahore) ...	4244
International Law ...	4075	Letters Patent (Madras) ...	4248
Interpretation ...	4076	Letters Patent (Patna) ...	4240
Interpretation and Effect ...	4077	Letters Patent (Rangoon) ...	4250
Interpretation of Act ...	4077	Libel ...	4250
Interpretation of Statutes ...	4077	Licence ...	4250
Investigating Police Officer ...	4102	Licensed Ware-House and Fire-Brigade Act (I of 1893) ...	4250
Investigation ...	4103	Lien ...	4251
Irregularity ...	4103	Life Insurance Company ...	4251
Irrigation Act (VIII of 1870) ...	4104	Limitation ...	4251
Jail Administration ...	4104	Limitation Act (IX of 1908) ...	4251
Jail Appeal ...	4104	Living in Adultery ...	4257
Jail Code ...	4105	Local inquiry ...	4257
Jail Manual Para. 870 ...	4105	Local Inspection ...	4257
Juvenile Offender ...	4105	Local Inspection by Magistrate ...	4258
Joinder of Charges ...	4105	Local Investigation ...	4258
Joint-trial ...	4106	Local Investigation by Magistrate ...	4259
Judge ...	4109	Local Law ...	4259
Judge and Counsel ...	4110	Local Self-Government Act (III B. C. of 1885) ...	4259
Judgment ...	4110	Locus Poenitentiae ...	4259
Judicial Commissions ...	4112	Lottery ...	4260
Judicial Inquiry ...	4112	Lower Burma Courts Act (VI of 1900) ...	4261
Judicial Officer ...	4112	Lower Burma Land and Revenue Act (II of 1876) ...	4261
Judicial Order ...	4112	Lower Burma Land Revenue Rules ...	4262
Judicial Precedents ...	4112	Lower Burma Towns Act (IX of 1892) ...	4262
Judicial Proceedings ...	4113	Lower Burma Village Act, 1889 ...	4262
Jurisdiction ...	4113	Lunacy Act (IV of 1912) ...	4263
Jurisdiction of British Courts ...	4127	Lunatic Accused ...	4265
Jurisdiction of Court ...	4127	Lurking House Trespass ...	4265
Jurisdiction of Criminal Courts ...	4127	Madras Abkari Act (I of 1886) ...	4265
Jury ...	4128	Madras Act (III of 1869) ...	4270
Jury Trial ...	4135	Madras Act (I of 1900) ...	4270
Karachi City Municipal Act (XVII of 1933) ...	4145	Madras Borstal Schools Act (V of 1926) ...	4271
Karachi Port Trust Act (VI of 1866) ...	4146	Madras Canal and Public Ferries Act (II of 1890) ...	4272
Karachi Port Trust Bye-laws ...	4147	Madras Children Act (IV of 1920) ...	4272
Karachi Tramways Act (II of 1883) ...	4147	Madras City Municipal Act (III of 1904) ...	4272
		Madras City Municipal Act (IV of 1919) ...	4275

Column	Column
Madras City Municipal Act (V of 1920) 4277	Maintenance ... 4347
Madras City Police Act (III of 1888) ... 4278	Maintenance of Wife ... 4347
Madras Civil Courts Act (III of 1873) 4280	Maintenance Orders Enforcement Act (XVIII of 1921) ... 4348
Madras Criminal Rules of Practice ... 4281	Maintenance Orders (Facilities of Enforcement) Act, 1920 (10 and 11 Geo. V. Chap. 83) ... 4348
Madras Criminal Rules of Practice and Orders, 1931 ... 4281	Malabar Law ... 4348
Madras Criminal Tribes Act (VI of 1924) 4281	Malabar (Restoration of Order) Ordinance (I of 1922) ... 4348
Madras District Municipalities Act (IV of 1884) ... 4281	Malice ... 4349
Madras District Municipalities Act (V of 1920) ... 4285	Malicious Prosecution ... 4350
Madras District Police Act (XXIV of 1859) ... 4298	Mamlatdar's Courts Act (Bombay II of 1906) ... 4351
Madras Elementary Education Act (VIII of 1920) ... 4300	Manual of Government Orders (U. P.) Para 852 ... 4351
Madras Estates Land Act (I of 1908) ... 4300	Market ... 4351
Madras Forest Act (V of 1882) ... 4302	Marriage ... 4351
Madras Forest Manual ... 4305	Martial Law Ordinance (IV of 1919) ... 4352
Madras Gaming Act (III of 1930) ... 4305	Martial Law Ordinance (II of 1921) ... 4352
Madras Hereditary Village Offices Act, 1895 ... 4309	Martial Law (Supplementary) Ordinance (III of 1921) ... 4352
Madras High Court ... 4309	Master and Servant ... 4352
Madras High Court Appellate Rules ... 4309	Master's Liability ... 4354
Madras High Court Rules, Appellate Side ... 4310	Maxim ... 4354
Madras High Court Appellate Side Rules made under S. 491 (2), Cr. P. C. ... 4310	Medical Degrees Act (VII of 1916) ... 4354
Madras Hill Municipalities Act (Madras Act II of 1907) ... 4310	Medical Evidence ... 4355
Madras Local Authorities Entertainments Act (XX of 1927) ... 4311	Mens Rea ... 4355
Madras Local Boards Act (V of 1884) 4311	Mercantile Agent ... 4355
Madras Local Boards Act (Mad. Act III of 1890) ... 4312	Merchandise Marks Act (IV of 1889) ... 4355
Madras Local Boards Act (XIV of 1920) 4312	Merchant Seamen Act (I of 1859) ... 4359
Madras Local Boards Act (XI of 1930) 4328	Merchant Shipping Act, 1894 (57 and 58 Vic. C. 96) ... 4359
Madras Motor Vehicles Act (I of 1907) 4328	Merchant Shipping Act (57 and 58 Vict. C. 60) ... 4360
Madras Motor Vehicles Rules, 1923 ... 4328	Merchant Shipping Act (XXI of 1923) 4360
Madras Motor Vehicles Rules, 1938 ... 4328	Mines Act (IV of 1923) ... 4366
Madras Motor Vehicles Taxation Act (III of 1931) ... 4329	Minor Offence ... 4366
Municipal Act (III of 1904) ... 4329	Mirzapur Stone Mahal Act (V of 1886) 4361
Madras Panchayat Courts Act (II of 1920) ... 4329	Misappropriation ... 4361
Madras Plague Regulations ... 4330	Misbehaviour ... 4361
Madras Planters Labour Act (I of 1908) 4330	Miscarriage of Justice ... 4361
Madras Police Act (XXIV of 1859) ... 4330	Miscellaneous ... 4362
Madras Police Act (III of 1888) ... 4331	Mischief ... 4362
Madras Prevention of Adulteration Act, (III of 1918) ... 4331	Misconduct ... 4362
Madras Prohibition Act (X of 1937) ... 4334	Misdirection ... 4362
Madras Regulation (II of 1816) ... 4334	Misjoinder ... 4362
Madras Regulation (II of 1819) ... 4335	Misjoinder of Charges ... 4363
Madras Revenue Recovery Act (II of 1864) ... 4335	Misjoinder of Opposite Parties ... 4363
Madras Salt Act, 1889 ... 4335	Misjoinder of Parties ... 4363
Madras Suppression of Immoral Traffic Act (V of 1930) ... 4335	Mistake of Law ... 4363
Madras Survey and Boundaries Act (IV of 1897) ... 4336	Molestation Ordinance (V of 1932) ... 4364
Madras Survey and Boundaries Act (VIII of 1923) ... 4337	Motive ... 4364
Madras Town Nuisances Act (III of 1889) ... 4337	Motive and Intention ... 4364
Madras Village Courts Act (I of 1889) ... 4341	Motive of Crime ... 4364
Madras Village Courts (Amendment) Act (II of 1920) ... 4343	Motor-Car and Cycle Act (III B. C. of 1908) ... 4365
Madras Village Police Regulation (XI of 1816) ... 4343	Motor Drivers ... 4365
Magistrate ... 4344	Motor Vehicles ... 4365
	Motor Vehicles Act (XI of 1890) ... 4365
	Motor Vehicles Act (VIII of 1914) ... 4366
	Motor Vehicles Carrying only Passengers for Hire ... 4388
	Motor Vehicles Rules (Bombay) 1915 4388
	Motor Vehicles Rules ... 4388
	Muhammadan Law ... 4388
	Muhammadan Law (Shia) ... 4388
	Mukhtar ... 4388
	Municipal Commissioner ... 4386
	Municipal Committee of Pen ... 4386
	Municipal Officer ... 4386

	Column		Column
Municipality	... 4386	Ordinance (II of 1932)	... 4432
Municipalities Act (I of 1900)	... 4386	Ordinance (V of 1932)	... 4433
Murder	... 4386	Ordinance (VII of 1932)	... 4433
Murder Case	... 4393	Ordinance (X of 1932)	... 4433
Mussalman Waqf Act (XLII of 1923)	4393	Original jurisdiction of Lahore High Court	... 4434
Mussalman Waqf Act (XLII of 1923) As Amended by (Bombay Act XVIII of 1935)	... 4393	Orissa Tenancy Act (II of 1918)	... 4434
Mysore Game and Fish Preservation Regulation (II of 1901)	... 4393	Oudh Courts Act (IV of 1925)	... 4434
Mysore Mines Regulation Act (IV of 1906)	... 4394	Oudh Criminal Digest	... 4434
Mysore Village Sanitation Regulation (1898)	... 4395	Oudh Criminal Rules	... 4434
Mysore Village Sanitation Rules	... 4395	Oudh Laws Act (XVIII of 1876)	... 4434
Mysore Whipping Regulation (No. V of 1903)	... 4395	Owner	... 4435
Nationality	... 4395	Palm Impression	... 4435
Native Passenger Ships Act (X of 1887)	4395	Parda Lady	... 4435
Native Testimony	... 4396	Pardanashin	... 4435
Negligence	... 4396	Pardanashin accused	... 4435
Negotiable Instruments Act (XXVI of 1881)	... 4396	Pardanashin Lady	... 4435
Newspaper	... 4396	Pardanashin Witnesses	... 4435
Newspaper (Incitement to Offences) Act (VII of 1908)	4397	Pardanashin Woman	... 4435
Newspaper Incitement to Violence Act (VII of 1908)	... 4398	Pardon	... 4436
Northern India Canals and Drainage Act (VII of 1873)	... 4398	Partnership	... 4436
Northern India Ferries Act (XVII of 1878)	... 4400	Party Interested	... 4436
N.-W. Frontier Crimes Regulation (1931)	... 4401	Party to proceeding	... 4436
N.-W. F. Province Court's Regulation (III of 1931)	... 4401	Patna High Court	... 4436
N.-W. F. and Oudh Land Revenue Act (III of 1901)	... 4402	Patna High Court General Rules	... 4436
N.-W. P. and Oudh Municipalities Act (I of 1900)	... 4403	Patna High Court General Rules and Circulars	... 4436
N.-W. P. Tenancy Act (II of 1901)	... 4404	Pawn Broker	... 4437
N.-W. Provinces Village and Roads Act (XVI of 1873)	... 4405	Penal Code Act (XLV of 1860)	... 4437
Note of Identification	... 4405	Penal Code (Amendment) Act (XVI of 1921)	... 5722
Notice	... 4405	Perjury	... 5722
Notification No. 34 I. B. of January 14, 1937	... 4400	Petroleum Act (VIII of 1899)	... 5723
Notification No. 754 I. B. of March 28, 1912	... 4406	Planters Labour Act (Madras Act) (XII of 1890)	... 5725
Nuisance	... 4406	Plea of Guilty	... 5725
Oath	... 4407	Pleader	... 5725
Oath of Declaration of Affidavit	... 4407	Pledgee	... 5729
Oaths Acts (X of 1873)	... 4407	Poisons Act (I of 1904)	... 5729
Obscene Book	... 4411	Police	... 5729
Obstruction	... 4411	Police Act (V of 1861)	... 5730
Occupation of Land	... 4412	Police Act (IV B. C. of 1866)	... 5741
Octroi Rules	... 4412	Police Diary	... 5742
Offence	... 4412	Police	... 5742
Offender	... 4412	Police Officer	... 5742
Officer-in-Charge of Police Station	... 4412	Police Regulation Act (V of 1861)	... 5742
Official Duty	... 4412	Police Report	... 5743
Official Register	... 4413	Policeman	... 5743
Omit	... 4413	Ports Act (XV of 1908)	... 5743
Onus of Proof	... 4413	Possession	... 5743
Opinion	... 4413	Post Mortem	... 5745
Opinion of Assessors	... 4413	Post Mortem Examination	... 5745
Opium Act (I of 1878)	... 4413	Post Office Act (VI of 1898)	... 5745
Opium Rules (1894)	... 4432	Practice	... 5747
Oral Confession	... 4432	Precedents	... 5770
Ordinance	... 4432	Premises	... 5772
Ordinance (XI of 1931)	... 4432	Prerogative	... 5772
		Prescription	... 5773
		Presidency Small Cause Courts Act (XV of 1882)	... 5773
		Presidency Towns Insolvency Act (III of 1909)	... 5773
		President of Municipality	... 5776
		Press Act (XXV of 1867)	... 5776
		Press Act (I of 1910)	... 5776
		Press and Registration of Books Act (XXV of 1867)	... 5784
		Press (Emergency) Powers Act, (XXIII of 1931)	... 5787
		Press Law Repeal and Amendment Act (XIV of 1922)	... 579 5

	Column		Column
Press Ordinance ...	5795	Punjab Opium Smoking Act (VI of 1923)	5866
Presumption ...	5796	Punjab Pure Food Act (VIII of 1929) ...	5866
Prevention of Cruelty to Animals ...	5796	Punjab Relief of Indebtedness Act (VII of 1934) ...	5866
Prevention of Cruelty to Animals Act (XI of 1890) ...	5796	Quashing of Sentence ...	5867
Prevention of Gambling Act (Bom. Act IV of 1887) ...	5798	Quashing Proceedings ...	5867
Prevention of Intimidation Ordinance (V of 1930) ...	5798	Railway ...	5867
Prevention of Molestation and Boy-cotting Ordinance (V of 1932) ...	5799	Railways Act ...	5867
Previous Conviction ...	5799	Railways Act (IX of 1890) ...	5867
Principal and Agent ...	5799	Rangoon Appellate Side Rules ...	5888
Printing Presses and Books Act (XXV of 1867) ...	5800	Rangoon Police Act (IV of 1899) ...	5888
Prisoners Act (III of 1900) ...	5801	Rangoon Port Act (IV of 1905) ...	5889
Prisoners Act, 1894 ...	5801	Rangoon Rent Act (II of 1920, as Amended by Act (I of 1922) ...	5890
Prisoners Act (Bombay) 1894 ...	5802	Rape ...	5890
Private Defence ...	5802	Receiver ...	5890
Private Fisheries Act (II of 1889) ...	5803	Record of Rights ...	5891
Privilege ...	5803	Reference ...	5891
Privy Council ...	5804	Reformatory Schools Act (VIII of 1897) ...	5892
Probate and Administration Act (V of 1881) ...	5811	Registrar, Co-operative Societies Act, 1912	5896
Procedure ...	5812	Registration Act (III of 1877) ...	5896
Professional Misconduct ...	5815	Registration Act (XVI of 1908) ...	5896
Property ...	5815	Regulation XI of 1816 ...	5901
Prosecution ...	5815	Religious Endowment ...	5901
Provident Funds Act (XIX of 1925) ...	5817	Religious Endowment Act (XX of 1863)	5901
Provident Insurance Societies Act (V of 1912) ...	5817	Remand ...	5902
Provincial Insolvency Act (III of 1907) ...	5817	Remand of Appeal ...	5902
Provincial Insolvency Act, 1920 ...	5819	Repealing and Amending Act (XX of 1937)	5902
Proviso to Section ...	5821	Report of a Police Officer ...	5903
Provocation ...	5821	Restriction of Habitual Offenders Act (V of 1918) ...	5908
Public Conveyances Act (Bombay Act VI of 1868) ...	5822	Re-trial ...	5904
Public Gambling Act (III of 1867) ...	5822	Review ...	5905
Public Justice ...	5840	Revision ...	5907
Punjab Laws Act (IV of 1872) ...	5840	Right of Prosecution ...	5924
Public Nuisance ...	5840	Rioting ...	5924
Public Place ...	5841	Rule of the Road ...	5925
Public Prosecution ...	5841	Sale of Goods Act (III of 1930) ...	5925
Public Prosecutor ...	5842	Salt Act (XII of 1882) ...	5925
Public Right ...	5842	Sanction to Prosecute ...	5926
Public Speech ...	5842	Scheduled Districts Act (XIV of 1874) ...	5930
Public Way ...	5842	Sea Customs Act (VIII of 1878) ...	5930
Punishment ...	5843	Search—Illegality ...	5931
Punjab Alienation of Land Act (XIII of 1900) ...	5844	Search ...	5932
Punjab Borstal Act (XI of 1925) ...	5844	Securities Act (X of 1920) ...	5933
Punjab Colonization of Government Lands Act (V of 1912) ...	5844	Security for Good Behaviour ...	5933
Punjab Conspiracy (Special Tribunals) Act (IV of 1930) ...	5845	Security ...	5934
Punjab District Boards Act (XX of 1883) ...	5845	Sedition ...	5934
Punjab District Board Notification Regulation 8 ...	5845	Sentence ...	5935
Punjab Excise Act, 1914 ...	5846	Separate Convictions ...	5959
Punjab Government Notification ...	5851	Sessions Case ...	5959
Punjab Land Revenue Act (XVII of 1887) ...	5852	Sessions Trial ...	5959
Punjab Laws Act (IV of 1872) ...	5852	Seychelles Penal Code ...	5960
Punjab Military Transports Animals Act (Punjab Act I of 1903) ...	5852	Sholapur Martial Law Ordinance (IV of 1930) ...	5960
Punjab Minor Canals Act (III of 1905) ...	5853	Sind Courts Act (XII of 1866) ...	5961
Punjab Motor Vehicles Rules ...	5853	Sind Courts Criminal Circulars, Chap. V	5965
Punjab Municipal Act (XX of 1891) ...	5853	Sind Encumbered Estates Act (XX of 1896) ...	5965
Punjab Municipal Act (XX of 1898) ...	5856	Sind Frontier Regulation (Act V of 1872) ...	5966
Punjab Municipal Act (III of 1911) ...	5856	Sind Frontier Regulation (III of 1892) ...	5967
		Sind Judicial Commissioner's Court Rules ...	5968
		Solicitor ...	5968
		Sonthal Parganas Justice Regulation (V of 1893) ...	5968
		Special Marriage Act (III of 1872) ...	5969
		Special Powers Ordinance (X of 1932) ...	5969
		Specific Relief Act, 1877 ...	5969
		Stage Carriages Act (XVI of 1861) ...	5970

	Column		Column
Stamp Act (II of 1899) ...	5970	U. P. Municipal Account Code ...	6024
Statement ...	5978	U. P. Municipalities Act (I of 1900) ...	6024
Statement to Police ...	5978	U. P. Municipalities Act (II of 1916) ...	6029
Statutes ...	5978	U. P. Naik Girl's Protection Act (II of 1920) ...	6050
Stay of Criminal Case ...	5982	U. P. Opium Smoking Act (II of 1925) ...	6050
Stay of Criminal Proceedings ...	5983	U. P. Prevention of Adulteration Act (VI of 1912) ...	6050
Stay of Criminal Trial ...	5983	U. P. Public Gambling Act (III of 1867) ...	6055
Stolen Property ...	5983	U. P. Sugarcane Rules, 1934 ...	6055
Street Private ...	5983	U. P. Town Improvement Act (VIII of 1919) ...	6056
Suburbs of Calcutta ...	5984	U. P. Village Panchayats Act (VI of 1920) ...	6056
Succession (Property Protection) Act XIX of 1841 ...	5984	Unlawful Assembly ...	6057
Sugarcane Act (VIII of 1934) ...	5984	Unlawful Instigation Ordinance (VI of 1930) ...	6058
Suits Valuation Act, 1887 ...	5988	Upper Burma Criminal Justice Regulation, Sch., Sec. XII ...	6058
Summary Trial ...	5988	Upper Burma Ruby Regulation (XII of 1887) ...	6059
Summons Against Accused ...	5989	Vaccination Act (XIII of 1880) ...	6059
Summons Case ...	5989	Vakils of High Court ...	6060
Suppression of Immoral Traffic Act ...	5989	Village Chowkidari Act (VI B.C. of 1870) ...	6060
Suppression of Terrorists Outrages (Supplementary) Act (XXIV B. C. of 1932) ...	5990	Village Courts Act (III of 1892) ...	6060
Sureties ...	5990	Village Police Officers ...	6060
Surety ...	5990	Village Sanitation Regulation (I of 1898) ...	6060
Surety Bond for Appearance ...	5991	Village Watchmen Rules, Rr. 43, 44 ...	6061
Tea Districts Emigrant Labour Act ...	5991	Waging War ...	6061
Telegraphy Act (XIII of 1885) ...	5991	Wajib-ul-Arz ...	6061
Tender of Pardon by Local Government ...	5992	Warrant ...	6061
Theft ...	5992	Warrant Case ...	6062
Thumb Impressions ...	5993	Water Works Act (I of 1891) ...	6062
Tort ...	5993	Weapon—Arms Act ...	6063
Tout ...	5994	Whipping ...	6063
Track Evidence ...	5995	Whipping Act (VI of 1864) ...	6063
Trade Disputes Act (Act VII of 1920) ...	5995	Whipping Act (IV of 1909) ...	6064
Trade Mark ...	5995	Whipping (Burma Amendment) Act of 1927 ...	6068
Tramways Act (XI of 1886) ...	6000	Wild Birds Protection Act (X of 1887) ...	6068
Transfer ...	6000	Wild Birds and Animals Protection Act (VIII of 1912) ...	6068
Transfer Application ...	6004	Wireless Telegraphy Act (XVII of 1933) ...	6068
Transfer of Case ...	6004	Witness ...	6068
Transfer of Proceedings ...	6005	Words and Phrases ...	6070
Transfer of Property Act (IV of 1882) ...	6005	Workman's Breach of Contract Act (XIII of 1859) ...	6076
Treasure Trove Act (VI of 1878) ...	6006	Workmen's Compensation ...	6096
Trespass ...	6007	Workmen's Compensation Act (VIII of 1923) ...	6096
Trial ...	6008	Works of Defence Act (VII of 1903) ...	6104
Trial by Jury ...	6009	Writ of Possession ...	6104
Trial of Sessions Cases ...	6011	Writing ...	6104
Trusts Act (II of 1882) ...	6012	Written Statement ...	6104
U. P. District Boards Act (X of 1922) ...	6012		
U. P. Excise Act (IV of 1910) ...	6013		
U. P. Excise Act (I of 1914) ...	6022		
U. P. Excise (Amendment) Act (II of 1923) ...	6022		
U. P. Land Revenue Act (III of 1911) ...	6022		
U. P. Motor Vehicles Act (II of 1911) ...	6023		
U. P. Motor Vehicles Rules ...	6023		

BANKING COMMISSION

	Page No.		Page No.
SECTION 1—LAW RELATING TO BANKER AND CUSTOMER ..	530-541	SECTION 3—LAWS STILL UNDER REVIEW BY THE STUDY GROUP ..	542-551
<i>A. Secrecy as to Affairs of Customers ..</i>	<i>530</i>	(i) <i>The Laws Relating to Negotiable Instruments and Negotiable Documents ..</i>	<i>5</i>
<i>Disclosure of General Information ..</i>	<i>530</i>	(ii) <i>Laws Relating to Loans and Advances ..</i>	<i>5</i>
<i>Qualifications to Secrecy Rule ..</i>	<i>531</i>	(iii) <i>The Laws Relating to Financial Intermediaries Which are not Doing Banking ..</i>	<i>5</i>
(1) <i>Where the Disclosure is under Compulsion by Law ..</i>	<i>531</i>	(iv) <i>The Effect of the Provisions of the Company Law on the Carrying on of the Business of Banking ..</i>	<i>5</i>
<i>Police Investigations ..</i>	<i>531</i>	SECTION 4—SETTING UP OF A SPECIAL MACHINERY FOR CONSTANTLY REVIEWING LAWS AFFECTING BANKING ..	551.
<i>Micro-filming of Bank Records ..</i>	<i>532</i>	CHAPTER 22 ²² BANKING RESEARCH AND EDUCATION ..	554
<i>Preservation of Bank Records ..</i>	<i>532</i>	INTRODUCTORY ..	554
<i>Preservation of Paid Instruments ..</i>	<i>533</i>	BANKING RESEARCH ..	554
<i>Returns, etc., to Income-tax Authorities ..</i>	<i>534</i>	<i>Present State of Banking Research in India ..</i>	<i>554</i>
<i>Identification of Parties ..</i>	<i>534</i>	<i>General Observations and Recommendations ..</i>	<i>554</i>
<i>State Revenue Laws ..</i>	<i>535</i>	BANKING EDUCATION ..	554
<i>Information with Foreign Branches of Indian Banks ..</i>	<i>535</i>	CONCLUDING OBSERVATIONS ..	554
(2) <i>Duty to the Public to Disclose Disclosure for Research Purposes ..</i>	<i>535</i>	CHAPTER 23 CONCLUDING OBSERVATIONS ..	554
<i>Disclosure of Information to Commissions/Committees Appointed by Government ..</i>	<i>536</i>	CHAPTER 24 SUMMARY OF MAJOR RECOMMENDATIONS ..	554
(3) <i>Disclosure by a Bank in its Own Interest ..</i>	<i>536</i>	CHAIRMAN'S REMARKS ON THE OCCASION OF THE PRESENTATION OF THE REPORT TO THE FINANCE MINISTER ..	554
(4) <i>Disclosure with the Express or Implied Consent of the Customer ..</i>	<i>537</i>		
B. Credit Information ..	537		
(a) <i>Furnishing of Credit Information by Banks ..</i>	<i>537</i>		
(b) <i>Furnishing of Credit Information by Specialised Agencies ..</i>	<i>538</i>		
(c) <i>Furnishing of Credit Information by the Borrowers Themselves ..</i>	<i>539</i>		
C. Repayment of Deposits and Release of Assets by Banks ..	539		
SECTION 2—THE LAWS GOVERNING BUSINESS ALLIED TO BANKING ..	541-542		

			<i>Page No.</i>
APPENDIX	I	.. Resolution of the Government Constituting the Banking Commission	659-660
APPENDIX	II	.. Opening Remarks by Deputy Prime Minister on the inauguration of the Banking Commission	661-663
APPENDIX	III	.. Study Groups Constituted by the Commission	664-670
APPENDIX	IV	.. Persons and Institutions Who Undertook Projects for the Commission	671-674
APPENDIX	V	.. List of Places Visited by the Commission ..	675
APPENDIX	VI	.. List of Persons with Whom the Commission had Discussions	676-716
APPENDIX	VII	.. Persons and Institutions Who Submitted Memoranda or Notes to the Commission	717-719
APPENDIX	VIII	.. Number of Governments of States and Union Territories, Banks and Other Institutions to Whom the Questionnaires Were Sent by the Commission and a List of Those Who Responded	720-732
APPENDIX	IX	.. Persons Who helped in Liaison Arrangements for the Visits of the Commission to the Various States	733-734
APPENDIX	X	.. Banking Commission, Staff and Special Cell of the Reserve Bank of India for the Commission	735-737
APPENDIX	XI	.. Trend and Progress of Banking in India ..	738-750
		751-760

A crore = 10 millions

A lakh = one-tenth of a million

ALL INDIA CRIMINAL DIGEST (1904-1940) Volume III

F

FACT

See also Evidence Act, 1872, Ss. 24, 25, 26, 27.

FACTORIES ACT (XV OF 1871)

—S. 15 (1) (E), Rule 22 III—*Order or notice from Inspector of Factories — Necessity of.*

No order or notice from the Inspector of Factories is necessary before a person, who has not conformed to the rules made under the Factories Act, can be charged for any offence under it. It is the duty of such person to obey the rules, and in case of his disobedience, he becomes liable to conviction whether there was any order or not from the Inspector calling upon him to obey the rules. *Emperor v. Ranoomian Pirbhai.*

11 Cr. L. J. 336 :
5 I. C. 969 : 12 Bom. L. R. 225.

FACTORIES ACT (XV OF 1881)

—S. 2—*Employed—Meaning of.*

The work of drawing cotton forms part of the operations of a Cotton Mill, and a boy who does this work, comes within the definition of the word "employed" given in S. 2 of the Factories Act. *Emperor v. Manilal Bhogilal.*

9 Cr. L. J. 160 :
1 I. C. 102 : 11 Bom. L. R. 12.

—S. 9—*Register of child labour—Necessity of keeping.*

S. 9 and R. 10, Bombay Factory Rules, direct the occupier of a factory to keep a register of the children "employed" and their respective employments. The responsibility is personal. A person cannot get rid of his liability for the performance of a duty imposed upon him by law by delegating it to another person. It is the duty of the occupier of a Factory to find out whether children are or not employed in the Factory. His liability is not discharged under S. 17 of the Act, unless he proves that his failure to enter the children in the register was due to

FACTORIES ACT (XV OF 1881)

the act of some other person without his knowledge or consent. *Emperor v. Manilal Bhogilal.*
9 Cr. L. J. 160 :
1 I. C. 102 : 11 Bom. L. R. 12.

—S. 14—*Notice of occupation—Necessity of.*

The substance and import of S. 14, Factories Act, 1881, are that the occupier of a factory shall send the notice prescribed, within one month after his occupation has commenced. If any individual sends such a notice, that is evidence of a representation by him that he is the occupier, but there is nothing in the Act, which makes it necessarily conclusive evidence. The Court may treat the evidence of a notice as sufficient to discharge the onus of proof lying on the prosecution at the outset and to shift the burden on to the person who gave the notice. The Court is not bound to treat it as such. Whether it should so treat it or not, must depend on the circumstances of each case. *Emperor v. Taylor.*

7 Cr. L. J. 44 :
10 Bom. L. R. 38.

—S. 15 (1) (e)—*Manager residing on the premises—Whether occupier.*

The manager of a factory, who resides in a part of the premises in which the factory is, is not an occupier of the factory within the meaning of the Indian Factories Act, 1881. *Emperor v. Rampratap Magniram.*

2 Cr. L. J. 428 :
7 Bom. L. R. 454 :
I. L. R. 29 Bom. 423.

—S. 17—*"Occupier," meaning of.*

The word "occupier" in S. 17, Factories Act, bears the same meaning as it bears in similar enactments in England, that is to say, a person who regulates a factory and controls the work that is done there. *Emperor v. Dhanji.*

14 Cr. L. J. 284
20 I. C. 144 : 15 Bom. L. R. 328.

Factories Act (XII of 1911)

—S. 2—Employed—Meaning of.

The definition given in S. 2 (2) provides that a person who works in a factory, whether for wages or not, in any of the ways enumerated in that clause, shall be deemed to be employed in that factory. *Ramdil Mal v. Emperor.*

35 Cr. L. J. 1401 :
151 I. C. 763 : 7 R. C. 173 :
61 Cal. 332 : 38 C. W. N. 801 :
A. I. R. 1934 Cal. 546.

—S. 2—Employed—Meaning of.

The Factories Act does not affect only the manual workers. As the provisions of the Act, now stand, the question whether a particular worker who comes strictly within the definition clauses of S. 2, which are of a very wide application, and in whose case an exception could be claimed under S. 29, has to be settled by the Inspector of Factories, who is the constituted authority under the law, as it now stands, to express the opinion whether that person held a position of supervision or management, or is employed in a confidential capacity as mentioned in S. 29 of the Act, and R. 59 framed under the Act, the opinion of the Inspector being dependent on the facts and circumstances of the case before him. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.*

152 I. C. 566 :
38 C. W. N. 1008 : 7 R. C. 292 :
A. I. R. 1934 Cal. 730.

—S. 2—Factory—What is.

The word 'factory' as used in the Factories Act, means premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold, or is in a suitable condition to be put on the market. *Prag Narain v. Emperor.*

29 Cr. L. J. 583 :
109 I. C. 599 : 8 Lah. 666 :
29 P. L. R. 234 : A. I. R. 1928 Lah. 78.

—Ss. 2, 18, 41 (1) —Factory —What is.

For the purposes of the definition of the word 'factory' in the Factories Act, the purpose for which the persons on the premises are employed, is not material. All that the definition requires is that a number of persons not less than twenty shall be simultaneously employed in the premises or within the precincts, and that mechanical power is used in aid of any manufacturing process. *Ganpat Dattu v. Emperor.*

31 Cr. L. J. 1094 :
126 I. C. 867 : 32 Bom. L. R. 329 :
A. I. R. 1930 Bom. 162.

—S. 2 (2)—Employment—What is.

The sorting of ground-nuts for use in ground-nut decortiating machine is work connected with the article, subject of manufacturing process, within the meaning of S. 2 (2) and amounts to employment under the Act. *In re : Ramanadham.*

28 Cr. L. J. 267 :
160 I. C. 235 : 25 L. W. 176 :
52 M. L. J. 207 : 38 M. L. T. 78 :
50 Mad. 834 : A. I. R. 1927 Mad. 345.

Factories Act (XII of 1911)

—S. 2 (2), (3)—Employed—Meaning of.

A person, who sells the manufactured article, though he happens to occupy a room at the factory, cannot be said to be doing any kind of work incidental to, or connected with, the manufacturing process or "connected with the article made," and is not, therefore, a person 'employed' in the factory within the meaning of S. 2 (2), (3), Factories Act. *Prag Narain v. Emperor.*

29 Cr. L. J. 583 :
109 I. C. 599 : 8 Lah. 666 : 29 P. L. R. 234 :
A. I. R. 1928 Lah. 78.

—S. 2 (2), (3)—Factory—What is.

A drying yard, 5 or 6 yards from the wall of the building in which machinery for decorating ground-nuts is used, is part of a factory within the meaning of S. 2 (3) of the Factories Act. *In re : Ramanadham.*

28 Cr. L. J. 267 :
100 I. C. 235 : 25 L. W. 176 :
52 M. L. J. 207 : 38 M. L. T. 78 :
50 Mad. 834 : A. I. R. 1927 Mad. 345.

—S. 2 (2), (3)—Factory—What is.

A factory includes everything, machine, rooms, sheds, godowns and yards, if within the premises or precincts, mechanical power is used in aid of any process for altering for transport or sale of any article. The test is whether mechanical power is used in aid of a manufacturing process used in the premises. If it is so used in a particular room, the whole premises are a factory and not merely the room. *In re : Ramanadham.*

28 Cr. L. J. 267 :
100 I. C. 235 : 25 L. W. 176 :
52 M. L. J. 207 : 38 M. L. T. 78 :
50 Mad. 834 : A. I. R. 1927 Mad. 345.

—S. 2 (3)—Premises—Meaning of.

The word 'premises' in S. 2 (3), Factories Act, means the main building and its appurtenances and the word 'precincts' is intended to include any adjunct thereof. *In re : Ramanadham.*

28 Cr. L. J. 267 :
100 I. C. 235 : 25 L. W. 176 :
52 M. L. J. 207 : 38 M. L. T. 78 :
50 Mad. 834 : A. I. R. 1927 Mad. 345.

—Ss. 7, 23 (a), 41 (a)—Girl, aged 14 years, whether 'child'—Certificate of fitness for employment, necessity of.

A girl aged 14 years comes under the definition of 'child' in the Factories Act, and cannot, therefore, be employed in a factory, unless she is in possession of a certificate as required by S. 28. *Gokuldas Haridas v. Emperor.*

30 Cr. L. J. 793 (b) :
117 I. C. 447 : 34 Bom. L. R. 514 :
I. R. 1929 Bom. 415 : A. I. R. 1929 Bom. 272.

—S. 18.

See also Factories Act, 1911, S. 2.

—S. 18 (2)—Interpretation.

The words "serve on the manager an order in writing" in S. 18 (2), Factories Act, mean that such an order as is referred to in Form O should be served definitely on the manager

FACTORIES ACT (XII OF 1911)

of the factory and that it should specify exactly what measures the manager is to take in order to remove the danger. *Narayan Anant Desai v. Emperor*. 26 Cr. L. J. 482 : 85 I. C. 226 : 26 Bom. L. R. 1245 : A. I. R. 1925 Bom. 143.

———S. 18 (2)—*Notice to manager—Necessity of.*

S. 18 (2), Factories Act, contemplates that the Inspector is to make up his mind definitely what is the order which he requires to be carried out under the Act, and for breach of which, he will prosecute the factory owner or manager under the Act, and that equally definite notice is to be given to the latter. The mere fact that the manager was aware of what the Inspector wanted him to do is not a sufficient compliance with the specific requirements of the Act. A manager of a factory cannot, therefore, be prosecuted under S. 41 (g), Factories Act, unless the condition precedent mentioned therein is complied with, that is to say, that the requisite notice has been served on the manager of the factory. *Narayan Anant Desai v. Emperor*.

26 Cr. L. J. 482 :
85 I. C. 226 : 26 Bom. L. R. 1245 :
A. I. R. 1925 Bom. 143.

———S. 20—*Partition in factory for separation of women and children—What is.*

The intention of S. 20, Factories Act, is that there should be a separation of women and children from the room in which the main body of the cotton-opener is, and that there should not be a direct means of access to that room. The partition intended by the section is one which should prevent the access of a woman or a child from the room in which the feed-end of the cotton-opener is at work to the adjacent room in which the rest of the cotton-opener is. Where there is a door made in such a partition and that door is shown to open at a particular time or even although it is shut, yet it is not locked or other effective means are not taken to prevent its being opened by a woman or child wishing to get into the press room, then the partition is on the same footing as if it had a gap in it which would not effectively separate women and children from the press room; and there would be a contravention of the provisions of S. 20 of the Factories Act. *Gamadia v. Emperor*.

27 Cr. L. J. 165 :
91 I. C. 949 : 27 Bom. L. R. 1405 :
50 Bom. 34 : A. I. R. 1926 Bom. 57.

———S. 22—*Employing several persons on Sunday constitutes one offence.*

Employing several persons on Sunday does not make distinct offences—Violation of all conditions constitutes only one offence. *In re : Konka Venkataratnam*. 37 Cr. L. J. 104 (1) : 159 I. C. 422 : 41 L. W. 497 : 1935 M. W. N. 326 : 8 R. M. 496 : A. I. R. 1935 Mad. 301.

———S. 23—*Employment of child labour in contravention of—Whether constitutes offence under S. 41.*

Once it is found that children are employed in

FACTORIES ACT (XII OF 1911)

a factory in contravention of S. 23, Factories Act, the occupier or manager is liable under S. 41. It is immaterial who actually pays them their wages. *In re : Ramanadham*.

28 Cr. L. J. 267 :
100 I. C. 235 : 25 L. W. 176 :
52 M. L. J. 207 : 38 M. L. T. 78 :
50 Mad. 834 : A. I. R. 1927 Mad. 345.

———S. 23—*Employment of child labour—Offence complete.*

Employment in drying yard of children in contravention of the provisions of S. 23 of the Act is an offence. *In re : Ramanadham*.

28 Cr. L. J. 267 :
100 I. C. 235 : 25 L. W. 176 :
52 M. L. J. 207 : 38 M. L. T. 78 :
50 Mad. 834 : A. I. R. 1927 Mad. 345.

———Ss. 24, 27—*Women, employment of, during night, when permissible—Inspector of Factories, power of.*

The employment of women for night work in a factory is prohibited, except in the case of Ginning Factory where women may be employed for night duty provided the owner gets an opinion from the Inspector of Factories that the staff of women is sufficient, but the Inspector has no right to issue a general prohibition against the employment of women on night duty. An owner who employs women for night work without obtaining an opinion from the Inspector is guilty of an infringement of Ss. 24 and 27, Factories Act. *Cocolas v. Emperor*.

22 Cr. L. J. 369 :
61 I. C. 225 : 19 A. L. J. 503 :
3 U. P. L. R. AIL. 88 :
A. I. R. 1921 AIL. 229.

———S. 26—*Breach of provisions of—When constitutes.*

Failure to comply with the provisions of S. 26, Factories Act, will not in itself amount to a breach of S. 26 or justify a conviction under S. 41 (a). *Emperor v. Nanubhai Maneklal*.

35 Cr. L. J. 542 :
147 I. C. 1154 : 35 Bom. L. R. 1167 :
58 Bom. 137 : 6 R. B. 235 :
A. I. R. 1934 Bom. 43.

———S. 26—*Piece workers—If within, scope of.*

The provisions of S. 26, Factories Act, regarding hours of employment apply not only to workmen regularly employed on daily wage but also to piece workers. *Kamlapat v. Emperor*.

31 Cr. L. J. 1220 :
127 I. C. 522 : 1930 A. L. J. 459 :
52 AIL. 444 : A. I. R. 1930 AIL. 214.

———S. 26—*Stoppage of work for 15 minutes—Extension of work for that period—Whether offence.*

Mill—Breakage of rope resulting in stopping of mill for 15 minutes—Special order by Manager extending period of work by 15 minutes amounts to an infringement of S. 26 rendering

FACTORIES ACT (XII OF 1911)

the manager liable to conviction under S. 41 (a).
Emperor v. Nanubhai Maneklal.

35 Cr. L. J. 542 :
147 I. C. 1154 : 35 Bom. L. R. 1167 :
58 Bom. 137 : 6 R. B. 235 :
A. I. R. 1934 Bom. 43.

—S. 26.

Factory exempted by Government under S. 30 from provisions of Ss. 21, 22 and 28 is also exempted from the provisions of S. 26. *Superintendent and Remembrancer of Legal Affairs, Bengal v. J. J. Andrews.*

134 I. C. 881 : 59 Cal. 519 :
35 C. W. N. 1108 : I. R. 1931 Cal. 881 :
54 C. L. J. 538 : A. I. R. 1931 Cal. 639.

—Ss. 26, 28, 30 (2) (c)—*Exemption of factory under S. 28 on condition of eight hour shifts—Applicability of S. 26.*

An ice factory had been exempted by the Government under S. 30 (2) (c) from the provisions of Ss. 21, 22, 28, Factories Act, as being one of a class of factories in which the work necessitated continuous production on condition, *inter alia*, that the persons engaged on factory work shall ordinarily be employed on daily eight hour shifts. The manager had fixed the specified hours for all work-people at seven and a half hours daily shifts. Some of the employees who had worked for seven and a half hours were employed for loading loaded lorries of ice from the factory to the docks and to put the ice on board a ship. The manager was prosecuted for contravention of S. 26 : *Held*, that in the circumstances of the case S. 26 could not be applied and the manager could not be convicted under that section. The necessity of immediate amendment of Factories Act, pointed out. *The Superintendent and Remembrancer of Legal Affairs, Bengal v. J. J. Andrews.* 134 I. C. 881 : I. R. 1931 Cal. 881 : 35 C. W. N. 1108 : 54 C. L. J. 538 : 59 Cal. 519 : A. I. R. 1931 Cal. 639.

—S. 28—Breach of law under —*Plea of good faith—Value of.*

The law, in general, affords protection in the matter of prosecution for commission of offences, to persons acting in good faith. Good faith so far as commission of acts of which penalties may be imposed under the law, must involve due care and attention. Where, therefore, there was the representation of the manager to the Inspector of Factories by a letter showing the *bona fides* on the part of the manager of the factory, in the matter of the alleged infringement of the law as contained in S. 28 read with S. 41 (a), Factories Act : *Held*, that the accused person was not the person on whom penalty could be imposed under the Factories Act. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.* 152 I. C. 566 : 38 C. W. N. 1008 : 7 R. C. 292 : A. I. R. 1934 Cal. 730.

—S. 28—Employed—*Meaning of.*

All persons not strictly coming within the exceptions contemplated by S. 29, and persons

FACTORIES ACT (XII OF 1911)

in regard to whom there is no "opinion" of the Inspector of Factories, entitling the Manager to claim that he was not a person employed in the factory, as contemplated by S. 28, Factories Act, are to be deemed as persons employed in the factory. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.* 152 I. C. 566 : 38 C. W. N. 1008 : 7 R. C. 292 : A. I. R. 1934 Cal. 730.

—S. 28—Scope and effect of.

S. 28, Factories Act, refers to individual employment and the interruption referred to in that section must be taken in connection with each individual employed and not confined to the general cessation of work, as for example, the interval between noon and 1 p. m.; the section further refers to actual work and not merely residence in the factory for certain number of hours. *Kamlapat v. Emperor.* 31 Cr. L. J. 1220 : 127 I. C. 522 : 1930 A. L. J. 459 : 52 All. 444 : A. I. R. 1930 All. 214.

—Ss. 28, 29, 31, 41 (a)—*Approval of system of working factory, whether can be cancelled—Appeal against order of cancellation—Prosecution during pendency of appeal, desirability of.*

Where an Inspector of Factories approves a system of working a particular factory, he has power under S. 21, Factories Act, to cancel the approval. Where, however, an appeal is pending from the order of cancellation, it is not desirable to institute a criminal prosecution in respect of the factory having been worked in contravention of the order of cancellation, during the pendency of the appeal. *Madan Mohan Lal v. Emperor.* 22 Cr. L. J. 153 : 59 I. C. 857 : A. I. R. 1920 Lah. 87.

—S. 29—Employed—*Meaning of.*

Persons employed in factories are those not coming under exception mentioned in S. 29. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.* 152 I. C. 566 : 38 C. W. N. 1008 : 7 R. C. 292 : A. I. R. 1934 Cal. 730.

—Ss. 34, 41-J—*Accident causing injury to two persons—Legality for, of manager and occupier—Nature of.*

Where an accident occurred in a factory in which two men were injured and the manager and occupier were separately convicted for two offences under S. 41-J, Factories Act, as no intimation as required by S. 34 of the Act was given by the manager : *Held*, that there was only one offence under S. 41-J though two persons were injured and there should be only a single conviction of the occupier and manager jointly and a single sentence of fine payable by them jointly and severally. The duty to inform the authority under the Factories Act, under S. 34, is laid on the manager. Both the occupier and the manager are made responsible jointly and severally for this contravention under S. 41-J of the Act. *Wazir Chand v. Emperor.* 31 Cr. L. J. 869 (b) : 125 I. C. 380 : A. I. R. 1930 Lah. 65.

FACTORIES ACT (XII OF 1911)

—S. 35—Employment Register.

The provision of the law as it stands in S. 35 is mandatory in its nature; and although the use of the word "shall" in some cases does not definitely indicate the intention of the Legislature, the expression "shall be kept," taken along with the proviso to S. 35 relating to an order in writing by the Inspector, makes the position clear that in the absence of such an order, one register in Form G must be kept, of all persons employed in a factory, of the hours of their work, and of the nature of their respective employment. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.*

152 I. C. 566 :
38 C. W. N. 1008 : 7 R. C. 292 :
A. I. R. 1934 Cal. 730.

—S. 35—Manager absent—Whether liable for breach.

Where a person was absent from the duties as manager, as contemplated by law, at the time when there was the alleged infringement of the law, he could not be proceeded against for such alleged offences under Factories Act, for he was not the manager responsible for the working of the factory. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.*

152 I. C. 566 : 7 R. C. 292 :
38 C. W. N. 1008 : A. I. R. 1934 Cal. 730.

—S. 35—Register of employees—Particulars required.

In order that the Employment Register required by the Factories Act shall properly be said to be up-to-date, it is necessary that it should contain, day by day, the names of the persons employed in the factory, their hours of work, and the nature of their employment. *Ramditi Mall v. Emperor.*

35 Cr. L. J. 1401 :
151 I. C. 763 : 61 Cal. 332 :
38 C. W. N. 801 : 7 R. C. 173 :
A. I. R. 1934 Cal. 546.

—S. 35—Scope.

The provision of the law as it stands in S. 35 is mandatory in its nature. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.*

152 I. C. 566 : 38 C. W. N. 1008 :
7 R. C. 292 : A. I. R. 1934 Cal. 730.

—S. 41—Amount of fine under.

S. 41, Factories Act, is a penal section and ought to be construed strictly. The natural interpretation of the clause in the section relating to the penalty seems to be that the occupier and manager, both or either of them, can be required to pay a fine which may extend to Rs. 200, but that between the two they cannot be required to pay any sum exceeding Rs. 200 for each offence. *Vrijvallabhdas v. Emperor.*

21 Cr. L. J. 728 :
58 I. C. 152 : 22 Bom. L. R. 904 :
45 Bom. 220 : A. I. R. 1921 Bom. 322.

—S. 41—Liability under of occupier and manager—Nature of.

S. 41, Factories Act, authorises a Magistrate to impose on the occupier and manager jointly and severally a fine not exceeding Rs. 200. There can be only one fine, and for the whole

FACTORIES ACT (XII OF 1911)

sum, each delinquent is jointly and severally liable. Separate sentences of fine on the occupier and manager, under this section, therefore, are not legal. *Niranjan Lal v. Emperor.*

19 Cr. L. J. 495 :
45 I. C. 159 : 13 P. R. 1918 Cr. :
21 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 285.

—S. 41—Mukaddam—Position of.

The *mukaddam* is really a foreman, and although he supervises work, in no sense can it be said that he regulates and controls the working of the factory. *Emperor v. Narayan Vithoba Kalar.*

34 Cr. L. J. 821 :
144 I. C. 693 : 29 N. L. R. 72 :
6 R. N. 7 : A. I. R. 1933 Nag. 100.

—S. 41—Occupier is solely liable under.

Under S. 41 the liability is fastened on the occupier, irrespective of the actual offender for the breach of certain provisions. *J. Agarwala v. Emperor.*

33 Cr. L. J. 274 (2) :
136 I. C. 289 : 13 P. L. T. 252 :
I. R. 1932 Pat. 65 :
A. I. R. 1932 Pat. 188.

—S. 41—Occupier—Who is.

An "occupier" of a factory within the meaning of S. 41, Factories Act, is the person entitled to the possession or use of the factory. He is the controller, for the time being, of the factory, the person entitled to use the factory for his own or another's profit. He may be the owner, on the other hand, he may be only a lessee or a mortgagee with possession, but it is he who decides whether the factory is to work or to close down. The manager merely carries out the occupier's orders to work the factory, and if the occupier designates no manager, the occupier himself shall be deemed to be the manager for the purposes of the Act. *Niranjan Lal v. Emperor.*

19 Cr. L. J. 495 :
45 I. C. 159 : 13 P. R. 1918 Cr. :
21 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 285.

—S. 41—Occupier—Who is.

The word 'occupier' denotes a person who is either a proprietor or otherwise entitled to be in possession of the factory and control its working. *Emperor v. Naryan Vithoba Kalar.*

34 Cr. L. J. 821 :
144 I. C. 693 : 29 N. L. R. 72 :
6 R. N. 7 : A. I. R. 1933 Nag. 100.

—S. 41 (a)—Manager—When not liable.

Bona fide representation by manager regarding alleged infringement of S. 28—Manager cannot be punished under S. 41 (a). *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson.*

152 I. C. 566 : 38 C. W. N. 1008 :
7 R. C. 292 : A. I. R. 1934 Cal. 730.

—S. 41 (a)—Offence under—Proof of.

The factories Act is a Special Act, and before a conviction can be had under S. 41 (a) of the Act, there must be definite evidence to show that the boy was either employed or was

FACTORIES ACT (XII OF 1911)

allowed to work contrary to the provisions of the Act. *Sanchoi Ram v. Emperor*.

20 Cr. L. J. 236 :
49 I. C. 860 : 17 A. L. J. 223 :
A. I. R. 1919 All. 273.

—S. 41 (a)—Offence under S. 41—Occupier whether can shift liability on to manager.

An occupier of a factory cannot escape his liability for an offence under S. 41 (a), Factories Act, by proving that he had left the entire management and control of the factory to the manager of the factory appointed by him and that he knew nothing about the management. *Emperor v. Jamshedji Naserwanji Modi*.

32 Cr. L. J. 1063 :
133 I. C. 826 (a) : 33 Bom. L. R. 309 :
55 Bom. 366 : I. R. 1931 Bom. 410 (1) :
A. I. R. 1931 Bom. 308.

—S. 41 (a)—Penal Code (Act XLV of 1860), S. 71—Employing several persons to work in contravention of provisions of Act—Offences, whether separate.

The language of S. 41 (a), Factories Act, indicates that what is prohibited is the employment of any person or allowing any person to work contrary to the provisions of the Act, that is to say, it is an offence to employ any person, or allow him to work, contrary to the provisions of the Act. Therefore, where several persons are so employed, the offence is complete and separate in respect of each person employed or allowed to work contrary to any of the provisions of the Act. To such a case the provisions of S. 71, Penal Code, have no application, because the offence of each workman is distinct and separate and there is not one offence collectively merely by the fact of a number of these offences having been committed at the same time. *Emperor v. Johnson*.

20 Cr. L. J. 837 :
53 I. C. 933 : 21 Bom. L. R. 1059 :
44 Bom. 88 : A. I. R. 1920 Bom. 315.

—S. 41 (a)—Retrial of offence under—When can be ordered.

That defendant held responsible position and that premises were factory, not fully established—Re-trial may be directed. *A. D. M. Cotton v. Emperor*.

35 Cr. L. J. 996 :
149 I. C. 450 : 6 R. C. 597 :
A. I. R. 1934 Cal. 604.

—S. 42—Occupier or manager, victim of other's negligence—Remedy under.

S. 42, Factories Act, provides the remedy for an occupier or manager who is the victim of some other person's neglect, but he must take the prescribed steps to assure the real culprit's conviction and not merely attempt to exculpate himself. *Niranjan Lal v. Emperor*.

19 Cr. L. J. 495 :
45 I. C. 159 : 13 P. R. 1918 Cr. :
21 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 285.

—S. 42—Proceedings under.

The structure of S. 42 (1), Factories Act, indicates that one proceeding is split up into two proceedings and that while the manager

FACTORIES ACT (XXV OF 1934)

or occupier is accused of having committed an offence under the Act, he is also a complainant on his complaint against the other person or persons he has brought in. In the proceedings in which the manager or occupier is the complainant, he is liable to be cross-examined by the other person or persons who has or have been brought before the Court on his complaint. Consequently, the manager or occupier *qua*-complainant must give evidence himself. In the circumstances contemplated in the latter part of the section, he goes into the witness-box not as an accused in the case originally started against him, but in his own right as a complainant on his complaint against the other person or persons whom he has brought in. *Superintendent and Remembrancer, Legal Affairs, Bengal v. Murray*.

30 Cr. L. J. 818 :
117 I. C. 673 : 32 C. W. N. 922 :
56 Cal. 400 : I. R. 1929 Cal. 561 :
A. I. R. 1928 Cal. 557.

—S. 43 (c)—Manager—When not liable.

Manager absent—Liability for infringement of law in his absence is not on him. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. B. Watson*.

152 I. C. 566 : 38 C. W. N. 1008 :
7 R. C. 292 : A. I. R. 1934 Cal. 730.

—S. 52—Applicability.

S. 52 does not apply to cases falling under S. 26. *Emperor v. Nanubhai Mancklal*.

35 Cr. L. J. 542 :
147 I. C. 1154 : 35 Bom. L. R. 1167 :
58 Bom. 137 : 6 R. B. 235 :
A. I. R. 1934 Bom. 43.

FACTORIES ACT (XXV OF 1934)

—S. 2 (1)—Managing Agent—Who is.

A person appointed by the person who has ultimate control of a factory as the latter's *Munim* and who is the ultimate authority on the spot and who is managing the factory on behalf of his master, answers to the description of managing agent in S. 2 (1), Factories Act, and is 'occupier' of the factory. The word *Munim* as commonly used does connote agency and persons dealing with the chief authority in charge of the factory where it is situated would look upon him as the agent of the owner or occupier. The phrase 'managing agent' in the definition does not have any limited technical meaning but denotes simply an agent who manages the factory. The burden of proving any special contract of service or agency between him and his master is on him. *Haribhau v. Emperor*.

38 Cr. L. J. 431 :
167 I. C. 745 : 9 R. N. 208 :
19 N. L. J. 247.

—S. 37.

See also Factories Act, 1934, Ss. 48, 42.

—S. 40.

See also Factories Act, 1934, S. 39 (1).

FACTORIES ACT (XXV OF 1934)

—S. 42—Infringement of provisions under—*Pnally for.*

Where a dyeing, bleaching and printing factory is exempt from observation of intervals of rest required by S. 37, but it was found that work was actually going on during the period shown as period of rest in the notice of periods of work maintained in the factory, the proprietor and manager are guilty under S. 60 (b) (i) for infringement of the provisions of S. 42. *Emperor v. R. J. Mistry.* 38 Cr. L. J. 304 :

166 I. C. 736 : 38 Bom. L. R. 1181 :
9 R. B. 254 : I. L. R. 1937 Bom. 175 :
A. I. R. 1937 Bom. 52.

—S. 43—Rules under—*Bihar and Orissa Factories Rules, 1936, r. 112 (c) (5) (i) and (iii) —Interpretation.*

The provisions of sub-clauses to Sub-r. (5) to r. 112 (c), Bihar and Orissa Factories Rules, framed under S. 43, Factories Act, cannot be interpreted to be alternative. *Gursaran Lall v. Emperor.* 40 Cr. L. J. 160 (b) : 179 I. C. 170 : 19 P. L. T. 936 : 11 R. P. 333 : 5 B. R. 207 : A. I. R. 1939 Pat. 163.

—Ss. 43, 42, 37, 60—Exemption—*Order of, should be specific.*

Where under rules made by the Local Government, exemptions as to special classes of persons exist, they have to be specific, and the sections from the provisions of which exemption is given have to be clearly specified in such rules. They cannot be deduced inferentially from other specified exemptions nor a particular exemption should be allowed to override the provisions of a section not specifically included in such exemption. It is impossible to infer that because the factory enjoyed an exemption as regards S. 37, Factories Act, it must be presumed that it was not required to observe the provisions of Ss. 39 and 40. An exemption from the provisions of S. 37 does not carry with it an exemption from the provisions of Ss. 39 and 40. *Emperor v. R. J. Mistry.* 38 Cr. L. J. 304 :

166 I. C. 736 : 38 Bom. L. R. 1181 :
9 R. B. 254 : I. L. R. 1937 Bom. 175 :
A. I. R. 1937 Bom. 52.

—S. 60 (b) (i)—*Clock behind standard time—Extension of working time—Liability of breach of S. 39 (1).*

The time observed by the Post Office is Indian Standard Time; and the hours stated in the notice for the periods of work in accordance with S. 39 (1) of the Factories Act, must be interpreted as referring to Indian Standard Time. If the factory worked for 15 minutes after the hour when it should have closed in accordance with the notice for the periods of work by allowing the factory clock to be 15 minutes behind the Standard Time, under S. 60 (b) (i), the manager and occupier are liable and they cannot plead the benefit of S. 81. *Provincial Government, Central Provinces and Berar v. Selh Chapsi.* 39 Cr. L. J. 829 :

176 I. C. 866 : 1938 N. L. J. 217 : 11 R. N. 90 :
A. I. R. 1938 Nag. 406.

FACTORIES ACT (XXV OF 1934)

—S. 71—Complaint by accused under S. 71—*Accused going into witness-box to prove his complaint—Factory Inspector as complainant in original complaint, if can cross-examine him.*

When a complaint is lodged by an accused under S. 71, the Factory Inspector, as the complainant in the original complaint, has a right, in the interests of justice, to cross-examine the accused when he goes into the witness-box to prove his own complaint. The second complaint is merely a statutory defence to the first complaint, and where the accused on the first complaint, elects to avail himself of such statutory defence, and goes into the witness-box, the complainant on the first complaint is at liberty to cross-examine him in order to show that the defence to the first complaint is not well-founded. *Emperor v. Narottam Lalbhai Seth.* 41 Cr. L. J. 884 :

190 I. C. 270 : 42 Bom. L. R. 482 :
I. L. R. 1940 Bom. 420 : 13 R. B. 113 :
A. I. R. 1940 Bom. 265.

—S. 71—Procedure—*Admission of offence by alleged actual offender.*

The complaint is made, in the first instance, by the Inspector of Factories against the manager or occupier under S. 60, Factories Act. The manager or occupier is then entitled under S. 71 to complain against the actual offender, and if he does so, the actual offender is given notice and brought before the Court and the trial proceeds as against both persons complained against; for the section contemplates both sets of complainants and accused being before the Court at the same time. Both parties complained against are concerned with the finding on this issue and both are entitled to cross-examine the prosecution witnesses at this stage, and to lead evidence to disprove the charge, but being accused persons, they would not be entitled to give evidence themselves. If the offence is proved, the Court should record an order to that effect and the manager or occupier is guilty under S. 60 of the Act. S. 71, however, affords the manager or occupier an opportunity of escaping liability provided he can give satisfactory proof of the facts required by S. 71 (1), (a) and (b). The actual offender who is the ultimate accused, would be entitled to call evidence, but not to give evidence himself. The difference in procedure being due to the fact that the actual offender occupies the role only of an accused, whereas the occupier or manager at this stage, besides being an accused, has to discharge the onus of positive proof required by S. 71 (1), (a) and (b), and in all probability he alone is capable of proving certain facts of which proof is thereby required. The Crown, which has initiated the proceedings, and has throughout retained the carriage of the proceedings, is entitled at this stage to cross-examine the occupier or manager if he gives evidence, and any witnesses called by him in support of his charge, and to call rebutting evidence.

FACTORY

Superintendent and Remembrancer of Legal Affairs, Bengal v. L. N. Birla. 41 Cr. L. J. 164 :
185 I. C. 319 : 70 C. L. J. 463 :
I. L. R. 1940, 1 Cal. 120 : 43 C. W. N. 1223 :
12 R. C. 369 : A. I. R. 1939 Cal. 724 :

———S. 71 (2)—Scope—Exception to general rule that person primarily responsible is manager or occupier.

S. 71 (2) is by way of exception to the general rule that the person primarily responsible is the manager or occupier. The whole scheme of the Factories Act is to bring pressure on the controlling authority to see that the provisions which the Legislature has made for the safety and welfare of employees are carried out. *Superintendent and Remembrancer of Legal Affairs, Bengal v. L. N. Birla.* 41 Cr. L. J. 164 :
185 I. C. 319 : 70 C. L. J. 463 :
I. L. R. 1940, 1 Cal. 120 : 43 C. W. N. 1223 :
12 R. C. 369 : A. I. R. 1939 Cal. 724.

———S. 77—Rules framed under r. 72 (1), breach of—Penalty for—Legality of.

The rules framed under the Factories Act, do not require a place like a pit, containing hot water used for silting wood which is used for the purposes of the factory, to be fenced in such a manner as to be completely unapproachable. It is sufficient if it is fenced in such a way that nobody would cross that way and fall into the pit by accident. *Jadu Ram v. Emperor.* 40 Cr. L. J. 316 :
180 I. C. 68 : 20 P. L. T. 95 : 5 B. R. 329 :
11 R. P. 441 : A. I. R. 1939 Pat. 46.

———S. 81.

· See also Factories Act, 1934, S. 39 (1).

———S. 81—Offence under S. 39 (1)—Good faith, if good plea.

S. 81, Factories Act, was inserted in the Act primarily, if not entirely, for the benefit of the inspecting staff. The manager or occupier who allows workmen to work beyond the prescribed hour is not, acting or intending to act under the Act. It is sufficient in a prosecution under the Factories Act to prove that the accused has infringed the Act or Rules under the Act and it is not necessary to show that the accused intended to infringe the Act or the Rules. But though S. 81, does not apply, it is open to the occupier or manager to show under S. 71 (1) that he has used due diligence to enforce the execution of the Act and that the offence was committed by some other person without his knowledge, consent or connivance. *Provincial Government, Central Provinces and Berar v. Seth Chapsi.* 39 Cr. L. J. 829 :
176 I. C. 866 : 1938 N. L. J. 217 :
11 R. N. 90 : A. I. R. 1938 Nag. 406.

FACTORY

———Factory—What is.

Definition of factory in the Indian Factories Act, 1881, explained. *Local Government v. Govind Rao Deshmukh.* 2 Cr. L. J. 649 :
1 N. L. R. 115.

FACTS DISCOVERED

See also Evidence Act, 1872, Ss. 24, 25, 26, 27.

FAIR COMMENT

See also Defamation.

FALSE COMPLAINT

See also Cr. P. C., 1898, S. 105.

FALSE EVIDENCE

See also (i) Cr. P. C., 1898, S. 138.

(ii) Joinder of Charges.

(iii) Penal Code, 1860, S. 193.

(iv) Perjury.

———English and Indian Law distinguished. *Emperor v. Bal Gangadhar Tilak.*

1 Cr. L. J. 305 :

6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

———Witness contradicting his evidence given before—Order prosecuting for false evidence—Legality of—Sending a witness for trial, S. 476, Cr. P. C.

When a witness at a Sessions trial contradicts the evidence which he gave before the Committing Magistrate, the Sessions Judge should not, without some special and cogent reason, order the prosecution of the witness for giving false evidence, unless he is satisfied that the evidence given at the Sessions trial was false.

Dolabi v. Emperor.

4 Cr. L. J. 469 :

3 L. B. R. 204.

FALSE INFORMATION

See also (i) Cr. P. C., 1898, Ss. 195, 476.
(ii) Penal Code, 1860, S. 182.

FEDERAL COURT RULES

———O. XXI, Rr. 2, 5—Rules of pleadings must be strictly followed.

The rules with regard to pleadings in O. XXI of the Federal Court Rules are to be strictly followed ; and particular attention should be given to R. 2 and to R. 5. Adherence to these rules will enable the opposite party to know exactly what case he has to meet, will be of material assistance to the Court, and will tend to shorten proceedings by clarifying and defining the real issues in the case. *The United Provinces v. The Governor-General-in-Council.*

40 Cr. L. J. 403 :

180 I. C. 863 : 11 R. F. C. 44 (2) :

5 B. R. 554 : 1939 O. L. R. 246 :

1939 M. W. N. 750 :

(1939) 2 M. L. J. 1 Sup. :

50 L. W. 209 : 1939 F. C. R. 124 :

1939 Kar. (F. C.) 98 F. C. :

A. I. R. 1939 F. C. 58.

FERRIES ACT (IV OF 1878)

———S. 22—Unauthorised collection by servants of Lessee—Liability of Lessee.

B as the Lessee of a ferry employed C to attend to the ferry and collect the tolls. C in contravention of the law extorted unauthorised and excessive toll from certain passengers and thereby committed an offence under S. 22, Ferries Act. B was prosecuted for this offence

FINGER PRINTS

and convicted: *Held*, that the conviction of B, who was not present and took no part in the extortion, was bad in law. *Emperor v. Behari Lal*.
13 Cr. L. J. 8 :
13 I. C. 101.

FERRIES ACT (I B. C. OF 1885)

—Ss. 6, 16, 28—*Ferry not declared public*
—*Conviction for plying private ferry—Legality of.*

Where a ferry has not been declared to be a public ferry under S. 6, Bengal Ferries Act, no conviction under Ss. 16 and 28 of the Act, can take place for plying a private ferry within the specified distance of the ferry. *Maharaj Mandal v. Pokak Singh*.
11 Cr. L. J. 293 :
6 I. C. 198.

—S. 7—*Settlement of ferries by District Board—Appeal from action of District Board, if lies to District Magistrate.*

The District Magistrate is not interested in the matter of settlements of ferries by the District Board. Such settlements are sanctioned by the Divisional Commissioner and appeals from the action of the District Board, do not lie to the District Magistrate. *Manu Khan v. Sunder Singh*.
151 I. C. 835 : 15 P. L. T. 26 :
7 R. P. 136 : A. I. R. 1934 Pat. 313.

FINE

—Consolidation—*Validity of.*

There is no justification in law for a "consolidated" fine for two offences. *Emperor v. Nga Lu Gale*.
19 Cr. L. J. 34 :
42 I. C. 994 : A. I. R. 1917 L. Bur. 5.

—*Fine.*

Fine cannot be imposed for breach of conditions of licence. *Mangi Ram v. Emperor*.
11 Cr. L. J. 17 :
4 I. C. 611 : 9 P. R. 1909 Cr. :
30 P. W. R. 1909 Cr. : 37 P. L. R. 1910.

FINGER IMPRESSION

See also Cr. P. C. 1898, S. 511.

FINGER PRINTS

See also (i) Evidence.
(ii) Registration Act, 1908,
S. 82 (c).

—*Comparison of—Duty of Court.*

There is nothing in the so-called science of finger prints or the qualifications of an expert which should prevent a Court from applying its own mind to the evidence in the case and form its conclusions on the similarities or differences established. *Public Prosecutor v. Virammal*.
23 Cr. L. J. 694 :
69 I. C. 374 : 1922 M. W. N. 642 :
16 L. W. 663 : 31 M. L. T. 427 :
A. I. R. 1923 Mad. 178.

—*Conviction on—Finger prints—Legality of.*

A conviction can be based on finger prints

FIRST INFORMATION REPORT

alone provided they are sufficiently clear and distinct to found an argument on them. *Public Prosecutor v. Virammal*.

23 Cr. L. J. 694 :
69 I. C. 374 : 1922 M. W. N. 642 :
16 L. W. 663 : 31 M. L. T. 427 :
A. I. R. 1923 Mad. 178.

FIRST INFORMATION

—Statement made at Police Station and recorded in Station Diary—Statement made subsequently to Police—Subsequent statement, whether first information—Admissibility of second statement.

A made a report at a Police Station of the occurrence of an offence and his statement was recorded by the Writer Head Constable in the Station Diary. Subsequently, A made another statement to the same Police Officer, and this latter statement was treated as the first information and was admitted in evidence "subject to objection": *Held*, that the statement recorded in the Station Diary was the first information, and that the subsequent statement was merely a statement made to a Police Officer in the Course of the investigation and was totally inadmissible in evidence. *Keshwar Gope v. Emperor*.
21 Cr. L. J. 743 :
58 I. C. 247 : 1 P. L. T. 491 :
A. I. R. 1920 Pat. 42.

—*What constitutes.*

Where a *chowkidar* made a report of a case of dacoity and a woman who was residing in the house in which the dacoity was committed, subsequently made a statement to the Police: *Held*, that the First Information Report was that which was made by the *chowkidar*. The statement made by the woman was nothing more than a statement made by a witness for the prosecution to the Police, which could not be used by the Crown for any purpose and could only be used by the defence as a basis for cross-examination. *Abdul Jalil Khan v. Emperor*.
32 Cr. L. J. 152 :
128 I. C. 593 : 1930 A. L. J. 1105 :
I. R. 1931 All. 65 : A. I. R. 1930 All. 746.

—*What is.*

Where two different persons give at two different places a report about the commission of an offence and one of them is earlier in point of time, the latter one should not be excluded as a statement made to a Police Officer under S. 164, Cr. P. C., as it is not a statement made to a Police Officer in the course of investigation but was an independent First Information Report. It can be used in evidence by the prosecution. *Emperor v. Lalji Rai*.
37 Cr. L. J. 235 :
160 I. C. 181 : 16 P. L. T. 730 :
2 B. R. 180 : 8 R. P. 344 :
A. I. R. 1936 Pat. 11.

FIRST INFORMATION REPORT.

See also (i) Cr. P. C., 1898, Ss. 151, 162, 312.

(ii) Evidence.

(iii) Evidence Act, 1872, Ss. 35, 157, 159.

FIRST INFORMATION REPORT

———*Accused known to complainant previously, mentioned as suspects—Value of.*

Where the accused are previously known to the complainant and are mentioned in First Information Report not as persons who were indentified at the spot but only as suspects who were overheard the evening before a particular place asking certain others to come that night, no importance can be attached to their inclusion in the Report. *Mangal Singh v. Emperor.* 27 Cr. L. J. 492 : 93 I. C. 892 : A. I. R. 1926 Lah. 112 (4).

———*Based on hearsay, value of.*

A First Information Report based entirely on hearsay, cannot be tendered in evidence by the prosecution. *Sajjan Singh v. Emperor.* 26 Cr. L. J. 1489 (b) : 90 I. C. 145 : 6 Lah. 437 : 7 L. L. J. 259 : A. I. R. 1925 Lah. 418.

———*Belated, scrutiny of.*

Where there has been delay in giving First Information Report to the Police, the evidence for the prosecution must be carefully scrutinized. *Bishen Singh v. Emperor.*

27 Cr. L. J. 903 : 96 I. C. 215 : 8 L. L. J. 296 : 27 P. L. R. 484 : A. I. R. 1926 Lah. 496.

———*Copy of—Accused, right of, to get copy.*

It is vitally necessary that an accused person should be granted a copy of the first information at the earliest possible stage in order that he may get the benefit of legal advice. *Dhanpat Singh v. Emperor.*

18 Cr. L. J. 982 : 42 I. C. 598 : 1917 Pat. 297 : 2 P. L. W. 188 : A. I. R. 1917 Pat. 625.

———*Delay in making—Conflicting statements regarding number of accused—Inference.*

Where a complainant has made conflicting statements with regard to the number of accused in the F. I. R. and his complaint, his evidence with regard to the identification of the accused persons should be looked upon with suspicion. The fact that the F. I. R. was made after considerable delay and that there is no satisfactory explanation of the delay, would add to the suspicion. *Hashmat Hussain v. Emperor.* 27 Cr. L. J. 225 : 92 I. C. 209 : 7 L. L. J. 96.

———*Delay in making, effect of.*

Where a report of an offence is made to the police at a late stage and after due deliberation no reliance can be placed upon its accuracy. *Jalal v. Emperor.* 27 Cr. L. J. 821 : 95 I. C. 597 : 8 L. L. J. 183 : 27 P. L. R. 22 : A. I. R. 1926 Lah. 113 (4).

———*Mode of proof.*

In admitting F. I. R. in evidence, the procedure laid down in S. 145, Evidence Act, must be strictly followed. It is not the duty of a Court of Justice to scrutinize the evidence which a witness has given on oath before the Court, and to compare it with some previous statement of his and then to

FIRST INFORMATION REPORT

try to find out if there are any discrepancies between the two with a view to discredit him, and it is unfair to the witness to seek to discredit him by referring to statements which he has made on some previous occasion without pointedly drawing his attention to them and giving him an opportunity of explaining them. *Mahla Singh v. Emperor.*

32 Cr. L. J. 522 : 130 I. C. 410 : I. R. 1931 Lah. 282 : 32 P. L. R. 259 : A. I. R. 1931 Lah. 38.

———*Names of prosecution witnesses not given in report, effect of.*

The mere fact that in the First Information Report the names of the witnesses who ultimately support the prosecution are not given, is not a matter which would throw suspicion upon the story for the prosecution. *Chandu v. Emperor.* 29 Cr. L. J. 378 : 108 I. C. 370 : A. I. R. 1928 Lah. 657.

———*Nature and value of, in criminal case.*

The First Information Report in a criminal case is not substantive evidence of the facts recorded therein and cannot serve as the basis of a conviction. *Jamal-ud-Din v. Emperor.*

24 Cr. L. J. 812 : 74 I. C. 716 : A. I. R. 1924 All. 164.

———*Omission, effect of.*

Omissions in the written reports sent to the Police soon after an offence, such as the time of murder, etc., which shatter the story subsequently told by the prosecution witnesses, shall be seriously considered by the Judge. *Mohammad Anis v. Emperor.*

37 Cr. L. J. 955 : 164 I. C. 482 : 1936 O. W. N. 691 : 1936 O. L. R. 459 : 9 R. O. 81 : A. I. R. 1936 Oudh 405.

———*Omission of accused's name in—Benefit of doubt.*

Where the First Information Report is made by a person who is not an eye-witness, the omission of the name of an accused in the report is not a material circumstance in favour of the accused. *Bahaduri v. Emperor.*

28 Cr. L. J. 45 : 99 I. C. 77 : A. I. R. 1927 Lah. 63.

———*Omission of accused's name in First Information Report, effect of.*

Where in the First Information Report, the informant tries his very best to describe the alleged dacoits, the omission of the name of an accused whom the informant knew before, makes the case against him doubtful. *Bachna v. Emperor.* 28 Cr. L. J. 17 :

99 I. C. 49 : A. I. R. 1927 Lah. 149.

———*Omission of names—Inference.*

Where the First Information Report is made by a person who is admittedly not an eye-witness and the report itself does not profess to mention the names of all the culprits, the omission of the names of some of the culprits is no ground for distrusting the eye-witness who depose to their being implicated in the crime. *Karman v. Emperor.* 27 Cr. L. J. 544 :

93 I. C. 1040 : A. I. R. 1926 Lah. 369.

FIRST INFORMATION REPORT

———*Precision requisite.*

A First Information Report need not be made with the same precision and particularity as a charge or a plaint in a civil suit.

Joseph v. Emperor. 26 Cr. L. J. 492 :
85 I. C. 236 : 3 Bur. L. J. 265 :
3 Rang. 11 : A. I. R. 1925 Rang. 122.

———*Proof of.*

Information to Police before investigation when can be proved, stated. *Mir Rahman v. Emperor.*

37 Cr. L. J. 225 :
159 I. C. 890 : 8 R. Pesh. 92 :
A. I. R. 1935 Pesh. 165.

———*Use.*

A First Information Report can be used as corroborating only the maker of the report.

Misri v. Emperor. 35 Cr. L. J. 1332 :
151 I. C. 437 : 7 R. S. 52 :
A. I. R. 1934 Sind 100.

———*Use of—Corroboration.*

A First Information Report can only be used by the prosecution for the purpose of corroborating in the witness-box the person who supplied the information contained in the report.

Sajjan Singh v. Emperor. 26 Cr. L. J. 1489 (b) :
90 I. C. 145 : 6 Lah. 437 :
7 L. L. J. 259 : A. I. R. 1925 Lah. 418.

———*Use of—Corroboration.*

Where, however, the person who gave the First Information Report can himself only speak from hearsay, the report cannot be used to corroborate such inadmissible evidence.

Sajjan Singh v. Emperor. 26 Cr. L. J. 1489 (b) :
90 I. C. 145 : 6 Lah. 437 :
7 L. L. J. 259 : A. I. R. 1925 Lah. 418.

———*Use of.*

The First Information Report may be useful in checking statements of witnesses given in Court which have to be taken as the only evidence against the accused.

Mahammad Khan v. Emperor. 35 Cr. L. J. 961 :
148 I. C. 1043 : 6 R. Pesh. 68 :
A. I. R. 1934 Pesh. 27.

———*Value of.*

A First Information Report is not like the deposition of a witness given in Court and cannot be considered to be exhaustive.

Jhandu v. Emperor. 26 Cr. L. J. 653 :
85 I. C. 941 : 6 L. L. J. 268 :
1 Lah. Cas. 414 : A. I. R. 1924 Lah. 555.

———*Value of, as evidence.*

First Information Report is not a substantive piece of evidence, and it is contrary to law to use it as substantive evidence.

Sheo Karan v. Emperor. 29 Cr. L. J. 734 :
110 I. C. 590 : A. I. R. 1928 Lah. 923.

———*Value of.*

The initial report of an offence to the Police is always of great importance in every criminal case. Where it has been made considerable time after the occurrence and by a person

FIRST REPORT

who is in a position to know all the facts and the persons concerned, no person should be convicted whose name is not mentioned therein as one of the offenders, particularly when there is no likelihood of his name being omitted.

Emperor v. Sada. 11 Cr. L. J. 99 :
4 I. C. 980 : 14 P. W. R. 1909 Cr.

———*When admissible.*

The First Information Report, unless the man who made it dies, is not admissible in evidence of any fact which is contained in it; it merely proves that this was the original story which set the Police in motion.

The King v. Maung Po Thi. 39 Cr. L. J. 771 :
176 I. C. 683 : 11 R. Rang. 72 :
A. I. R. 1938 Rang. 282.

———*Statement before Court—Value of.*

Statements of the complainant as recorded in Court and First Information Report are not substantive evidence and are admissible only to contradict the complainant but in order to contradict him they must be specially put to him.

Bhagwant Rao v. Emperor. 37 Cr. L. J. 858 :
163 I. C. 702 : 18 N. L. J. 289 : 9 R. N. 14.

FIRST REPORT

———*Description of culprits not applying to persons implicated subsequently—Doubt—Accused entitled to benefit.*

An offence was committed, whereby injury was caused to F. No report to the Police naming the culprits was made until the following day. On the evening before F's servant reported to the *Zaildar* of the village that the offence had been committed by certain men whom he described, this description, however, did not apply to the accused: Held, that there was an element of doubt which much weakened the case for the prosecution, and the accused was entitled to an acquittal.

Muhamada v. Emperor. 12 Cr. L. J. 561 :
12 I. C. 649 : 33 P. W. R. 1911 Cr.

———*No mention of offender therein—Subsequent assertion of his having been seen, not reliable.*

Where the first report makes no mention of the offender, and the complainant when questioned named nobody as his assailant, and there is no assertion therein that any fugitive had been seen, the complainant's subsequent statement that he had identified the accused at the time of the attack and the evidence of his neighbours that they saw him running with the instrument of crime in his hands, cannot justly be relied upon.

Ronki v. Emperor. 16 Cr. L. J. 222 :
27 I. C. 846 : 10 P. W. R. 1915 Cr. :
91 P. L. R. 1915 : A. I. R. 1915 Lah. 469.

———*Statement in, made by complainant—Admissibility in evidence.*

Any statement made by a complainant in his first report at the Police Station is not admissible as proof of the facts therein mentioned,

FOREIGN JURISDICTION ACT, 1890

and cannot be used as evidence against the accused in his trial. *Dal v. Emperor*.

16 Cr. L. J. 62 :
26 I. C. 654 : 10 L. J. 687 :
A. I. R. 1914 Oudh 414.

FISCAL STATUTES

See Court Fees Act, 1870, S. 19 (xvii).

FISHERIES

See also Penal Code, 1860, S. 379.

FISHERY RIGHTS

See also Penal Code, 1860, Ss. 143, 379.

———Relinquishment of—Validity of.

The right to fish in the sea cannot form the subject-matter of property or be enjoyed as an easement and so no one can, by contract or otherwise, relinquish to another his right or any part of it. If any such contract has been made, the Civil Court will not enforce it whatever other remedies may be open to the aggrieved party to the contract. *Sethukaruppan Ambalam v. Peer Mahammad Sammatti*.

37 Cr. L. J. 4 :
159 I. C. 49 : 1935 M. W. N. 181 :
68 M. L. J. 417 : 41 L. W. 436 :
58 Mad. 876 : 8 R. M. 440 :
A. I. R. 1935 Mad. 350.

FORFEITURE OF BOND OF SURETIES

See also Cr. P. C., 1898, S. 110.

FOREIGN JURISDICTION ACT, 1890

———S. 4 (1)—Jurisdiction.

The appellant Ibrahim, an *Afghan*, was a natural born subject of the Ameer of Afghanistan. In 1911, he was enlisted and enrolled as a soldier in a British Indian Regiment and took the oath of allegiance to His Majesty. He also made a solemn declaration to go wherever ordered by land or sea. In 1912, while serving with the detachment of that regiment at Shameen, the appellant murdered the *Subedar* of the regiment and was taken into custody almost at once. Some ten or fifteen minutes after the occurrence, the Officer Commanding the detachment came up and said to the appellant: "Why have you done such a senseless act?" To this the appellant replied, "Some three or four days he has been abusing me; without a doubt I killed him." The Judge of a Provincial Court having jurisdiction in the matter held the preliminary examination in the case and with the concurrence of the Commanding Officer, sent it to the Supreme Court of Hong Kong for trial which resulted in the appellant's conviction and death sentence being passed upon him. The Judge of the Court as well as the Commanding Officer were examined as prosecution witnesses in the case. The latter deposed as to the conversation he had had with the appellant, while the former deposed that the place of the murder was entirely within his jurisdiction; that the jurisdiction exercised at Canton on Shameen is the same ex-territorial jurisdiction as is

FOREIGNERS ACT (III OF 1864)

exercised throughout China by the Supreme Court; that it is still in force; that "the Indian soldiers enjoy His Majesty's protection in Shameen, Canton, and the Court exercises jurisdiction over them;" and that "Consular protection extends to trying persons and protecting them if they are improperly arrested." By special leave, an appeal *in forma pauperis* was preferred to the Privy Council on the grounds, *first* that the Hong Kong Court had no jurisdiction to try the appellant, and *second*, there was a grave miscarriage of justice by reason of the misreception of evidence: *Held*, that S. 4 (1), Foreign Jurisdiction Act did not prevent the evidence of the Judge of the Provincial Court from being admissible upon the question of jurisdiction and that in the absence of contradiction and of any grounds of real doubt, that evidence by itself satisfied all the conditions of proof requisite to establish the jurisdiction of the Supreme Court at Hong Kong; that the evidence of the Judge of the Provincial Court shows: "that by usage, sufferance, or other lawful means" His Majesty has jurisdiction at Canton; that as the appellant was a soldier of the Crown and subject to Military Law while stationed at Shameen and as he "enjoyed His Majesty's protection" in China, as of right he was subject to the jurisdiction of the Supreme Court of China. When the Crown lawfully enlists in its forces aliens along with British subjects and requires of them the same service, loyalty and allegiance as are the duties of British enlisted subjects, it extends to them the same protection in a foreign country, where all are serving together in the armed forces of His Majesty. *Ibrahim v. Emperor*.

15 Cr. L. J. 326 :
23 I. C. 678 : 1 L. W. 989 :
18 C. W. N. 705 :
A. I. R. 1914 P. C. 155.

FOREIGN JURISDICTION AND EXTRADITION ACT, 1879

See also Cr. P. C., S. 9.

FOREIGNERS ACT (III OF 1864)

———S. 2—Cessation of territory—Allegiance, whether affected.

Where there is a State, the ordinary idea of Constitutional Law is that there are subjects in that State who are ruled by the Sovereign, and when territory is ceded, the inhabitants of that territory will ordinarily become subjects of the Sovereign to whom the territory is ceded. In the absence of an express provision in a treaty of cession regulating the future nationality of the inhabitants of the ceded territory, a relinquishment of the Government of a territory is not only a relinquishment of the right to the soil of the territory but also of the right over the inhabitants of the country. It is open to a subject of the ceded territory, unless the treaty expressly forbids, to elect to continue his former nationality and to prove such election. The burden of proving such election, however, lies on the person

FOREIGNERS ORDINANCE (III OF 1914)

who asserts that he has made such election. It is not enough for him to merely assert, when the question arises, that he has elected to remain within the allegiance of his former Sovereign, there must be conduct on his part such as leaving the ceded territory and going to reside permanently in his former Sovereign's dominions, to indicate his previous election. *Jagardco Ramsumer Tewari v. Emperor*.

26 Cr. L. J. 1526 :
90 I. C. 310 : 27 Bom. L. R. 1043 :
49 Bom. 804 : A. I. R. 1925 Bom. 489.

—S. 3 (A)—Interpretation.

The provision of Sub-s. (5) of S. 3 A, Foreigners Act, about the orders being given without delay is mandatory, and Sub-s. (4) of that section must be read as if the words "pending the orders of the Local Government" were qualified by the words "such orders being obtained within a reasonable time," for "without delay" means this. *In re : Jagardco*.

26 Cr. L. J. 458 :
85 I. C. 138 : 49 Bom. 222 :
26 Bom. L. R. 1252 :
A. I. R. 1925 Bom. 139.

—S. 3-A—Foreigner—Apprehension of—Procedure.

It is incumbent on the Commissioner of Police to report the case to the Local Government at the same time as he issues a warrant for the apprehension of an alleged foreigner. The onus is on the apprehended person to prove that he is not a foreigner. Where after the apprehension of an alleged foreigner no orders have been obtained from the Government under S. 3 of the Foreigners Act, the continued detention of the person apprehended is an illegal or improper detention within the meaning of S. 401 (1) (b) of the Cr. P. C., or, in the alternative, the person apprehended is not being dealt with according to law within the meaning of S. 401 (1) (a). The executive powers of deportation of the Government must be exercised without delay on the receipt of the report from the Commissioner of Police. *In re : Jagardco*.

26 Cr. L. J. 458 :
85 I. C. 138 : 49 Bom. 222 :
26 Bom. L. R. 1252 :
A. I. R. 1925 Bom. 139.

—S. 3—Change of residence—Meaning of.

Change of residence implies something of a more definite character than a mere casual journey involving a couple of nights spent away from home. *In re : Charles George Hedinger*.

17 Cr. L. J. 67 :
32 I. C. 659 : A. I. R. 1917 Mad. 499.

FOREIGNERS ORDINANCE (III OF 1914)

—Ss. 3, 4, 7—Infringement of order under S. 3—Procedure for trial of offender.

An ordinance is a law, and an infringement of its provisions is an offence. Consequently,

FOREST ACT (VII OF 1878)

an inquiry into such an offence must, under S. 5, Cr. P. C., be dealt with according to the provisions of that Code, unless there is any other enactment in force prescribing a different method of inquiry into such an offence, and in the case of an offence under Ordinance III of 1914, unless there are rules promulgated in exercise of the power conferred by S. 7 of the Ordinance. Where, therefore, the petitioner was charged with having infringed an order under S. 3, Ordinance III of 1913, and the District Magistrate held a regular trial under the Cr. P. C. and convicted the petitioner: *Held*, that the District Magistrate was bound as he did, to conduct the trial in accordance with the provisions of the Cr. P. C., and that accordingly, an appeal lay to the Sessions Judge under S. 408 of the Code. *Sher Singh v. Emperor*.

17 Cr. L. J. 225 :
34 I. C. 641 : 10 P. R. 1916 Cr. :
15 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 207.

—Ss. 3, 8—Delegation of powers of Governor-General-in-Council to Local Government—Notification of Local Government regulating liberty of foreigners, whether ultra vires.

Where the Governor-General-in-Council has delegated his powers under S. 8, Foreigners Ordinance, to a Local Government, a notification of that Local Government compelling foreigners residing or being in British India to notify their change of residence, is not ultra vires. *In re : Charles George Hedinger*.

17 Cr. L. J. 67 :
32 I. C. 659 : A. I. R. 1917 Mad. 499.

FOREST ACT (VII OF 1878)

See also Penal Code, 1860, S. 409.

—Ss. 2, 39, 41—"Timber" and "forest produce", meaning of.

The word "timber" and "forest produce" in S. 41 of the Forest Act, are used in the widest sense as given in the definitions to be found in S. 2 of the Act and not in the narrow and restricted sense specially introduced to define and limit the powers described in Chap. VII of the Act. *Lal Badshah v. Emperor*.

29 Cr. L. J. 198 :
106 I. C. 790 : A. I. R. 1928 Lah. 80.

—Ss. 25, 32 (a)—Protected Forest—Felling a tree without permission—Damage to the Protected Forest—Compensation for the damage—Permissibility.

There is no provision either in the Forest Act or in the rules framed thereunder to award compensation for damages in respect of the Protected Forest. *Emperor v. Kariana*.

5 Cr. L. J. 9 :
8 Bom. L. R. 987.

FOREST ACT (VII OF 1878)

—S. 25, Cl. (i) — 'Hunt', meaning of.

The accused was sitting in a *bhoja*, or a specially prepared screen devised for hunting, and had by his side a loaded gun. He was so sitting there with the intention of hunting: *Held*, that the accused was hunting within the meaning of S. 25, Cl. (i) of the Indian Forest Act. The word 'hunt' therein is used intransitively, meaning 'to go in pursuit of wild animals, to engage in the chase. *Emperor v. Malu Hiru Bagara*.

11 Cr. L. J. 486 (a) :

7 I. C. 450 : 12 Bom. L. R. 420.

—Ss. 25 (i), 31 (j), R. 3 (A) — *Reserved forest—Shooting tiger in reserved forest without licence to protect property—Offence.*

Under R. 3 (a) of the rules made by the Bombay Government under S. 25 (i) and S. 31 (j) of the Forest Act, hunting and shooting in a reserved forest are prohibited except under a licence to be obtained from the Conservator of Forests. Some of accused's cattle were killed by a tiger and with a view to prevent further injury to his property, the accused successfully tracked and shot a tiger without licence in a reserved forest, to which the rules made by the Local Government under S. 25 (i) and S. 31 (j) of the Forest Act had been duly applied: *Held*, that the accused was guilty of an offence under S. 25 (i) of the Forest Act. *Ambirsaheb Balamiya Patil v. Emperor*.

19 Cr. L. J. 610 :

45 I. C. 514 : 20 Bom. L. R. 384 :

42 Bom. 406 : A. I. R. 1918 Bom. 150.

—Ss. 25 (b), 76 — *Punjab Government Notifications, No. 61, 26th January 1897, R. 28, and No. 437, 3rd October 1904, R. 1—"Sets fire to", meaning of.*

A person is said to set fire to a thing if he puts a match to it or sets it on fire directly, and not if it catches fire as an indirect consequence of his act. The accused kindled a fire in his master's garden which spread to an unclassified forest, and thence to a reserved forest: *Held*, that the accused could not be said to have set fire to either of the forests within the meaning of S. 25 (b), Forest Act. *Rao v. Emperor*.

17 Cr. L. J. 458 :

36 I. C. 138 : 30 P. R. 1916 Cr. :

51 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 70.

—S. 25 (d) — *Berar Grazing Rules - Grazing licence—Cattle belonging to licensee trespassing into reserve forest—Licensee, whether criminally liable.*

A master is not criminally responsible for the acts of his servant unless he expressly commands or personally co-operates in them or such responsibility is expressly imposed on him by Statute or contract. There is nothing in the Grazing Rules for Berar framed under the Forest Act, that imposes a criminal liability on a licensee for grazing for the acts of his servant. A person who has obtained a grazing licence under the Forest Act, cannot be convicted of an offence under S. 25 (d) of the Act in the absence of evidence that he pastured the cattle in the reserve forest him-

FOREST ACT (VII OF 1878)

self or permitted them by some overt act or negligent omission to trespass in the reserve forest. *Fakira Sambhaji v. Emperor*.

26 Cr. L. J. 1030 :

87 I. C. 918 : A. I. R. 1926 Nag. 73.

—S. 25 (d) — *Permitting cattle to trespass—Question of fact.*

The question whether an owner of cattle is guilty or not guilty of an offence of permitting cattle to trespass, under S. 25 (d), Forest Act, does not depend upon the absence or presence of the owner at the time but on the question of fact in each case, namely, whether he did or did not in fact permit his cattle to trespass, the answer will depend on the whole circumstances of each case. In a great many cases, the question will resolve itself into, did he or did he not take proper precautions to prevent such trespass. When the cattle of any owner are found trespassing within a reserved forest in the neighbourhood of his house, *prima facie* he must be held to have permitted the trespass, but the presumption may be rebutted. *Emperor v. Samandar*.

11 Cr. L. J. 67 :

4 I. C. 866 : 16 P. R. 1909 Cr.

—S. 25 (f) — *Cutting 69 trees constitutes 69 offences.*

A person felling a number of trees in a forest is guilty of as many offences under S. 25 (f), Forest Act, as the number of the trees felled by him. Accused was charged under S. 25 (f), Forest Act, with felling 69 trees in a forest, and was convicted on three separate charges: *Held* (1) that the accused was guilty of 69 offences; (2) that the trial of the accused on three charges for 69 offences was bad in law; (3) but that the accused having been sufficiently punished, the irregularity was covered by S. 537, Cr. P. C., and a re-trial was not necessary. *Emperor v. Raghunath*.

19 Cr. L. J. 161 :

43 I. C. 577 : A. I. R. 1918 All. 351.

—S. 25 (i) — *Hunting in reserved forest without permit—Offence.*

Accused with two others formed a party and went to a reserved forest with the object of hunting. The other two shot two deer in the forest: *Held*, that notwithstanding that the accused did not actually shoot in the forest, they were guilty of hunting in the forest without a permit within the meaning of S. 25 (i), Forest Act, and the rules framed thereunder. *Barkat Ali v. Emperor*.

19 Cr. L. J. 10 :

42 I. C. 922 : 15 A. L. J. 824 :

40 All. 38 : A. I. R. 1918 All. 338.

—S. 26 — *Hunt—Meaning of.*

The word 'hunt' implies motion, a chase and a pursuit. Hence any person who is one of the party beating up game in a reserved forest in this fashion, is a member of the hunt, and even though he himself may not be within the prohibited area, he is guilty of the offence along with the rest of the hunt. *Jagannath Rao Dani v. Emperor*.

A. I. R. 1935 Nag. 23.

FOREST ACT (VII OF 1878)

———S. 26 (d)—*Illicit grazing in Government Forest—Conviction—Proof.*

An owner of cattle cannot be convicted under S. 26 (d), Forest Act unless it is proved that he had in any way authorized the grazier directly or indirectly to graze his cattle in a Government Forest. When the accused denies all knowledge of illicit grazing, it is necessary for the prosecution to establish knowledge or connivance on his part to connect him with the offence. *Emperor v. Sontoki.*

31 Cr. L. J. 109 :
120 I. C. 414 : A. I. R. 1930 Nag. 64.

———S. 27 (d)—*Owners of cattle, whether criminally liable for offence of their grazier.*

The owners of the cattle cannot be made liable criminally for the offence of their grazier under S. 27 (d), Forest Act. *Emperor v. Wamanrao.*

38 Cr. L. J. 588 (a) :
168 I. C. 469 : 9 R. N. 257 (2) :
I. L. R. 1937 Nag. 536 :
A. I. R. 1937 Nag. 169.

———S. 29—*Person cutting trees in contravention of—Forest Officer, if can arrest without warrant.*

A Forest Officer has no power to arrest without warrant a person cutting trees in contravention of a notification under S. 29 (a). *Moslem Sirkar v. Emperor.*

28 Cr. L. J. 562 :
102 I. C. 498 : 54 Cal. 296 :
A. I. R. 1927 Cal. 516.

———Ss. 29 (a), 32, 63—*Notification under S. 29 (a) not specifying date—Validity of.*

A notification issued under Cl. (a) of S. 29, Forest Act, which does not mention the date from which the trees specified in the notification are to be reserved, is invalid inasmuch as it does not comply with the provisions of the clause and a conviction under S. 32, for cutting trees specified such a notification, is, therefore, illegal. *Moslem Sirkar v. Emperor.*

28 Cr. L. J. 562 :
102 I. C. 498 : 54 Cal. 296 :
A. I. R. 1927 Cal. 516.

———S. 32.

Sec also (i) Cr. P. C., 1898, S. 249.
(ii) Forest Acts, 1878, S. 25.

———S. 32—*Cutting reserved forest trees is offence either under S. 32, Forest Act, or S. 447, Penal Code.*

A man who enters a forest and cuts down Reserved Forest trees, cannot be held guilty of offences both under S. 32, Forest Act, and under S. 447, Penal Code, the offence under the latter section being included in that under the former. *Rup Deb v. Emperor.*

14 Cr. L. J. 424 :
20 I. C. 408 : 11 A. L. J. 340.

———Ss. 32, 54, 55—*Conviction for forest offence—Confiscation of forest produce even when not Government property—Produce to be made over to Forest Department—Practice.*

Where a person is convicted of an offence under S. 32, Forest Act, the whole of the forest produce, in respect of which the offence

FOREST ACT (VII OF 1878)

was committed, may be confiscated, even though it may not be Government property. When confiscated, the produce should be made over in *specie* to the Forest Department of the Government. *Emperor v. Sadapur.*

13 Cr. L. J. 172 :
13 I. C. 924 : 1 P. R. 1912 Cr. :
37 P. L. R. 1912 : 15 P. W. R. 1912 Cr.

———S. 32 (a), (b) and (c)—*Quarrying metal in Reserved Forest under orders of Public Works Department—Permission of Forest Department not obtained—Whether offence.*

A, a contractor engaged by the Public Works Department, quarried metal in place pointed out to him by that Department. The place was within the area of a Reserved Forest and the permission of the Forest Department had not been obtained to the quarrying. A was convicted of an offence under S. 32 (a), (b), and (c) of the Forest Act, read with Ss. 40 and 114 of the Penal Code : *Held*, that the principle of S. 79, Penal Code, applied to the case. The conviction and sentence were accordingly set aside. *Emperor v. Kassim Isab Sab.*

13 Cr. L. J. 530 (a) :
15 I. C. 802 : 14 Bom. L. R. 365.

———S. 32 (c)—*Breaking the ground, whether includes mere 'clearing'.*

A person who is proved merely to have cleared a piece of ground in a protected forest, does not commit the offence of breaking the ground inasmuch as it is not possible to hold by any permissible interpretation that the word 'breaking' in the Forest Act, and the notifications thereunder include mere 'clearing'. *Umed Singh v. Emperor.*

28 Cr. L. J. 151 :
99 I. C. 407 : 49 All. 291 :
25 A. L. J. 148 : A. I. R. 1927 All. 121.

———S. 32 (c)—*Notification prohibiting breaking of ground—'Clearing', whether prohibited.*

Where 'breaking' of ground only is forbidden by a notification issued under the Forest Act, no offence is committed where there has been only 'clearing' of the ground. *Thep Singh v. Emperor.*

28 Cr. L. J. 591 :
102 I. C. 559 : A. I. R. 1927 All. 767.

———S. 39—*Notification of Bombay Government—Duty on timber brought from Foreign place.*

Clause (b) of S. 39, Forest Act, which imposes a liability to levy of duty on all timber or other forest produce 'which is brought from any place beyond the Frontier of British India' and the Notification of the Bombay Government under that clause only contemplates the levy of duty from a person who has actually brought the timber from a foreign place to the place where the duty is leviable. Timber of which a person obtains possession and which has been originally brought to British India from a place beyond the Frontier of British India by another person, is not liable in the hands of the former to duty where he has not taken any part in the bringing of that

FOREST ACT (VII OF 1878)

timber from the place beyond the Frontier.
Emperor v. Kadarbhai Usufali Bohri.

28 Cr. L. J. 705 :
103 I. C. 593 : 29 Bom. L. R. 987 :
51 Bom. 896 : A. I. R. 1927 Bom. 483.

—Ss. 39, 41—"Timber and other forest produce" in S. 41, meaning of.

The expression "timber and other forest produce" in S. 41, Forests Act, refers to timber and other forest produce as defined in S. 39 of the Act, viz., timber or other forest produce which is produced in British India, and in respect of which the Government has any right, or which is brought from any place beyond the Frontier of British India. *Lal Badshah v. Emperor.*

25 Cr. L. J. 104 :
76 I. C. 104 : A. I. R. 1925 Lah. 225.

—S. 41—River Rules for the Chittagong Hill Tracts, applicability of—Removal of forest produce by private owner—Offence.

The River Rules for the Chittagong Hill Tracts framed under S. 41, Forest Act, relate to reserved forests of the Government, and have no application to the case of a person who has obtained a lease of a forest in fee simple. The removal, therefore, by such a lessee of bamboos from one portion of the estate to another is not an offence punishable under those rules. *Satyaranjan Sen Gupta v. Mohammad Sarfaraj.*

21 Cr. L. J. 659 :
57 I. C. 819 : A. I. R. 1920 Cal. 544.

—Ss. 41 (b), 42—Rule 4, framed by Government of Bombay under S. 41 (b)—Ultra vires.

Rule 4 of the Rules for Sind framed by the Government of Bombay under S. 41 (b), Forest Act, prohibiting the moving of timber from private land without a certificate from the holder or manager of such land, is *ultra vires*, consequently a conviction for a breach thereof, under S. 42 is illegal. *Mitho v. Emperor.*

17 Cr. L. J. 364 :
35 I. C. 668 : 10 S. L. R. 9 :
A. I. R. 1916 Sind 8.

—S. 63.

See also Forest Act, 1878, Ss. 29 (a), 32, 63.

—Ss. 29, 32—"Protected forest" declared to be "reserved forest"—Reservation, cancellation of, effect of—Land, whether becomes "protected forest."

Where land which is "protected forest" is removed from the category of "protected forest" and is declared to be "reserved forest" and the reservation is subsequently cancelled by a notification, the effect of the notification is to restore the status of the land to what it was before, that is to say, it again becomes "protected forest." *Emperor v. Kamla Pati.*

25 Cr. L. J. 999 :
81 I. C. 711 : 46 All. 128 :
A. I. R. 1924 All. 539.

FOREST ACT (XVI OF 1927)

—S. 26 (1) (i)—Offence under, when constitutes.

Person carrying loaded gun through Government reserve forest—Offence is not committed—Intention to shoot game is not penal. *Emperor v. Balbir Singh.*

34 Cr. L. J. 1050 :
145 I. C. 735 : 6 R. A. 153 :
1933 A. L. J. 704 :
A. I. R. 1933 All. 630.

—S. 26 (1), (i)—Shoots—Meaning of.

The word 'shoots' in S. 26 (1) (i) cannot be interpreted to mean going for shooting, that is, with the intention of shooting; it means discharging a fire-arm or other weapon. *Cuhram v. Emperor.*

32 Cr. L. J. 1140 :
134 I. C. 377 : 25 S. L. R. 217 :
I. R. 1931 Sind 121 :
A. I. R. 1931 Sind 156.

—S. 26 (d)—Breach of—What is.

Where a herd of 81 cattle is entrusted to one youth and two children, there is a reasonable suspicion against the owners that they themselves had committed an offence, as entrusting such a large number of cattle in the vicinity of a closed forest to a youth and two children might be held to amount to such negligence as to suggest connivance for a breach of the law. *Emperor v. Mohamad Khan.*

39 Cr. L. J. 700 :
175 I. C. 795 : 11 R. N. 32 :
A. I. R. 1938 Nag. 365.

—S. 26 (d)—Cattle eating grass in forest—Offence by owner of cattle.

While tools, boats, carts and cattle may be instrumental in cases of theft of forest produce, the cattle are also instrumental in the theft of grass which they eat and in the damage to grass and young trees which they cause in grazing; and an offence under S. 26 (d) is as such an offence as the illicit removal of timber, and cattle used in committing such an offence are as much liable to confiscation as cattle drawing a cart containing illicitly felled timber. *Emperor v. Mohamad Khan.*

39 Cr. L. J. 700 :
175 I. C. 795 : 11 R. N. 32 :
A. I. R. 1938 Nag. 365.

—Ss. 26 (d), 55—Object of S. 55—Master, when criminally liable in cases of cattle trespassing in Government forest.

The object of the Legislature in enacting S. 55, Forest Act, was to make the owner liable to a certain extent for the acts of his servant, civilly not criminally. It is well-established that the owner cannot be made criminally liable for the acts of his servant except in certain cases by statute. It is also equally well-established that he is civilly liable for wrongs done by his servant. In the case of cattle trespassing in Government forest unless duly licensed, the master cannot be criminally liable for the acts of his grazier in taking his cattle into such forest unless

FOREST ACT (XVI OF 1927)

he permits the cattle so to graze by some overt acts or by some negligent omission. *Emperor v. Mohamad Khan*. 39 Cr. L. J. 700 :

175 I. C. 795 : 11 R. N. 32 :
A. I. R. 1938 Nag. 365.

———S. 26 (h)—Forest land—What is.

Where a certain land has been in the possession of the accused for several years, it must be held to have been occupied land and not to have been forest or waste land until the point is properly established by the prosecution. *Nago Wani v. Emperor*. 31 Cr. L. J. 708 :

124 I. C. 622 : A. I. R. 1929 Nag. 190.

———S. 26 (h)—Prosecution for clearing or breaking up forest land.

A person cannot be convicted under S. 26 (h), Forest Act, for clearing or breaking up reserved forest land where the evidence shows that such clearing or breaking up must have taken place at the hands of some of his predecessors and not in his time. *Nago Wani v. Emperor*. 31 Cr. L. J. 708 :

124 I. C. 622 : A. I. R. 1929 Nag. 190.

———Ss. 52, 76—Forest produce must be proved to belong to Government, for offence under Act.

No forest offence can be said to have been committed in relation to any forest produce unless it is definitely established, that that produce belonged to Government. Any rule made under S. 76, Forest Act, by the Provincial Government which deals with the disposal of trees not belonging to Government will be clearly *ultra vires*. *Gulabu v. Emperor*. 41 Cr. L. J. 10 :

184 I. C. 427 : 41 P. L. R. 423 :
12 R. L. 222 : A. I. R. 1939 Lah. 469.

———S. 55.

See also Forest Act, 1927, S. 26 (d).

———S. 55—Confiscation and forfeiture—Distinction.

The word used in S. 55 is "confiscation" and not as in the Penal Code, "forfeiture." Forfeiture can only relate to the property owned by the person concerned, but property may be confiscated from the possession of anyone, whether he is the owner thereof or not. *Emperor v. Mohamad Khan*. 39 Cr. L. J. 700 :

175 I. C. 795 : 11 R. N. 32 :
A. I. R. 1938 Nag. 365.

———S. 59—Appeal—Scope of inquiry in.

It cannot be laid down as a broad proposition that in an appeal under S. 59, Forest Act, the contention of the appellant must be limited to that the property seized was not used in the commission of the offence. *Meher Sardar v. Emperor*. 31 Cr. L. J. 1117 :

126 I. C. 780 : 34 C. W. N. 956 :
52 C. L. J. 171 : A. I. R. 1930 Cal. 577.

———S. 59—Interpretation.

The phrase 'any person claiming to be interested in the property so seized' in S. 59, Forest Act, is not limited in its scope to the conditions contemplated by S. 57 of the said

FORGERY

Act. The language of the section is unrestricted and must be given effect to accordingly. *Meher Sardar v. Emperor*. 31 Cr. L. J. 1117 :
126 I. C. 780 : 34 C. W. N. 956 :
52 C. L. J. 171 : A. I. R. 1930 Cal. 577.

FOREST OFFENCES

———Statements in office files, admissibility of.

Inference drawn by forest officials as to persons who committed forest offences are not evidence of repute. The Court should test the sources of the information that led the officials to infer that the accused had anything to do with the offences. *Kripa Sindhu Naik v. Emperor*. 19 Cr. L. J. 905 :

47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

FORGERY

See also (i) Cr. P. C., 1898, S. 179.

(ii) Penal Code, 1860, Ss. 170,
103, 433, 437, 463 to 476.

———Expert evidence alone insufficient for conviction.

It is very unsafe, as a general rule, to base a conviction simply upon the opinion of an expert. The evidence of a person supposed to be acquainted with the handwriting of another is not admissible under S. 47, Evidence Act, if he does not state facts which, according to the explanation to the section, would make his opinion relevant. Similarly, the evidence of a witness who is not positive as to identity of handwriting is of no value. *Jalal-ud-Din v. Emperor*. 13 Cr. L. J. 563 :

15 I. C. 979 : 18 P. W. R. 1912 Cr. :
147 P. L. R. 1912.

———Institution of false suit on basis of forged document against an illiterate—Gravity of offence—Accused not entitled to leniency.

The institution of a false suit against an illiterate man on the basis of a forged document constitutes a very serious offence which disentitles the accused to any leniency from Court. *Umrao Khan v. Emperor*. 29 Cr. L. J. 631 :

109 I. C. 903 : 5 O. W. N. 138 :
A. I. R. 1927 Oudh 630.

———Part of document—Materiality—Surplusage—Fabricating of.

In a *kabuliyat*, there were three witnesses. It was alleged that the name of one of them, B, was forged: Held, that even admitting that the name of B was a fictitious name, it would not make the document a false document; that even supposing that, part of a document was false, that part must have some material effect on the transaction; that a mere surplusage, even though fictitious, would not invalidate a deed; that as there were two witnesses besides B, it would have no effect on the validity of the document whether this name was or was not fictitious and that if it was the intention of the accused that this should be used in future as evidence that B who was the *zemindar*

FRESH COMPLAINT

himself was a witness to the *kabuliyat*, that might bring the case within the definition of fabricating false evidence for the purpose of being used in a judicial proceeding, or it might be a preparation for the offence of cheating; but certainly did not amount to forgery. *Haidar Ali Pradhan v. Emperor*.

14 Cr. L. J. 129 :
18 I. C. 881 : 17 C. W. N. 854.

Person to be charged.

A charge of forgery cannot lie against a person who was not the writer of the forged document, or who did not sign the forged name. *Haider Ali Pradhan v. Emperor*.

14 Cr. L. J. 129 :
18 I. C. 881 : 17 C. W. N. 854.

—S. 467 of the Indian Penal Code (Act XLV of 1860)—Party to a registered deed denying knowledge of any of its contents—Presumption—Burden of proof—Benefit of doubt to accused.

In the case of a registered document, the presumption is that a party to it knows what it contained therein, and that the burden of proving, in the clearest way, that he did not know any of its contents when he set his hand to it, lies very heavily upon him particularly in a criminal charge: *Held*, also, that benefit of doubt should be given to the accused. *Sant Singh v. Emperor*.

5 Cr. L. J. 67 :
2 P. W. R. Cr. 1.

FOUND GAMING

See also Bombay Prevention of Gambling Act, 1887, Ss. 3, 4, 5, 6.

FRAUD

See also (i) Contract Act, 1872, S. 17.
(ii) Penal Code, 1860, S. 423.

Fraud.

The mere suggestion that certain officials were actuated by ill-will or might have supplied false information during the course of the enquiry is inadequate to found a case of fraud upon the Act. *Pratul Chandra Mitra v. Commandant, Hijli Detention Camp*.

35 Cr. L. J. 1466 :
151 I. C. 1028 : 38 C. W. N. 299 :
59 C. L. J. 185 : 61 Cal. 197 : 7 R. C. 201 (2) :
A. I. R. 1934 Cal. 259.

FRAUDULENT TRANSFER

See also Penal Code, 1860, S. 422.

FRESH COMPLAINT

—Original complaint dismissed without enquiry—Fresh complaint whether can be accepted by Court.

The dismissal of a complaint without inquiry does not debar the same Magistrate from accepting and taking action on a fresh complaint by the complainant on the same facts. *Angan v. Ram Pirbhan*.

14 Cr. L. J. 2 :
18 I. C. 146 : 10 A. L. J. 531 : 35 All. 78.

FRONTIER CRIMES REGULATION (III OF 1901)**S. 7—Construction of.**

Regulation should be construed in a way favourable to accused. Privilege under S. 387, cl. 2-A is not taken away by Regulation. *Public Prosecutor, Peshawar Division v. Mugarah*.

34 Cr. L. J. 212 :
141 I. C. 881 : I. R. 1933 Pesh. 1 :
A. I. R. 1933 Pesh. 3.

S. 29—Joint trial for offences under S. 29, Regulation and S. 19, Arms Act—Legality of.

A joint trial of the accused for offences under S. 29, Frontier Crimes Regulation, and S. 19, Arms Act, is not open to any objection. *Akbar v. Emperor*.

35 Cr. L. J. 399 :
147 I. C. 180 : 6 R. Pesh. 26 :
A. I. R. 1933 Pesh. 90.

S. 30.

See also Cr. P. C., 1898, S. 526.

S. 30—Adultery—Proof of—Sufficiency of.

Mere fact that woman is of bad character and another person visits her father with whom she had been residing, is insufficient to prove adultery. *Sabhai v. Emperor*.

33 Cr. L. J. 333 :
136 I. C. 707 : 33 P. L. R. 392 :
13 Lah. 585 : I. R. 1932 Lah. 243 :
A. I. R. 1932 Lah. 436.

S. 38.

See also Penal Code, 1860, S. 441.

Ss. 48, 49—Applicability.

Both sections apply to orders passed by Special Tribunals—They do not affect High Court's power. *Sabhai v. Emperor*.

33 Cr. L. J. 333 :
136 I. C. 707 : 33 P. L. R. 392 :
13 Lah. 585 : I. R. 1932 Lah. 243 :
A. I. R. 1932 Lah. 436.

FUGITIVE OFFENDERS ACT, 1881, (44 AND 45 VIC. CHAP. 69)**S. 13—Failure to endorse warrant—Effect of.**

Where a Magistrate failed to endorse a warrant after satisfying himself that it was properly issued under S. 13, Fugitive Offenders Act, the arrest thereunder and the subsequent proceedings are not in accordance with law and, therefore, the amounts deposited by the sureties must be returned to them. *Khadi Husain v. Emperor*.

11 Cr. L. J. 622 :
8 I. C. 301 : 1 M. W. N. 568.

S. 14—Court cannot decide legality of issue of warrant of arrest.

Magistrate to whom prisoners are brought under S. 14, Fugitive Offenders Act, are not entitled to decide whether the issue of the warrant for the apprehension of the prisoner was or was not justifiable on the evidence. They can only act under S. 19 if the case

GAMBLING

appears to be trivial. *Mohamed Naina Maracair v. Bava Sahib Maracair.*

34 Cr. L. J. 883 :
144 I. C. 896 : 1933 M. W. N. 324 :
37 L. W. 735 : 65 M. L. J. 56 :
6 R. M. 25 : A. I. R. 1933 Mad. 503 (1).

———Ss. 14, 19—*Scope.*

Ss. 14, 19, Fugitive Offenders Act, are not mutually exclusive and an order refusing extradition of a prisoner which is ostensibly one under S. 14, may be treated as one under S. 19. *Mohamed Naina Maracair v. Ahmed Maracair.*

35 Cr. L. J. 511 :
147 I. C. 929 : 38 L. W. 987 :
1933 M. W. N. 1481 : 57 Mad. 259 :
66 M. L. J. 383 : 6 R. M. 396 :
A. I. R. 1934 Mad. 55.

———Ss. 14, 19—*Whether exclude appellate jurisdiction of High Court.*

Even assuming that an order under S. 14 is a totally different order from one under S. 19 and that the operation of the two sections is exclusive, it is not very clear that the appellate jurisdiction of the High Court is excluded. *Mohamed Naina Maracair v. Ahmed Maracair.*

35 Cr. L. J. 511 :
147 I. C. 929 : 38 L. W. 987 :
1933 M. W. N. 1481 : 57 Mad. 259 :
66 M. L. J. 383 : 6 R. M. 396 :
A. I. R. 1934 Mad. 55.

———S. 19—*Order directing Lower Court to take further evidence is not ultra vires.*

An order made on appeal from an order under S. 19 directing the Lower Court to take further evidence is not irregular or *ultra vires*. *Mohamed Naina Maracair v. Ahmed Maracair.*

35 Cr. L. J. 511 :
147 I. C. 929 : 38 L. W. 987 :
1933 M. W. N. 1481 : 57 Mad. 259 :
66 M. L. J. 383 : 6 R. M. 396 :
A. I. R. 1934 Mad. 55.

———S. 33.

See also Penal Code, 1860, S. 4.

FURTHER ENQUIRY.

See also (i) Cr. P. C., 1898, Ss. 195, 437.
(ii) Notice.

G**GAMBLING**

See also (i) Bombay Prevention of Gambling Act, 1887.

(ii) Burma Gambling Act, 1899.

(iii) Madras Town Nuisance Act, 1889.

(iv) Under Local Acts.

———*Gambling, arrest—Legality of.*

Neither of the Police Officers examined said that they had seen any of the accused actually playing for money with any instrument of gaming: *Held*, that they acted illegally in arresting the accused. *Shwe Thaw v. Emperor.*

1 Cr. L. J. 662 :
10 Bur. L. J. 120.

GAMBLING CALCUTTA POLICE ACT, 1866

———S. 44—*Offence under.*

Defendant, who was *pro tanto* a book-maker, invited people to bet on certain odds offered by him, on certain figures; they could choose any figure from 1 to 10 or any combination of figures and they could wager any sum from 2 annas up to Rs. 10, receiving a voucher in return on which was entered in one column the amount they had paid, and in an opposite column, the amount they would win if the result of the quotations for the day divided by five corresponded with the figure they had selected: *Held*, that the system pursued was pure betting which was not penal, and no offence was committed within the meaning of S. 44, Act IV of 1866, as amended by Act III (B. C.) of 1897. *Ram Pratap Nemani v. Emperor.*

13 Cr. L. J. 603 :
16 I. C. 171 : 16 C. W. N. 858 :
16 C. L. J. 250 : 39 Cal. 968.

———*Club and common gaming house, distinction.*

In the case of a club, it is not usual for a charge to be made for the profit and benefit of the owner or occupier of the premises. In the case of a common gaming house, all those participating in the game, pay certain amount for the benefit of the owner of the premises. The other point is that in the case of a club, the place is not open to any member of the public, but only to members of the club and perhaps their guests. *Emperor v. Kallappa Gurappa Kotagunshi.*

41 Cr. L. J. 157 :
185 I. C. 315 : 12 R. B. 231 :
41 Bom. L. R. 970 :
I. L. R. 1939 Bom. 679 :
A. I. R. 1939 Bom. 481.

———*Gaming and betting—Distinction.*

The difference between gaming and betting depends on the nature of the event on which the bet is made. If the event is brought about solely for the purpose of being betted about, betting on it is gaming otherwise it is not. The distinction between the two terms is based on the scientific or historical meanings of gaming; but a more satisfactory distinction is to be found by considering the popular rather than the scientific use of the word. *Hari Singh v. Jadu Nandan Singh.*

1 Cr. L. J. 349 :
8 C. W. N. 458 :
I. L. R. 31 Cal. 542.

———*Gaming in public place is offence.*

The Legislature in India has made gaming in public places penal, and has refrained from passing any penal legislation against wagering or betting. *Ram Pratap Nemani v. Emperor.*

13 Cr. L. J. 603 :
16 I. C. 171 : 16 C. W. N. 858 :
16 C. L. J. 250 : 39 Cal. 968.

———*Gaming instruments — What are.*

Currency notes and the coins can only be held to be instruments of gaming when they

GAMBLING CALCUTTA POLICE ACT, 1866

are actually used as such, and there was no evidence in this case that the currency notes and coins seized were actually used as instruments of gaming. Mere possession by a player of currency notes or coins does not make such notes and coins instruments of gaming. *Shwe Thaw v. Emperor*.

1 Cr. L. J. 662 :
10 Bur. L. R. 120.

-----Gaming instruments—What are.

Tin-boards containing cotton figures, boards showing the odds on a series of figures, etc., are mere evidence of gambling but are not instruments of gaming. *Rani Pratap Nemani v. Emperor*.

13 Cr. L. J. 603 :
16 I. C. 171 : 16 C. W. N. 858 :
16 C. L. J. 250 : 39 Cal. 968.

-----Gaming instrument—What is.

A machine, the working of which, produces results not depending on human skill or operation of nature, but on mere chance, when used for the purpose of betting or staking, is an instrument of gaming. *Hari Singh v. Jadu Nandan Singh*.

1 Cr. L. J. 349 :
8 C. W. N. 458 : I. L. R. 31 Cal. 542.

-----Gaming—Meaning of.

Gaming is playing at any game, sport, pastime or exercise, lawful or unlawful, for money or any other valuable thing, which is staked on the result of the game, i. e., which is to be lost or won according to the success or failure of the person who has staked. *Rani Pratap Nemani v. Emperor*.

13 Cr. L. J. 603 :
16 I. C. 171 : 16 C. W. N. 858 :
16 C. L. J. 250 : 39 Cal. 968.

✓-----Public place—Meaning of.

A place may be a public place though it is the private property of an individual. A private place to which the public have access without the permission of, or prevention by, its owner is a public place within the meaning of the Gambling Act, II of 1867. Where a place is in any way dedicated to the use of the public, it is of course a public place. But where it is owned privately, and no such dedication has taken place, the question whether it is a public place depends on the character of the place itself and the use actually made of it. Where the place is an open piece of ground, the presumption that it is a public place is naturally more easily created than where it is a building or is surrounded by a wall. *Hari Singh v. Jadu Nandan Singh*.

1 Cr. L. J. 349 :
8 C. W. N. 458 : I. L. R. 31 Cal. 542.

-----Wagering and gaming—Distinction.

Wagering, which includes betting, is making a contract on an unascertained event, past or future (in which the parties have no pecuniary interest other than that created by the contract), by which the parties are to gain or lose, according as the uncertainty is determined one way or the other. "Gaming" is now always associated with the staking of money

GAMBLING ACT (III OF 1867)

or money's worth on the result of a game of pure chance or mixed skill and chance, while "wagering" is applied to money hazarded on any contingency in which the person wagering has no interest at risk, other than the amount at stake. *Ram Parlap Nemani v. Emperor*.

13 Cr. L. J. 603 :
16 I. C. 171 : 16 C. W. N. 858 :
16 C. L. J. 250 : 39 Cal. 968.

GAMBLING ACT (II OF 1867, B. C.)

-----S. 4—Common gambling house—What is.

Where the premises of Messrs. John King & Co. were used, during the night, when they were deserted for business purposes, for the purpose of gambling for months together, to the profit of *durwans* left in charge thereof: *Held*, that the premises could not be regarded as a "common gambling house" even though the *durwans* might have made some profit out of the gambling which went on there. *Mohesh Narain v. Emperor*.

6 Cr. L. J. 228 :
11 C. W. N. 972.

-----Ss. 10, 3—Game of chance—Game of skill—Which is offence.

If a game is one of skill, it is not an offence under the Gambling Act; if it is a game of mere chance, it is. Where the chief element of a game is one of skill, the game is not an offence, although there is an element of chance in it. *Hari Singh v. Emperor*.

6 Cr. L. J. 421 :
6 C. L. J. 708.

-----S. 11—Public place, meaning of.

Where gambling took place after midnight in a place forming part of a building—private property of certain private individuals—used during the day as a shop, but not so in the night: *Held*, that such place is not a public place within the meaning of S. 11, Bengal Gambling Act (II of 1867). *Durga Prasad Kalutan v. Emperor*.

1 Cr. L. J. 531 :
8 C. W. N. 592 : I. L. R. 31 Cal. 910.

GAMBLING ACT (III OF 1867)

-----S. 1—Common gaming house—Meaning of.

A house was nonetheless a "common gaming house" within the meaning of S. 1 of Act No. III of 1867, because the profit of the owner, occupier or keeper of the house was derived, not from payments made for the use of the house or the instruments of gaming, but from the game itself, by reason of the odds being always in favour of the bank. *Emperor v. Abdal Sattar*.

2 Cr. L. J. 245 :
25 A. W. N. 106 : 2 A. L. J. 414 : 27 All. 567.

-----S. 2—Limits within which in force—Municipal boundaries—Subsequent alteration of Municipal boundaries.

Where the Lieutenant-Governor under the powers conferred by Act III of 1867 declared by notification that the Act should be in force within the boundaries of the Municipality of Mirzapur and those boundaries were

GAMBLING ACT (III OF 1867)

subsequently revised and an offence was committed within the boundaries as existing at the time of the notification under Act III of 1867, but without the boundaries as revised: *Held*, that the boundaries for the purpose of Act III of 1867 must be taken to be those as existing at the time of the notification under that Act. *Janak v. Emperor*.

3 Cr. L. J. 439 :
26 A. W. N. 133.

———S. 3—Gambling in grove—*Whether offence.*

A person found gambling in a private grove cannot be convicted under S. 13 of Act III of 1867, which provides a punishment for gambling "in a public street, place, or thoroughfare." *Ahmad Ali v. Emperor*.

1 Cr. L. J. 272 :
1 A. L. J. 129.

———Ss. 3, 4—Offence under—*When constitutes.*

On the day after the *Diwali* festival, the house of a respectable Hindu gentleman was raided, and about 42 persons found in the house were arrested. It was found that their object was merely to indulge in a common friendly amusement, and that the idea of making a profit by levying a commission was not present in the mind of the person owning the house: *Held*, that the necessary elements constituting an offence under Ss. 3 and 4, Gambling Act, were not made out. *Ram Shanker v. Emperor*.

18 Cr. L. J. 494 :
39 I. C. 334 : 20 O. C. 4 : 4 O. L. J. 88 :
A. I. R. 1917 Oudh 102.

———Ss. 3 and 6—Search warrant—*Imperfect description of house to be searched—Effect of.*

A warrant was issued under Act No. III of 1867 for the search of "house No. 169 belonging to Jhunni Bakkal, mohalla Baniapara." The house in fact searched was a house in the occupation of Jhunni Bakkal, bearing No. 169, but in mohalla Shahnathan. But Shahnathan and Baniapara were adjoining mohallas, and in mohalla Baniapara, there was no No. 169. There was further evidence to show that the house which was searched under this warrant was the house concerning which information had been given and the house which the police intended to search: *Held*, that the wrong connotation given to the house, namely, that it was a house in mohalla Baniapara, was merely a misdescription which did not vitiate the warrant nor prevent the presumption provided for by S. 6 from arising. *Emperor v. Abdul Sattar*.

2 Cr. L. J. 243 :
25 A. W. N. 106 : 2 A. L. J. 414 : 27 All. 567.

———S. 4.

See also Gambling Act (III of 1887), S. 3.

———Ss. 4, 5, 6—Common gaming house—*Evidence—Admissibility.*

When a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as

GAMBLING ACT (III OF 1867)

a common gaming house notwithstanding that the warrant under which the search is conducted is defective, though the finding of such articles may not be evidence to the extent mentioned in S. 6. *Emperor v. Abdus Samad*.

2 Cr. L. J. 806 :
25 A. W. N. 257 : 28 All. 210.

———S. 5.

See also Gambling Act, 1867, Ss. 3, 4.

———S. 5—Credible information—*Meaning of.*

The words "credible information" as used in S. 5 of Act No. III of 1867, have not the same meaning as "credible evidence." The "credible information" there mentioned, need not be in writing. *Emperor v. Abdus Samad*.

2 Cr. L. J. 806 :
25 A. W. N. 257 : 28 All. 210.

———Ss. 5 and 6—Warrant for search of suspected house—*Endorsement of warrant by officer to whom it was issued—Validity of.*

Warrants issued under Act No. III of 1867 are governed by those provisions of the Code of Criminal Procedure which provide for the issue and execution of warrants in general; there is, therefore, no objection to the officer to whom such a warrant is originally issued endorsing it to another officer, provided that the latter is officer to whom such warrant could be legally issued in the first instance. *Emperor v. Kashinath*.

7 Cr. L. J. 19 :
28 A. W. N. 9 : 1 L. R. 30 All. 60 :
5 A. L. J. 59.

———Ss. 5, 8—Confiscation of money—*Discretion of Court.*

In exercising his discretion, a Magistrate should not order the confiscation of the money found on the person of the gambler, which, up to the time of search, has not been used for the purpose of gaming. *Mahadeya v. Emperor*.

11 Cr. L. J. 373 :
6 I. C. 586 : 7 A. L. J. 404.

———S. 6.

See also Gambling Act, 1867, Ss. 3, 4.

———S. 6—Presumption under—*When arises.*

The presumption mentioned in S. 6 of Act III of 1867 arises only when a house is entered by the Police under a warrant signed by an officer having authority in that behalf. But it may be proved *aliunde* that the house is a gaming house. *Ram Sarup v. Emperor*.

1 Cr. L. J. 269 :
1 A. L. J. 115.

———Ss. 6, 7, 11—Power of search under.

As ward and village headmen are usually appointed by the Deputy Commissioners, after an informal election by house-holders, they are not officials in the same sense as salaried servants of Government, and the mere fact that they are appointed by Government does not disqualify them as witnesses to a search under S. 103, Cr. P. C. Also, that the existence

GAMBLING ACT (III OF 1867)

of obligations, similar to, though wider than those imposed by Chapter IV of the Code of Criminal Procedure on land-holders and private individuals, in the case of ward and village headmen does not disqualify them in the matter of searches under the Gambling Act. *Paw Ya v. Emperor*. 8 Cr. L. J. 413 : U. B. R. Cr. 1908, 2nd Qr. Gambling 1.

———S. 7—Conviction under—Validity of—Gambling in one room—Conviction of persons sitting in another room—Presumption.

A and B were sitting in a room and were convicted for gaming along with others who were gaming in another room. The room in which A and B were sitting formed part of the common gaming house: *Held*, that the conviction of A and B was right. *In re: Narain Bhatta*. 11 Cr. L. J. 334 : 5 I. C. 934 : 7 M. L. T. 189.

———S. 7—Presumption under—When arises.

Where the Sub-Divisional Magistrate issued a warrant under the Gambling Act and entrusted it to the *Mukhtiarkar*, who arrested the accused: *Held*, the warrant not having been issued to a Police Officer, no presumption under S. 7 could arise, and the prosecution must, therefore, prove that the house in question was used as a common gaming house. *Emperor v. Chellaram*. 10 Cr. L. J. 205 : 2 S. L. R. 40.

———Ss. 8, 13—Conviction under S. 13—Forfeiture of money seized by the Police—Legality of.

The accused were convicted and sentenced under S. 13, Gambling Act, for gambling in a public place. The Magistrate further directed that the money seized by the Police on the spot should be forfeited and credited to Government: *Held*, that on a conviction under S. 13, the Magistrate may order all instruments of gaming found in the public place or on the persons of those arrested to be forthwith destroyed, but that section contains no provision such as is to be found in S. 8 authorising the forfeiture of the money seized. *Emperor v. Tola*. 1 Cr. L. J. 35 : 24 A. W. N. 11 : I. L. R. 26 All. 270.

———S. 10.

See also Gambling Act (III of 1887), S. 8.

———Ss. 10, 11—Evidence of co-accused.

One of the accused can be examined as a witness against the others under Ss. 10 and 11 of the Act only when a house is entered under the provisions of the Act and not contrary to them. *Ram Sarup v. Emperor*. 1 Cr. L. J. 269 : 1 A. L. J. 115.

———S. 11—Acquittal of approver—How and when allowed.

S. 11, Gambling Act, allows the acquittal of an approver only if a disclosure made is be-

GAMBLING ACT (BURMA) (I OF 1899)

lieved to be true and faithful. *Ram Shanker v. Emperor*. 18 Cr. L. J. 494 :

39 I. C. 334 : 20 O. C. 4 :

4 O. L. J. 88 : A. I. R. 1917 Oudh 102.

———S. 12 (a)—Public place—Meaning of.

Where the accused were found gambling on a spot just on the edge of a cart track road: *Held*, that as the word "public place" in S. 12, Gambling Act, meant a place of the same general character as "road or thoroughfare", the spot on the side of the road was virtually a portion of the thoroughfare, and of the same general character; the public having, by common usage, the right to walk along the road and also along the strip of ground on its immediate margin. *Memon Kasam Umar v. The Public Prosecutor*. 10 Cr. L. J. 16. 17 All. 166.

———S. 13.

See also (i) Cr. P. C., 1898, S. 514.

(ii) Gambling Act, 1867, S. 3.

———S. 13—Public place, meaning of.

A public place must be taken to mean a place appropriated to the use of the public. The land belonging to a private person, though the public may have access to it without interference, is not a public place within the meaning of S. 13, Gambling Act. *Emperor v. Rajja*. 2 Cr. L. J. 46 :

9 P. R. Cr. 1905 : 6 P. L. R. 448.

———S. 17—Order requiring security under S. 118, Cr. P. C.—Appeal—Whether lies.

An order requiring security from a person concerning whom information has been received and proceedings taken under S. 17, Gambling Act, is passed under S. 118, Cr. P. C., and an appeal therefore lies against the order in the manner provided by S. 406 of the Cr. P. C. *Tet Pya v. Emperor*. 2 Cr. L. J. 378 : 3 L. B. R. 21.

GAMBLING ACT (BURMA)

———Zayat, whether public place.

Ordinarily a *zayat* is a place to which the public have access. *Shwe Thaw v. Emperor*. 1 Cr. L. J. 662 :

10 Bur. L. R. 120.

———Ss. 5, 10—Licensed toddy shop—Whether public place.

A licensed toddy shop is not a "place to which the public have access" within the meaning of Ss. 5 and 10, Burma Gambling Act (I of 1899). *Ah Kon v. Emperor*. 1 Cr. L. J. 461 : 2 L. B. R. 195.

———S. 6—Duty of Police under.

Duty of Police in proceedings under S. 6, Gambling Act, explained. *Paung Nga v. Emperor*. 1 Cr. L. J. 480 : 2 L. B. R. 212 : 10 Bur. L. R. 227.

———S. 10—Conviction under—Legality of.

In order to support a conviction under S. 10, Gambling Act (1), it had to be proved that the particular accused had been playing for money

GENERAL CLAUSES ACT (X OF 1897)

with instruments of gaming, and there was no evidence to show that they had been so doing. *Shwe Thaw v. Emperor*.

1 Cr. L. J. 662 :
10 Bur. L. R. 120.

———S. 14—Report—Meaning of.

The expression "report" in S. 14, Gambling Act, includes any report of a Police Officer, and not only the report prescribed by S. 6, Sub-s. 4, in cases where a house has been searched under a warrant. *Paung Nga v. Emperor*.

1 Cr. L. J. 480 :
2 L. B. R. 212 : 10 Bur. L. R. 227.

GAME OF SKILL

See also Bombay Prevention of Gambling Act, 1887, Ss. 13, 12, 3 (a).

GAMING

See also (i) Bengal Public Gambling Act, 1867, as amended by Act, 1918, S. 1.

(ii) Calcutta Police Act, 1866, Ss. 3, 47, 40.

(iii) Gambling.

———Gaming when punishable.

Gaming is not an offence in itself but is punishable only when carried on in a common gaming house, or on a public place. *Emperor v. Umer Khan*.

12 Cr. L. J. 28 :
8 I. C. 1127 : 6 N. L. R. 168.

GENERAL CLAUSES ACT (X OF 1897)

———British Minister at Kabul—Whether Political Agent.

His Britannic Majesty's Minister at Kabul is not a Political Agent within the definition to be found in the General Clauses Act. *Mohammad Qasim Khan v. Emperor*.

36 Cr. L. J. 430 :
153 I. C. 747 : 16 Lah. 73 :
37 P. L. R. 419 : 7 R. L. 454 :
A. I. R. 1934 Lah. 827.

———Movable property—Meaning of.

The definition of 'movable property' in the General Clauses Act, includes a debt. *Secretary of State v. Sengammal*.

18 Cr. L. J. 1 :
36 I. C. 83 : 4 L. W. 613 :
1917 M. W. N. 105 :
A. I. R. 1917 Mad. 748.

———S. 3—Interpretation.

The expression "the Government" as defined in S. 3, Cl. 21, General Clauses Act, means also the Government of India, and in S. 3, Cl. 40, it means Local Government but does not include British Government. *Jeramdas Vishandas v. Emperor*.

36 Cr. L. J. 240 :
153 I. C. 60 : 28 S. L. R. 27 :
7 R. S. 117 : A. I. R. 1934 Sind 96.

———S. 3—Interpretation.

The words 'Government established by law in British India' should be interpreted in the light of S. 3, General Clauses Act, which governs the Press Act as regards definition of terms. So interpreted, it includes the Government of

GENERAL CLAUSES ACT (X OF 1897)

India and all Local Governments. The addition of the words 'established by law in British India' seems to be intended to emphasize the fact that it is the Government existing at the time that is sought to be protected from attacks. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
A. I. R. 1918 Mad. 1210.

———S. 3 (2)—Interpretation.

The expression "shall include", in S. 3, Cls. 21 and 40, is used in its restricted sense as equivalent to "mean and include." *Jeramdas Vishandas v. Emperor*.

36 Cr. L. J. 240 :
153 I. C. 60 : 28 S. L. R. 27 :
7 R. S. 117 : A. I. R. 1934 Sind 96.

———Ss. 3, 6, 7—Revival of repealed enactments.

S. 3, General Clauses Act (I of 1868), expressly provided that for the purpose of reviving, either wholly or partially a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose, and the same is the effect of Ss. 6 and 7, General Clauses Act (X of 1897). *In the matter of: Jawa Nathoo*.

18 Cr. L. J. 64 :
37 I. C. 48 : 20 C. W. N. 1327 :
44 Cal. 459 : A. I. R. 1917 Cal. 243.

———S. 3 (31)—Magistrate, whether includes Magistrate of foreign country.

The definition of 'Magistrate' in S. 3 (31), General Clauses Act, is not confined to Magistrate exercising jurisdiction under the Cr. P. C., it merely includes them. *In re: Panchanatham Pillai*.

31 Cr. L. J. 223 :
121 I. C. 157 : 29 L. W. 645 :
52 Mad. 529 : 56 M. L. J. 628 :
1929 M. W. N. 383 : A. I. R. 1929 Mad. 487.

———S. 3, Cl. (52)—Accused able to sign—Thumb-mark cannot be his signature.

Where an accused person is able to write his name, his thumb-mark is not a signature within the meaning of S. 3, Cl. (52), General Clauses Act, or S. 164, Cr. P. C. *Sadananda Pal v. Emperor*.

2 Cr. L. J. 405 :
I. L. R. 32 Cal. 550.

———S. 6.

See also Cr. P. C., 1898, S. 195.

———S. 6—Change of law—Right of appeal.

A right of appeal is only by Statute. It is not in itself a necessary part of the procedure in an action but is the right of entering a Supreme Court and invoking its aid and interposition to redress the error of the Court below. The power to apply to higher Court to revoke a sanction by an inferior Court is not a mere matter of procedure but is a substantive right, and by virtue of S. 6, General Clauses Act, such right is unaffected by a change in the law relating to sanctions. *Ramakrishna Iyer v. Silhai Ammal*. (F. B.)

27 Cr. L. J. 91 :
91 I. C. 395 : 49 M. L. J. 223 :
1925 M. W. N. 684 : 48 Mad. 620 :
22 L. W. 879 : A. I. R. 1925 Mad. 911.

GENERAL CLAUSES ACT (X OF 1897)

-----S. 6—Detention under expired ordinance—*Legality of.*

Practice—Detention in jail under conviction under Ordinance, after expiry of Ordinance, is not illegal. *Jogendra Mohan Guha v. Emperor.* 34 Cr. L. J. 879 :

144 I. C. 957 : 60 Cal. 545 :
6 R. C. 68 : A. I. R. 1933 Cal. 516.

-----S. 6—Ordinances—*Applicability of S. 6.*

By S. 30, the Act is made applicable to Ordinances II and X of 1932. But S. 6 does not apply as Ordinances are temporary ones. *Emperor v. Baba Bausgopal.* (F. B.)

34 Cr. L. J. 1030 :
145 I. C. 680 : 1933 A. L. J. 875 :
6 R. A. 141 : A. I. R. 1933 All. 669.

-----S. 10.

See also Cattle Trespass Act, 1871, S. 20.

-----S. 10—Complaint under S. 20, Cattle Trespass Act—*Applicability.*

The principle underlying S. 10 applies to complaints under S. 20 of the Cattle Trespass Act. *Mahdeo Gaupali Patil v. Nabha Vishwanath.* 30 Cr. L. J. 125 :

113 I. C. 285 : I. R. 1929 Nag. 32 :
A. I. R. 1929 Nag. 96.

-----S. 13.

See also Cr. P. C., 1898, S. 234.

-----S. 21.

See also Factories Act, 1911, S. 28.

-----S. 26.

See also (i) Joinder of Charges.
(ii) Railways Act, 1890, S. 68.

-----S. 26—Conviction under two acts—*Legality of.*

Accused in possession of contraband salt—Conviction under Salt Act and also under Criminal Law Amendment Act—Convictions should be under either of the Acts and not under both. *Emperor v. Bhogilal Chimanlal Nanavati.* 32 Cr. L. J. 1145 :

134 I. C. 345 : 33 Bom. L. R. 648 :
I. R. 1931 Bom. 457 :
A. I. R. 1931 Bom. 409.

-----S. 26—Scope.

Under S. 26 where an act is punishable under a General Statute, the offender could be proceeded with under either or both, but could not be punished twice. *Joti Prasad Gupta v. Emperor.* 33 Cr. L. J. 236 :

136 I. C. 91 : 53 All. 642 :
I. R. 1932 All. 139 : A. I. R. 1932 All. 18.

-----S. 26—*Scope and object.*

S. 26 does not act as a bar to trial or conviction but merely as a bar to duplicated punishment. *Arsala Khan v. Emperor.*

36 Cr. L. J. 813 :
155 I. C. 287 : 7 R. Pesh. 101 :
A. I. R. 1935 Pesh. 18.

GOOD FAITH

-----S. 26—Special and general enactments—*Conviction cannot be under both.*

Where a special enactment deals with an offence similar to an offence dealt with by a general enactment, it does not follow that the provisions of the general enactment are repealed to that extent. The prosecution in such a case may be under either of those enactments as provided by S. 26, General Clauses Act. *Segu Baliah v. N. Ramasamiah.*

18 Cr. L. J. 992 :
42 I. C. 608 : 6 L. W. 283 :
A. I. R. 1918 Mad. 460.

-----S. 30—Effect.

General Clauses Act is applicable to Ordinances II and X of 1932 under S. 30. *Emperor v. Bangsopal.* (F. B.) 34 Cr. L. J. 1030 :
145 I. C. 680 : 1933 A. L. J. 875 :
6 R. A. 141 : A. I. R. 1933 All. 669.

GENERAL REPUTE

See also Cr. P. C., 1898, S. 110.

-----Evidence—*Investigating Officer, evidence of, whether admissible.*

In order to establish general repute for the purposes of S. 110, Cr. P. C., the evidence of the investigating Police Officer is inadmissible and irrelevant. *Rameshwar Dasadh v. Emperor.* 21 Cr. L. J. 321 (b) :

55 I. C. 593 : 1 P. L. T. 632 :
A. I. R. 1920 Pat. 25.

-----Evidence of—*Vague and indirect evidence—Value of.*

Evidence of general repute by persons who have no personal knowledge of the accused and know nothing of his business and circumstances, is not sufficient in itself to justify an order. Vague reputation, unaccompanied by direct evidence personally affecting each accused person or accompanied by direct evidence which breaks down, is not sufficient in itself to justify an order. *Angnoo Singh v. Emperor.* 24 Cr. L. J. 257 :

71 I. C. 865 : 20 A. L. J. 881 : 45 All. 109 :
A. I. R. 1923 All. 35.

GIRL

See also Calcutta Suppression of Immoral Traffic Act, 1923, S. 4.

GIVE INFORMATION

See also Penal Code, 1860, S. 182.

GOES ARMED

See also Arms Act, 1878, S. 19 (c).

GOOD FAITH

See also (i) Defamation.

(ii) Penal Code, 1860, S. 409.

-----*Inference of—When arises.*

Sub-Inspector going to village dressed up in uniform to arrest accused—Inference of good faith does not necessarily arise. *Gaya Din v. Emperor.* 35 Cr. L. J. 804 :

148 I. C. 870 : 11 O. W. N. 337 : 6 R. O. 448 :
A. I. R. 1934 Oudh 124.

GOONDAS ACT (B. C. I. OF 1923)

—Object of.

The Bengal Goondas Act has not created any Court but has only provided a certain procedure for dealing with goondas. A Secretary to the Local Government who issues a warrant under the Bengal Goondas Act is not an "inferior Criminal Court" within the meaning S. 435, Cr. P. C., so as to make him subject to the revisional jurisdiction of the High Court. *Bhimraj Bania v. Emperor*.

26 Cr. L. J. 20 :
83 I. C. 500 : 51 Cal. 460 :
A. I. R. 1924 Cal. 698.

—S. 4.

See also Cr. P. C., 1898, Ss. 54, 76.

GOSHA WOMAN

See also Pardanashin Woman.

GOVERNMENT COUNSEL

See also Counsel and client.

GOVERNMENT OF BURMA ACT, 1935

—S. 100—Acts relating to Police Forces mentioned.

The Acts relating to the Police Forces referred to in S. 100, Government of Burma Act, are the General Police Act and the Local Police Acts, such as the Bombay District Police Act, the Calcutta Police Act, the Rangoon Police Act (Burma Act IV of 1890), etc. *Tun Ya v. The King*.

39 Cr. L. J. 614 :
175 I. C. 442 : 1938 Rang. 104 :
10 R. Rang. 505 (2) : A. I. R. 1938 Rang. 181.

GOVERNMENT OF INDIA ACT, 1915

—Lahore Conspiracy Case Ordinance, 1930, —Whether void.

The Lahore Conspiracy Case Ordinance No. III of 1930, is not void merely because there is repugnancy between the Ordinance and the constitution of the Lahore High Court. *Bhagat Singh v. Emperor*.

32 Cr. L. J. 727 :
131 I. C. 415 : 35 C. W. N. 646 :
1931 A. L. J. 448 : 8 O. W. N. 846 :
53 C. L. J. 383 : 1931 M. W. N. 601 :
12 Lah. 280 : 33 Bom. L. R. 950 :
34 L. W. 57 : 32 P. L. R. 658 :
61 M. L. J. 279 : I. R. 1931 P. C. 143 P. C. :
A. I. R. 1931 P. C. 111.

—S. 72—Operation of ordinance.

Viceroy is the sole judge whether Ordinance can be operative by reference to original statute. In the matter of: *Ananda Bazar Patrika*. (F. B.)

33 Cr. L. J. 839 :
140 I. C. 5 : 37 C. W. N. 104 :
60 Cal. 408 : I. R. 1932 Cal. 675 :
A. I. R. 1932 Cal. 745.

—S. 72—Promulgating amending Ordinance.

Viceroy can promulgate amending Ordinance

GOVERNMENT OF INDIA ACT, 1915

—Original emergency need not be reiterated. In the matter of: *Ananda Bazar Patrika*. (F. B.)

33 Cr. L. J. 839 :
140 I. C. 5 : 37 C. W. N. 104 :
60 Cal. 408 : I. R. 1932 Cal. 675 :
A. I. R. 1932 Cal. 745.

—S. 72—Promulgating Ordinance—Emergency for it exists or not—Court can decide.

In the case of an Ordinance promulgated under S. 72, the question whether a state of emergency exists or not is one of fact which the Courts can enquire into. *Channappa Shantirappa v. Emperor*. (S. B.)

32 Cr. L. J. 403 :
129 I. C. 596 : 32 Bom. L. R. 1613 :
55 Bom. 263 : I. R. 1931 Bom. 196.
A. I. R. 1931 Bom. 57.

—S. 72—Promulgating Ordinance—Governor-General alone empowered.

Only Governor-General can promulgate Ordinance. He can provide that area, and time should be determined by third party. *Balkrishna Hari Phansalkar v. Emperor*.

34 Cr. L. J. 199 :
141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130 :
A. I. R. 1933 Bom. 1.

—S. 72—Promulgating Ordinance—Stat-ing grounds, if necessary.

It is not incumbent on the Governor-General, when promulgating an Ordinance under S. 72, to expound the reasons which induced him to promulgate it. *Bhagat Singh v. Emperor*.

32 Cr. L. J. 727 :
131 I. C. 415 : 35 C. W. N. 646 :
1931 A. L. J. 448 : 8 O. W. N. 846 :
53 C. L. J. 383 : 1931 M. W. N. 601 :
12 Lah. 280 : 33 Bom. L. R. 950 :
34 L. W. 57 : 32 P. L. R. 658 :
61 M. L. J. 279 : I. R. 1931 P. C. 143 P. C. :
A. I. R. 1931 P. C. 111.

—S. 72—Promulgating Ordinance—Validity whether rests on proof of emergency.

Validity of Ordinance does not rest on proof of recital of emergency. In the matter of: *the Amrita Bazar Patrika*. (F. B.)

33 Cr. L. J. 949 :
140 I. C. 304 : 56 C. L. J. 157 :
37 C. W. N. 166 : I. R. 1932 Cal. 696 :
A. I. R. 1932 Cal. 738.

—S. 72—Ordinance whether good for peace and good Government—Governor-General is sole Judge.

The Governor-General is also the sole Judge of whether the Ordinance did or did not conduce to the peace and good Government of British India. *Bhagat Singh v. Emperor*.

32 Cr. L. J. 727 :
131 I. C. 415 : 35 C. W. N. 646 :
1931 A. L. J. 448 : 8 O. W. N. 846 :
53 C. L. J. 383 : 1931 M. W. N. 601 :
12 Lah. 280 : 33 Bom. L. R. 950 :
34 L. W. 57 : 32 P. L. R. 658 :
61 M. L. J. 279 : I. R. 1931 P. C. 143 P. C. :
A. I. R. 1931 P. C. 111.

GOVERNMENT OF INDIA ACT, 1915

—S. 106—Amending Letters Patent.

It is under Ordinance-making power of Governor-General to alter and amend Letters Patent. *Amar Chandra v. Emperor.*

34 Cr. L. J. 320 :
142 I. C. 310 : 37 C. W. N. 481 :
60 Cal. 814 : I. R. 1933 Cal. 259 :
A. I. R. 1933 Cal. 364.

—S. 107—Now S. 224, Government of India Act, 1935.

See also (i) Bengal Suppression of Terrorist Outrages (Supplementary Act, 1932), S. 85.

(ii) Cr. P. C., 1898, Ss. 144, 145, 197, Sub-ss. (6) (7), 430, 476, 476-B.

(iii) Legal Practitioners Act, 1879.

(iv) Madras Local Boards Act, 1920, S. 221.

(v) Madras Village Courts (Amendment) Act, 1920, S. 76.

(vi) Sanction to prosecute.

—S. 107—Attachment of immovable property—High Court can give directions for disposal of.

Owing to a dispute between a landlord and his tenant as to the right of the former to *lac* growing on trees, the District Magistrate apprehended a breach of the peace and initiated proceedings under S. 145, Cr. P. C., and by a subsequent order, attached the trees with the *lac* thereon : the *lac* was collected and some of it sold, the sale-proceeds being deposited in the Treasury and the unsold *lac* stored away : the High Court set aside the proceedings as being without jurisdiction, and issued a Rule calling upon the District Magistrate and the tenants to show cause why the sale-proceeds of the *lac* and the unsold *lac* should not be made over to the landlord, or why such order should not be passed as to the Court might seem proper : *Held*, (1) that the High Court had inherent power to give directions as to the disposal of property attached in a criminal proceeding initiated without jurisdiction as might be necessary in the interests of justice ; (2) that in the present case, the proper order was to keep the sale-proceeds of the *lac* and the unsold *lac* in the custody of the Subordinate Judge of the District pending the decision of a suit to be instituted by the landlord for declaration of his right to the *lac*, and that, in default of such suit being instituted, the net sale-proceeds of the *lac* be distributed rateably among the tenants. *Ali Muhammad Mandal v. Piggot.*

22 Cr. L. J. 213 :
60 I. C. 325 : 32 C. L. J. 270 :
48 Cal. 522 : A. I. R. 1921 Cal. 30.

—S. 107—Bengal Emergency Powers Ordinance—Whether takes away power of superintendence.

The power of superintendence that the High Court derives from S. 107 is not taken away

GOVERNMENT OF INDIA ACT, 1915

by S. 39, Bengal Emergency Powers Ordinance. *Manmatha Nath Biswas v. Emperor.*

34 Cr. L. J. 299 :
142 I. C. 280 : 37 C. W. N. 201 :
60 Cal. 618 : I. R. 1933 Cal. 246 :
A. I. R. 1933 Cal. 132.

—S. 107—Court of Munsif not inferior Criminal Court under S. 435, Cr. P. C.—High Court can revise its proceedings under S. 107, G. I. Act.

Although the Court of a Munsif is not an inferior Criminal Court within the meaning of S. 435, Cr. P. C., the High Court has ample power under S. 107, Government of India Act, to entertain an application for revision of an order made by a Munsif in a proceeding in which a suitor is called upon to show cause why he should not be committed for contempt of Court. An application was made to a Munsif by a Vakil on behalf of certain minor plaintiffs to set aside an order dismissing their suit in default, the said order being described in the application as one "against rules and against law." The Munsif stigmatised this as contempt of Court and issued notice to the minors to show cause why they should not be committed for contempt of Court in respect of the application. On an application made to the High Court in revision : *Held*, that there was nothing in the application for restoration to which exception could possibly be taken. *Kadhory v. Emperor.*

20 Cr. L. J. 615 :
52 I. C. 279 : 17 A. L. J. 898 :
42 All. 26 : A. I. R. 1919 All. 46.

—S. 107—Courts subject to appellate jurisdiction—What are.

The Special Courts under the Ordinance are Courts subject to the appellate jurisdiction of the High Court. *Balkrishna Hari Phansalkar v. Emperor.*

34 Cr. L. J. 199 :
141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130.
A. I. R. 1933 Bom. 1.

—S. 107—Difference of opinion among Judges—Procedure.

Where a High Court exercises jurisdiction under S. 107, Government of India Act, 1915, and the Judges hearing a case differ in opinion, the opinion of the Senior Judge prevails. *Indian Iron & Steel Co., Ltd. v. Banso Gopal.*

22 Cr. L. J. 99 :
59 I. C. 403 : 32 C. L. J. 54 :
A. I. R. 1920 Cal. 824.

—S. 107—Jurisdiction of High Court under Charter Act—Whether affected by S. 107.

S. 107, Government of India Act, does not differ from or extend the jurisdiction conferred upon the High Court by S. 15, Charter Act. *Malukdhari Singh v. Jaisari.*

18 Cr. L. J. 828 :
41 I. C. 652 : 15 A. L. J. 576 :
39 All. 612 : A. I. R. 1917 All. 220.

GOVERNMENT OF INDIA ACT, 1915

—S. 107—Power of superintendence—Severity of sentence—Interference—Propriety of.

Beaumont, C. J. and Broomfield, J. (Nanavali J., dissenting)—That the High Court would not interfere in exercise of its general powers of superintendence on the ground of mere excessive severity of the sentence. *Balkrishna Hari Phansalkar v. Emperor.*

34 Cr. L. J. 199 :
141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130 :
A. I. R. 1933 Bom. 1.

—S. 107—Power of superintendence.

The High Court will not act under S. 107, Government of India Act, on an independent application for stay of proceedings. *Yalavarty Ankanna v. Pillameri Adribhothu.*

24 Cr. L. J. 640 :
73 I. C. 528 : 18 L. W. 236 :
A. I. R. 1924 Mad. 235.

—S. 107—Power of superintendence—Discretion to revise or set aside conviction—Principles of, exercise of.

The High Court has a discretion to revise or set aside any conviction under powers of superintendence, but must exercise discretion on judicial grounds, and only interfere if considerations of justice require it to do so. *Balkrishna Hari Phansalkar v. Emperor.*

34 Cr. L. J. 199 :
141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130 :
A. I. R. 1933 Bom. 1.

—S. 107—Power of superintendence—Extent of.

Under S. 107, Government of India Act, the High Court has superintendence over all Courts for the time being subject to its appellate jurisdiction. Rights of Superintendence include not only superintendence on administrative points, but superintendence on the judicial side as well, and under its power of superintendence, the High Court can correct any error in a judgment of a Court subject to its appellate jurisdiction. *Emperor v. Jamnadas Nathji Shah.* 38 Cr. L. J. 606 :
168 I. C. 718 : 39 Bom. L. R. 82 :
I. L. R. 1937 Bom. 263 : 9 R. B. 393 :
A. I. R. 1937 Bom. 153.

—S. 107—Power of superintendence—High Court cannot send for record and transfer proceedings.

The High Court can, in the exercise of its powers of general superintendence under S. 107, Government of India Act, send for the record of a proceeding under S. 14, Legal Practitioners Act, against a Pleader and direct a transfer of the proceeding or pass any orders as it thinks fit. *Lakshmi Narain v. Ratni.*

27 Cr. L. J. 476 :
93 I. C. 700 : 27 P. L. R. 225 :
A. I. R. 1926 Lah. 199.

—S. 107—'Superintendence,' meaning of.

Without expressing any opinion as to the

GOVERNMENT OF INDIA ACT, 1915

applicability of S. 107, Government of India Act, it is sufficient to say that the High Court should not interfere with the progress of an enquiry in which nothing final can be done by the presiding officer. The 'general superintendence' vested in the High Court under S. 107, Government of India Act, applies only to cases where a subordinate officer, be he a Judge or otherwise, acts without jurisdiction or in excess of jurisdiction. When a duly constituted officer acting within jurisdiction makes a charge and proceeds to hold an enquiry, the High Court will not interfere under the Statute unless he has grossly abused his powers. *In the matter of: Janak Kishore.*

18 Cr. L. J. 132 :
37 I. C. 484 : 1 P. L. J. 576 :
1917 Pat. 60 : A. I. R. 1916 Pat. 115.

—S. 107—Power of superintendence—Nature of.

The High Court may make consequential or incidental orders in the exercise of its power of superintendence over Subordinate Courts, which may be invoked, if occasion should arise, to reach and remedy all forms of judicial high-handedness. *Ali Muhammad Mandal v. Piggot.*

22 Cr. L. J. 213 :
60 I. C. 325 : 32 C. L. J. 270 :
48 Cal. 522 : A. I. R. 1921 Cal. 30.

—S. 107—Power of superintendence—Nature of.

This power of superintendence is judicial and not merely administrative. Exercise of a power of superintendence is not the same thing as the hearing of an appeal. *Balkrishna Hari Phansalkar v. Emperor.*

34 Cr. L. J. 199 :
141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130 :
A. I. R. 1933 Bom. 1.

—S. 107—Power of superintendence—Nature of.

Under its power of superintendence, the High Court can correct any error in a judgment of a Court subject to its appellate jurisdiction. *Balkrishna Hari Phansalkar v. Emperor.*

34 Cr. L. J. 199 :
141 I. C. 720 : 34 Bom. L. R. 1523 :
57 Bom. 93 : I. R. 1933 Bom. 130 :
A. I. R. 1933 Bom. 1.

—S. 107—Power of superintendence—Principles of, exercise of.

The power of superintendence should be exercised upon those judicial principles which give in its character. *Manmatha Nath Biswas v. Emperor.*

34 Cr. L. J. 299 :
142 I. C. 280 : 37 C. W. N. 201 :
60 Cal. 618 : I. R. 1933 Cal. 246 :
A. I. R. 1933 Cal. 132.

—S. 107—Power of superintendence—Whether controlled by Governor-General.

The power of superintendence which the High Court possesses by virtue of S. 107, cannot be controlled by the Governor-General, though in the case of the Cr. P. C., it is competent for the Governor-General, having regard to

GOVERNMENT OF INDIA ACT, 1915

Ss. 72 and 65, Government of India Act, to override its powers. *Balkishna Hari Phansalkar v. Emperor*. 34 Cr. L. J. 199 :

141 I. C. 720 : 34 Bom. L. R. 1523 :

57 Bom. 93 : I. R. 1933 Bom. 130 :

A. I. R. 1933 Bom. 1.

———S. 107—Power of superintendence—
—When to be exercised.

The powers of superintendence under this section of the Government of India Act are not ordinarily meant to be exercised where no power of revision or interference exists under the Cr. P. C., and such power ought to be exercised only in rare cases where an obvious miscarriage of justice cannot be otherwise prevented. Such powers are not intended to be invoked in order to get round any of the express provisions of the Cr. P. C. *Emperor v. Jamnadas Nathji Shah*. 38 Cr. L. J. 606 :

168 I. C. 718 : 39 Bom. L. R. 82 :

I. L. R. 1937 Bom. 263 : 9 R. B. 393 :

A. I. R. 1937 Bom. 153.

———S. 107—Proceedings under S. 145, Cr. P. C.—High Court can set aside notwithstanding S. 439, Cr. P. C.

A High Court is competent, in the exercise of the powers of superintendence vested in it under S. 107, Government of India Act, 1915, to set aside proceedings instituted without jurisdiction by a Subordinate Court under S. 145, Cr. P. C., such power of superintendence can be exercised notwithstanding S. 435 (3), Cr. P. C. *Ali Muhammad Mandal v. Piggot*. 22 Cr. L. J. 213 :

60 I. C. 325 : 32 C. L. J. 270 :

48 Cal. 522 : A. I. R. 1921 Cal. 30.

———S. 107—Revision—High Court, whether can interfere with proceedings under Ch. XII of Cr. P. C.

If proceedings, totally without legal foundation of legislative authority, are taken by a Magistrate in the name of proceedings under Chapter XII but not seriously purporting to be taken under or to comply with the provisions of that Chapter and the High Court is satisfied of that fact by reliable evidence, there is clearly a case for interference. It is always open to a party in such a case to satisfy the High Court that the property of which he is entitled to possession has been dealt with by an order which has no legal authority at all, and he may do so by an affidavit or in any other reliable manner, and thereby invoke the superintending power of the Court, but he cannot ask the High Court to interfere in revision or to send for the record merely by showing, that on the face of the judgment, the Magistrate has neglected or misinterpreted some of the provisions of the Chapter. *Sundar Nath v. Emperor*.

19 Cr. L. J. 369 :

44 I. C. 673 : 16 A. L. J. 189 : 40 All. 364 :

A. I. R. 1918 All. 186.

GOVERNMENT OF INDIA ACT, 1919
(9 AND 10 GEO. V. C. 101)

———S. 49—Bengal Government's order under S. 25, Bengal Suppression of Terrorist Outrages Act—If should be proved under S. 78, Evidence Act.

Where the Government order sets out the names of certain persons as having committed various offences under the Arms Act, and directs under S. 25, Bengal Suppression of Terrorist Outrages Act, that they should be tried by a Magistrate invested with the power of a Special Magistrate ending with "by order of the Governor-in-Council" and is signed by the Under-Secretary to the Bengal Government and the official seal of the Bengal Government is also affixed, the order is not a copy and it cannot be called into question. The necessity, therefore, of the usual mode of proof of Government documents which do not prove themselves, and which is alluded to in S. 78, Evidence Act, has no application. *Kalijiban Bhattacharjee v. Emperor*. 37 Cr. L. J. 775 :

163 I. C. 41 : 63 C. L. J. 232 :

8 R. C. 714 : 63 Cal. 1053 :

A. I. R. 1936 Cal. 316.

———S. 49—Bengal Court's order under S. 25, Bengal Suppression of Terrorist Outrages Act—Whether should be proved under S. 78, Evidence Act.

There is nothing in the terms of S. 49, Government of India Act, to suggest that proof of the existence of the order is dispensed with. The section does not, in plain terms, empower the Court to take judicial notice of the existence of such an order. It is open to the prosecution to adopt any legal mode of proof they please. Although S. 78, Evidence Act, provides a convenient mode, it is by its very terms not exhaustive. *Kalijiban Bhattacharjee v. Emperor*.

37 Cr. L. J. 775 :

163 I. C. 41 : 63 C. L. J. 232 :

8 R. C. 714 : 63 Cal. 1053 :

A. I. R. 1936 Cal. 316.

———Ss. 67-B, 67-B (2), Proviso—Scope of—Declaration in regard to state of emergency, whether must synchronize with date on which Act was certified by Governor-General.

S. 67-B, Government of India Act, 1919, did not lay down that a declaration by the Governor-General in regard to the state of emergency must necessarily synchronize with the date on which the Act was certified or made by him. In fact, it is possible to conceive of cases in which no state of emergency might have existed at the time when the Act was made by the Governor-General, but it might have come into existence subsequently when he might have been obliged to bring it into operation at once. It cannot, therefore, be argued that as some time had elapsed since the Act was made, the Governor-General had lost his power to declare the existence of a state of emergency although

GOVERNMENT OF INDIA ACT, 1919

one might have come into existence in the meantime. *In re : Swami Arungiri Natha.*

179 I. C. 605 : 1938 M. W. N. 1105 (2) :
1938, 2 M. L. J. 863 : 48 L. W. 813 :

11 R. M. 603 : I. L. R. 1939 Mad. 87 :
A. I. R. 1939 Mad. 21.

———S. 67-B (2) Proviso—*Nature of—*
Whether condition on provisions of sub-clause
itself.

The Proviso to S. 67-B (2), Government of India Act, 1919, must be taken to be in the nature of a condition on the provisions of the sub-clause itself and cannot be held to depend on it for its enforceability. In other words, the Act was required to be submitted to both the Houses of Parliament and then to His Majesty for assent only when the Governor-General did not consider that a state of emergency existed which would authorize him to enforce the Act made by him earlier. If those circumstances were found to be existing, the Governor-General was authorized to bring the Act into operation at once without waiting for the period which would have elapsed if the Act were to be laid before both the Houses of Parliament for a given number of days when they were in session and then presented to His Majesty for assent. The proper way to regard a Proviso is as a limitation upon the effect of the principal enactment. *In re : Swami Arungiri Natha.*

179 I. C. 605 : 1938 M. W. N. 1105 (2) :
1938, 2 M. L. J. 863 : 48 L. W. 813 :
11 R. M. 603 : I. L. R. 1939 Mad. 87 :
A. I. R. 1939 Mad. 21.

———S. 67-B (2) Proviso—*Scope of—*
Whether powers under S. 67-B (2) Proviso should
be exercised, is matter for Governor-General alone
to decide.

All that is required in circumstances under S. 67-B (2), Government of India Act, 1919, is that the Governor-General shall exercise his powers. The question whether those powers shall be exercised is a matter for the Governor-General alone to decide. The Governor-General is the sole Judge in such matters, and is not bound to give any reasons for promulgating such Ordinances. The Governor-General did exercise his powers, and having exercised them, the Criminal Law Amendment Act, 1935, became a lawful Act. *In re : Swami Arungiri Natha.*

40 Cr. L. J. 224 :
179 I. C. 605 : 1938 M. W. N. 1105 (2) :
1938, 2 M. L. J. 863 : 48 L. W. 813 :
11 R. M. 603 : I. L. R. 1939 Mad. 87 :
A. I. R. 1939 Mad. 21.

———S. 72—Ordinance II of 1932—*Sentence*
under, does not expire on expiration of Ordinance.

Ordinance II of 1932—Sentences under Ordinance are not intended to expire with the Ordinance—Provision of Ordinance II of 1932, S. 21, authorising Court to pass sentence which would continue beyond the life of Ordinance is not *ultra vires* of S. 72. *Jogindra Chandra Roy v. Superintendent of the Dum Dum Special Jail.*

34 Cr. L. J. 291 (2) :
142 I. C. 204 : 37 C. W. N. 363 :
60 Cal. 742 : I. R. 1933 Cal. 241 (2) :
A. I. R. 1933 Cal. 280.

GOVERNMENT OF INDIA ACT, 1919

———S. 72—Promulgating Ordinances.

The High Court can examine an Act of the Legislature whether enacted by the Legislature itself or by the Governor-General-in-Council or by the Governor-General, in order to see whether the said Act or Ordinance has been made and promulgated within the scope of the powers conferred on the Legislature, the Governor-General-in-Council and the Governor-General, respectively, by the Government of India Act, 1919. Assuming that it is open to the Court to decide whether there was or was not a state of emergency within the meaning of S. 72, Government of India Act, there was an emergency for the making of Ordinance No. III of 1930 and the Ordinance was not, therefore, *ultra vires*. An Ordinance made by the Governor-General under S. 72, Government of India Act, is not invalid merely because it deprives the right of an accused person to be tried by a Sessions Judge aided by assessors and to prefer an appeal to the High Court, inasmuch as these are rights given to the accused by the Cr. P. C., and there is nothing to prevent the Legislature from amending the Code so as to lay down a different procedure. *Des Raj v. Emperor.*

31 Cr. L. J. 987 :
126 I. C. 177 : 31 P. L. R. 677 :
A. I. R. 1930 Lah. 781.

———S. 72—Repealing Ordinance.

Ordinance once issued may be repealed. *In the matter of : Dainik Nayak and Swadesh Press.* (F. B.)

34 Cr. L. J. 316 :
142 I. C. 225 : I. R. 1933 Cal. 257 :
A. I. R. 1933 Cal. 278.

———S. 72-D (7)—*Interpretation—‘By reason*
of his speech or vote’ in S. 72-D (7)—Meaning of.

The phrase “by reason of his speech or vote” in S. 72-D, Sub-s. (7), Government of India Act, includes any utterance of the vocal organs made at any time in any such Council and there is nothing to confine it to the mere formal discourses which form part of the debate. If the Legislature had desired to narrow down the privilege which it has accorded to members of the Council in the exercise of their duties, apt words could have been found to indicate the restricted sense in which the privilege was to be bestowed. *Khin Maung v. Au Eu Wa.* (F. B.)

37 Cr. L. J. 1013 :
164 I. C. 960 : 14 Rang. 420 :
9 R. Rang. 145 : A. I. R. 1936 Rang. 425.

———S. 72-D (7)—*Privilege of Member of*
Legislative Council (Burma)—Burma Legislative
Council Rules, r. 2—Burma Legislative Council
Standing Orders. S. 4.

When a member of the Burma Legislative Council asks a question under S. 8, Burma Legislative Council Rules, and S. 4, Burma Legislative Council Standing Orders, he is entitled to absolute privilege in respect thereof in the sense that no proceedings can be taken against him in any Court in respect of any statement made in the question. Any oral statement made by a member of the Legislative Council in the House during the course of the sittings

GOVERNMENT OF INDIA ACT, 1919

which forms part of the proceedings of the Council and appertains to the business of the Council at the time it was made, must be regarded as "his speech" in the Council and is, therefore, protected by the second portion of S. 72-D (7), Government of India Act. *Khin Maung v. Au Eu Wa.* (F. B.)

37 Cr. L. J. 1013 :

164 I. C. 960 : 14 Rang. 420 :

9 R. Rang. 145 : A. I. R. 1936 Rang. 425.

———S. 84 (2)—*Scope of—Statute creating new mode of suing—Cause of action, whether must arise subsequent to period when new statute comes into force.*

When an enactment states that nothing therein shall be construed as having a particular effect, it is not right to interpret that provision merely as prohibiting a Court from placing a particular construction on the enactment. The latter part of S. 84 (2), Government of India Act, 1919, cannot be used to limit the significance of the earlier words, because the latter part relates not only to Acts of the Central Legislature but also to Acts of the Indian Legislature. It follows that notwithstanding the Devolution Rules framed under the Government of India Act of 1919, the Indian Legislature was competent to enact S. 100 (c), Cantonments Act of 1924. *The United Provinces v. The Governor-General-in-Council.*

40 Cr. L. J. 403 :

180 I. C. 863 : 11 R. F. C. 44 (2) :

5 B. R. 554 : 1939 O. L. R. 246 :

1939 M. W. N. 750 :

1939, 2 M. L. J. 1 Sup. : 50 L. W. 209 :

1939 Kar. F. C. 98 F. C. :

1939 F. C. R. 124 :

A. I. R. 1939 F. C. 58.

———Ss. 124, 127, 128—*Offence under S. 124—Jurisdiction of Lahore High Court.*

The original criminal jurisdiction of the High Court of Lahore is co-extensive with that of the Chief Court of the Punjab and does not extend further. The High Court of Lahore has no jurisdiction to try an offence under S. 124, Government of India Act. Jurisdiction to take cognizance of offences must be expressly conferred. Inherent powers of the Court cannot be invoked for that purpose. Unless expressly prohibited by the Letters Patent to take cognizance of a certain offence, the High Courts constituted after 1915, when the present Government of India Act was enacted, have the power to take cognizance of all offences which have been made cognizable by such Courts by the statutory laws in force in this country. *Faqir Singh v. Ali Mohammad.*

30 Cr. L. J. 460 :

115 I. C. 428 : I. R. 1929 Lah. 380 :

A. I. R. 1929 Lah. 217.

———S. 127—*Scope.*

S. 27, Government of India Act, is an enabling provision of law and, therefore, the section cannot be read, to exclude the jurisdiction of other Courts which might otherwise have been competent to take cognizance of the offences referred to in that section. *Faqir Singh v. Ali Mohammad.*

30 Cr. L. J. 460 :

115 I. C. 428 : I. R. 1929 Lah. 380 :

A. I. R. 1929 Lah. 217.

GOVERNMENT OF INDIA ACT, 1935

———S. 129-A—*Scope.*

S. 129-A, Government of India Act, 1919, had reference to legislation purporting in terms to repeal or alter or amend the Devolution Rules, and not to legislation which was merely inconsistent with the Rules and, therefore, could only be said to repeal or to alter them by implication. *United Provinces v. Governor-General-in-Council.*

40 Cr. L. J. 403 F. C. :

180 I. C. 863 : 11 R. F. C. 44 (2) :

5 B. R. 554 : 1939 O. L. R. 246 :

1939 M. W. N. 750 :

1939 2 M. L. J. 1 Sup. :

50 L. W. 209 : 1939 F. C. R. 124 :

1939 Kar. F. C. 98 :

A. I. R. 1939 F. C. 58.

GOVERNMENT OF INDIA ACT, 1935,
(25 AND 26 GEO. 2 CH. 42)

See also Penal Code, 1800, S. 124-A.

———Ss. 49, 50—*Ministry—Ministry chosen from elected representatives of people and empowered to dictate policy to executive Government whether Officers subordinate to Government.*

Quære.—There is no difficulty in the position that Ministers are members of the Government. There is no difficulty in the position that they are servants of the Crown. It is, however, difficult to maintain the position that a Ministry, chosen from the elected representatives of the people, and empowered, within prescribed limits, to dictate the policy of the executive Government, is, in any real sense, a body of officers subordinate to the Governor. *Dhirendra Nath Sen v. Emperor.*

40 Cr. L. J. 82 :

178 I. C. 536 : 42 C. W. N. 1150 :

11 R. C. 371 : I. L. R. 1938, 2 Cal. 672 :

A. I. R. 1938 Cal. 721.

———Ss. 49 (1), 50 (3)—*Executive duties of Governor—Ministers, if must be consulted.*

There is no provision in the Government of India Act, 1935, which requires the Governor to consult his Ministers before performing executive acts. The Instrument of Instructions implies that he should consult his Ministers, for without consulting them, he would not be able to be guided by their advice, but he is not legally required to do so. The remedy for any unconstitutional act on the part of the Governor is not legal action but constitutional action—the resignation of the Ministers if they consider that the unconstitutional act of the Governor is of sufficient importance to warrant their resignation and a request that the Governor be recalled. *In re : S. S. Balliwala.*

39 Cr. L. J. 938 :

177 I. C. 747 : 48 L. W. 170 :

1938, 2 M. L. J. 416 : 11 R. M. 375 :

1938 M. W. N. 529 :

A. I. R. 1938 Mad. 758.

———S. 50 (3)—*Prohibition contained in S. 50 (3), scope.*

Under S. 50 (3), Government of India Act, the prohibition is a general one and is not confined to cases where the question arises whether any matter is or is not a matter in

GOVERNMENT OF INDIA ACT, 1935

respect of which the Governor is required to act in his discretion or to exercise his individual judgment. In the case of a sanction to prosecute under S. 100, Cr. P. C., the Governor is certainly not required to exercise his individual judgment; but that does not mean that in exercising his individual judgment he is acting unlawfully, and that his act can be called in question in Court of Law. There is nothing in the Government of India Act which imposes a legal obligation upon His Excellency the Governor to consult his Ministers before sanctioning the prosecution. *In re: S. S. Balliwala.*

39 Cr. L. J. 938 :
177 I. C. 747 : 48 L. W. 170 :
1938 M. W. N. 529 : 11 R. M. 375 :
1938, 2 M. L. J. 416 :
A. I. R. 1938 Mad. 758.

————S. 124 (2)—*Suit against Sub-Inspector of Police committing accused to Sessions irrespective of whether acts were done in good faith or not—Order is contrary to S. 124 (2).*

Where in a case against a Sub-Inspector of Police, the Magistrate refers to S. 124 (2), Government of Burma Act, in the committal proceedings but in the order refuses to come to a finding whether the acts complained of were not done in good faith, the order amounts to one purporting to commit the accused to Sessions irrespective of whether the acts were done in good faith or not and is clearly contrary to the wording of S. 124 (2). *Rai Mahal Panday v. Maung Po Sein.*

39 Cr. L. J. 565 :
175 I. C. 360 : 1938 Rang. 116 :
10 R. Rang. 487 : A. I. R. 1938 Rang. 189.

————S. 204 — Jurisdiction of Federal Court.

Federal Court has jurisdiction to entertain a suit for a declaration that S. 100, Cantonments Act of 1924, was *ultra vires*. The Federal Court has, by S. 204 (1), of the Act, an exclusive original jurisdiction in any dispute between the Governor-General-in-Council and any Province, if and in so far as the dispute involves any question, whether of law or fact, on which the existence or extent of a legal right depends. Cantonment Board is not an independent body and the Central Government exercises a considerable measure of control over it more indeed at the present time than it did before the Constitution Act came into force, as a reference to the adaptations and modifications which the adaptation order has made in the Cantonments Act of 1924, plainly shows. In these circumstances the Governor-General-in-Council has a sufficient interest in the subject-matter of the challenged enactment to make it possible for the Federal Court to entertain a suit against him at the instance of a Provincial Government for a declaration that the enactment is

GOVERNMENT OF INDIA ACT, 1935

ultra vires. The United Provinces v. The Governor-General-in-Council.

40 Cr. L. J. 403 :
180 I. C. 863 : 11 R. F. C. 44 (2) :
5 B. R. 554 : 1939 O. L. R. 246 :
1939 M. W. N. 750 :
1939, 2 M. L. J. 1 Sup. :
50 L. W. 209 : 1939 F. C. R. 124 :
1939 Kar. (F. C.) 98 F. C. :
A. I. R. 1939 F. C. 58.

————S. 204—'Legal right,' meaning of.

The term 'legal right' used in S. 204, Government of India Act, 1935, means recognised by law and capable of being enforced by the power of a State, but not necessarily in a Court of Law. It is a right of a party, the violation of which would be a legal wrong done to his interest and respect for which is a legal duty even though no action may actually lie. Where a Statute affords a new mode of suing, the cause of action need not arise subsequently to the period when the Statute comes into operation. Where a Statute creates a new jurisdiction, the new jurisdiction takes up all past cases and there is not the slightest injustice in this; for, although the circumstances may have occurred prior to the passing of the Statute, the suit or action may have been commenced subsequently. And so if a 'legal right' really existed under the old Act, S. 204 of the new Act would not be inapplicable merely because the right related to an earlier period. *The United Provinces v. The Governor-General-in-Council.*

40 Cr. L. J. 403 :
180 I. C. 863 : 11 R. F. C. 44 (2) :
5 B. R. 554 : 1939 O. L. R. 246 :
1939 M. W. N. 750 :
1939, 2 M. L. J. 1 Sup. :
50 L. W. 209 : 1939 F. C. R. 124 :
1939 Kar. (F. C.) 98 F. C. :
A. I. R. 1939 F. C. 58.

————S. 205—Judgment, if includes judgment in criminal cases.

The juxtaposition of the words "judgment, decree or final order" in S. 205, Government of India Act, is no doubt, suggestive of civil litigation; but it cannot be said that the word "judgment" is not comprehensive enough to include a judgment pronounced in a criminal case; unlike S. 206, Constitution Act, S. 205 is not in terms limited to civil cases. Per *Sulaiman, J.*—The word 'judgment' cannot be taken in its widest possible sense so as to include every order which terminates a proceeding pending in a High Court so far as that Court is concerned. The order of the High Court directing a re-hearing of the criminal appeal by the Sessions Court is not a judgment within the meaning of S. 205, Government of India Act. Similarly, the order of remand cannot be regarded as a final

GOVERNMENT OF INDIA ACT, 1935

order within the meaning of S. 205 (1).
Dr. Hori Ram Singh v. Emperor.

- 40 Cr. L. J. 468 :
181 I. C. 317 : 11 R. F. C. 60 :
1939 M. W. N. 497 :
5 B. R. 685 : 1939 O. L. R. 366 :
50 L. W. 95 : 20 P. L. T. 539 :
1939, 2 M. L. J. 23 Sup. :
41 P. L. R. 680 : 43 C. W. N. F. C. 50 :
1939 F. C. R. 159 :
1939 Kar. F. C. 132 F. C. :
A. I. R. 1939 F. C. 43.

—S. 205 (1)—*Order of Foreign and Political Department, made by Governor-General-in-Council, whether order under Government of India Act, 1935—Certificate from decision involving interpretation of such order.*

Under the Government of India Act, 1935, there was no power to make any orders in Council relating to Foreign jurisdiction until April 1, 1937. As the order of the Foreign and Political Department No. 34 I. B., dated January 14, 1937, made by Governor-General-in-Council in the exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, was made on January 14, 1937, it cannot possibly be said to have been an order made under the Government of India Act, 1935. Hence certificate cannot be granted from the decision of High Court on the interpretation of such order.
Haramohan Patnaik v. Emperor.

- 41 Cr. L. J. 313 :
186 I. C. 442 : 21 P. L. T. 252 :
6 B. R. 371 : 12 R. P. 510 :
A. I. R. 1940 Pat. 109.

—Ss. 220, 222—*Death of Chief Justice, effect of—No appointment for some time—High Court, if properly constituted—Jurisdiction of other Judges, if affected.*

Where the office of the Chief Justice of a High Court remains vacant due to the death of the Chief Justice or other cause, it will be preposterous to hold that till the vacancy is filled up, there is no properly constituted High Court. The vacancy in any office implies that the office exists. Vacancy must be distinguished from abolition of the office. When a Chief Justice dies, the office does not die with him but still continues. It only remains vacant until it is filled up. So long as the office is not abolished, the constitution remains unbroken and unchanged. The only effect of the vacancy in the office of Chief Justice, so long as it continues is that there will be nobody to perform his duties unless the Governor-General appoints some one of the other Judges to do the same. But this does not affect the jurisdiction of the other Judges in the least. *Emperor v. Solrai Koeri.*

- 40 Cr. L. J. 41 :
178 I. C. 376 : 19 P. L. T. 675 :
17 Pat. 574 : 11 R. P. 254 :
5 B. R. 98 : A. I. R. 1938 Pat. 550.

—S. 224 (2)—*Order of Village Headman under S. 10 of Regulation XI of 1816—High Court cannot question.*

The order of the Village Headman under

GOVERNMENT OF INDIA ACT, 1935

S. 10, Regulation XI of 1816, was not subject to appeal or revision except under S. 107, Government of India Act of 1915, and Cl. (2) of S. 224, Government of India Act, 1935, excludes the jurisdiction of the High Court to question the order in such cases. *In re : Periantha Pillai.*

- 41 Cr. L. J. 402 :
187 I. C. 92 : 50 L. W. 799 :
1939 M. W. N. 1223 : 12 R. M. 703 :
A. I. R. 1940 Mad. 183.

—S. 270.

See also Cr. P. C., 1898, S. 197.

—S. 270—*Applicability.*

S. 270, Government of India Act, only applies to proceedings "before the relevant date," i. e., April 1, 1937. *Gurdas Ram v. Emperor.*

- 41 Cr. L. J. 756 :
189 I. C. 605 : 42 P. L. R. 192 :
13 R. L. 109 : A. I. R. 1940 Lah. 283.

—S. 270—*Consent—Discretion.*

Where the 'consent' under S. 270 stated that it was granted by the Governor of a Province and there is no indication that in doing so, the Governor was acting "with his Ministers", it must be presumed that he granted it "in his discretion." *Arjan Singh v. Emperor.*

- 41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
12 R. L. 241 (2) : I. L. R. 1940 Lah. 102 :
A. I. R. 1939 Lah. 479.

—S. 270—*Consent—Necessity of.*

Charges against certain servants of the Crown not only stated that the alleged criminal acts were done by them while they were engaged in the execution of their duties as Sub-Divisional Officer and Overseer, respectively, but they showed that their "official capacity was involved in the acts complained of as amounting to a crime": *Held*, that the gravamen of the charges was that the accused had acted fraudulently in the discharge of their duties, and that, therefore, the 'consent' prescribed in S. 270 was required for initiating proceedings against them. *Arjan Singh v. Emperor.*

- 41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
12 R. L. 241 (2) : I. L. R. 1940 Lah. 102 :
A. I. R. 1939 Lah. 479.

—S. 270—*Consent—Necessity of.*

The provisions of Sub-s. (1) of S. 270, are mandatory, and admit of no reservation or exception. They contain a positive prohibition against the institution of civil and criminal proceedings against the persons described in the section in respect of the acts mentioned, without such consent. In other words, the Governor's "consent" is an essential pre-requisite to the competency of the Court to entertain the proceedings. It is the very foundation of the Court's jurisdiction, and its absence renders the entire proceedings void *ab initio*. Such an illegality cannot be cured under S. 537, Cr. P. C., even when no

GOVERNMENT OF INDIA ACT, 1935

prejudice has been shown to have been caused. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
12 R. L. 241 (2) : I. L. R. 1940 Lah. 102 :
A. I. R. 1939 Lah. 479.

———S. 270—Consent obtained subsequently—Effect of.

Where the initiation of the proceedings was illegal, the subsequent production of the "consent," even though it was before the commencement of the trial *de novo*, in another Court, of the case, cannot validate what was invalid at its inception. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 :
12 R. L. 241 (2) : A. I. R. 1939 Lah. 479.

———S. 270—Cr. P. C., S. 197 and S. 270, Government of India Act—Distinction.

There is a fundamental difference between S. 270, Government of India Act, and S. 197 Cr. P. C. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 : 12 R. L. 241 (2) :
A. I. R. 1939 Lah. 479.

———S. 270—Scope.

The section creates a bar to the "institution" of proceedings, that is to say, to the act of a complainant making a complaint or of a Police Officer making a report as well as to the act of Magistrate taking cognizance upon such complaint. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 : 12 R. L. 241 (2) :
A. I. R. 1939 Lah. 479.

———S. 270—"Servant of the Crown," meaning of.

In the Government of India Act, there is no definition of the expression "servant of the Crown." According to the definition in the Penal Code, Ss. 13, 14 and 17, a servant of the Queen is the same as a servant of the Crown. The words "servant of the Crown" in S. 270, Government of India Act, have the same meaning; a civil servant does not cease to be a servant of the Crown although the conditions of his service may be regulated by an Act of the Legislature. Crown services include the subordinate as well as the superior civil services and there is no warrant for the suggestion that S. 270 applies only to the case of the superior civil services. The word "duty" in S. 270 is not necessarily confined to a legal duty. Civil servants who are Medical Officers are obviously bound to obey the rules made for the guidance of such officers and it is their duty to obey them. The affairs of a Province in S. 270 does not mean only the affairs of the Executive Government. Local Self-Government within the Province is obviously a branch of provincial affairs, and Crown servants whose services are lent to local bodies can quite properly be said to be employed in connection with the affairs of the Province, as opposed to the affairs of the

GOVERNMENT OF INDIA ACT, 1935

Central Government. *S. D. Marathe v. Pandurang Narayan Joshi*.

39 Cr. L. J. 903 :
177 I. C. 589 : 40 Bom. L. R. 825 :
I. L. R. 1938 Bom. 770 : 11 R. B. 98 :
A. R. 1938 Bom. 419.

———Ss. 270, 59—Applicability of S. 270 to all servants of the Crown whether gazetted or otherwise.

S. 270, Government of India Act, is very wide in its terms and prohibits the initiation of proceedings in respect of the acts described therein against all servants of the Crown employed in connection with the affairs of the Province whether they are "gazetted officers" or not. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 : 12 R. L. 241 (2) :
A. I. R. 1939 Lah. 479.

———Ss. 270, 59—Rules by Punjab Governor under S. 59 (2)—R. 3—Consent under S. 270 signed by Home Secretary, if valid.

Under r. 3 of the Rules made by the Governor of the Punjab, under S. 59 (2), Government of India Act, the order of the Governor may be signed by any of the Secretaries; it is not necessary that orders passed by him in his discretion must be signed by a particular Secretary. The signature of the Home Secretary on the "consent" under S. 270 is, therefore in order, and the transmission of the "consent" by him is valid. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 : 12 R. L. 241 (2) :
A. I. R. 1939 Lah. 479.

———S. 270 (1)—Consent, necessity of—Offence under S. 477-A, Penal Code.

It is not right to introduce the question of good faith or bad faith at the stage to which Sub-s. (1) of S. 270 relates. An act is not less one done or purporting to be done in execution of a duty because the officer concerned does it negligently. An offence under S. 477-A, Penal Code, is committed if an officer or servant or anyone employed or acting in such capacity, wilfully and with intent to defraud falsifies any book or account. Thus where it is his duty to maintain a record or a register, and in maintaining that register, he makes some entries which are false to his knowledge, he is certainly purporting to act, though not actually acting in the execution of his duty, because he is making certain entries in the register, knowing them to be false. He is ostensibly professing to be discharging his official duty in maintaining the register, which he is bound to maintain correctly. In making the entries, he pretends or purports to act in the execution of his duty; but in point of fact he is acting in direct dereliction of it. For the trial of such an offence, consent under S. 270 (1) is

GOVERNMENT OF INDIA ACT, 1935

necessary. *Dr. Hori Ram Singh v. Emperor.* (F. B.) 40 Cr. L. J. 468 :

181 I. C. 317 : 11 R. F. C. 60 :
1939 M. W. N. 497 : 5 B. R. 685 :
1939 O. L. R. 366 : 50 L. W. 95 :
20 P. L. T. 539 : 1939, 2 M. L. J. 23 Sup. :
41 P. L. R. 680 : 43 C. W. N. F. C. 50 :
1939 F. C. R. 159 : 1939 Kar. F. C. 132 :
A. I. R. 1939 F. C. 43.

———S. 270 (1)—Dismissal of complaint.

Where the Sessions Judge on appeal comes to the conclusion that the accused should not have been tried without the sanction under S. 270 (1), Government of India Act, the proper order to be passed on this footing is not one of acquittal but the complaint should be dismissed. *Dr. Hori Ram Singh v. Emperor.* (F. B.) 40 Cr. L. J. 468 :

181 I. C. 317 : 11 R. F. C. 60 :
1939 M. W. N. 497 : 5 B. R. 685 :
1939 O. L. R. 366 : 50 L. W. 95 :
20 P. L. T. 539 : 1939, 2 M. L. J. 23 Sup. :
41 P. L. R. 680 : 43 C. W. N. F. C. 50 :
1939 F. C. R. 159 : 1939 Kar. F. C. 132 :
A. I. R. 1939 F. C. 43.

———S. 270 (1) – Sanction.

As the consent of the Governor, provided for in S. 270 (1), Government of India Act, is a condition precedent to the institution of proceedings against a public servant, the necessity for such consent cannot be made to depend upon the case which the accused or the defendant may put forward after the proceedings had been instituted, but must be determined with reference to the nature of the allegations made against the public servant, in the suit or criminal proceeding. *Dr. Hori Ram Singh v. Emperor.* (F. B.) 40 Cr. L. J. 468 :

181 I. C. 317 : 11 R. F. C. 60 :
1939 M. W. N. 497 : 5 B. R. 685 :
1939 O. L. R. 366 : 50 L. W. 95 :
20 P. L. T. 539 : 1939, 2 M. L. J. 23 Sup. :
41 P. L. R. 680 : 43 C. W. N. F. C. 50 :
1939 F. C. R. 159 : 1939 Kar. F. C. 132 :
A. I. R. 1939 F. C. 43.

———S. 270 (1)—Scope of—Extent of—Protection.

For the protection under S. 270 (1) the offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of the duty. The test is not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. It must purport to be done in the official capacity with which the offender pretends to be clothed at the time, that is to say, under

GOVERNMENT OF INDIA (AMENDMENT) ACT, 1916

the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another the impression that he is so acting. The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. The question whether a criminal breach of trust can be committed while purporting to act in execution of duty is not capable of being answered hypothetically in the abstract, without any reference to the actual facts of the case. The question must depend on the special circumstances of each case. When a public servant simply embezzles some property entrusted to him and thereby commits a criminal breach of trust under S. 409, Penal Code, he is not doing an act, nor even purports to do an act in execution of his duty ; when he commits the act, he does not pretend to act in the official discharge of his duty. A case like that would not ordinarily fall within the scope of S. 270 (1). *Dr. Hori Ram Singh v. Emperor.* (F. B.) 40 Cr. L. J. 468 :

181 I. C. 317 : 11 R. F. C. 60 :
1939 M. W. N. 497 : 5 B. R. 685 :
1939 O. L. R. 366 : 50 L. W. 95 :
20 P. L. T. 539 : 1939, 2 M. L. J. 23 Sup. :
41 P. L. R. 680 : 43 C. W. N. F. C. 50 :
1939 F. C. R. 159 : 1939 Kar. F. C. 132 :
A. I. R. 1939 F. C. 43.

GOVERNMENT OF INDIA (AMENDMENT) ACT 1916 (6 AND 7 GEO. V. C. 37)

———S. 2 (2)—Restrictions on powers of Indian Legislature—Right to be tried by ordinary Courts, whether can be taken away—Laws affecting allegiance.

S. 65 (2), Government of India Act, 1915, does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law upon the observance of which some person may conceive or allege that his allegiance depends ; it refers only to laws which directly affect the allegiance of the subject, as by a transfer or qualification of the allegiance or a modification of the obligation thereby imposed. *Bugga v. Emperor.*

21 Cr. L. J. 456 P. C. :
56 I. C. 440 : 1920 M. W. N. 326 :
2 U. P. L. R. (P. C.) 50 : 24 C. W. N. 650 :
18 A. L. J. 455 : 22 Bom. L. R. 609 :
39 M. L. J. 1 : 12 L. W. 296 :
2 Lah. 226 : I. A. 128 : 5 P. W. R. 1920 Cr. :
A. I. R. 1920 P. C. 23.

GOVERNMENT SAVINGS BANK ACT (V OF 1873)

See also Penal Code, 1860, S. 197.

GOVERNOR

See also Constitutional Law.

GRAVE AND SUDDEN PROVOCATION

See also Penal Code, 1860, Ss. 300, 302, 304.

GRIEVOUS HURT

See also Penal Code, 1860, Ss. 322, 332.

GROUNDLESS

See also Cr. P. C., 1898, S. 253.

GROUNDLESS CHARGE

See also Cr. P. C., 1898, Ss. 202, 203.

GUARDIANS AND WARDS ACT (VIII OF 1890)

———Brother under Hindu Law can arrange for marriage of his sister—He need not apply for guardianship.

When, under the Hindu Law, a brother is a guardian of his sister and has a right to arrange for her marriage, he should not apply to be made a guardian of the girl under the Act. *Nek Ram v. Emperor*.

36 Cr. L. J. 1498 :
158 I. C. 1047 : 1935 A. W. R. 939 :
8 R. A. 363 : A. I. R. 1935 All. 920.

———Proceedings for appointment of guardian last throughout minority of minor.

Proceedings by application under the Guardians and Wards Act for appointment or declaration of guardian last or continue throughout the minority of the minor concerned. *Tularam Marwadi v. Emperor*.

28 Cr. L. J. 388 :
100 I. C. 1044 : A. I. R. 1927 Nag. 184.

———S. 12—Miscellaneous.

The father having obstinately declined to be appointed as guardian, the Court declared that the minor was the ward of the District Judge incumbent. The minor was left in the custody of her father with a clear admonition that he was not to perform her marriage without the District Judge's permission. The father, however, married the girl with a person who had done so with full knowledge of the prohibitory order passed against the father. The point for consideration was whether the District Judge himself could not lawfully deal with the case as one of a wilful disobedience to his own injunction: *Held*, that there was no disobedience on the part of the legal guardian; S. 43, Guardians and Wards Act could not, therefore, come into play. Nor, on the other hand, could O. XXXIX, r. 2 (3), C. P. C., be made applicable even by resorting to S. 141, C. P. C., unless any party to the proceeding had invoked the disciplinary jurisdiction of the District Judge. It was open to the Court to pass a prohibitory

GUARDIANS AND WARDS ACT (VIII OF 1890)

order *suo motu* under either of Ss. 12 or 43 of the Guardians and Wards Act unlike O. XXXIX, r. 2, C. P. C. If so, it must be equally open to the Court to deal with disobedience to such order *suo motu*. But in the special circumstances of this case, it was inadvisable to remit the case back to the District Judge as it would put him in the unenviable position of an aggrieved party being called upon to try his own case, especially when the issue had no bearing on the minor's interests. *District Judge, Chindwara v. Basori Lal*.

41 Cr. L. J. 803 :
189 I. R. 813 : 1940 N. L. J. 157 :
13 R. N. 80 : A. I. R. 1940 Nag. 203.

———S. 25—Scope.

Where there is nothing to show that the detention of the girl is for unlawful purpose, nor is it suggested by specific allegations how the detention is for illegal purpose, but there is only a vague reference to the apprehension that the girl would be spoiled as she has been wrongly detained, the remedy of the guardian is by an application under S. 25, Guardians and Wards Act. *Om Radhe v. Emperor*.

40 Cr. L. J. 698 :
182 I. C. 710 : 12 R. S. 28 :
1939 Kar. 760 : A. I. R. 1939 Sind 152.

———S. 34 (e)—Order of maintenance under—Duration of.

Where an order is passed by the District Judge in respect of maintenance of a dependent of a minor whose guardian has been appointed, the order is one passed under S. 34 (e), which is of a temporary nature and is not binding when the minor attains majority. *Mohammad v. Wahab Jan*.

37 Cr. L. J. 197 :
159 I. C. 819 : 8 R. Pesh. 87 :
A. I. R. 1935 Pesh. 174.

———S. 41—Relief under S. 491, Cr. P. C., is available.

Court of Wards assuming superintendence of persons and property of minor sons of deceased Raja—Right of Court of Wards to custody of children—Relief under S. 491, Cr. P. C., can be granted. *Deputy Commissioner, Gonda v. Mohammad Shikoh*.

35 Cr. L. J. 1108 :
150 I. C. 706 : 1934 O. L. R. 602 :
11 O. W. N. 803 : 7 R. O. 40 :
A. I. R. 1934 Oudh 392.

———S. 41—Applicability.

S. 24 applies to persons who claim to be guardians appointed by an instrument. *Deputy Commissioner, Gonda v. Mohammad Shikoh*.

35 Cr. L. J. 1108 :
150 I. C. 706 : 11 O. W. N. 803 :
7 R. O. 40 : A. I. R. 1934 Oudh 392.

———S. 43.

See also Guardians and Wards Act, 1899, S. 12.

HABEAS CORPUS

H

See also (i) Cr. P. C., 1898, Ss. 54, 76, 491, 494 (1).

(ii) Extradition Act, 1903, S. 3.

(iii) Indian Councils Act, 1861, S. 22 proviso.

(iv) Ordinance, 1921, Ss. 6, 7.

———Cl. 16, Martial Law Ordinance does not refer to jurisdiction of High Court to issue writs.

Cl. 16, Martial Law Ordinance, does not refer to the general jurisdiction of the High Court to issue writs of *habeas corpus*. The section does not apply where the acts of the Martial Law Magistrates are wholly without jurisdiction. *In re : Kochunni Elaya Nair*.

23 Cr. L. J. 490 :

68 I. C. 26 : 41 M. L. J. 441 : 14 L. W. 465 :

1921 M. W. N. 708 : 45 Mad. 14 :

A. I. R. 1922 Mad. 215.

———Common Law of England—Successive applications to different Judges of same Court, maintainability of.

By the Common Law of England it is the right of any imprisoned person to apply successively to every Tribunal competent to issue a writ of *habeas corpus*. Each Judge of a Court is a Tribunal to which an application can be made within the meaning of this rule and every Judge who has jurisdiction to issue the writ is bound to hear and determine such an application on the merits notwithstanding that some other Judge of the same or another Court has already refused a similar application. *Eshugbayi Eleko v. Government of Nigeria*.

30 Cr. L. J. 113 P. C. :

113 I. C. 273 : 28 L. W. 874 :

I. R. 1929 P. C. 1 : 26 A. L. J. 1169 :

A. I. R. 1928 P. C. 300.

———Common Law writ of *habeas corpus* has been substituted by S. 491, Cr. P. C.

The common law writ of *habeas corpus* does not run in British India. Assuming that the Court formerly had the power to issue a writ of *habeas corpus*, that power has been taken away and the powers conferred by S. 491, Cr. P. C., substituted. *C. P. Matthew v. District Magistrate of Trivandrum*.

40 Cr. L. J. 675 :

182 I. C. 551 : 12 R. P. C. 4 : 5 B. R. 841 :

1939 O. L. R. 433 : 50 L. W. 48 :

1939 O. W. N. 602 : 43 C. W. N. 981 :

1939 M. W. N. 744 : 20 P. L. T. 597 :

1939, 2 M. L. J. 406 : 70 C. L. J. 270 :

1939 A. L. J. 836 : 41 Bom. L. R. 1119 :

I. L. R. 1939 Mad. 744 :

1939 Kar. P. C. 324 Sup. P. C. :

A. I. R. 1939 P. C. 213.

———Detention under Indian Extradition Act—Power of High Court to issue writ under S. 491, Cr. P. C.

The High Court has jurisdiction, under S. 491, Cr. P. C., to give a direction of the nature of *habeas corpus* and to examine whether a person detained in public custody under the

HABITUAL OFFENDER

Indian Extradition Act is legally detained, and the jurisdiction in the matter is not taken away, merely because the Government of India have already issued a warrant for surrender under Sub-s. (8) of S. 3, Indian Extradition Act, 1903. The Government of India, when it issues the warrant, does so in exercise of a statutory authority ; such power can be exercised validly only after strict compliance with the necessary preliminary provisions formulated by the Legislature in the Extradition Act. Consequently, if the provisions of the Act have been contravened, the action of the Government may be successfully challenged even though the warrant for surrender has already been issued. The High Court, however, will not sit in appeal to review and weigh the evidence. It is sufficient that there should be some evidence of the offence upon which the Magistrate may reasonably act. But if there was no evidence before the Magistrate, the High Court will interfere. The illegality of the initial arrest of the accused does not vitiate the extradition proceedings. Therefore, even if it be assumed that the accused was illegally arrested, that circumstance does not invalidate the inquiry under S. 3, Sub-s. (3), Extradition Act; that he was in Court was sufficient to entitle the Magistrate to hold the inquiry no matter how he had been brought before the Magistrate. The Government may issue its order to any Magistrate provided he is one who has jurisdiction to inquire into the crime of the nature of that for which extradition is sought, and he is not disqualified merely because the accused resided beyond the limits of his jurisdiction. *In re : Rudolph Stallman*.

12 Cr. L. J. 505 :

12 I. C. 273 : 15 C. W. N. 1053 :

14 C. L. J. 375 : 39 Cal. 164.

———Madras High Court Rules—Application under S. 491 to whom to be made.

Rules 2 and 2-A of the Appellate Side Rules of the Madras High Court made under S. 491 (2), Cr. P. C., are *intra vires* the Court's powers. Therefore the application filed under S. 491, Cr. P. C., must be dealt with in accordance with the rules of the Court which means that it must be dealt with by the Criminal Bench and not by a Single Judge of the High Court. *C. P. Matthew v. District Magistrate of Trivandrum*.

40 Cr. L. J. 675 :

182 I. C. 551 : 12 R. P. C. 4 :

5 B. R. 841 : 1939 O. L. R. 433 :

50 L. W. 48 : 1939 O. W. N. 602 :

43 C. W. N. 981 : 1939 M. W. N. 744 :

20 P. L. T. 597 : 1939, 2 M. L. J. 406 :

70 C. L. J. 270 : 1939 A. L. J. 836 :

41 Bom. L. R. 1119 : I. L. R. 1939 Mad. 744 :

1939 Kar. 324 Sup. P. C. :

A. I. R. 1939 P. C. 213.

HABITUAL GANG OF THIEVES

See also Penal Code, 1860, S. 401.

HABITUAL OFFENDER

See also Cr. P. C., 1898, S. 110.

HABITUALLY

See also Cr. P. C., 1898, S. 110.

HACKNEY CARRIAGE ACT (XIV OF 1879)

—Offering carriages for hire without licence—Conviction for—Legality of—Hackney-carriage—Offer of carriage for hire—Advertisement—Passenger.

The accused published an advertisement to the effect that certain carriages might be had on hire or for sale on application being made to him. He was prosecuted under S. 7, Hackney Carriage Act for offering hackney carriages for hire without a licence as required under a Municipal rule made under S. 3 of the Act, and was convicted. The conviction was based merely on the fact of publication of the advertisement and the fact that the accused had no licence: *Held*, that the conviction was bad as there was no proof that the accused actually possessed the carriages mentioned in the advertisement: *Held*, further, that regard being had to the meaning of the word "passengers" used in the definition of hackney carriage in S. 2 of the Act, and in the absence of anything to show on what terms the accused intended to let out the carriages for hire, he could not be convicted of an offence under the Act even if he were proved to have possessed the carriages. *H. A. Garstin v. Emperor*. 7 Cr. L. J. 71 : 4 L. B. R. 80.

—Ss. 6, 7—Insein Rules, r. 15—Refusal by driver to ply hackney carriage for hire—Liability of driver and owner for such refusal.

The driver of a hackney carriage who refuses to ply it for hire is not punishable for infringement of r. 15 of the Insein Rules under the Hackney Carriages Act, because he cannot properly be said to "keep" the carriage which he happens to be driving. And the "owner" or "keeper" of a carriage is not punishable for the refusal of his servant, i. e., the driver. It must be shown that the hirer applied to the "owner" or "keeper" and was refused by him. *Emperor v. Kamali Khan*. 15 Cr. L. J. 552 : 24 I. C. 960 : A. I. R. 1914 L. Bur. 234.

—S. 6 (g)—Bye-laws framed by Lucknow Municipal Board, Bye-law 18—Carriage repainted and awaiting for number—Number painted on lamps—Breach of bye-law, if constitutes.

Where a hackney carriage, whose lamps bear the number, has been re-painted and is awaiting for the number to be painted on it, the absence of the number from a conspicuous part of the carriage does not involve a breach of Bye-law 18 framed by the Lucknow Municipal Board under S. 6 (g), Hackney Carriages Act. *John Cassel v. Emperor*. 26 Cr. L. J. 1170 : 88 I. C. 594 : 2 O. W. N. 443 : A. I. R. 1925 Oudh 447.

HALTING PLACE

See also Madras Local Boards Act, 1920, S. 161.

HANDWRITING

—Comparison of—Value of, as mode of proof.

A comparison of handwriting is, at all times, as a mode of proof, hazardous and inconclusive, and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of Counsel and the evidence of experts. *Barindra Kumar v. Emperor*. 11 Cr. L. J. 453 : 7 I. C. 359 : 37 Cal. 467.

—Comparison—What is.

A comparison of a writing in ink with that in chalk on a black board is impossible. *Suresh Chandra Sanyal v. Emperor*. 13 Cr. L. J. 289 : 14 I. C. 753 : 39 Cal. 606 : 16 C. W. N. 812.

—Comparison—Writing to be compared with proved or admitted writing in open Court.

The one thing that is required for the admission of evidence of expert witnesses to handwriting is that the writing with which the comparison is made should be proved beyond question or doubt to be that of the person alleged. *Suresh Chandra Sanyal v. Emperor*. 13 Cr. L. J. 289 : 14 I. C. 753 : 39 Cal. 606 : 16 C. W. N. 812.

—Criminal trial—Comparison of signatures—Object.

A comparison of signatures is a mode of ascertaining the truth, which ought to be used with very great care and caution. This is doubly so in a criminal case where a large quantity of apparently very different handwriting is under comparison. *Suresh Chandra Sanyal v. Emperor*. 13 Cr. L. J. 289 : 14 I. C. 753 : 39 Cal. 606 : 16 C. W. N. 812.

—Evidence of expert, when admissible.

When there is no comparison by the expert in open Court before the accused with documents proved or admitted to be in his handwriting, the evidence of the expert is inadmissible. *Suresh Chandra Sanyal v. Emperor*. 13 Cr. L. J. 289 : 14 I. C. 753 : 39 Cal. 606 : 16 C. W. N. 812.

—Proof of.

Handwriting may be proved by circumstantial evidence under S. 97, Evidence Act, which prescribes no particular kind of proof. *Barindra Kumar v. Emperor*. 11 Cr. L. J. 453 : 7 I. C. 359 : 37 Cal. 467.

HARBOURING PROCLAIMED OFFENDER

Sec also Penal Code, 1860, S. 216.

HAT

—Holding hat on one's own property, if unlawful—Whether injunction may issue not to hold hat.

The holding of a hat on a man's own property is not in itself a wrongful act, and, therefore, any ulterior consequences which may arise from it cannot give rise to any proceedings against the owner of the land for committing an act likely to cause a breach of the peace, unless those ulterior consequences are made the basis of the proceedings. An injunction cannot be issued to a person restraining him from doing a lawful act upon his own property. *Rakhal Das Singh v. Emperor*. 13 Cr. L. J. 511 : 15 I. C. 665.

—Hat—Order not to hold on own property—Whether within S. 144, Cr. P. C.

An order directing a man not to use his property in a lawful manner, for instance, not to establish a hat on his own land, does not come within the purview of S. 144, Cr. P. C. *Rakhal Das Singh v. Emperor*. 13 Cr. L. J. 511 : 15 I. C. 665.

HIGH COURT

Sec also (i) Advocate.

- (ii) Bombay District Municipal Act, 1901, S. 86.
- (iii) Bombay Village Police Act, 1867.
- (iv) Calcutta Municipal Act, 1860, S. 645.
- (v) Charter Act, 1861, S. 15.
- (vi) Cr. P. C., 1898, Ss. 4 (m), 110, 115, 144, 145, 145 Cl. (1), 177, 195, 202, 208, 307, 345, 379, 435, 476, 523, 530, 544 Chap. XII.
- (vii) Extradition Act, 1903, Ss. 7, 15.
- (viii) Jurisdiction.
- (ix) Pleader.
- (x) Penal Code, 1860, S. 190.
- (xi) Press and Registration of Books Act, 1867.

—Confirmation of death sentence by—Principles for.

As the law stands in India, where the alternative penalties of death and transportation are prescribed for murder, the High Court ought not to confirm the death sentence unless it considers that sentence ought to be carried out when it is confirmed. Where, in an appeal from a capital sentence, one of the Judges of the High Court was in favour of an acquittal and some delay had occurred in hearing the appeal, this was considered to be a sufficient reason for not imposing the extreme penalty. *Aular Singh v. Emperor*. 14 Cr. L. J. 642 : 21 I. C. 882 : 17 C. W. N. 1213.

HIGH COURT

—Courts at Ajmere are not subordinate to Allahabad High Court except in two comparatively rarer matters.

Broadly speaking the Courts at Ajmere are not subordinate to the High Court of Allahabad except in two comparatively rarer matters. In the matter of : *A Vakil of Beawar*. 128 I. C. 388 : 1930 A. L. J. 839 : I. R. 1931 All. 36 : A. I. R. 1930 All. 887.

—Inherent power to stay criminal proceedings is wide.

The inherent power of the High Court to stay criminal proceedings is very wide. *Kanhaiya Lal v. Bhagwan Das*. 26 Cr. L. J. 1485 : 89 I. C. 1053 : L. R. 6 A. 153 Cr. : 23 A. L. J. 956 : 48 All. 60 : A. I. R. 1926 All. 30.

—Judgment not sealed, can be altered.

A judgment or order of the High Court is not complete until it is sealed, and until this is done, it may be altered by the Court without any application for review. *Anodini Dass v. Darsan Ghose*. 13 Cr. L. J. 120 : 13 I. C. 776 : 38 Cal. 828.

—Powers of—Superintendence—Criminal Proceedings, stay of, when civil suit on same facts pending.

The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses, and such proceedings, if launched, will be stayed by the High Court in the exercise of its powers of superintendence. *Anna Ayyar v. Emperor*. 6 Cr. L. J. 131 : I. L. R. 30 Mad. 226.

—Government of India Act, 1915 (5 & 6 Geo. V., c. 61), S. 107—Proceedings—Difference of opinion between Judges—Procedure—Opinion of senior Judge to prevail—High Court's power of superintendence over subordinate Courts.

When on an application to the High Court under S. 107 of the Government of India Act, there is a difference of opinion between the Judges, the decision of the Senior Judge prevails. Per *Shamsul Huda, J.*—There is no authority for the proposition that the High Court's power of superintendence over inferior Courts is confined to questions of jurisdiction alone. This power can be exercised, not only where inferior Courts act without jurisdiction or refuse jurisdiction, but also when these Courts commit an illegality or a material irregularity. *Moiram Bewah v. Mrijan Sardar*. 21 Cr. L. J. 25 : 54 I. C. 169 : 24 C. W. N. 97 : 31 C. L. J. 183 : 47 Cal. 438 : A. I. R. 1920 Cal. 417.

—Powers of, to report erroneous convictions to Government, where appeal or revision is barred by Statute.

Where the High Court cannot interfere with an erroneous conviction owing to the rights of

HIGH COURTS ACT, 1861

appeal and revision being barred by Statute, it may report the conviction to the Local Government with its recommendation. *Jiwanji & Co. v. Emperor*. 17 Cr. L. J. 231 : 34 I. C. 647 : 9 S. L. R. 205 : A. I. R. 1916 Sind 65.

Power to declare legislation ultra vires.

If an enactment of the Indian Legislature is outside the scope of the powers conferred upon the Governor-General-in-Council by Act of Parliament, the High Court has power in a proper proceeding to declare such an enactment ultra vires and of no force and effect with all the consequences that may result therefrom. *Parmeshwar Ahir v. Emperor*.

19 Cr. L. J. 281 : 44 I. C. 185 : 4 P. L. W. 157 : 1918 Pat. 97 : 3 P. L. J. 537 : A. I. R. 1918 Pat. 155.

Power to weigh evidence after exclusion of inadmissible matter.

If in a criminal trial evidence has been admitted which should have been rejected; it is competent to the High Court to consider whether, after excluding the evidence wrongly admitted, the rest of the evidence is sufficient to sustain the verdict. *Ram Bhagwan v. Emperor*. 19 Cr. L. J. 886 : 47 I. C. 82 : A. I. R. 1918 Pat. 201.

Revisional jurisdiction.

Sub-s. (3) of S. 435, Cr. P. C., does not bar the revisional jurisdiction of the High Court in a case where an order purporting to be made under Chap. XII of the Cr. P. C. has been made without jurisdiction. An order purporting to be made under S. 145 of the Cr. P. C. but dealing with movable property, was set aside in revision. *Vygraven Chetty v. Meyappa Chetty*. 6 Cr. L. J. 291 : 4 L. B. R. 75 : 13 Bur. L. R. 372.

Rule granted on one only of several grounds—Fresh rule on other ground, if may be issued.

The High Court has no jurisdiction to grant a fresh rule when, upon a previous occasion, the whole matter was before the Court and a rule was granted on only one of the several grounds; or, in other words, when a Rule is issued by the High Court on one or more selected grounds, no further application can be granted on the remaining grounds not so selected. *Narain Singh v. Jhagroo Sahu*.

12 Cr. L. J. 407 : 11 I. C. 591.

HIGH COURTS ACT, 1861

S. 15.

See also Legal Practitioners Act, 1879, as amended by Act, 1926; Ss. 2-A, 86.

S. 15—Scope.

S. 15 of the High Courts Act of 1861, does not override the provisions of S. 435 (8). *Maharaj Tewari v. Harcharan Rai*. 1 Cr. L. J. 339 : I. L. R. 26 All. 144 : 1903 A. W. N. 212.

HINDU LAW

S. 16—Prohibition and mandamus, if sole forms of superintendence.

Prohibition and mandamus are not the sole forms of superintendence. Defect of jurisdiction, fraud on the part of the prosecutor and error on the face of the proceedings are all good grounds for certiorari. *Hanmatha Nath Biswas v. Emperor*. 34 Cr. L. J. 299 : 142 I. C. 280 : 60 Cal. 618 : 37 C. W. N. 201 : I. R. 1933 Cal. 246 : A. I. R. 1933 Cal. 132.

HIGH COURT RULES (ALLAHABAD)

Order dismissing revision application requires to be sealed.

An order of a High Court dismissing an application for revision, requires under the rules of the Allahabad High Court, to be sealed. *Gobind Sahai v. Emperor*. 17 Cr. L. J. 47 : 32 I. C. 335 : 14 A. L. J. 61 : 38 All. 134 : A. I. R. 1916 All. 183.

HINDU JOINT FAMILY

See also Penal Code, 1860, S. 235.

HINDU LAW

Bengal School—Kayasthas, position of—Marriage between kayastha and dome, whether valid.

It is well-settled law in Bengal that kayasthas are treated as sudras. A dome is also treated as a sudra. A marriage between a kayastha and a dome is valid under Hindu Law, if performed with due rites. *Bhola Nath Mitter v. Emperor*. 25 Cr. L. J. 997 : 81 I. C. 709 : 28 C. W. N. 323 : 51 Cal. 488 : A. I. R. 1924 Cal. 616.

Guardianship—Marriage—Bride, whether must be given away by guardian personally.

Under the Hindu Law, it is not absolutely necessary that the bride should be given away by the legal guardian; what is necessary is that the giving away should be with the knowledge and consent of the guardian. Where, therefore, the bride's father is unavoidably absent from the marriage and the bride is given away by the mother with the knowledge and consent of the father, the marriage is perfectly valid. *Benodini Howldar v. Emperor*. 28 Cr. L. J. 327 : 100 I. C. 711 : A. I. R. 1927 Cal. 480.

Joint house—Member entering room occupied by another member is guilty of criminal trespass.

Although a member of a joint family does not commit an offence of criminal trespass by entering the house which forms the joint property, he may be guilty of that offence when he enters the room ordinarily occupied by another member of the family. *Lalchand Pitumal v. Emperor*. 35 Cr. L. J. 270 : 147 I. C. 66 : 28 S. L. R. 22 : 6 R. S. 123 : A. I. R. 1933 Sind 396.

HINDU LAW

———*Marriage between persons belonging to different sub-castes of sudras is valid.*

Adidravidas are *sudras*, and under the Hindu Law, marriage between persons belonging to the different sub-castes among the *sudras* is valid. *Manickam v. Poongavanammal*.

35 Cr. L. J. 852 :
148 I. C. 921 : 39 L. W. 439 :
1934 M. W. N. 185 : 66 M. L. J. 543 :
6 R. M. 555 : A. I. R. 1934 Mad. 323.

———*Marriage—Consent of parties, necessity of—Factum valet, applicability of.*

A Hindu marriage is a sacrament and not a contract, and the presence of a consenting mind is not indispensable. If the marriage rites are duly performed, and there is no impediment to the marriage in the shape of identity of *gotra* or prohibited degrees or relationship, the doctrine of *factum valet* applies and makes the marriage indissoluble in the absence of proof of any force or fraud. The reason for the exception seems to be that where the girl is abducted by force or fraud and married, there is neither any gift by the lawful guardian nor performance of any religious ceremony in the proper sense and there is consequently an absence of the essential ingredients necessary to constitute a valid marriage. *Kshitish Chandra Chakraburty v. Emperor*. (F. B.)

38 Cr. L. J. 577 :
168 I. C. 708 : 41 C. W. N. 540 :
9 R. C. 869 : I. L. R. (1937) 2 Cal. 221 :
A. I. R. 1937 Cal. 214.

———*Marriage—Parties to marriage belonging to different sub-castes—Marriage, if valid.*

There is no rule of Hindu Law which prevents a man and woman belonging to two sub-castes of a twice-born class from entering into a lawful marriage. The *Shastras* dealing with the Hindu Law of Marriage do not contain any injunction forbidding marriages between persons belonging to different divisions of the same *varna*. The fact that marriages between members of different sub-castes of the same caste do not ordinarily take place, does not imply that such a marriage is interdicted and would, if performed, be declared to be invalid. There may be a disinclination to marry outside a sub-caste inspired probably by a social prejudice; but it cannot be seriously maintained that there is any custom which has acquired the force of law. *Kshitish Chandra Chakraburty v. Emperor*. (F. B.)

38 Cr. L. J. 577 :
168 I. C. 708 : 41 C. W. N. 540 :
9 R. C. 869 : I. L. R. (1937) 2 Cal. 221 :
A. I. R. 1937 Cal. 214.

———*Marriage with maternal aunt, legality of—Chadar-andazi, whether recognised by Hindu Law.*

An *Arora* Hindu cannot, under Hindu Law, contract a valid marriage with his maternal aunt. Marriage by *chadar-andazi* is not recognised by Hindu Law as a valid marriage. *Saudagar v. Emperor*.

29 Cr. L. J. 210 :
107 I. C. 98 : A. I. R. 1928 Lah. 165.

HINDU WIDOWS' RE-MARRIAGE ACT (XV OF 1856)

———*Minor—Nearest male, whether entitled to custody of minor girl.*

The fact that a person happens to be the nearest major male relative of a minor girl does not, under the Hindu Law, give him an absolute right to the custody of the girl. *Sital Prasad v. Emperor*.

21 Cr. L. J. 50 :
54 I. C. 402 : 18 A. L. J. 64 :
2 U. P. L. R. All. 76 : 42 All. 146 :
A. I. R. 1919 All. 36.

———*Mother-in-law, whether entitled to give daughter-in-law in marriage.*

A mother-in-law has no right under the Hindu Law to give her widowed daughter-in-law in marriage. *Sant Ram v. Emperor*.

31 Cr. L. J. 648 :
124 I. C. 310 : 30 P. L. R. 573 :
11 Lah. 178 : A. I. R. 1929 Lah. 713.

———*Partition—Evidence of.*

A mere separation in residence does not amount to any partition in Hindu Law. *Tej Singh v. Emperor*.

36 Cr. L. J. 545 :
154 I. C. 631 : 1935 A. L. J. 367 :
1935 A. W. R. 206 : 7 R. A. 778 :
A. I. R. 1935 All. 490.

———*Stridhan—Power of disposal.*

A woman has absolute power of disposal over her *saudayika stridhan*, even during coverture. She may dispose of it in any other way she pleases, even without the consent of her husband. *Emperor v. Sat Narain*.

32 Cr. L. J. 576 :
130 I. C. 693 : 1931 A. L. J. 201 :
I. R. 1931 All. 309 :
A. I. R. 1931 All. 265.

HINDU 'WIDOWS' RE-MARRIAGE ACT (XV OF 1856)

———*S. 6—Applicability—Whether applies to cases where, by custom, re-marriage is allowed.*

The purpose of S. 6, Hindu Widows' Remarriage Act, is to validate widow marriages, that prior to the passing of that Act, could not be validated, it was the purpose of the Act not to limit but rather to increase the rights of Hindu widows, not to restrict any existing custom of re-marriage among Hindu widows but to give the right to Hindu widows to whom it had hitherto been denied. But where, Hindu re-marriage is generally recognized, S. 6, Hindu Widows' Re-marriage Act, has no application. *Tapoo v. Emperor*.

38 Cr. L. J. 369 :
167 I. C. 366 : 9 R. S. 177 :
30 S. L. R. 421 : A. I. R. 1937 Sind 42.

———*S. 6—Ceremonies required for first marriage, whether necessary where S. 6 does not apply—Re-marriage in such cases, when valid.*

Where it is clear that according to the custom of second marriage or *nikah* among sweepers, the ceremonies of the first marriage are not necessary, the re-marriage would not be rendered invalid because of the absence of the ceremonies of the first marriage, as required by S. 6. If according to custom attendance of the caste people and the feast followed by

HOME RULE FOR INDIA

co-habitation is sufficient to validate a second marriage, the proof of these things is enough to constitute a valid re-marriage and the widow becomes a wife of the person to whom she is married within the meaning of Ss. 497 and 498, Penal Code. *Tapoo v. Emperor*.

38 Cr. L. J. 369 :
167 I. C. 366 : 9 R. S. 177 :
30 S. L. R. 421 : A. I. R. 1937 Sind 42.

HIRE PURCHASE AGREEMENT

———*Instalments—Rent—Possession—Sale of article hired.*

In a hire purchase agreement the hirer is under no legal obligation to buy but has an option either to return the article hired or to become its owner on payment in full, whereas the seller is bound to keep his offer open; it is not a sale within the meaning of S. 78 of the Contract Act, the hirer being merely a bailee. Therefore, where a hirer of a sewing machine without making payments in full sells the machine, he is guilty of criminal breach of trust. *Maung Mya Gyi v. Mg. Po Shwe*.

15 Cr. L. J. 425 :
24 I. C. 161 : 7 L. B. R. 298 :
7 Bur. L. T. 222 :
A. I. R. 1914 L. Bur. 157.

HISTORY SHEET

See also Cr. P. C., 1898, S. 108.

HOME RULE FLAG

———*Flying of, legality of.*

The flying of a Home Rule flag is a perfectly legal act, and it is the duty of the Magistrate to support all lawful acts as far as possible. If unreasonable people threaten to commit a breach of the peace, the Magistrate ought not to treat it as a case of emergency, unless through temporary circumstances the Magistrate has no sufficient Police or other force at his command to prevent an immediate breach of the peace and unless he is further unable to find out the persons threatening to commit a breach of the peace so as to bind them over to keep the peace. *S.S. Venkataramana Aiyar v. Emperor*.

19 Cr. L. J. 56 :
43 I. C. 88 : 6 L. W. 456 :
22 M. L. T. 323 : 1917 M. W. N. 724 :
A. I. R. 1919 Mad. 1004.

HOME RULE FOR INDIA

———*Advocacy of, legality of—Speeches, construction of, mode of.*

The advocacy of principles, the object of which is to obtain for Indians an increased and gradually increasing share of political authority and to subject the administration of the country to the control of the people or peoples of India is not *per se* an infringement of the law. To advocate the establishment of Home Rule for India on the contentions that Indian administrators govern Native States without complaint; that in British India British Officials are paid too highly and Indians, though they are free to discuss, have no effective control over finance or policy; that the present officials being in fact alien by race,

HONG KONG ORDINANCE No. 3 OF 1873

though able and industrious men, do not readily understand the needs of the people, is fair political criticism and is not abnoxious to S. 124-A of the Penal Code. *Bal Gangadhar Tilak v. Emperor*.

18 Cr. L. J. 567 :
39 I. C. 807 : 19 Bom. L. R. 211 :
A. I. R. 1916 Bom. 9.

HOME RULE OR SELF-GOVERNMENT FOR INDIA ON COLONIAL LINES

———*Agitation for, whether lawful—Methods of advocacy—Legitimate discussion and propaganda, principles governing.*

The advocacy of any Home Rule propaganda for India cannot be regarded as illegal *per se*. It lies entirely with the Sovereign, that is, the King in Parliament to establish any Government he chooses for India or any other part of the British Empire. There can be nothing wrong, therefore, in a subject of the Crown urging the desirability of a change in the machinery of the Government in India. In certain stages of society, reforms in the constitution of the Government are a biological and political necessity. Any discussion about 'Home Rule' for India is not *per se* objectionable. Two essentials should be kept in mind in asking for changes in the machinery of Government. The allegiance to the throne and person of the Sovereign should be held as inviolate, and there should be no suggestion that the connection which makes India an integral part of the British Empire should be severed. Within these limits, it is permissible to ask that the details of the administrative machinery should be re-adjusted to meet the exigencies of the times. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916 2 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085
A. I. R. 1918 Mad. 1210.

HOMICIDAL MANIA

———*Proof of.*

Homicidal maniacs need have no motive to perpetrate the crime and the chief evidence of the existence of insanity appears to be in the act itself. *In re: Vaithinatha Pillai*.

14 Cr. L. J. 465 :
20 I. C. 721 : 1912 M. W. N. 825.

HONG KONG ORDINANCE NO. 3 OF 1873

———*Summary proceedings—Contempt—Conspiracy to injure another—Specific allegations of perjury.*

Where in a summary proceeding a statement was made by the Court to the effect that the whole evidence given by the witnesses convinced it of a conspiracy on their part to make it appear that a certain person was at the date of the presentation of a certain petition of bankruptcy, a partner in a certain firm, and that all they had said material to that issue was a tissue of deliberate falsehoods; *Held*, that having regard to the nature of the charge, the Court was making

HURT

against the witnesses, it did not admit of being formulated in a series of special allegations of perjury, and that the gist of the accusation it was making ought to have been sufficiently clear to them from the language it employed to express it. *In the matter of : Lai Hing Firm.*

11 Cr. L. J. 277 P. C. :
4 I. C. 539 : 13 C. W. N. 685 : 9 M. L. T. 9 :
19 M. L. J. 324.

HONORARY MAGISTRATES

See also Cr. P. C., 1898, S. 6.

———*Bench, object of, constitution of—Record of evidence by one Magistrate—Other constituting Bench attending to other work—Miscarriage of justice.*

The object constituting a Bench of Honorary Magistrates is that the latter should individually and collectively give their attention and apply their minds to the hearing of the evidence and the determination of the points at issue and arrive at an independent judgment in regard to the merits of the charge. The very object with which a Bench is constituted is defeated and miscarriage of justice becomes quite possible if one Magistrate is recording the evidence while the other Magistrate constituting the Bench is attending to some other work. *Sullan v. Shamsher.*

23 Cr. L. J. 696 :
69 I. C. 376 : 25 O. C. 182 :
A. I. R. 1922 Oudh 21.

HOSTILE WITNESS

See also (i) Cr. P. C., 1898, S. 298.
(ii) Evidence Act, 1872, S. 154.

HOUSE-BREAKING

See also Penal Code, 1860, Ss. 456, 457.

HOUSE TRESPASS

See also Penal Code, 1861, Ss. 441, 451, 457.

HURT

See also (i) Charge.
(ii) Penal Code, 1860, Ss. 304, 322 to 332.

———*Rioting—Common object not stated to cause hurt—Bail, order for—Issue of order to be immediate.*

Where accused are charged with rioting and are convicted of hurt, they should be acquitted especially as where the common object charged for the riot did not specify the intention to cause hurt. When a rule is issued by the High Court and proceedings stayed, and therefore, *a fortiori* when there is an order for bail, Magistrates on receiving reliable information thereof should stay their hands then and there. *Lal Mohan v. Kali Kishore.*

12 Cr. L. J. 169 :
9 I. C. 965 : 13 C. L. J. 329 : 38 Cal. 293.

HUSBAND AND WIFE

See also (i) Cr. P. C., 1898, Ss. 100, 488.
(ii) Penal Code, 1860, S. 498.

———*Custody of wife.*

Although for a husband to take his wife would not be an offence, he has no legal right to cause injury, fear and annoyance to her by using criminal force and his right can be enforced only by having recourse to the Court and not by use of force. *Nanku v. Emperor.*

37 Cr. L. J. 35 :
159 I. C. 183 : 1935 A. L. J. 1096 :
1935 A. W. R. 1081 : 8 R. A. 400 :
A. I. R. 1935 All. 916.

———*Decree for restitution of conjugal rights—Execution.*

Decree for restitution of conjugal rights against wives are now-a-days no longer enforced by Courts of Justice though decree may be passed. Should the wife refuse to go and live with the husband, a decree for restitution of conjugal rights is a good answer to an application for maintenance under the Cr. P. C. *Mahla v. Aye Maung.*

133 I. C. 96 (a) : I. R. 1931 Rang. 240 :
A. I. R. 1931 Rang. 111 (1).

———*Divorce—Costs.*

Where the wife is the petitioner and is successful in her suit, her husband will, as a matter of course, be ordered to pay her costs. *Gladys Seinapatti v. Seinapatti.*

136 I. C. 262 : 33 P. L. R. 339 :
I. R. 1932 Lah. 214 : A. I. R. 1932 Lah. 116.

———*Suit for restitution of conjugal rights.*

The inability of the husband to find an independent livelihood for himself and his wife is not a matrimonial fault for which a suit for restitution of conjugal rights could be dismissed. *Mehla v. Aye Maung.*

133 I. C. 96 (a) : I. R. 1931 Rang. 240 :
A. I. R. 1931 Rang. 111 (1).

I**IDENTIFICATION**

See also (i) Cr. P. C., 1898, S. 159.
(ii) Criminal trial.
(iii) Evidence.
(iv) Evidence Act, 1872, S. 9.
(v) Practice.

———*Amount of identification required—Failure to identify in Court, effect of.*

The power to identify varies according to the power of observation and observation may be based upon small *minutiae* which a witness cannot describe himself or explain. It is impossible to lay down any useful principles as to the exact amount of identification which is required in any particular case. The Court will consider the value of the evidence of identification against each accused, and satisfy itself as to whether the man is or is not guilty. Evidence which goes to prove that a person has identified another person as having taken part in a particular offence either in Jail identification proceedings or elsewhere, is admissible though the value

IDENTIFICATION

of such evidence is weakened perceptibly as a general rule by failure to identify subsequently in Court. *Bachchu v. Emperor*.

32 Cr. L. J. 162 :
128 I. C. 739 : 7 O. W. N. 862 :

I. R. 1931 Oudh 67 :
A. I. R. 1930 Oudh 455.

—Articles not mixed with similar articles
—Value of identification.

Where during the identification of articles recovered from the accused, they were not mixed with similar articles, this omission would not make the identification inadmissible although it would detract from the weight that would otherwise be attached to that evidence. *Motilal v. Emperor*.

41 Cr. L. J. 158 :
185 I. C. 310 : 12 R. N. 150 :
1939 N. L. J. 585 :
A. I. R. 1940 Rang. 66.

—Benefit of doubt.

Where only three persons were alleged in F. I. R. to have taken part in the assault which was committed after dark and the identification parades were held five years after the occurrence, and the identifying witness who stated that there were six men in the party identified only two of the accused: *Held*, that it could not be held that all reasonable possibility of an honest mistake had been eliminated so far as the identification of the accused by witness was concerned, and that they should be given the benefit of doubt. *Panjaba v. Emperor*.

A. I. R. 1935 Lah. 146.

—Body decomposed—Identification from clothing.

It is not safe to rely upon the articles of clothing when the body itself is not identifiable on account of being in an advanced stage of decomposition. *Ghanwara v. Emperor*.

16 Cr. L. J. 612 :
30 I. C. 436 : 19 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 215.

—Body decomposed—Identification from clothing.

Satisfactory proof that clothes found on the body of a murdered person belong to him and were worn by him immediately before disappearance, is sufficient to find that the corpse is of that person although it is too decomposed to be identified otherwise. *Gul Hassan v. Emperor*.

11 Cr. L. J. 604 :
8 I. C. 250 : 38 P. W. R. 1910 Cr. :
24 P. R. 1910 Cr.

—Conviction based on identification of single witness.

It is not safe to convict a person upon his identification by one individual under circumstances of strain and terror accompanying violent crime. *Ghulam Muhammad Khan v. Emperor*.

26 Cr. L. J. 878 :
86 I. C. 814 : 4 Pat. 327 :
6 P. L. T. 598 : A. I. R. 1925 Pat. 536.

—Dark night—Recognition by voice.

Identification of the accused in a pitch

IDENTIFICATION

dark night by the modulation of his voice cannot he safely relied upon for his conviction. *Bhagtu v. Emperor*.

29 Cr. L. J. 758 :
110 I. C. 790 : A. I. R. 1928 Lah. 925.

—Duty of Court—Documents signed by professional identifiers.

The Courts and all officers who have to receive documents on which signatures are identified, should remember that they are not bound to accept the identification merely because the nature of the identifier's profession entitles him to perform identifications. It is very easy for any officer in that position to become acquainted with the fact that such and such *mukhtear* whose name he frequently sees on papers of identification has really no other business, and in those circumstances, the presumption is that he is merely a professional identifier whose identification should not be accepted. *In re : R. A. Mukhtear of Chapra*.

(S. B.) 38 Cr. L. J. 411 :

167 I. C. 668 : 17 P. L. T. 951 :
9 R. P. 410 : 3 B. R. 310 :
16 Pat. 121 : A. I. R. 1937 Pat. 138.

—Duty of Judge—Identification in jail, value of.

Identification in jail is no substantive evidence. It can only be used as corroborative of identification made at the trial in the presence of the Judge. *Sarju Singh v. Emperor*.

26 Cr. L. J. 1236
88 I. C. 852 : A. I. R. 1925 Oudh 726.

—Evidence.

It is not sufficient to say that the witness identified no one which is an inaccurate statement if the witness has really identified a person, but it is not the person required by the prosecution to be identified. *Jahangir Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58.
A. I. R. 1935 Lah. 230.

—Evidence by witness—Witnesses who had given no previous description of accused, value of.

No reliance can be placed on the identification of an accused person by a witness who had previously to the identification given no description of the person whom he identifies. *Maula Dad v. Emperor*.

26 Cr. L. J. 693 :
86 I. C. 69 : 26 P. L. R. 40 :
A. I. R. 1925 Lah. 426.

—Identification during dark night.

Identification of the accused on a dark night when they are not previously known, carries no weight. *Mangal Singh v. Emperor*.

27 Cr. L. J. 492 :
93 I. C. 892.

—Evidence of—Failure of witnesses to identify accused several years after date of offence, effect of—Credibility of witness.

The mere failure of a witness to identify an accused person whom he has not seen for several years, would not by itself be a sufficient reason for disbelieving the witness as to his having seen the accused committing

IDENTIFICATION

the offence with which he is charged. *Labh Singh v. Emperor*. 27 Cr. L. J. 817 :

95 I. C. 593 : 8 L. L. J. 194 :
27 P. L. R. 743 : A. I. R. 1926 Lah. 392.

—————*Evidence of identity.*

Evidence of identity based on personal impression should be approached with considerable caution specially where much depends upon such evidence. *Gajadhar v. Emperor*.

33 Cr. L. J. 381 :
137 I. C. 79 : 9 O. W. N. 32 :
I. R. 1932 Oudh 195 :
A. I. R. 1932 Oudh 99.

—————*Evidence of identity.*

The power of observation and memory of different persons vary, and the mere fact that some witnesses have failed to identify a culprit, does not necessarily render the identification by other witnesses valueless. *Sher Jang v. Emperor*.

32 Cr. L. J. 684 :
131 I. C. 277 : I. R. 1931 Lah. 405 :
A. I. R. 1931 Lah. 178.

—————*Evidence of identity—Witness familiar with face of accused—Conviction, whether justified.*

Identification evidence by itself is, at best, a very insufficient basis for conviction but when it is found that identification witnesses have been familiar with the face of the person identified, there can be no certainty that the witnesses really saw the accused person at the time of the commission of the offence. *Din Dayal v. Emperor*.

25 Cr. L. J. 1125 :
81 I. C. 949 : 10 O. L. J. 347 :
A. I. R. 1924 Oudh 295.

—————*Evidence of officer who held parade for identification, admissibility of.*

Where it is shown that at an identification parade, witnesses picked out certain men as having taken part in a riot, but did not state to the officer who conducted the parade, what part each man had taken in the riot, the officer's evidence that he had told the witnesses to pick out the persons present in the riot, is quite sufficient. *Farlap Singh v. Emperor*.

27 Cr. L. J. 215 :
92 I. C. 167 : 7 Lah. 91 :
27 P. L. R. 222 : A. I. R. 1926 Lah. 310.

—————*Evidence of—Opportunity of seeing accused.*

Where a witness has had ample opportunity to see an accused person in Court during the proceedings, it is dangerous to rely on his identification of the accused, especially where he appears to have identified the accused only in answer to questions put by the Court. *Rehman v. Emperor*.

26 Cr. L. J. 19 :
83 I. C. 499 : 5 L. L. J. 477 :
A. I. R. 1923 Lah. 662.

—————*Evidence, value of—Accused not previously known to witnesses.*

No reliance can be placed on the evidence of witnesses, professing after many months

IDENTIFICATION

to identify persons, previously unknown to them, as having taken part in the crime, unless it is shown that there was a regular identification parade in which they picked out those persons from among others. *Makhan Singh v. Emperor*.

26 Cr. L. J. 445 :
85 I. C. 61 : 6 L. L. J. 320 :
A. I. R. 1924 Lah. 722.

—————*Evidence, when should be accepted.*

A witness's evidence of identification given in Court should only be accepted if he identified the same person whom he had previously picked out in the identification parade in the jail. *Mahni v. Emperor*.

25 Cr. L. J. 1272 :
82 I. C. 280 : A. I. R. 1925 Lah. 137.

—————*Identification.*

Boys identifying accused not asked if they knew him previously — Evidence that they must have known him: *Held*, that identification at parade proved nothing. *Nga Shwe Gan v. Emperor*.

36 Cr. L. J. 1137 :
157 I. C. 344 : 8 R. Rang. 94.

—————*Identification by abducted girl.*

The identification by the abducted girl of an accused person who was *shamiltastish* with her in the earlier stage of the investigation is perfectly meaningless. *Sohan Singh v. Emperor*.

40 Cr. L. J. 684 :
182 I. C. 520 : 41 P. L. R. 45 :
12 R. L. 53 : A. I. R. 1939 Lah. 180.

—————*Identification by voice — Reliability of.*

It is never safe to rely on the identification of a person by his voice. One is always liable to make a mistake. *Nga Aung Khin v. Emperor*.

39 Cr. L. J. 34 :
172 I. C. 56 : 10 R. Rang. 207 :
A. I. R. 1937 Rang. 407.

—————*Identification of all accused by first informant, if necessary.*

It is not necessary that the first informant himself must have identified all the persons who are sent up for trial. It is enough if they are identified by other witnesses as being present. *Kuar Koeri v. Emperor*.

38 Cr. L. J. 1007 :
170 I. C. 785 : 18 P. L. T. 416 :
10 R. P. 170 : 3 B. R. 794 :
A. I. R. 1937 Pat. 497.

—————*Mode.*

Identification proceeding held in jail—Nature and value of, discussed. *Bhagat Ram v. Emperor*.

36 Cr. L. J. 121 :
152 I. C. 531 : 35 P. L. R. 499 :
7 R. L. 283 : A. I. R. 1934 Lah. 641.

—————*Mode.*

Identification parade should be held at the earliest possible opportunity. *Bhagat Ram v. Emperor*.

36 Cr. L. J. 121 :
152 I. C. 531 : 35 P. L. R. 499 :
7 R. L. 283 : A. I. R. 1934 Lah. 641.

IDENTIFICATION

———*Mode of holding identification parade.*

It is desirable that, when an identification parade is held, each person who might reasonably be expected to identify an offender should be kept apart from the other prosecution witnesses and not remain present whilst an identification by any other person is proceeding. When one witness has picked out some or all of the supposed offenders, the next witness should be brought upon the scene and invited to pick out the person or persons whom he can identify, without any opportunity of communicating with the first witness who has already done so. This procedure should be followed till every witness has had an independent opportunity of picking out of the identification parade the supposed criminal or criminals. *Nga Po Thit v. The King.*

39 Cr. L. J. 193 :
172 I. C. 865 : 10 R. Rang. 282 :
A. I. R. 1937 Rang. 504.

———*Mode of.*

In the matter of identification parades, the Magistrate should make a list of the outsiders mixed with the accused. *Jahangiri Lal v. Emperor.*

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

———*Mode of.*

It is the duty of the Magistrates when a proposed witness identifies any person to note in what connection he identifies him. *Jahagiri Lal v. Emperor.*

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

———*Mode of.*

Presence of Magistrate during identification - Magistrate should be present when the accused identifies the property. *Emperor v. Isakumar.*

5 Cr. L. J. 471.

———*Ornaments—Assessors, opinion of, value of.*

In a case of identification of ornaments ordinarily worn by the people of the country, the opinion of the assessors is of considerable value as they are well-acquainted with the ways and habits of men, of the standing of the complainant and the accused. *Behari v. Emperor.*

26 Cr. L. J. 1291 :
89 I. C. 155 : 2 O. W. N. 330 :
12 O. L. J. 339 : A. I. R. 1925 Oudh 452.

———*Parade, value of.*

The principal evidence of identification is the evidence of the witness given in Court as to how and under what circumstances he came to pick out a particular accused person and the details of the part which that accused took in the crime in question. The statement made by such a witness at an identification parade might be used to corroborate his evidence given in Court, but, otherwise, the evidence of identification furnished by an identification parade can only be hearsay except as to the simple fact that the witness was in a position

IDENTIFICATION

to show that he knew a certain accused person by sight. *Lal Singh v. Emperor.*

27 Cr. L. J. 170 :
91 I. C. 954 : 5 Lah. 396 :
A. I. R. 1925 Lah. 19.

———*Policemen, use of.*

There is no objection to the use of Policemen for identification parade, if proper precautions are adopted. *Indar Pal v. Emperor.*

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

———*Presence of Police.*

The presence of Police constables in the room where the identification is held is most objectionable. *Kartar Singh v. Emperor.*

36 Cr. L. J. 679 :
155 I. C. 263 : 35 P. L. R. 744 :
7 R. L. 670 : A. I. R. 1934 Lah. 692.

———*Principles.*

A Magistrate, who is conducting an identification parade, should bear in mind that the life and liberty of an accused person may depend upon his vigilance and caution, and at the same time bear in mind, that justice should be done. *Parbhu v. Emperor.*

35 Cr. L. J. 79 (2) :
146 I. C. 364 : 34 P. L. R. 639 :
6 R. L. 212 : A. I. R. 1933 Lah. 946.

———*Procedure.*

It would be perfectly fair for a Police Officer to enquire from a witness, without holding an identification parade, whether he could identify certain person, it is a totally different matter to get that person to make a confession in front of a proposed witness and then see if the witness would be prepared to identify him in a farce called an identification parade, and to crown all this, commit perjury in Court by denying the incident. *Jahangiri Lal v. Emperor.*

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

———*Procedure—Evidence of Magistrate conducting parade.*

It is not correct procedure to have the Magistrate who conducted the identification parade simply depose to a memorandum which he prepared at the time. The summary of the result of the identification should be given ordinarily as part of the oral evidence in the case. *Ahmad v. Emperor.*

27 Cr. L. J. 555 :
93 I. C. 1051 : A. I. R. 1926 Lah. 378.

———*Proceedings in Jail, whether evidence against accused.*

Identification proceedings held at the Jail are not substantive evidence against an accused. *Bindeshry v. Emperor.*

27 Cr. L. J. 1358 :
98 I. C. 478 : A. I. R. 1927 All. 163.

Proportion of five other persons to one accused person is the minimum desirable proportion. But proceedings should not be discarded if the standard is not kept. *Naubat Singh v. Emperor.*

36 Cr. L. J. 1139 :
157 I. C. 354 : 1935 A. W. R. 801 :
8 R. A. 179 : A. I. R. 1935 All. 653.

IDENTIFICATION

-----Relevancy of, in criminal trial—Use of.

The question whether a witness has or has not identified a man during the investigation is not one which is in itself irrelevant at the trial. Identification parade should be held as a check upon the veracity of people who are believed to know something about the matter. The actual evidence regarding identification is that which is given by the witness in Court. It will not be strengthened by proof of the facts that they alleged recognition of an accused at a parade held during the investigation, though on the other hand, its value will be destroyed if it is shown that they have ever failed to identify the accused prior to the trial. *Mohammad Hussain v. Emperor*.

37 Cr. L. J. 981 :
164 I. C. 578 : 9 R. Pesh. 17 :
A. I. R. 1936 Pesh. 166.

-----Reliability.

Boy identifying witness—Identification of only three suspects against four 'wrong men'—Evidence is not entitled to consideration. *Sucha Singh v. Emperor*. 34 Cr. L. J. 379 :
142 I. C. 699 (2) : 34 P. L. R. 405 :
I. R. 1933 Lah. 241 : A. I. R. 1932 Lah. 488.

-----Reliability.

In a criminal trial, identifications made at night during a dacoity or when the people are terrorized, are generally of very little value. *Chanan Singh v. Emperor*.

35 Cr. L. J. 610 :
148 I. C. 72 : 6 R. L. 502 :
A. I. R. 1933 Lah. 299.

-----Reliability.

The evidence of a witness who identifies the accused cannot be held to be unreliable merely because the witness has mistakenly identified also other persons. Each case must depend on its own merits. *Sheo Narain Singh v. Emperor*.

30 Cr. L. J. 716 :
117 I. C. 43 : 10 P. L. T. 228 :
8 Pat. 262 : I. R. 1929 Pat. 363 :
A. I. R. 1929 Pat. 212.

-----Reliability.

Where the accused has made a protest before the identification took place to the effect that he was known to the identifying witnesses before, much value cannot be attached to the identification. *Chauhan v. Emperor*.

35 Cr. L. J. 889 :
148 I. C. 1192 : 11 O. W. N. 765 :
6 R. O. 500 (2).

-----Reliability of.

Identification tests of accused persons are not as a rule quite sufficient to form the basis of a conviction though they may perhaps add some weight to other evidence against the accused. *Ramzan v. Emperor*.

30 Cr. L. J. 456 :
115 I. C. 328 : I. R. 1929 Sind 88 :
A. I. R. 1929 Sind 149.

-----Test.

It is not necessary for identification tests

IDENTIFICATION.

to be held in the presence of Magistrate. *Noor Mahmud v. Emperor*. 41 Cr. L. J. 924 :
190 I. C. 499 : 1940 Kar. 487 : 13 R. S. 81 :
A. I. R. 1940 Sind 168.

-----Test, value of.

Value of identification test held during trial commented upon. *Arshed Ali v. Emperor*.
27 Cr. L. J. 378 :
92 I. C. 890 : 30 C. W. N. 166.

-----Identification.

The persons who identify an accused must have had no opportunity of seeing him after the commission of the crime and no mistakes should have been made by those witnesses or the mistakes made by them are negligible. *Emperor v. Chhadammil Lal*.

37 Cr. L. J. 730 :
162 I. C. 948 : 1936 A. W. R. 185 :
8 R. A. 916 : A. I. R. 1936 All. 373.

-----Use of policemen at parade, if proper.

There is no objection to the use of Policemen for identification parade, if proper precautions are adopted. *Indar Pal v. Emperor*.

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

-----Value.

On the value of identification by witnesses each case has to be judged on its own particular facts. *Sucha Singh v. Emperor*.

34 Cr. L. J. 379 :
142 I. C. 699 (2) : 34 P. L. R. 405 :
I. R. 1933 Lah. 241 : A. I. R. 1932 Lah. 488.

-----Value of.

Identification of accused by witness in Court—Subsequent statement that he might have committed mistake—It is not safe to rely on this evidence. *Jahangiri Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

-----Value of identification parade.

Identification parades held by the Police require the most careful scrutiny, for if a witness has, before the parade, seen the person that he is going to identify, it does not matter in what order that person is placed, the witness is sure to identify him. *In re Nanni Kudumban*.

25 Cr. L. J. 145 :
76 I. C. 289 : 45 M. L. J. 406 :
18 L. W. 482 : 1923 M. W. N. 695 :
A. I. R. 1924 Mad. 232.

-----Value of.

In dacoity cases, evidence adduced as to identification of dacoits ought not to be accepted too readily, but should be looked at with great caution. *Emperor v. Magbul Ahmad Khan*.

33 Cr. L. J. 920 :
139 I. C. 751 : 9 O. W. N. 3 :
7 Luck. 511 : I. R. 1932 Oudh 383 :
A. I. R. 1932 Oudh 317.

IDENTIFICATION

———Value of.

It cannot be laid down as a hard and fast rule that identification evidence by itself is an insufficient basis for conviction. The value of identification evidence must vary with the circumstances. *Bhagat Ram v. Emperor*.

36 Cr. L. J. 121 :
152 I. C. 531 : 35 P. L. R. 499 :
7 R. L. 283 : A. I. R. 1934 Lah. 641.

———Value of.

Where a witness while picking out certain persons was only speculating as to their identity, the identification by that witness carries no weight whatever. *Sheo Sahai v. Emperor*.

34 Cr. L. J. 197 :
141 I. C. 511 : 9 O. W. N. 766 :
I. R. 1933 Oudh 71 : A. I. R. 1932 Oudh 287.

———Value of.

Where the manner in which the identification parades were held throws a lot of suspicion on the conduct of the Police, the evidence of the identification of the accused persons by the prosecution witnesses is not entitled to any weight in determining their guilt. *Bahaduri v. Emperor*.

41 Cr. L. J. 779 :
189 I. C. 672 : 42 P. L. R. 229 :
13 R. L. 121 : A. I. R. 1940 Lah. 281.

———Value of.

Where witnesses who have no obvious connection with one another, furnished lists, and in particular long lists of identical people whom they say they have recognized among the looters, there is a possibility that this identification is the result of collaboration between them rather than of actual observation. The true principle to adopt is, while not necessarily discarding their evidence altogether, to regard it, nevertheless with a great deal of suspicion unless it is confirmed from other reliable sources. *Emperor v. Aftab Mohammad Khan*.

41 Cr. L. J. 647 :
188 I. C. 649 : 1940 A. L. J. 206 :
13 R. A. 55 : A. I. R. 1940 All. 291.

———Witness's failure to identify accused—Effect.

The omission of a witness, whose evidence is material so far as the question of identification is concerned, to identify the accused in Court cannot be treated to be a mere immaterial irregularity. *Kanshi Ram v. Emperor*.

36 Cr. L. J. 383 (2) :
153 I. C. 383 : 15 Lah. 491 :
36 P. L. R. 346 : 7 R. L. 425 (2) :
A. I. R. 1934 Lah. 873.

———Witness identifying in jail unable to identify in Court—Evidence of identification, admissibility of.

When a witness who has made an identification in jail is unable to identify in the Court of the Committing Magistrate or of the Sessions Judge or in both, his evidence of identification, though weak, is not inadmissible in evidence. In such cases outside evidence is admissible to prove that the witness did make such identification and the circumstances in which he made it, though the

IDENTIFICATION PROCEEDINGS

question as to what weight may be given to it will depend on the facts of each case. *Ram Prasad v. Emperor*.

29 Cr. L. J. 129 :
106 I. C. 721 : 1 Luck. Cas. 339 :
2 Luck. 631 : A. I. R. 1927 Oudh 369.

IDENTIFICATION OF PRISONERS ACT (XXXIII OF 1920)

———S. 2—Scope of.

Police Officer in S. 2 includes Excise Officer. *J. E. Gubbay v. Emperor*.

37 Cr. L. J. 438 :
161 I. C. 238 : 40 C. W. N. 415 :
63 Cal. 780 : 8 R. C. 499 :
A. I. R. 1936 Cal. 65.

———S. 5.

See also (i) Criminal trial.

(ii) Evidence Act, 1872, S. 45.

(iii) Registration Act, 1908,
S. 82 (c).

———S. 5—Scope of.

Order directing measurements to be taken, stating that Magistrate was satisfied, that for investigation purposes, they are necessary—Failure to state reasons specifically does not render order illegal. *J. E. Gubbay v. Emperor*.

37 Cr. L. J. 438 :
161 I. C. 238 : 40 C. W. N. 415 :
63 Cal. 780 : 8 R. C. 499 :
A. I. R. 1936 Cal. 65.

———S. 5—Thumb impression — Power of Court to take.

By virtue of S. 5, Identification of Prisoners Act, 1920, a Magistrate is legally competent to take the thumb impression of the accused at the trial, and such impression is admissible in evidence. *Superintendent and Remembrancer, Legal Affairs, Bengal v. Kiran Bala Dasi*.

27 Cr. L. J. 409 :
93 I. C. 73 : 43 C. L. J. 79 :
30 C. W. N. 373 : A. I. R. 1926 Cal. 531.

IDENTIFICATION PARADE

———Witness identifying accused in parade but denying the fact at trial—Identification, admissibility and value of.

At an identification parade a witness picked up two of the accused as the culprits who had taken part in the offence, but at the trial, stated that they were shown to him and that he did not see them amongst the culprits: *Held*, that the fact that the witness did identify the two accused was admissible though not of much value. *Natha v. Emperor*.

29 Cr. L. J. 366 :
108 I. C. 265 : A. I. R. 1928 Lah. 546.

IDENTIFICATION PROCEEDINGS

———Identification of men with marks on face.

If a person to be identified has a wart or defect on his face, no attempt should be made to cover it up in identification proceedings. *Autar v. Emperor*.

31 Cr. L. J. 1017 :
126 I. C. 498 : 7 O. W. N. 456 :
I. R. 1930 Oudh 370 :
A. I. R. 1931 Oudh 74.

ILLEGAL ARREST

See also Criminal trial.

ILLEGAL CONFINEMENT

See also Cr. P. C., 1898, S. 100.

ILLEGAL GRATIFICATION

See also Penal Code, 1860, S. 161.

ILLEGAL ORDER

———Disobedience, whether punishable under S. 145, Cr. P. C.

Under S. 145, Cr. P. C., disobedience is not punishable. *Musammal Sardara v. Emperor*.

14 Cr. L. J. 63 :

18 I. C. 351 : 16 P. W. R. 1913 Cr. :

92 P. L. R. 1913.

———Illegal order forbidding Pandas to enter Railway premises. *Rama v. Emperor*.

14 Cr. L. J. 122 :

18 I. C. 682 : 35 All. 136 :

11 A. L. J. 92.

ILLEGAL POSSESSION

———Cocaine. *Kali Charan Mukherjee v. Emperor*.

15 Cr. L. J. 4 :

22 I. C. 148 : 18 C. L. J. 514 :

18 C. W. N. 309 : 41 Cal. 537.

ILLEGAL SEARCH

See also Cr. P. C., 1898, S. 165.

ILLEGALITY

See also Cr. P. C., 1898, Ss. 107, 145.

ILLCIT POSSESSION

———Cocaine.

Possession exceeding five grains. *Makund Sahu v. Emperor*.

15 Cr. L. J. 262 :

23 I. C. 470 : 18 C. W. N. 1023.

IMPRISONMENT

———Concurrent sentence of imprisonment—*Legality of*.

A sentence of imprisonment cannot be ordered to run concurrently with another sentence passed in another case. *Emperor v. Eng Gyaung*.

12 Cr. L. J. 465 :

11 I. C. 1001 : 4 Bur. L. T. 174 :

6 L. B. R. 22.

———One day's simple imprisonment—*Object*.

Per *Jenkins, C. J.*—The purpose of inflicting one day's simple imprisonment is to exercise clemency towards an accused, and so it is ordinarily passed where imprisonment is the only punishment allowed by law, and the Court sees in the circumstances of the case grounds for passing the lightest possible sentence. In practice, the person on whom it is passed, is not placed in prison, but is to all intents and purposes as free as though the sentence had not been passed. *Emperor v. H. C. Bayne*.

3 Cr. L. J. 494 :

8 Bom. L. R. 414.

IMPUTATION

See also Defamation.

INADMISSIBILITY

———Evidence of discovery.

Where two persons together are taken to point out murdered bodies or stolen property, etc., the evidence of joint discovery under S. 27, Evidence Act, becomes altogether inadmissible against both unless it is conclusively established which of the two made the discovery. *Muzammal v. Emperor*.

10 Cr. L. J. 321 :

3 I. C. 622 : 8 P. W. R. 1909 Cr.

INCOME TAX ACT (II OF 1886)

See also Cr. P. C., 1898, S. 476.

———Power of Income-tax Officer to order prosecution—Income-tax proceedings—False statements by petitioner in Income-tax application—Prosecution ordered long after.

An Income-tax Officer, adjudicating upon a petition for reduction of income-tax, or hearing an appeal under the Income Tax Act, is a Court and is competent to sanction the prosecution of a person for any offence committed before him under the powers conferred by S. 476, Cr. P. C. *In re : Natara'a Iyer*.

13 Cr. L. J. 723 :

13 I. C. 91 : 10 M. L. T. 503 :

1911 M. W. N. 590 : 22 M. L. J. 105.

———S. 25—Jurisdiction to direct prosecution—Collector—Petition, verification of.

The Income Tax Act is a special Act and must, therefore, be construed in favour of the subject. The Collector is the person who has authority and jurisdiction to direct proceedings to be taken for offences under the Income Tax Act. Statements contained in a petition under S. 25, Income Tax Act, must be verified by the petitioner or some other competent persons in the manner required by law for the verification of plaints. In proceedings like those relating to Income-tax, a person who is supposed to have made a false statement is entitled to have set out the particular statement which is supposed to be false. *Jagdeo Sahu v. Emperor*.

18 Cr. L. J. 433 :

38 I. C. 993 : 15 A. L. J. 163 :

A. I. R. 1917 All. 339.

———Ss. 34 (b), 46—Notice—Failure to deliver statement—Delivery by unregistered post, whether sufficient.

Delivery of a notice by unregistered post does not amount to the service required by S. 46, Income Tax Act. Therefore, a conviction under S. 34 (b), Income Tax Act, based on the failure to comply with notice sent by unregistered post is not maintainable. *Emperor v. Ram Charan*.

20 Cr. L. J. 221 (a) :

49 I. C. 781 : 17 A. L. J. 146 :

1 U. P. L. R. All. 88 :

A. I. R. 1919 All. 300.

———Ss. 35, 36—Prosecution—False statement—Prosecution, who can direct.

No person can be prosecuted under S. 35,

INCOME TAX ACT (VII OF 1918)

Income Tax Act, except at the instance of the Collector under S. 36. *Bankat Lal v. Emperor*.

15 Cr. L. J. 296 :
23 I. C. 504 : 12 A. L. J. 258 :
A. I. R. 1914 All. 117.

———S. 36—Collector—Revenue Court—Collector deciding objections to assessment of income-tax as Revenue Court.

A Collector deciding an objection to the assessment of Income-tax may possibly be regarded as a Revenue Court. *Ganga Sahai v. Emperor*.

15 Cr. L. J. 2 :
22 I. C. 146 : A. I. R. 1914 Oudh 114.

INCOME TAX ACT (VII OF 1918)

———Form of warrant, purpose of.

The form of warrant provided by the Income Tax Act is for the convenience and instruction of Revenue Officers, and there is nothing in the Act which renders the use of a warrant obligatory. If a warrant is issued, it is expedient to issue it in the form as appended to the Act, but this does not take away from the Collector the right to collect Income Tax without that warrant. *Emperor v. Gulabrai*.

26 Cr. L. J. 195 :
88 I. C. 899 : 16 S. L. R. 161.

———Ss. 24, 39 (d)—Prosecution—Penal assessment, levy of—Prosecution under S. 39, whether barred.

The fact that a penal assessment has been levied against a person under S. 24, Income Tax Act, is no bar to the prosecution of that person under S. 39 (d), for failure to produce his account books in obedience to a notice issued by the Collector. *Emperor v. Hussain Ally & Co.*

21 Cr. L. J. 395 :
55 I. C. 1003 : 38 M. L. J. 333 :
11 L. W. 425 : 43 Mad. 498 :

1920 M. W. N. 250 : A. I. R. 1920 Mad. 250.

———S. 36—Attachment.

There is nothing in the Income Tax Act or the Bombay Land Revenue Code which renders it obligatory for the person who actually effects an attachment to give a receipt in respect of the property attached. When an attachment has once been effected without any protest being made by the owner of the property attached, and the property has passed into the possession of the Attaching Officer, and the Attaching Officer has left the premises, it is not permissible that any person should remove the attached property from the custody of the Attaching Officer, under the pretext that the warrant of attachment was illegal. *Emperor v. Gulabrai*.

26 Cr. L. J. 195 :
88 I. C. 899 : 16 S. L. R. 161.

———S. 36—Recovery of arrears of income-tax—Bombay Land Revenue Code (Act V of 1879), S. 154—Arrears of Income-tax, recovery of—Procedure.

The combined effect of S. 36, Income Tax Act, and S. 154, Bombay Land Revenue Code, is that the Collector may recover arrears of Income-tax by causing the defaulter's movable property to be distrained and sold. Under

INCOME TAX ACT (XI OF 1922)

S. 154, Bombay Land Revenue Code, cash and particularly Currency Notes may be distrained and sold. No warrant is necessary to enable a *Tapedar* or a *Munshi* who can read and write and who is acting under the orders of the Collector or the *Mahalkari* to distrain. *Emperor v. Gulabrai*.

26 Cr. L. J. 195 :
88 I. C. 899 : 16 S. L. R. 161.

———S. 40—Jurisdiction—Penal Code, S. 177, Cr. P. C., S. 179—False verification in income-tax petition, complaint of—Forum, proper Place where return received, Court having jurisdiction over, competency of, to try offence.

The offence of making false verification in an income-tax petition is legally triable only by a Court having jurisdiction over the place where the verification was made. The place where the petition was received by the authorities does not determine the jurisdiction. *In re : Mohiddin Pakkiri*.

23 Cr. L. J. 619 :
68 I. C. 843 : 16 L. W. 335 :
31 M. L. T. 282 : 43 M. L. J. 475 :
1922 M. W. N. 690 : 45 Mad. 839 :
A. I. R. 1923 Mad. 50.

———S. 46—Notice—Method of service.

S. 40, Income Tax Act, does not require that service of a notice under it must be effected by the Officer of the Court himself placing the notice in the hands of the person named therein; the section in no way excludes any of the other forms of service permitted by O. V. of the C. P. C., and allows a notice to be sent by post. *Local Government v. Ismail Bhai*.

23 Cr. L. J. 591 :
68 I. C. 628 : A. I. R. 1922 Nag. 187.

INCOME TAX ACT (XI OF 1922)

———Ss. 22, 28, 52—Mitigation of sentence—Penal Code Act (XLV of 1860), S. 177—False return—Revised true return—Offence under S. 177, whether condoned.

A person who makes a statement in a verification mentioned in S. 22 (2) Income Tax Act, which is false and which he either knows or believes to be false or does not believe to be true, commits an offence under S. 177, Penal Code, read with S. 52, Income Tax Act, as soon as the statement is made and a subsequent rectification of the statement in a revised return filed under S. 22 (3), Income Tax Act, cannot make it any the less an offence, though it may be considered as an extenuating circumstance in awarding sentence. *Ganga Sagar v. Emperor*.

31 Cr. L. J. 88 :
120 I. C. 435 : 1930 A. L. J. 26 :
A. I. R. 1929 All. 919.

———Ss. 23 (2), 37—Legality of conviction—Penal Code, S. 196—Proceedings before Income-tax Officers, whether 'judicial proceedings'—Production of false account books—Conviction under S. 196, Penal Code—Legality of conviction.

A person who, on being served with a notice under S. 23 (2), Income-tax Act, produces false account books before an Income Tax Officer, cannot be convicted of

INCOME TAX ACT (XI OF 1922)

an offence under S. 196, Penal Code, inasmuch as, under S. 37, Income Tax Act, proceedings before Income-tax Officers are to be deemed to be judicial proceedings only within the meaning of Ss. 193 and 228, Penal Code. *Lal Mohan Saha v. Emperor*.

28 Cr. L. J. 887 :
104 I. C. 903 : 31 C. W. N. 996 :
46 C. L. J. 550 : 55 Cal. 423 :
A. I. R. 1927 Cal. 721.

—S. 27—Order under.

An assessee applied for cancellation of an assessment under S. 27, Income Tax Act, pleading that he was prevented from making a return as his books of account were produced in a criminal case. This case was decided in October 1927, and the best judgment assessment was made in 1928. The assessee was asked to produce a copy of the application that he said he had made for return of the books. He had over a month's time to produce this but could not produce a copy and the Income Tax Officer refused to review the case: *Held*, that, in the circumstances of the case, the assessee was not prevented by sufficient cause from making a return of his income within the meaning of S. 27, Income Tax Act, and the order of the Income-tax Officer was perfectly justified. *Ram Kumar Mohan Lal v. Emperor*.

30 Cr. L. J. 1084 :
119 I. C. 569 : 1929 A. L. J. 566 :
I. R. 1929 All. 1065.

—S. 46.

See also Penal Code, 1860, S. 353.

—S. 51—Scope of.

Offences under S. 51 and S. 52 are different. *Champalal Girdharilal v. Emperor*.

35 Cr. L. J. 224 (2) :
146 I. C. 848 : 30 N. L. R. 50 : 6 R. N. 102 :
A. I. R. 1933 Nag. 358.

—S. 52—Offence under, nature of.

Return not complete—Verification of such return does not constitute offence under S. 52. *Champalal Girdharilal v. Emperor*.

35 Cr. L. J. 224 (2) :
146 I. C. 848 : 30 N. L. R. 50 :
6 R. N. 102 : A. I. R. 1933 Nag. 358.

—S. 66—Application for review of judgment of High Court—Reference by Commissioner.

An application for review of a judgment delivered by the High Court in an income-tax case on a statement made by the Commissioner of Income-tax under S. 66, Income Tax Act, is not maintainable. *Emperor v. Kajori Mal Kalyan Das*.

126 I. C. 361 : I. R. 1930 All. 841 :
A. I. R. 1930 All. 211 (1).

—S. 195—Income-tax Officer.

The "public servant concerned" referred to in S. 195 (1) is the Income Tax Officer whose duty it is to make assessments for Income-tax in the particular section or area. *P. D. Patel v. Emperor*.

35 Cr. L. J. 131 :
146 I. C. 653 : 6 R. Rang. 113 :
A. I. R. 1933 Rang. 292.

INDIAN CHRISTIAN MARRIAGES ACT (XV OF 1872)

—S. 38—Scope of.

S. 38 governs the schedule and the space left for age is not necessary to be filled with that particular. *A. R. Manuel v. Emperor*.

36 Cr. L. J. 1462 :
158 I. C. 791 : 8 R. C. 217 :
39 C. W. N. 1303 :
A. I. R. 1935 Cal. 678.

INDIAN COUNCILS ACT, 1861 (24 AND 25 VIC. CHAP. 67)

—S. 22—Proviso—Power of Legislature—Power to abolish prerogative writ of habeas corpus.

The abolition of the right to issue a prerogative writ is not a matter which can be deemed to affect allegiance to the Crown. The penultimate Proviso to S. 22, Councils Act, cannot be said to have restricted the powers of the Legislature and affected its rights to abolish the prerogative writ of habeas corpus. *District Magistrate, Travandrum v. K. C. Mammen Mappillai*, (F. B.)

40 Cr. L. J. 320 :
180 I. C. 216 : 11 R. M. 663 :
1938 M. W. N. 1289 :
1939, 2 M. L. J. 135 :
I. L. R. 1939 Mad. 708 :
A. I. R. 1939 Mad. 120.

—Ss. 22, 23—Powers under.

Under S. 23, Indian Councils Act, 1861, no Ordinance can have any force of law, for more than six months from its promulgation, but the power of the Governor-General-in-Council to pass an Act embodying the provisions of an Ordinance is in no matter controlled or taken away by that section. The Governor-General-in-Council has power to pass an Act, like the Emergency Legislation Continuance Act (I of 1915) which embodies the provisions of Ordinances 3 and 5 of 1914. *In the matter of : Jewa Nathoo*.

18 Cr. L. J. 64 :
37 I. C. 48 : 44 Cal. 459 :
20 C. W. N. 1327 :
A. I. R. 1917 Cal. 243.

—Ss. 39, 40, 43—Power of Local Legislature to alter Penal Code—Previous sanction of the Governor-General—Presumption as to such sanction—Sanction subsequently obtained—Effect of.

A local legislature has the power to alter "in any way" the Penal Code, with the previous sanction of the Governor-General previously communicated. In the absence of evidence as to such sanction, it cannot be presumed that it was not obtained in the ordinary course of official business. The mere omission to obtain a previous sanction does not render any law or regulation of a local Legislature invalid, provided it is assented to by the Governor-General subsequently. An assent subsequently obtained has the effect of prior command or sanction. *Emperor v. Elias Ezekiel*.

1 Cr. L. J. 23 :
6 Bom. L. R. 54.

INDIAN FOREIGN JURISDICTION ORDER IN COUNCIL, 1902

———*Powers under—Government of India Notifications No. 680 I-B, dated 19th March 1912, and No. 732-D, dated March 1913—Cr. P. C.*

The combined effect of Notifications No. 680 I-B, dated 19th March 1912, and No. 732-D, dated March 1913, of the Government of India under the Foreign Jurisdiction Order in Council is to invest the District Magistrate of the Civil and Military Station of Bangalore, with reference to European British subjects, with all the powers exercisable under the Cr. P. C., by a District Magistrate not limited by the special provisions applicable to European British subjects. He, therefore, has power to try a European British subject and sentence him to a term not exceeding two years. *In re : Bob Dore.*

17 Cr. L. J. 293 :
35 I. C. 165 : 4 L. W. 405 :
A. I. R. 1917 Mad. 139.

INDIAN FOREST ACT (VII OF 1878)

———Ss. 28, 29, 32, 34—*Scope of—Protected forest—Cutting trees.*

Accused was convicted of cutting trees reserved in a protected forest under S. 29 (a), Forest Act : *Held*, acquitting the accused, that a protected forest may be notified either under S. 28 or 34, but the powers under both these sections are restricted to land which are forest or waste lands. Whatever liability the accused might have in regard to the provisions of any other law, he could not be convicted under S. 32 (a) of the Act, for the land, which formed part of a survey number in an occupant's holding and was assessed, was not shown to be within the class of lands to which the powers of Government under Ss. 28, 29 and 34, Forest Act applied. *Emperor v. Shesagirirao Vithalrao.*

2 Cr. L. J. 437 :
7 Bom. L. R. 462.

———S. 9.

See also Indian Forest Act, 1878, S. 28.

———S. 32.

See also Indian Forest Act, 1878, S. 28.

———S. 34.

See also Indian Forest Act, 1878, S. 28.

INDIAN HIGH COURT, ACT (STATUTES 24 AND 25, VIC. CHAP. CIV)

———S. 9.

See also Cr. P. C., 1898, S. 485.

———S. 15.

See also Cr. P. C., 1898, S. 485.

———S. 29.

See also Cr. P. C., 1898, S. 29.

INDIAN MEDICAL DEGREES ACT (VII OF 1916)

———S. 5—*Offence under, nature of.*

Lending people to believe that accused's college was an Allopathic College which could award diplomas, and issuing diplomas, constitutes offence under S. 5. *Emperor v. Satish Chandra Datta.*

34 Cr. L. J. 603 :
143 I. C. 567 : 37 C. W. N. 767 :
I. R. 1933 Cal. 443 : A. I. R. 1933 Cal. 456.

INDIAN PRESS (EMERGENCY POWERS) ACT (XXIII OF 1931)

———Ss. 4 (1), 7 (3)—*Legality of order for furnishing security—Interpretation of words used—Attack on Police Officer, whether falls within S. 4 (1).*

Where a newspaper contained a statement that the local Police Inspector and some other Police Officers arrested certain *satyagrahis* at the Congress Office and used *lathis* on them, as a result of which, some of the *satyagrahis* became unconscious, and contained an enumeration of the several injuries inflicted by the Police Officers but there was no suggestion that the misconduct of these Police Officers was approved by the administration or was part of a deliberate policy of repression, and there was no comment of any sort in fact : *Held*, that the words were not such as to bring, directly or indirectly, the Government of India or the administration of justice into hatred or contempt or to excite disaffection towards His Majesty. *In the matter of : "Janasakti" and In the matter of : Sylhet ; an application under S. 23 of the said Act and In the matter of : Biddurajan Chakravarti.*

138 I. C. 849 :
I. R. 1932 Cal. 537 : 36 C. W. N. 962 :
A. I. R. 1932 Cal. 649.

INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT OF 1922

———*Object of.*

The Indian States (Protection against Disaffection) Act, 1922, purports to prevent and not to punish dissemination or circulation of prohibited matter. *Dewan Singh Mastoon v. Emperor.*

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

———S. 2—'Publish', *scope of.*

It is quite logical to hold that the word "publish" is meant to apply to printed document only and although other than printed documents are within the ambit of the Act, the offence contemplated with regard to them is only that of creating them "is the author of." On this view, one is not using the word "publish" in two different senses in the same sentence. *Dewan Singh Mastoon v. Emperor.*

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 19 N. L. J. 84 :
8 R. N. 219 : A. I. R. 1936 Nag. 55.

———S. 3—*Illegality of prosecution.*

Sanction to prosecute under S. 3 (1)—Sanction regarding prosecution of one offence only

INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT OF 1922

—Prosecution for all offences under S. 3 (1), is not legal. *Diwan Singh Maftoon v. Emperor*.

36 Cr. L. J. 744 :
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

—S. 3—'Publishing', meaning of.

The word "publishing" must be understood in its ordinary significance of making known, announcing publicly, or bringing to notice". *Diwan Singh Maftoon v. Emperor*.

36 Cr. L. J. 744 :
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

—S. 3—'Publishing', scope of.

"Editing", "printing" and "publishing" are technical terms and "publishing" must be construed in the strict and narrow sense of the initial publication. *Diwan Singh Maftoon v. Emperor*.

37 Cr. L. J. 474 (2):
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

—S. 3—Right of accused—Offence under S. 3.

A person who is accused of an offence under S. 3, Indian States (Protection against Disaffection) Act, 1922, is entitled to adduce evidence to prove that the allegations made by him are true inasmuch as he has a right to plead extenuating circumstances such as a worthy motive in mitigation of the penalty which may be imposed on him in the event of his conviction, and for making good such a plea, it may be necessary for him to show that the allegations are true. *Santa Singh v. Emperor*.

29 Cr. L. J. 117 :
106 I. C. 709 : A. I. R. 1927 Lah. 710.

—S. 3.—Scope of.

Publication in the strict sense does not include circulation. *Diwan Singh Maftoon v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55

—S. 3—Scope of.

'Publishes'—Meaning must be resolved in favour of the subject. *Diwan Singh Maftoon v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

—S. 3—Scope of.

The imputation contained in any book, newspaper or other document is itself not punishable but the words expressly mentioned there, namely editing, printing, etc., are alone severally or jointly punishable. *Dewan Singh Maftoon v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

—S. 3—Scope of.

The words "any book, newspaper or other document" used in S. 3, mean printed documents only. *Dewan Singh Maftoon v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

INHERENT JURISDICTION

—S. 3 (1).

See Cr. P. C., 1898, Ss. 238, 234, 235.

INDIAN WORKS OF DEFENCE ACT (VII OF 1903)

—S. 36—Continuing fine, when legal—Previous record of conviction for persistence in offence, necessity of.

A Magistrate cannot impose a continuing fine upon an accused under S. 36, Indian Works of Defence Act, 1903, before recording a conviction of the accused's persistence in the offence. *Tika Ram v. Emperor*.

29 Cr. L. J. 739 :
110 I. C. 675 : 26 A. L. J. 1377 :
A. I. R. 1928 All. 687.

INFORMATION

See also (i) Evidence Act, 1872, S. 27.
(ii) Cr. P. C., 1898, Ss. 94, 190.
(iii) Penal Code, 1860, Ss. 211, 471.

—Circumstantial evidence—First information inconsistent with later prosecution story—Such inconsistency a weak feature where prosecution based on circumstantial evidence.

The inconsistency of the first information to the Police with the later prosecution story is a very weak feature of a case which depends entirely on circumstantial evidence. *Nazir Jharudar v. Emperor*.

2 Cr. L. 255 :
9 C. W. N. 474.

—Illegality of a cognizable and a non-cognizable offence—Police reporting the case as non-cognizable—Magistrate's acceptance of the report—Magistrate's subsequent order calling for a charge-sheet from the Police for the cognizable offence—Illegality

Where on an information having been lodged before the Police charging the accused with a cognizable and a non-cognizable offence, the Police reports that the charge of the cognizable offence is false and the Magistrate accepts the Police report and passes orders accordingly, the Magistrate cannot subsequently order the Police to send up the charge-sheet for the cognizable offence, if there appears nothing in the Police report or on the materials before the Magistrate to support a charge of such an offence. Where, in such a case, on the order of the Magistrate, the Police sends up a charge-sheet for the cognizable offence and proceedings are commenced against the accused: Held, that the proceedings so taken are bad and ought to be quashed. *Mokamiji Das v. Emperor*.

6 Cr. L. J. 34 :
11 C. W. N. 832.

INFRINGEMENT OF COPYRIGHT

See also Copyright Act, 1914.

INHERENT JURISDICTION

See also Cr. P. C., 1898, S. 561-A.

INHERENT POWERS

See also (i) Cr. P. C., 1898, S. 561-A.
(ii) Criminal trial.

INLAND STEAM VESSELS ACT (VI OF 1884)

—Ss. 31, 32, 33, 34, 35—*Power of District Magistrate—Rules under the Act, force of—Investigation into collision by a Special Court.*

A serang of a launch which collided with and sank another vessel, was examined on 4th July 1910, as a witness in an investigation under Ss. 81 and 32, Inland Steam Vessels Act, 1884. He was then charged with incompetency or misconduct, and again examined on 18th July. On both occasions he was put on solemn affirmation. The District Magistrate, Rangoon, considering that the serang has given false evidence on both occasions, ordered his prosecution for perjury before the Sub-Divisional Magistrate, who, however, discharged the accused, holding that the District Magistrate had no power under the Rules framed under the Act to administer an oath or affirmation to a party: *Held*, that the Sub-Divisional Magistrate was right as regards the statements made on the 18th July as the serang was then in the position of an accused person under S. 342, Cr. P. C., but wrong as regards the statements made on the 4th July. *Emperor v. Lal Miah*.

12 Cr. L. J. 577 :

12 I. C. 841 : 4 Bur. L. T. 130.

INLAND STEAM VESSELS ACT (I OF 1917)

—S. 58—*Conviction under—Question of mens rea—Certificate intended is one last issued.*

S. 58, Inland Steam Vessels Act, gives no option to the Magistrate but to hold the owner and master liable, if the section is contravened. The question of *mens rea* does not arise. For the purposes of S. 58 the certificate intended is the certificate last issued for the steamer, and it is immaterial that that certificate was under renewal at the time of the offence. *Rivers Steam Navigation Co., Ltd. v. Emperor*.

39 Cr. L. J. 275 :

173 I. C. 249 : 18 P. L. T. 941 :

16 Pat. 668 : 4 B. R. 232 : 10 R. P. 395 :

A. I. R. 1938 Pat. 66.

INQUEST

See also Coroners' Act, 1871.

INQUEST REPORT

—Refusal to sign, whether offence—Powers of Village Head—Cr. P. C., Ss. 174 and 175.

An inquest report is not a statement within the meaning of S. 180, Penal Code, and refusal to sign such a report is not an offence punishable under the Penal Code. The village Head acting under Ss. 174 and 175, Cr. P. C., has only the powers of a Police Officer specified in S. 175. *Andi v. Emperor*.

11 Cr. L. J. 500 :

7 I. C. 557 : 1 M. W. N. 366 :

8 M. L. T. 198.

INSANITY

—See also Penal Code, 1860, Ss. 84, 300.

—*Unsoundness of mind—Delusion—Knowledge of the nature of the act—Penal Code (Act XLV of 1860), S. 84.*

Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape or offer resistance, and the evidence showed that before the commission of the offence, he suffered from a failure of reasoning powers, and also that he entertained delusions as to dangers which threatened his wife: *Held*, that the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that S. 84, Penal Code, applied. *Dil Gazi v. Emperor*.

6 Cr. L. J. 233 :

I. L. R. 34 Cal. 686.

INSTRUMENT OF GAMING

See also Bombay Prevention of Gambling Act, 1887, Ss. 3, 4, 5, 6.

INSUFFICIENCY OF EVIDENCE

See also Cr. P. C., 1898, S. 213.

INSURANCE ACT (IV OF 1938)

—S. 107—*Interpretation—Prosecution for offence under Act—Sanction of Advocate-General, whether necessary.*

The words "who is liable.....S. 41" in S. 107, Insurance Act, qualify the words "any person." Otherwise, the words "no proceedings under this Act" would have no real meaning. Therefore if the complainant wishes to prosecute for an offence under the Insurance Act, he must obtain the sanction of the Advocate-General. *Surendra Nath Sarkar v. Kali Pada Das*.

41 Cr. L. J. 625 :

188 I. C. 537 : I. L. R. 1940, 1 Cal. 575 :

44 C. W. N. 454 : 13 R. C. 14 :

A. I. R. 1940 Cal. 232.

INTENT AND ATTEMPT

—*Distinction between.*

An intent to commit an offence punishable with imprisonment is not the same thing as an attempt to commit such offence. It exists before the attempt is begun. A mere intent is not by itself an offence, therefore, where it is used as essential to bring a particular act within the category of criminal offences, and proof has been given that such an act accompanied by such an intent has been committed, the offence is complete, even though the further act intended may not have been committed or even attempted. *Emperor v. Dhantua Lodhi*.

19 Cr. L. J. 881 :

47 I. C. 77 : A. I. R. 1917 Nag. 90.

INTENT TO DEFRAUD

—*Meaning of.*

The meaning of the term "with intent to defraud" is not restricted to cases of "deceit and injury to person deceived." The term means either an intention to deceive and by means of deceit, to obtain an advantage, or an

INTERNATIONAL LAW

intention that injury should befall some person or persons. *Mauug Tint v. The King*.

40 Cr. L. J. 552 :
181 I. C. 439 : 11 R. Rang. 464 :
A. I. R. 1939 Rang. 156.

INTENTION

See also Penal Code, 1860, Ss. 124-A,
102, 211, 301, 456.

———What is.

Intention is a question of fact which must be decided upon the circumstances of each particular case. It may be a legal fiction as, for instance, where knowledge is presumed in the case of a person who is intoxicated and intention is the inference drawn from such knowledge, or it may be proved by evidence of the particular circumstances in each case. *Nga Po Tha v. Emperor*. 19 Cr. L. J. 375 :
44 I. C. 679 : 3 U. B. R. 1917 54 :
A. I. R. 1918 U. Bur. 24.

INTERCEPTED LETTERS

See also Criminal trial.

INTERFERENCE BY P. C.

———Grounds for.

Intervention in criminal matters, when made—Mistake in admission of improper evidence—Interference will be advised—Murder case—Complaint on ground of improper admission of evidence : *Held*, accused was not prejudiced. *Inayat Khan v. Emperor*.

37 Cr. L. J. 833 P. C. :
163 I. C. 7 : 40 C. W. N. 1101 :
44 L. W. 125 : 1936 M. W. N. 743 :
2 B. R. 637 : 1936 O. L. R. 357 :
9 R. P. C. 1 : 38 P. L. R. 824 :
63 C. L. J. 486 : 38 Bom. L. R. 764 :
17 Lah. 488 P. C. : A. I. R. 1936 P. C. 199.

———Grounds for.

Objection to admission of documents not taken—Effect—Errors of procedure of a technical character : *Held*, their Lordships would not intervene. *Inayat Khan v. Emperor*.

37 Cr. L. J. 833 :
163 I. C. 7 : 44 L. W. 125 :
40 C. W. N. 1101 : 2 B. R. 637 :
1936 M. W. N. 743 :
1936 O. L. R. 357 : 9 R. P. C. 1 :
38 P. L. R. 824 : 63 C. L. J. 486 :
38 Bom. L. R. 764 : 17 Lah. 488 P. C. :
A. I. R. 1936 P. C. 199.

INTERLOCUTORY ORDER

See also Cr. P. C., 1898, S. 144.

INTERNATIONAL LAW

The country where a crime has been committed governs the nature of the offence and the Courts of that country alone have jurisdiction to try the offender. *Gokaldas Amarsee v. Emperor*.

35 Cr. L. J. 585 :
148 I. C. 135 (2) : 27 S. L. R. 392 :
6 R. S. 180 : A. I. R. 1933 Sind 333.

INTERPRETATION

———*Doctrine of ex-territoriality, value of.*

A public ship of a nation in Foreign waters is not and is not treated as territory of her own nation. The doctrine of ex-territoriality which regards the public ship "as a floating portion of the flag State," must be rejected. The true view is that in accordance with the conventions of International Law, the territorial sovereign grants to foreign sovereigns and their envoys and public ships and the naval forces carried by such ships certain immunities. These immunities flow from a waiver by the local sovereign of his full territorial jurisdiction and can themselves be waived. The original jurisdiction in such a case flows afresh. *Chung Chi Cheung v. The King*.

40 Cr. L. J. 291 :
180 I. C. 20 : 11 R. P. C. 151 :
1939 M. W. N. 233 P. C. :
A. I. R. 1939 P. C. 69.

———*Jurisdiction.*

The murder was committed on board the Chinese Maritime Customs cruiser *Cheung, Keng* while that vessel was in Hong Kong territorial waters. Both the murdered man and the accused were in the service of the Chinese Government as members of the officers and crew of the cruiser. The former was Captain, the accused was cabin boy. The accused shot and killed the Captain. He then shot at and wounded the acting Chief Officer, and then went below and shot and wounded himself. The acting Chief Officer as soon as he was wounded, directed the boatswain to proceed to Hong Kong at full speed and hail the Police launch. He wanted, he said, help to arrest the accused from the Hong Kong Police. Within a couple of hours the launch of the Hong Kong Water Police came alongside in answer to the cruiser's signal. The Police took the wounded officer and the accused to hospital. Extradition proceedings were commenced subsequently against the accused on the requisition of the Chairman of the Provincial Government of Kwangtung alleging murder and attempted murder on board the Chinese Customs cruiser within the jurisdiction of China. The crime was in reality committed within British waters. After many adjournments, the Magistrate decided, on evidence called for the defence, that the accused was a British national and that the proceedings, therefore, failed. The accused was at once re-arrested and charged with murder "in the waters of this colony" and duly committed and was tried by British Court: *Held*, that the Chinese Government could clearly have had jurisdiction over the offence. *Chung Chi Cheung v. The King*.

40 Cr. L. J. 291 :
180 I. C. 20 : 11 R. P. C. 151 :
1939 M. W. N. 233 P. C. :
A. I. R. 1939 P. C. 69.

INTERPRETATION

See also Cr. P. C., 1898, S. 350.

———*Intention of Legislature when can be referred to—Power to stopping public street.*

When the ordinary grammatical construction

INTERPRETATION OF STATUTES

of a Statute leads to a manifest contradiction of the apparent purpose of the enactment, the rules of grammar must give way to those of common sense and the Statute must be construed with reference to the intention of the Legislature. Powers materially affecting the welfare of a community must, of course, be exercised not arbitrarily or capriciously but in a reasonable manner, and with due regard to the well-known maxim which has been applied in cases where highways are concerned, *salus populi suprema lex* that "regard for the public welfare is the highest law." *Hyderabad Municipality v. Fakhurudin*. 25 Cr. L. J. 646 : 81 I. C. 134 : 17 S. L. R. 273 : A. I. R. 1925 Sind 90.

—————*Procedure—Law, alteration of—Retrospective effect—Appeal, right of, if affected.*

A new procedure affect bygone transactions, and alterations in procedure are always retrospective. Where the right of appeal is given by law, a suitor cannot be deprived of that right, in a pending action, by an alteration of the law. *Nataraja Pillai v. Rangaswamy Pillai*. 25 Cr. L. J. 361 :

771 I. C. 297 : 46 M. L. J. 274 :

19 L. W. 358 : 47 Mad. 384 :

A. I. R. 1924 Mad. 657.

INTERPRETATION AND EFFECT

—————*Statute of Westminster, 1931, Cls. 2, 3, 7.*

The limitations imposed on the Dominion Legislature by the Colonial Laws Validity Act and by the principle or rule that its powers were limited by the doctrine forbidding extra-territorial legislation have now been abrogated by the Statute of Westminster. There now remain only such limitations as flow from the Act itself, the operation of which as affecting the competence of Dominion Legislation was saved by S. 7 of the Statute, a section which excludes from the competence of the Dominion and Provincial Parliaments any power of "repeal, amendment or alteration" of the Act. *British Coal Corporation v. The King*.

157 I. C. 571 P. C. : 8 R. P. C. 38 :

A. I. R. 1935 P. C. 158.

INTERPRETATION OF ACT

It is an ordinary canon of construction that a word which occurs more than once in the same Act, must be given the same meaning throughout the Act, unless some definition in the Act or the context shows that the Legislature used the word in different senses. *Emperor v. Mukunda*. 8 Cr. L. J. 18 :

4 N. L. R. 78.

INTERPRETATION OF STATUTES

—————Ambiguity.
 —————Application by Courts.
 —————Bye-laws.
 —————Cancellation.
 —————Casus omissus.
 —————Change of language in Statute—Presumption.
 —————Constituent Statute,

INTERPRETATION OF STATUTES

—————Construction of comprehensive defining clause.
 —————Crown.
 —————Double construction possible.
 —————Duty of Court.
 —————Ejusdem generis.
 —————English decisions.
 —————English Law.
 —————Express words.
 —————Expressing doubt, import.
 —————Fiscal Acts.
 —————Fiscal and Penal Statutes.
 —————Fiscal Enactments.
 —————General and Special Act.
 —————Harmonious construction.
 —————Head line.
 —————Headings.
 —————Heading and preamble.
 —————Illustrations.
 —————Inconsistent sections.
 —————Intention.
 —————Intention of Legislature.
 —————Jurisdiction.
 —————Language.
 —————Later enactment.
 —————Legal terms.
 —————Liberal construction.
 —————Literal sense.
 —————Marginal Notes.
 —————' May ' and ' shall ' .
 —————Meaning of words.
 —————Miscellaneous.
 —————Natural justice.
 —————Objects and reasons.
 —————Omissions when can be supplied.
 —————Ordinances.
 —————Other enactments.
 —————Penal Acts.
 —————Penal enactment.
 —————Penal Laws.
 —————Penal provisions.
 —————Penal sections.
 —————Penal Statute.
 —————Plain construction.
 —————Plain intention of Legislature.
 —————Plain meaning.
 —————Powers of Legislature.
 —————Previous Law.
 —————Previous rulings, if should be relied on.
 —————Procedure prescribed by Statute.
 —————Public policy.
 —————Punitive enactment.
 —————Re-enactment.
 —————Repeal of earlier enactment.
 —————Retrospective effect.
 —————Rules made Act.
 —————Specific provision.
 —————Statement of object and reasons.
 —————Strict construction.
 —————Temporary enactments.
 —————True construction.
 —————Two constructions.
 —————Two interpretations.
 —————Words clear and unambiguous—Hardship no criterion.
 —————Words from one cannot illustrate meaning of the other.
 —————Words having popular meaning—Construction—Exception,

INTERPRETATION OF STATUTES

- See also (i) Arms Act, 1878, S. 19.
 (ii) Bombay District Municipal Act, 1901, S. 91-A.
 (iii) Cr. P. C., 1898, Ss. 161, 195, 263, 491.
 (iv) Evidence Act, 1872, S. 27.
 (v) Government of India Act, 1919, S. 72.
 (vi) N.-W. P. and Oudh Municipalities Act, 1900, Ss. 87, 3.
 (vii) Penal Code, 1860, Ss. 171-F, 467.
 (viii) Police Act, 1861, S. 34.
 (ix) Railway Act, 1890, S. 122.

———Ambiguity.

It is a rule of construction that in interpreting a section which is ambiguous, the Court may look to the state of the law as it had existed before the Statute containing the section was passed. *Bhikaji v. Maneckji*.

5 Cr. L. J. 334 ;
 9 Bom. L. R. 359.

———Ambiguity.

The interpretation clause contained in most modern Statutes should be used for interpreting words which are ambiguous or equivocal only, and not so as to disturb the meaning of such as are plain. It is not to be construed as a positive enactment. *Manik Ram Ahir v. Emperor*.

18 Cr. L. J. 404 ;
 38 I. C. 964 ; 2 P. L. J. 91 ;
 1917 Pat. 89 ; 2 P. L. W. 357 ;
 A. I. R. 1916 Pat. 133 (2).

———Ambiguity.

Where an equivocal word or an ambiguous sentence is used in a disabling section, the construction which is in favour of the freedom of the subject should be given effect to. *Emperor v. Asiat*.

36 Cr. L. J. 902 ;
 156 I. C. 294 ; 29 S. L. R. 19 ;
 7 R. S. 240 ; A. I. R. 1935 Sind 102.

———Application by Courts.

Courts have to administer and to apply as accurately as lies in their power, the precise words of the relevant statutory enactment. *Abdul Rahman v. Emperor*.

36 Cr. L. J. 982 ;
 156 I. C. 678 ; 62 Cal. 749 ;
 8 R. C. 21 ; A. I. R. 1935 Cal. 316.

———Bye-laws.

Directions, rules or bye-laws, issued under a statutory power, must not be in excess of the power authorising them nor repugnant to the Statute or to the general principles of law. *In the matter of: Khairati Ram*.

32 Cr. L. J. 913 ;
 132 I. C. 519 ; 32 P. L. R. 493 ;
 12 Lah. 635 ; I. R. 1931 Lah. 615 ;
 A. I. R. 1931 Lah. 476.

———Bye-laws.

The reasonable and equitable nature of bye-laws framed by local bodies is a matter open to the Criminal Courts to consider when offenders against the bye-laws are put up for

INTERPRETATION OF STATUTES

prosecution before them. *Satyannarayana v. H. B. Yorke*.

34 Cr. L. J. 26 ;
 140 I. C. 524 ; 1933 M. W. N. 102 ;
 37 L. W. 264 ; I. R. 1933 Mad. 17 ;
 A. I. R. 1933 Mad. 148.

———Bye-laws.

Where there is a competent authority to which an Act of Parliament entrusts the power of making regulations, it is for the authority to decide what regulations are necessary ; and any regulations which they may decide to make should be supported unless they are manifestly unreasonable or unfair. *S. R. Varma v. Emperor*.

34 Cr. L. J. 693 ;
 144 I. C. 198 ; 37 C. W. N. 344 ;
 60 Cal. 689 ; I. R. 1933 Cal. 525 ;
 A. I. R. 1933 Cal. 243.

———Cancellation.

In order that one Statute may cancel another, the two must be mutually destructive. *The Public Prosecutor v. Ranganayakalu Chetty*.

28 Cr. L. J. 491 ;
 101 I. C. 667 ; 25 L. W. 768 ;
 38 M. L. T. 373 ; 52 M. L. J. 653 ;
 50 Mad. 845 ; A. I. R. 1927 Mad. 602.

———Casus omissus.

It is not permissible to create a *casus omissus* by interpretation save in some case of strong necessity. *Emperor v. Rustumji*.

5 Cr. L. J. 338 ;
 9 Bom. L. R. 363.

———Change of language in Statute—Presumption.

A change of language in the same Code or Act may be presumed to indicate a change of intention on the part of the Legislature. *Farid v. Piru*.

16 Cr. L. J. 249 ;
 28 I. C. 105 ; 8 S. L. R. 215 ;
 A. I. R. 1914 Sind 11.

———Constituent Statute.

In interpreting a constituent or organic statute, that construction most beneficial to the widest possible amplitude of its powers must be adopted. *British Coal Corporation v. The King*.

157 I. C. 571 P. C. ; 8 R. P. C. 38 ;
 A. I. R. 1935 P. C. 158.

———Construction of comprehensive defining clause.

The rule with regard to the effect of interpretation clause of a comprehensive nature, such as those defining a term as "including" something, is that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require they should. *Emperor v. Braz H. De Souza*.

12 Cr. L. J. 426 ;
 11 I. C. 610 ; 13 Bom. L. R. 494 ;
 35 Bom. 412.

INTERPRETATION OF STATUTES

—Crown.

It is a universal rule of construction that the Crown is not bound by an Act of Parliament unless named therein expressly or by necessary implication. *Hiranand Khushiram Kirpalani v. Secretary of State*.

153 I. C. 142 : 36 Bom. L. R. 820 :
58 Bom. 635 : 7 R. B. 212 (2).
A. I. R. 1934 Bom. 379.

—Double construction possible.

In construing an Act of the Legislature, the wording of which is open to two possible constructions, the Court must look at what appears to have been the real object of the Act in order to determine which of the two rival constructions should be adopted. *Bastiao v. Emperor*.

35 Cr. L. J. 1036 (2) :
149 I. C. 1129 : 36 Bom. L. R. 430 :
6 R. B. 415 : A. I. R. 1934 Bom. 213.

—Duty of Court.

It is not within the competence of any Court to usurp the functions of the Legislature, and a Court cannot, in any way, limit or extend the scope of any provision of the law on grounds of policy or other considerations. *Shebalak Singh v. Kamaruddin Mandal*.

23 Cr. L. J. 549 :
68 I. C. 149 : 3 P. L. T. 573 : 1922 Pat. 241 :
4 U. P. L. R. Pat. 57 : A. I. R. 1922 Pat. 435.

—Duty of Court.

No universal rule can be laid down for the construction of Statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the Statute to be construed. *Government of Assam v. Sahebulla*.

24 Cr. L. J. 881 :
75 I. C. 129 : 38 C. L. J. 77 : 27 C. W. N. 857 :
51 Cal. 1 : A. I. R. 1924 Cal. 1.

—Duty of Court—Principles.

The fact, that a Judge thinks that a particular enactment is irrational or unfair, is irrelevant, provided the enactment is in such clear terms as to admit of no doubt as to its meaning. But a Judge, construing an Act of Parliament, is not a mere automaton whose only duty is to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament, and if he comes to the conclusion that a particular construction leads to a result which he considers irrational or unfair, he is entitled, and indeed bound to assume that the Legislature did not intend such a construction to be adopted, and to try to find some more rational meaning to which the words are sensible. *Emperor v. Somabhai Govindbhai*. (F. B.)

40 Cr. L. J. 97 :
178 I. C. 588 : 40 Bom. L. R. 1082 :
11 R. B. 176 : I. L. R. 1939 Bom. 53 :
A. I. R. 1938 Bom. 484.

INTERPRETATION OF STATUTES

—Duty of Court.

When once the intention of the Legislature is plain, it is not the province of the Court to scan its wisdom or its policy. Its duty is not to make the law reasonable but expound it as it stands, according to the real sense of the words. *Emperor v. Thakordas Motiram*.

26 Cr. L. R. 1463 :
89 I. C. 1031 : 27 Bom. L. R. 1023 :
A. I. R. 1925 Bom. 505.

—Ejusdem generis—Word of general indication succeeding words of specialised indication—Construction.

Any word of general indication succeeding a catalogue of words having a specialised indication must be interpreted to have a meaning *ejusdem generis*. *Emperor v. Basantlal Juthalal*.

38 Cr. L. J. 694 :
169 I. C. 36 : 9 R. N. 294 :
A. I. R. 1937 Nag. 102.

—English decisions.

Courts are not permitted to say, after discussion of the English cases on which the provision is based, that the legislature must have meant something different from what it has in fact laid down. *Emperor v. Ramanuja Ayyangar*. (F. B.)

36 Cr. L. J. 1442 (2) :
158 I. C. 764 : 1935 M. W. N. 1479 :
58 Mad. 642 : 42 L. W. 124 : 68 M. L. J. 73 :
8 R. M. 331 : A. I. R. 1935 Mad. 528.

—English Law.

Construction of an Indian Statute depends entirely upon the meaning of words therein used and its interpretation must not be influenced by any similar provisions of the English Law. *Sukhan v. Emperor*.

30 Cr. L. J. 414 :
115 I. C. 6 : 30 P. L. R. 197 :
I. R. 1929 Lah. 342 : 11 L. L. J. 159 :
10 Lah. 283 : A. I. R. 1929 Lah. 314.

—English Law—English case interpreting English Act—Whether can be a guide in interpreting Indian Provincial Act.

There is a danger in accepting an English case interpreting an Act of Parliament as a guide for the interpretation of a section of an Indian Provincial Statute. *Tarachand Pribhdas v. Emperor*.

39 Cr. L. J. 668 :
175 I. C. 834 : 11 R. S. 7 :
32 S. L. R. 622 : A. I. R. 1938 Sind 116.

—English Law.

In interpreting the Statutory provisions of an Indian Act, the Courts should examine the language of the Indian Statute itself uninfluenced by any consideration derived from the English Law on which it might have been based. *Diwan Singh Maftoon v. Emperor*.

36 Cr. L. J. 744 :
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

—English Law.

It may be permissible to refer to the principles of English Law, if there is any ambiguity in the language used by the Statute, and adopt

INTERPRETATION OF STATUTES

the interpretation which is in conformity with those principles. But Courts are not at liberty to read into the section words which do not exist there. *Dial Singh v. Emperor*.

37 Cr. L. J. 508 :
161 I. C. 898 : 37 P. L. R. 806 :
16 Lah. 651 : 8 R. L. 814 :
A. I. R. 1936 Lah. 337.

—English Law.

The acceptance of a rule or principle adopted in or derived from English Law is not permissible if thereby the true and actual meaning of the Statute under construction be varied or denied effect. *Aung Hla v. Emperor*. (S. B.)

33 Cr. L. J. 205 :
135 I. C. 849 : 9 Rang. 404 :
I. R. 1932 Rang. 65 :
A. I. R. 1931 Rang. 235.

—Express words — Curtailment of the jurisdiction of a Superior Court.

The jurisdiction of a Superior Court cannot be taken away except by express words or necessary implication. *Emperor v. Karim Bahadin*.

13 Cr. L. J. 31 :
13 I. C. 223 : 5 S. L. R. 179.

—Express words — Expressio unius est exclusio alterius.

A litigant cannot be allowed to blow hot and cold in the same matter. *Pandurang S. Kalli v. Minnie Henrietta Kalli*.

29 Cr. L. J. 513 :
109 I. C. 337 : 30 Bom. L. R. 350 :
52 Bom. 262 : A. I. R. 1928 Bom. 117.

—Expression of doubtful import.

In construing an expression of doubtful import occurring in a Statute, the Court may well have regard to considerations outside the language of the Act. *Emperor v. Almaram*.

6 Cr. L. J. 47.
9 Bom. L. R. 681 : I. L. R. 31 Bom. 480.

—Fiscal Acts.

It is a well-established principle that fiscal enactments must be construed strictly. *Bhola Ram & Sons, Ltd. v. Emperor*.

150 I. C. 781 (2) : 36 P. L. R. 9 :
15 Lah. 501 : 7 R. L. 24 :
A. I. R. 1934 Lah. 530.

—Fiscal and Penal Statutes.

Where there is reasonable ground for doubt as to the correct interpretation of an enactment that interpretation should be adopted which is most in favour of the person to be penalised. This principle is of general application to Fiscal and Penal Statutes. Where the matter is in doubt, that interpretation should be given to the Statute which will prevent or will not permit of an abuse of the process of the law. *Emperor v. Himanchal Singh*. (F. B.)

31 Cr. L. J. 546 :
123 I. C. 673 : 1930 A. L. J. 354 :
14 R. D. 566 : 52 All. 568 :
A. I. R. 1930 All. 265.

—Interpretation of Statutes.

Fiscal enactments. *Hira Chand v. Emperor*.

32 Cr. L. J. 946 :
132 I. C. 694 : 32 P. L. R. 639 :
I. R. 1931 Lah. 662.

INTERPRETATION OF STATUTES

—General and Special Act.

Where there is nothing in the Special Act to exclude the operation of the general criminal law, it cannot be inferred that there was an intention on the part of the Legislature to exclude it. *Joti Prasad Gupta v. Emperor*.

33 Cr. L. J. 236 :
136 I. C. 91 : 53 All. 642 :
I. R. 1932 All. 139 : A. I. R. 1932 All. 18.

—Harmonious construction.

If the words of an Act of the Legislature are capable grammatically of two meanings, the Court must look to the whole of the Act in order to determine which meaning best gives effect to the intention of the Legislature. *Emperor v. G. G. Munshi*.

33 Cr. L. J. 689 :
138 I. C. 703 : 34 Bom. L. R. 595 :
56 Bom. 264 : I. R. 1932 Bom. 416 :
A. I. R. 1932 Bom. 427.

—Harmonious construction.

The same meaning must, in the absence of any strong reason to the contrary, be given to similar words in two contiguous sections of the same Act. *Kulroo v. Emperor*.

26 Cr. L. J. 1112 :
88 I. C. 280 : 23 A. L. J. 364 :
47 All. 575 : A. I. R. 1925 All. 434.

—Head line.

Where there is a doubt as to the interpretation of a section, that interpretation which will give effect to the object stated in the head-line, should be adopted. *Bastian v. Emperor*.

35 Cr. L. J. 1036 (2) :
149 I. C. 1129 : 36 Bom. L. R. 430 :
6 R. B. 415 : A. I. R. 1934 Bom. 213.

—Headings.

The headings in a Statute can be referred to for the purpose of finding out the meaning of a doubtful expression in a section. *Emperor v. Ismail Sayad Saheb Mujawar*. (F. B.)

34 Cr. L. J. 1239 :
146 I. C. 248 : 35 Bom. L. R. 886 :
57 Bom. 537 : 6 R. B. 139 :
A. I. R. 1933 Bom. 417.

—Heading and preamble.

Both the heading and the preamble of the Act are to be taken into consideration in interpreting the clauses of the Act, but they are not the operative portion of the Act. *Mohammad Yusuf v. Imtiaz Ahmad Khan*. (F. B.)

40 Cr. L. J. 421 :
180 I. C. 745 : 1939 O. W. N. 296 :
1939 O. L. R. 194 : 11 R. O. 248 :
14 Luck. 492 : A. I. R. 1939 Oudh 131.

—Illustrations.

Illustrations, although attached to, do not legally form part of the Act and they are not absolutely binding on the Courts; they merely go to show the intention of the framers of the Act, and in that and other respects, they may be useful, provided they are correct. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

INTERPRETATION OF STATUTES

———*Illustrations — Illustrations as aid to interpretation.*

Illustrations are part and parcel of enactment, and when a Court is called upon to interpret a piece of an enactment which comprises both the substantive provision and an illustration of the same, the Court is not justified in rejecting the illustration as a guide to the interpretation of the substantive provision. *Ram Lal v. Emperor*

28 Cr. L. J. 1029 :
106 I. C. 213 : 1 Luck. Cas. 579 :
A. I. R. 1928 Oudh 15.

———*Illustrations — Illustrations cannot control section.*

The Illustrations of a section cannot be held to control the section. *Emperor v. Ambaji Dhakya Karkari*.

29 Cr. L. J. 545 :
109 I. C. 481 : 30 Bom. L. R. 380 :
52 Bom. 257 : A. I. R. 1928 Bom. 143.

———*Illustrations—Illustrations, not to control section.*

Illustrations cannot control the general words of a section. *Emperor v. Phillip Spratt* (No. 3).

29 Cr. L. J. 320 :
108 I. C. 30 : 30 Bom. L. R. 315 :
A. I. R. 1928 Bom. 78.

———*Illustrations, value of.*

The statements of law in the illustrations used in an Act, cannot be taken as laying down substantive law; they merely go to show the intention of the framers of the Act and may be useful, if correct. *Nga Mya v. Emperor*.

17 Cr. L. J. 49 :
32 I. C. 641 : 8 Bur. L. T. 220 :
8 L. B. R. 306 : A. I. R. 1916 L. Bur. 114.

———*Inconsistent sections.*

If two co-ordinate sections of a Statute are apparently inconsistent, an effort must be made to reconcile them. *Ratansi Hirji v. Emperor*.

31 Cr. L. J. 103 :
120 I. C. 356 : 31 Bom. L. R. 581 :
53 Bom. 627 : A. I. R. 1929 Bom. 274.

———*Intention.*

Words used should be taken as guide to discovery of intention of Legislature. *Diwan Singh Maftoon v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

———*Intention of Legislature—Court putting certain construction on enactment—Enactment not amended—Presumption.*

Where a provision of an enactment has been interpreted by Courts in a particular manner and that enactment has been subsequently amended but the said provision of it has been left intact, the conclusion is irresistible that the interpretation of the Court is in accordance with the intention of the Legislature. *Thiraj v. Emperor*.

29 Cr. L. J. 810 :
111 I. C. 314 : 10 Lah. 187 :
A. I. R. 1928 Lah. 567.

INTERPRETATION OF STATUTES

———*Intention of Legislature—History of legislation, when can be referred to.*

A reference to the history of legislation can only be legitimately made when reasonable doubt is entertained as to the true construction of a Statute. The proper course is, in the first instance, to examine the language of the Statute, to interpret it, to ask what is its natural meaning, uninfluenced by considerations derived from the previous state of the law. To begin with, an examination of the previous state of the law on the point is to attack the problem at the wrong end; and it is a grave error to force upon the plain language of the section of an Indian Statute, an interpretation which the words will bear, on the assumption of a supposed policy on the part of the Legislature to adopt or to vary, as the case may be, the rules of the English Law on the subject. The intention of the Legislature is to be gathered from the words used in the context in which they stand. *Emperor v. Barendra Kumar Ghose*. (F. B.)

25 Cr. L. J. 817 :
81 I. C. 353 : 38 C. L. J. 411 :
28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

———*Intention of Legislature.*

In construing an Act of Parliament the Court always has to ascertain the intention of the Legislature from the language of the whole enactment, and it sometimes becomes necessary to do a certain amount of violence to the language in order to give effect to the intention to be gathered from the enactment as a whole. *Vaijappa v. Emperor*.

36 Cr. L. J. 1470 (2) :
158 I. C. 649 : 37 Bom. L. R. 739 :
8 R. B. 138 : 60 Bom. 55 :
A. I. R. 1935 Bom. 402.

———*Intention of Legislature.*

In order to find out the intention of the Legislature in enacting a particular provision in a Statute, the Court must have regard to the language of the whole section and not confine itself to its words detached from the whole of the context. *Bhikaji v. Maneckji*.

5 Cr. L. J. 334 :
9 Bom. L. R. 359.

———*Intention of Legislature.*

It must always be presumed that the Legislature does not intend to make any alteration in the law beyond what it explicitly declares, either in express terms or by implication, or in other words beyond the immediate scope and object of the Statute. In all general matters beyond that the law remains undisturbed. It is in the highest degree improbable that the Legislature would overthrow fundamental principles or depart from the general system of law without expressing its intention with irresistible clearness. *Sobhraj Dwarkadas v. Emperor*.

19 Cr. L. J. 591 :
45 I. C. 399 : 11 S. L. R. 128 :
A. I. R. 1918 Sind 22.

INTERPRETATION OF STATUTES

———*Intention of Legislature.*

Provisions should be reconciled as far as possible—Intention of Legislature must be given effect to. *Giribala Dasi v. Madu Gazi.*

34 Cr. L. J. 433 (2) :
142 I. C. 891 : 36 C. W. N. 928 :
56 C. L. J. 79 : 60 Cal. 233 :
I. R. 1933 Cal. 317 : A. I. R. 1932 Cal. 699.

———*Intention of Legislature.*

Where the language of a Statute is clear and unambiguous, it must be interpreted in its ordinary sense. A reasonable interpretation is to be preferred to one that leads to unreasonable results. The state of the law at the time a Statute was passed is a matter material to be considered to arrive at the intention of the Legislature. *Dwarka Mahlon v. Patna City Municipality.*

37 Cr. L. J. 634 (2) :
162 I. C. 550 : 2 B. R. 466 :
15 Pat. 36 : 17 P. L. T. 123 :
8 R. P. 541 : A. I. R. 1936 Pat. 282.

———*Jurisdiction.*

Courts ought not to be astute in finding reasons for assuming jurisdiction to deal with crimes committed outside their jurisdiction, and if there is a section dealing with a particular form of crime, it would require strong words to show that any section of more general application was intended to deal also with that particular crime. : *In re : Jivandas Savchand.*

32 Cr. L. J. 331 :
129 I. C. 385 : 32 Bom. L. R. 1195 :
I. R. 1931 Bom. 161 : 55 Bom. 59 :
A. I. R. 1930 Bom. 490.

———*Language.*

Due meaning should be given to every part of language employed. *Pichai Pillai v. Balasundara Mudaly.*

36 Cr. L. J. 1241 :
157 I. C. 24 : 41 L. W. 558 :
1935 M. W. N. 457 : 68 M. L. J. 608 :
8 R. M. 103 : 58 Mad. 787 :
A. I. R. 1935 Mad. 442.

———*Language.*

In construing a Statute, the proper course is, in the first instance, to examine the language of the Statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law and not to start with inquiring how the law previously stood and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. *Emperor v. Nga Tha Din.*

27 Cr. L. J. 881 :
96 I. C. 145 : 5 Bur. L. J. 30 :
4 Rang. 72 : A. I. R. 1926 Rang 116.

———*Language.*

Intention of Legislature to be judged from language used. *Public Prosecutor, Peshawar Division v. Muqarrab.*

34 Cr. L. J. 212 :
141 I. C. 881 : I. R. 1933 Pesh. 1 :
A. I. R. 1933 Pesh. 3.

INTERPRETATION OF STATUTES

———*Language—Language of section clear—Court should not indulge in surmises.*

Where the language of a section is clear, it is not for a Court to probe into the mind of the Legislature or to indulge in surmises. *Qamarali v. Tulsi.*

39 Cr. L. J. 981 :
178 I. C. 54 : 11 R. N. 197 :
A. I. R. 1938 Nag. 433.

———*Language—Speculation as to meaning is not proper.*

The object of the Legislature must be ascertained from within the four corners of the Act. It is not open to the Court to speculate as to what the Legislature probably meant, and then do violence to the language of the enactment in order to give effect to the presumed intention. *Emperor v. Chhotalal Amarchand.*

(F. B.) 38 Cr. L. J. 156 :
166 I. C. 7 : 38 Bom. L. R. 1164 :
9 R. B. 221 : I. L. R. 1937 Bom. 183 :
A. I. R. 1937 Bom. 1.

———*Language—Speculation regarding intention of Legislature—Construction favourable to subject preferred.*

It is a well-established proposition, that when the language of a Statute is clear, it is not permissible to speculate as to the intention of the Legislature. It is a cardinal principle of construction of Penal Statutes, that in case of doubt, the construction favourable to the subject should be preferred. Therefore, where the question is about the right of appeal to an accused person and the plain construction of the section appears to be in favour of such a right, it should not be rejected on the basis of any speculation as to the intention of the Legislature. *Thiraj v. Emperor.*

30 Cr. L. J. 1019 :
119 I. C. 265 : I. R. 1929 Lah. 857 :
11 Lah. 55 : 31 P. L. R. 464 :
A. I. R. 1929 Lah. 641.

———*Language.*

The proper method of construction of a Statute is to interpret its language as it stands uninfluenced by considerations of what the law may be elsewhere. *Venkatachala Goundan v. Emperor.*

33 Cr. L. J. 215 :
136 I. C. 33 : 1931 M. W. N. 1053 :
35 L. W. 44 : I. R. 1932 Mad. 241 :
A. I. R. 1932 Mad. 21.

———*Later enactment.*

Where the words and expressions in a Statute are plainly taken from an earlier Statute in *pari materia* and have received judicial interpretation, it must be assumed that the Legislature was aware of such interpretation and intended it to be followed in the later enactment. A decision under the old Succession Act was relied on in construing the new Act of 1925. *In the goods of : Sarah Ezra.*

134 I. C. 443 : 58 Cal. 761 :
I. R. 1931 Cal. 827 :
A. I. R. 1931 Cal. 560.

———*Legal terms.*

In interpreting a Statute, the settled rule of construction is that where the Legislature

INTERPRETATION OF STATUTES

uses a legal term which has a known significance, it must be assumed that the term has been used in that sense and in no other. *Jhari Singha v. Emperor*. 21 Cr. L. J. 443 :

56 I. C. 235 : A. I. R. 1920 Pat. 349.

———*Liberal construction*—*Performance of duty in strictest language of Act, idle or impossible—Enactment to be understood as dispensing with strict performance of that duty.*

If in the interpretation of Statute, the Court finds the duty either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when performance in the strictest language of the enactment is either idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty. *Emperor v. Ganpal Laxman Kalgutkar*. 39 Cr. L. J. 933 :

177 I. C. 665 : 40 Bom. L. R. 820 :

11 R. B. 112 : A. I. R. 1938 Bom. 427.

———*Literal construction—Literal construction, if prevails when opposed to intention of Legislature.*

It is a well-recognized canon of construction that the more literal construction ought not to prevail if it is opposed to the intentions of the Legislature as apparent from the Statute, and if the words are sufficiently flexible to admit of some other construction by which the intention will be better appreciated. *Bachoo Kandero v. Emperor*. (F. B.)

39 Cr. L. J. 239 :

172 I. C. 968 : 10 R. S. 188 :

32 S. L. R. 185 : A. I. R. 1938 Sind 1.

———*Literal construction—Section to be construed literally unless it is repugnant to general purpose of Act or other section cuts down its meaning.*

It is a cardinal rule of construction that a section of a statute must be construed literally unless the section itself is repugnant to the general purpose of the Act, and there is some other section which cuts down its meaning. *Minho v. Emperor*. 39 Cr. L. J. 294 :

173 I. C. 325 : 10 R. S. 201 :

32 S. L. R. 129 : A. I. R. 1938 Sind 9.

———*Literal sense.*

The words have to be read in their literal sense. The Courts cannot put upon them a construction which they believe to represent the intention of the Legislature at the time of the passing of the Statute. *Government Advocate, N.-W. F. Province v. Fazal Rahim*.

34 Cr. L. J. 670 :

143 I. C. 508 : 1 R. 1933 Pesh. 29 :

A. I. R. 1933 Pesh. 69.

———*Marginal notes—Implied repeal.*

Side notes to sections are no real guides to the intention of the Legislature, the safest guide to it being the language of the section itself. Abrogation of a section by implication is permissible under law. *Bhagia v. Emperor*. 28 Cr. L. J. 340 :

100 I. C. 820 : A. I. R. 1927 Nag. 203.

———*Marginal notes.*

It is not a legitimate canon of construction

INTERPRETATION OF STATUTES

to refer to the marginal note for the purpose of construing a section. *In re : P. Natasa Mudaliar*. 28 Cr. L. J. 116 :

99 I. C. 324 : 51 M. L. J. 704 :

1927 M. W. N. 6 : 26 L. W. 890 :

38 M. L. T. 166 : 50 Mad. 733 :

A. I. R. 1927 Mad. 156.

———*Marginal notes, reference to, whether permissible.*

It is permissible in India to refer to marginal notes to a section of an Act of the Legislature to explain an ambiguity in the section. *Emperor v. Lukman*. 27 Cr. L. J. 1233 :

98 I. C. 49 : A. I. R. 1927 Sind 39.

———*Marginal notes.*

There is no objection to refer to marginal notes for the purpose of construing or interpreting the sections of an Act. *Emperor v. Ismail Sayad Sabab Minjawan*. (F. B.)

34 Cr. L. J. 1239 :

146 I. C. 248 : 35 Bom. L. R. 886 :

57 Bom. 537 : 6 R. B. 139 :

A. I. R. 1933 Bom. 417.

———*Marginal notes, value of, in interpreting section.*

A marginal note is of no value in interpreting a section. *Minho v. Emperor*.

39 Cr. L. J. 294 :

173 I. C. 325 : 10 R. S. 201 :

32 S. L. R. 129 : A. I. R. 1938 Sind 9.

———*Marginal notes.*

Where a marginal note has been inserted by or under the authority of the Legislature, it can be referred to for an exposition of the meaning of the section. *Abdul Hakim v. Fozu Mita*. 36 Cr. L. J. 857 :

155 I. C. 1003 : 39 C. W. N. 57 :

62 Cal. 266 : 7 R. C. 655 :

A. I. R. 1935 Cal. 287.

———*Marginal notes.*

Where the terms of a section of a Statute are ambiguous or obscure, reference to the marginal notes is permissible. *Ganpatrao Devaji v. Emperor*. 34 Cr. L. J. 311 :

142 I. C. 277 : 28 N. L. R. 302 :

I. R. 1933 Nag. 104 :

A. I. R. 1932 Nag. 174.

———*'May' and 'shall'.*

Where the Legislature in revising a Statute alters the word 'shall' into 'may', the deduction which is usually made from the change is that whatever it was said *shall* be done before was compulsory, whereas the alteration of 'shall' to 'may' makes the action discretionary. *K. C. V. Reddy v. Emperor*.

31 Cr. L. J. 793 :

125 I. C. 266 : 8 Rang. 25 :

A. I. R. 1930 Rang. 201.

———*Meaning of words—Words should be construed in reference to context—Same word has same meaning in Statute.*

It is the primary principle of construction of Statutes that the words used in any enactment are to be construed with reference

INTERPRETATION OF STATUTES

to their context. There is a presumption that the Legislature uses, as far as possible, the same word in the same sense in a Statute. This rule will apply with greater force when in one and the same section the same word is used. *Amdu Miyan v. Emperor*. (F. B.)

38 Cr. L. J. 237 :
166 I. C. 582 : 9 R. N. 126 :
I. L. R. 1937 Nag. 315 :
A. I. R. 1937 Nag. 17.

———*Meaning of words.*

Words used in an enactment should be taken in their ordinary sense especially when the sense is appropriate to the context. *Mula Mal v. Emperor*

31 Cr. L. J. 49 :
120 I. C. 188 : 11 Lah. 24 :
A. I. R. 1929 Lah. 607.

———*Miscellaneous.*

Where a Sessions Judge, in referring to the evidence of certain witnesses who had knowledge of the commission of an offence but did not give out the information for some time until they were threatened with prosecution for keeping back the knowledge of the fact, warned the Jury with regard to their evidence, told them about the suspicion arising from the delay, and also placed before the Jury the explanation which those witnesses gave for the delay and advised the Jury to place proper value on their evidence, the mere fact that he did not expressly tell the Jury that these witnesses were no better than mere accomplices, does not amount to a misdirection of the Jury. *Umed Sheikh v. Emperor*.

27 Cr. L. J. 1011 :
96 I. C. 867 : 30 C. W. N. 816.

———*Natural justice.*

If a Legislature should deviate from the straight and narrow path of natural justice, to correct their mistake is not one of the duties committed for the judiciary. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

———*Objects and reasons.*

It is a fundamental principle of the interpretation of Statutes that if they are capable of an interpretation as they stand, the objects and reasons for which they were passed, must not be considered. *Dil Jan v. Municipal Committee, Peshawar*.

40 Cr. L. J. 851 (a) :
184 I. C. 16 : 12 R. Pesh. 24 :
A. I. R. 1939 Pesh. 40.

———*Object and reasons.*

The only safe and certain guide in interpreting an Act or Ordinance is the Act or the Ordinance itself, and when the words are perfectly plain, the Court need not look any further or speculate as to intention by reference to objects and reasons. *Jugal Kishore Dhar v. Emperor*.

33 Cr. L. J. 28 :
134 I. C. 1129 : 35 C. W. N. 436 :
I. R. 1932 Cal. 41 :
A. I. R. 1931 Cal. 633.

INTERPRETATION OF STATUTES

———*Omissions, when can be supplied.*

An omission which the context shows with reasonable certainty to have been unintended may be supplied, at least in enactments which are construed beneficially, as distinguished from strictly. The tendency of modern decisions upon the whole is to narrow materially the difference between what is called a strict and a beneficial construction. All Statutes are now construed with a mere attentive regard to the language, and criminal Statutes with a more rational regard to the aim and intention of the Legislature than formerly. *Emperor v. Noor Mahomed*.

28 Cr. L. J. 913 :
105 I. C. 433 : A. I. R. 1928 Sind 1.

———*Ordinances.*

To interpret ordinances is a function reserved for Courts established for that purpose. Though exposition proposed by Executive Government cannot be received as authority, in particular instances it may set forth intention of law given in which case it may be relied on. *Jethmal Parsram v. Emperor*.

33 Cr. L. J. 902 :
139 I. C. 777 : I. R. 1932 Sind 146 :
A. I. R. 1932 Sind 107.

———*Other Enactments.*

The provisions of an Act of one Provincial Legislature form a very poor guide to the construction of the provisions of an Act of another Provincial Legislature. *Emperor v. Khin Maung*.

35 Cr. L. J. 599 :
147 I. C. 1152 : 6 R. Rang. 191 :
A. I. R. 1933 Rang. 275.

———*Penal Act.*

Courts must generally deal in cases of doubt against any construction of a Penal Law which is patently oppressive to the subject and in favour of a construction which is in accord with the general policy of the Criminal Law which is to protect the subject from a fresh prosecution after he has been convicted or acquitted in respect of what is in substance the same matter. *A. M. Rangachariar v. Venkatasami Chetty*.

36 Cr. L. J. 311 :
153 I. C. 322 : 40 L. W. 834 :
1934 M. W. N. 1088 :
67 M. L. J. 873 :
58 Mad. 513 : 7 R. M. 343 :
A. I. R. 1935 Mad. 56 (2).

———*Penal Act.*

Criminal Law connotes only quality of such act or omission as is prohibited under appropriate penal provisions by authority of State. *Proprietary Articles Trade Association v. Attorney-General of Canada*.

32 Cr. L. J. 899 :
132 I. C. 593 : I. R. 1931 P. C. 177 :
A. I. R. 1931 P. C. 94.

———*Penal Act.*

Every clause of a Statute should be construed with reference to the context and other clauses of the Act, so as, so far as

INTERPRETATION OF STATUTES

possible, to make a consistent enactment of the whole Statute or series of Statutes relating to the subject-matter. The law is jealous of the liberty of the subject and does not allow his detention by the Police unless there is a legal sanction for it. *In the matter of : Khairati Ram.*

32 Cr. L. J. 913 :
132 I. C. 519 : 12 Lah. 635 :
32 P. L. R. 493 :
I. R. 1931 Lah. 615 :
A. I. R. 1931 Lah. 476.

—————*Penal Acts.*

Offence charged should be clearly brought within the letter and spirit of the Statute. *Dewan Singh Maflon v. Emperor.*

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

—————*Penal Acts—Penal Acts casting onus of innocence on accused, must be strictly construed.*

In construing a section of a Penal Act, which casts upon the accused the burden of proving his innocence, the Court must act strictly. *Emperor v. Nathalal Vanmali.*

40 Cr. L. J. 891 :
184 I. C. 252 : 12 R. B. 155 :
41 Bom. L. R. 548 :
I. L. R. 1939 Bom. 434 :
A. I. R. 1939 Bom. 339.

—————*Penal Act.*

Penal enactment—Intention of Legislature must be given effect to. *Bapulal v. Emperor.*

37 Cr. L. J. 588 :
162 I. C. 332 : 8 R. N. 259 :
I. L. R. 1936 Nag. 89 :
A. I. R. 1936 Nag. 78.

—————*Penal Act—Penal provision.*

All penal provisions of a Statute must be very strictly construed. *Mathubhai v. Emperor.*

23 Cr. L. J. 259 :
66 I. C. 323 : 46 Bom. 667 :
24 Bom. L. R. 105 :
A. I. R. 1922 Bom. 97.

—————*Penal Acts.*

Though in Penal Statutes the duties cast upon the bodies with delegated powers are generally construed as imperative rather than directory, each Statute has to be construed according to its own terms and no inflexible rule can be laid down to determine whether the command to a body entrusted with the power of framing rules is to be considered merely as a direction. In each case regard must be had to the scope and object of the enactment in question. *Emperor v. Barkal.*

27 Cr. L. J. 888 :
96 I. C. 152 : 7 Lah. 507 :
27 P. L. R. 791 : A. I. R. 1926 Lah. 447.

—————*Penal enactment.*

A penal Statute must be construed strictly, the intention of the Legislature being gathered from the language which the Legislature has elected to use. Judges cannot add sections

INTERPRETATION OF STATUTES

of their own to penal Statutes with a view to improve them by some fancied completeness or consistency. *Emperor v. Jaffur Mahomed.*

14 Cr. L. J. 204 :
16 I. C. 204 : 15 Bom. L. R. 106 :
37 Bom. 402.

—————*Penal enactments..*

Criminal Statutes are to be construed strictly. It is not merely unsound but unjust to read words and infer meanings that are not found in the text. *Nga Po Chein v. Emperor.*

13 Cr. L. J. 54 :
13 I. C. 390 : 4 Bur. L. T. 261.

—————*Penal Laws.*

Construction of a Penal Statute—The section must be read plainly. *Chedi Mala v. Emperor.*

1 Cr. L. J. 205 :
8 C. W. N. 349.

—————*Penal Laws.*

In the case of Penal Statutes and Fiscal Enactments, a strict construction most favourable to the subject ought to be adopted. *Ratansi Hirji v. Emperor.*

31 Cr. L. J. 103 :
120 I. C. 356 : 31 Bom. L. R. 581 :
53 Bom. 627 : A. I. R. 1929 Bom. 274.

—————*Penal Laws.*

Penal Laws should be construed strictly. *Prithwiger v. Emperor.*

9 Cr. L. J. 539 :
2 I. C. 233 : 5 N. L. R. 59.

—————*Penal provisions, construction of.*

When two equally reasonable interpretations are possible, the penal provision should be so construed as not to place a burden on the subject. *Gurandilla v. Emperor.*

39 Cr. L. J. 970 :
177 I. C. 975 : 40 P. L. R. 942 :
11 R. L. 381 : A. I. R. 1938 Lah. 691.

—————*Penal Sections.*

Penal sections affecting the liberty of the subject must be construed strictly. *Emperor v. Dattaraya Laxman Sarpoldar.*

13 Cr. L. J. 430 :
14 I. C. 974 : 14 Bom. L. R. 158 :
36 Bom. 504.

—————*Penal Statute.*

A penal enactment should be construed strictly. *Sat Narain Prasad v. Emperor.*

15 Cr. L. J. 291 (b) :
23 I. C. 499 : 12 A. L. J. 288 :
A. I. R. 1914 All. 101.

—————*Penal Statutes—Guilty mind, proof of—Intention of accused.*

Unless the Statute creates an offence independently of dishonest intention, there ought not to be a conviction unless the guilty mind is proved. *Emperor v. Chaturbhuj Narain Choudhury.*

37 Cr. L. J. 877 :
164 I. C. 74 : 15 Pat. 108 :
17 P. L. T. 302 : 2 B. R. 696 : 9 R. P. 77 :
A. I. R. 1936 Pat. 350.

INTERPRETATION OF STATUTES

—Penal Statutes.

It is an ordinary canon of construction that a word which occurs more than once in the same Act must be given the same meaning throughout the Act, unless some definition in the Act or the context shows that the Legislature used the word in different senses. *Rameshwar Prasad v. Emperor*.

32 Cr. L. J. 1266 :
134 I. C. 854 : 27 N. L. R. 270 :
I. R. 1931 Nag. 182 :
A. I. R. 1931 Nag. 177.

—Penal Statutes.

It is no doubt true that a Penal Statute or a Notification conferring criminal jurisdiction in pursuance of powers vested by a Penal Statute should be construed strictly and that omissions, if any, may not be supplied lightly, but there is no absolute bar to the omissions being supplied in fit cases and it may be inferred in a proper case that the Legislature has impliedly conferred criminal jurisdiction on inferior Criminal Courts, though there are no express words in that behalf. *Emperor v. Noor Mahomed*.

28 Cr. L. J. 913 :
105 I. C. 433 : A. I. R. 1928 Sind 1.

—Penal Statute.

It is true that a Penal Statute should be strictly construed, but every Statute should be construed in a manner consistent with common sense, and that if the intention of the Legislature is not apparent from the words of the Statute itself, it ought to be presumed to have been such as is consistent with reason and justice. *Jogendra Chandra Roy v. Superintendent of the Dum Dum Special Jail*.

34 Cr. L. J. 291 (2) :
144 I. C. 204 : 37 C. W. N. 363 :
60 Cal. 742 : I. R. 1933 Cal. 241 (2) :
A. I. R. 1933 Cal. 280.

—Penal Statutes—More than one interpretation—Interpretation should be in favour of subject.

Although the language of a Statute is the first test for its interpretation, there are other equally important tests, when the language is not clear and unambiguous, and when more than one interpretation is possible. In such circumstances, the interpretation which appears to be most 'in accord with reason, convenience and justice' is to be preferred. Another canon of interpretation is that a Penal Statute should be construed strictly and that in case of doubt, the benefit should go to the subject. *Parmanand v. Emperor*. (F. B.)

40 Cr. L. J. 497 :
180 I. C. 835 : 41 P. L. R. 137 :
11 R. L. 721 : A. I. R. 1939 Lah. 81.

—Penal Statutes must be construed strictly.

Penal Statutes must be strictly construed, words and expressions cannot be strained beyond their ordinary meaning in order to confer penal jurisdiction. *Emperor v. Deumal*.

10 Cr. L. J. 395 :
3 I. C. 886 : 3 S. L. R. 66.

INTERPRETATION OF STATUTES

—Penal Statutes.

Penal Statutes must be construed in the strict and narrow sense. *Rameshwar Prasad v. Emperor*.

32 Cr. L. J. 1266 :
134 I. C. 854 : 27 N. L. R. 270 :
I. R. 1931 Nag. 182 :
A. I. R. 1931 Nag. 177.

—Penal Statutes—Strict construction.

In dealing with a penal provision, the rule of strict construction requires that the language shall be construed so that no cases shall be held to fall within it which do not fall within the reasonable interpretation of the enactment. *Dattatraya Mallhar Bidkar v. Emperor*.

38 Cr. L. J. 145 :
166 I. C. 263 : 38 Bom. L. R. 1115 :
9 R. B. 230 : A. I. R. 1937 Bom. 28.

—Penal Statutes.

Where the thing is brought within the words and within the spirit, a penal enactment must be construed, like any other instrument, according to the fair common sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a Penal Statute where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument. What the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. *Gamadia v. Emperor*.

27 Cr. L. J. 165 :
91 I. C. 949 : 27 Bom. L. R. 1405 :
50 Bom. 34 : A. I. R. 1926 Bom. 57.

—Plain construction.

Statute affecting man in street—Interpretation should be one which a man in street would place upon it. *Htwan Htin v. Emperor*.

36 Cr. L. J. 998 :
156 I. C. 719 : 13 Rang. 130 :
8 R. Rang. 40 : A. I. R. 1935 Rang. 181.

—Plain intention of Legislature.

The Legislature may have unconsciously done a thing deemed injurious. It may have acted with improvidence or without sufficient forethought; but, if so, it must be left to correct its own error, and the Court has no power to defeat its plain intention because of the result which it may or may not have contemplated. *Hakam Khuda Yar v. Emperor*. (F. B.)

41 Cr. L. J. 591 :
188 I. C. 498 : I. L. R. 1940 Lah. 42 :
13 R. L. 1 : A. I. R. 1940 Lah. 129.

—Plain meaning—Meaning of words of section, plain and declaring intention of Legislature—Court cannot consider advantages or disadvantages of applying plain meaning—Supposed intentions cannot be considered.

When the meaning of words of a section is plain, it is not the duty of the Courts to busy themselves with supposed intentions, when the words themselves declare the intention of the Legislature. It is inadmissible to consider the advantages or disadvantages

INTERPRETATION OF STATUTES

of applying the plain meaning whether in the interests of the prosecution or the accused. *Pakola Narayana Swami v. The King-Emperor*.

- 40 Cr. L. J. 364 ;
 180 I. C. 1 : 1939 M. W. N. 185 :
 1939 O. W. N. 282 : 20 P. L. T. 265 :
 49 L. W. 349 : 43 C. W. N. 473 :
 1939 O. L. R. 134 : 11 R. P. C. 166 :
 1939 A. L. J. 298 : 41 Bom. L. R. 428 :
 41 P. L. R. 272 : 69 C. L. J. 273 :
 5 B. R. 449 : 1939, 1 M. L. J. 756 :
 18 Pat. 234 : 66 I. A. 66 P. C. :
 A. I. R. 1939 P. C. 47.

———*Plain meaning—Statute to be interpreted according to plain meaning of words and sentences.*

The first and foremost canon of interpretation is that a Statute should be construed according to the plain meaning of the words and sentences contained therein. *Emperor v. Jagiri Lal*.

- 39 Cr. L. J. 551 :
 175 I. C. 155 : I. L. R. 1938 Lah. 236 :
 40 P. L. R. 1029 : 10 R. L. 694 :
 A. I. R. 1938 Lah. 251.

———*Plain meaning—Interpretation of Statutes.*

When the meaning of words is plain, it is not the duty of the Courts to busy themselves with supposed intentions. *Feteh Mohammad v. Emperor*.

- 41 Cr. L. J. 750 :
 189 I. C. 586 : 1940 Kar. 287 :
 13 R. S. 33 : A. I. R. 1940 Sind 197.

———*Plain meaning.*

Where it appears upon the face of the proceedings that the inferior Court has jurisdiction, it will be intended that the proceedings are regular, but unless it so appears, that is, if it appears affirmatively that the inferior Court has no jurisdiction or if it be left in doubt whether it has jurisdiction or not—no such intentment will be made. Jurisdiction does not arise from an intention presumed to exist in the mind of the author of the Notification but from apt words giving effect to that intention. The doctrine of interpretation '*ut res magis valeret quam periret*' has never been invoked so as to confer jurisdiction. If the precise words are plain and unambiguous, Court is bound to construe them in their ordinary sense, even though, it do lead to an absurdity and manifest injustice. Nothing is intended to do within the jurisdiction of an inferior Court but that which is expressly alleged. *Emperor v. Noor Mohamed*.

- 28 Cr. L. J. 913 :
 105 I. C. 433 : A. I. R. 1928 Sind 1.

———*Powers of Legislature.*

Where a legislative body is given power to legislate as to matters relating to 'criminal law', the power must extend to legislation to make new crimes. *The Proprietary Articles Trade Association v. The Attorney-General of Canada*.

- 32 Cr. L. J. 899 :
 132 I. C. 593 : I. R. 1931 P. C. 177 :
 A. I. R. 1931 P. C. 94.

———*Previous law.*

When the words used in a Statute are of

INTERPRETATION OF STATUTES

doubtful import and particularly when it is contended, that the enactment in question was not intended to go beyond the scope of the enactment which was repealed, it is imperative to look into the history of this legislation. *Dewan Singh Mastoon v. Emperor*.

- 37 Cr. L. J. 474 (2) :
 161 I. C. 635 : 8 R. N. 219 :
 A. I. R. 1936 Nag. 55.

———*Previous rulings, if should be relied on—Question of law depending upon interpretation of Statutes.*

There is grave danger in relying upon a course of rulings rather than upon the terms of the Statute itself when a question of law arises which depends on the interpretation of a Statute. *Zahid Beg v. Emperor*.

- 39 Cr. L. J. 364 :
 173 I. C. 838 : 1937 A. L. J. 1253 :
 10 R. A. 508 : A. I. R. 1938 Ail. 91.

———*Procedure prescribed by Statutes—Proceedings of Legislature—Special offences created by Statute.*

A Court is not authorised to look into the proceedings of the Legislature to see what took place there during the passage of the bill which passed into law or what was the reason why a particular clause was put in for the purpose of interpreting a Statute. Where a special offence is created by a Statute and the mode how the penalty should be imposed is provided in that Statute, it can only be imposed in the mode provided therein and in no other mode. *T. Ganguly v. E. L. Watson*.

- 27 Cr. L. J. 1268 :
 98 I. C. 116 : 44 C. L. J. 350 :
 53 Cal. 929 : A. I. R. 1927 Cal. 149.

———*Public policy.*

Courts should carefully refrain from extending their powers on grounds of public policy, that is to say, of expediency, and thus encroach on the province of the Legislature. It is better that the public, if it is of the opinion that a certain course is opposed to public policy, should make its view clear through constitutional channels, i. e., the Legislature. *Hoondaraj Mithomal v. Emperor*.

- 26 Cr. L. J. 234 :
 84 I. C. 58 : 16 S. L. R. 150 :
 A. I. R. 1921 Sind 92.

———*Punitive enactment.*

Construction of punitive enactment. A punitive enactment must always be strictly construed. *Patandin v. Emperor*.

- 2 Cr. L. J. 19 :
 2 A. L. J. 26 : 25 A. W. N. 19.

———*Re-enactment.*

Under S. 25 of the Bengal General Clauses Act, where an Act is repealed and re-enacted, Notifications issued under the old enactment which are not inconsistent with the provisions of the new enactment are attracted to the new enactment and prosecutions under such Notifications must be founded on the new enactment and not on the repealed one.

INTERPRETATION OF STATUTES

S. Mukherjee v. Manager, H. T. Mohammad & Co. 30 Cr. L. J. 298 :

114 I. C. 406 : 56 Cal. 1206 :
32 C. W. N. 476 : I. R. 1929 Cal. 230 :
A. I. R. 1928 Cal. 484.

—————*Repeal of earlier enactment.*

It is no doubt true that it is one of the canons of the interpretation of Statutes that repeal by implication of an earlier enactment is not to be favoured especially when the earlier enactment dealt with a particular subject. But if the later Statute is so worded that the repeal flows from it as a necessary consequence, it is the duty of the Courts to give effect to it. *Hakam Khuda Yar v. Emperor.* (F. B.) 41 Cr. L. J. 591 :

188 I. C. 498 : 13 R. L. 1 :
I. L. R. 1940 Lah. 242 :
A. I. R. 1940 Lah. 129.

—————*Retrospective effect.*

An enactment ought not to be construed so as to give it a retrospective operation, especially in the case of a criminal matter, unless the language used indicates such intention in the Legislature. *Chuni Lal v. Corporation of Calcutta.* 34 Cr. L. J. 1228 :

146 I. C. 177 : 37 C. W. N. 737 :
60 Cal. 892 : 6 R. C. 188 :
A. I. R. 1933 Cal. 732.

—————*Retrospective effect—Law of Limitation.*

The general rule of construction is *nova constitutio futuris formam imponere debet non proteritis*. But this rule does not apply to Statutes relating to procedure and the Law of Limitation is a law of procedure. Such a law has retrospective effect unless there is a distinct provision to the contrary. *Nuralhaqshah v. Emperor.* (F. B.) 38 Cr. L. J. 723 :

169 I. C. 274 : 9 R. S. 257 :
A. I. R. 1937 Sind 129.

—————*Retrospective effect.*

The Legislature is presumed to enact prospectively and not retrospectively. While this principle is of general application, it is followed with particular strictness in reference to Penal Statutes. *Pars Ram v. Emperor.*

32 Cr. L. J. 700 :
131 I. C. 353 : 32 P. L. R. 71.
I. R. 1931 Lah. 449 : A. I. R. 1931 Lah. 145.

—————*Rules made Act.*

Rules made under statutory power enforceable by penalties are to be construed like other provisions encroaching on the ordinary rights of persons. They must, on pain of invalidity, be not unreasonable nor in excess of the statutory power authorising them, nor be repugnant to the Statute or to the general principles of law. *Eng Hock v. Emperor.*

35 Cr. L. J. 1364 :
151 I. C. 632 : 12 Rang. 515 :
7 R. Rang. 100 : A. I. R. 1934 Rang. 178.

—————*Specific provision—Offence falling under specific and also general provision—Provision to be applied.*

INTERPRETATION OF STATUTES

Where there is a specific provision in a Statute as well as a general one, and the case is covered by the specific provision, it is that specific provision which must govern the case and not the general one. *Beana Makan v. Emperor.* 37 Cr. L. J. 883 :

163 I. C. 847 : 9 R. B. 50 :
38 Bom. L. R. 432 :
A. I. R. 1936 Bom. 256.

—————*Statement of objects and reasons.*

Courts of Justice are not concerned with the objects with which the Legislature enacts any particular law, unless in the particular enactment, the object is stated as a guiding principle to be followed in interpretation. *Radha Kishun v. Emperor.* (S. B.)

34 Cr. L. J. 1 :
140 I. C. 283 : 13 P. L. T. 627 :
12 Pat. 46 : I. R. 1932 Pat. 299 :
A. I. R. 1932 Pat. 293.

—————*Statement of objects and reasons.*

In construing a Statute it is not open to the Court to consider the statement of objects and reasons as they form no part of the Statute. *Rantansi Hirji v. Emperor.*

31 Cr. L. J. 103 :
120 I. C. 356 : 31 Bom. L. R. 581 :
53 Bom. 627 : A. I. R. 1929 Bom. 274.

—————*Statement of objects and reasons.*

It is not open to the Court to consider the statement of objects and reasons in the case of an Ordinance any more than in the case of an Act. *Sakinabai Budruddin Lukmani.* 32 Cr. L. J. 283 :

129 I. C. 346 : 55 Bom. 220 :
32 Bom. L. R. 1506 :
I. R. 1931 Bom. 154 :
A. I. R. 1931 Bom. 70.

—————*Statement of object and reasons.*

No reference may be made to the introductory note to a Code or to any statement of reasons for legislation unless it be where a section is ambiguous, and cannot be construed without some such reference to outside sources. *Superintendent & Remembrancer of Legal Affairs, Bengal v. Tarak Nath Chatterjee.*

37 Cr. L. J. 698 :
162 I. C. 910 : 62 Cal. 666 :
8 R. C. 663 : A. I. R. 1935 Cal. 304.

—————*Statement of Objects and Reasons—Preamble—Debates in Assembly—Whether can be referred to.*

It is not permissible in India to refer to the Statement of Objects and Reasons which accompanies the Draft Bill when it is first introduced in the Legislative body. Unlike the preamble, the headings and marginal notes, the Statement of Objects and Reasons is no part of the Act as passed by the Legislature. Similarly, the debates in the Assembly cannot be referred to in the interpretation of an Act. *In the matter of : Lala Harkishan Lal.* (S. B.)

38 Cr. L. J. 883 :
170 I. C. 375 : I. L. R. 1937 Lah. 69 :
39 P. L. R. 733 : 10 R. L. 103 (2) :
A. I. R. 1937 Lah. 497.

INTERPRETATION OF STATUTES

———*Strict construction — Statute curtailing personal liberty — Construction in favour of subject.*

A Statute which curtails personal liberty should be construed most strictly and, if anything, in favour towards the subject. *Netai Chandra Jana v. Emperor.*

37 Cr. L. J. 1092 :
165 I. C. 162 : 40 C. W. N. 959 :
9 R. C. 351 : 64 C. L. J. 421 :
A. I. R. 1936 Cal. 529.

———*Temporary enactments.*

It is a recognised rule of construction which applies with equal force to Statutes that had been expressly repealed, and to temporary Statutes, the terms of which had expired that transactions that have been completed, rights that have been acquired and penalties that have been incurred while a Statute is in force, are not affected by the mere fact of the Statute having ceased to be in force. *Jogendra Chandra Roy v. Superintendent of the Dum Dum Special Jail.*

34 Cr. L. J. 291 (2) :
142 I. C. 204 : 37 C. W. N. 363 :
60 Cal. 742 : I. R. 1933 Cal. 241 (2) :
A. I. R. 1933 Cal. 280.

———*True construction — Court is bound to adopt true construction irrespective of consequences.*

It is not the function of the Court to legislate or to look into the possible inconvenience that may arise to the prosecution or to the accused if the true construction of the Statute is adopted. The Court is bound to adopt the true construction of the Statute aided by the meaning of the words deliberately adopted by the Legislature irrespective of the consequences that it may have on an assumed policy of the Legislature or on its unexpressed intention. *Ram Prasad v. Emperor.* (F. B.)

39 Cr. L. J. 796 :
176 I. C. 787 : 19 P. L. T. 461 :
4 B. R. 772 : 11 R. P. 107 :
17 Pat. 632 : A. I. R. 1938 Pat. 403.

———*Two constructions — Which to be followed.*

Where on the words of an enactment, two constructions are open, the Court may adopt the more reasonable or beneficial of the two, or the one which is the more likely to avoid a manifest injustice. *Goloke Behari Takal v. Emperor.*

39 Cr. L. J. 161 :
173 I. C. 65 : 66 C. L. J. 25 :
42 C. W. N. 129 : 10 R. C. 441 :
I. L. R. (1938) 1 Cal. 290 :
A. I. R. 1938 Cal. 51.

———*Two constructions.*

When the language used by the Legislature admits of two constructions, the Court should not adopt a construction which would lead to an absurdity or obvious injustice but should adopt that construction which appears to be most in accord with convenience, reason and justice. *Kundan Lal v. Emperor.*

32 Cr. L. J. 785 :
131 I. C. 625 : 32 P. L. R. 423 :
I. R. 1931 Lah. 481 : A. I. R. 1931 Lah. 353.

INVESTIGATING POLICE OFFICER

———*Two interpretations — Construction mitigating penalty preferred.*

Where the terms of a clause is susceptible of two interpretations, one mitigating the penalty and the other aggravating it, it is the former that would prevail. *Emperor v. Ahmed.*

27 Cr. L. J. 865 :
96 I. C. 113 : 20 S. L. R. 163 :
A. I. R. 1926 Sind 273.

———*Two interpretations.*

If a statutory enactment is ambiguous and capable of two interpretations, one is entitled to take into consideration that there are certain consequences which it may be presumed the Legislature did not intend to bring about and to prefer a construction which would avoid such consequences rather than one which would lead to them. *Sheo Nandan Prasad Singh v. Emperor.*

19 Cr. L. J. 833 :
46 I. C. 977 : 3 P. L. J. 581 : 1919 Pat. 1 :
5 P. L. W. 324 : A. I. R. 1918 Pat. 103.

———*Words clear and unambiguous — Hardship, no criterion.*

Where the meaning of words used in a Statute is clear and unambiguous, a Court is not at liberty to speculate as to the intention and to decline to give effect to the strict sense because of some apparent or supposed hardship. *Emperor v. Halimati.*

12 Cr. L. J. 122 :
9 I. C. 720 : 4 S. L. R. 214.

———*Words from one cannot illustrate meaning of the other.*

It is a dangerous practice to take words from one Statute to illustrate the meaning of words in another Statute. *Emperor v. Aftab Mohammad Khan.*

41 Cr. L. J. 647 :
188 I. C. 649 : 1940 A. L. J. 206 :
13 R. A. 55 : 1940 A. W. R. 85 :
A. I. R. 1940 All. 291.

———*Word having popular meaning — Construction — Exception.*

It is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense, but one exception to that rule is that, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, when the law has attached that sense to them. *Emperor v. Ramchandra.*

11 Cr. L. J. 544 :
7 I. C. 935 : 12 Bom. L. R. 669.

INVESTIGATING POLICE OFFICER

———*Testimony — Corroboration, necessity of, Judge, statement of, as to what took place before him whether conclusive.*

The statement of the Judge who presides at a trial as to what actually took place before him is conclusive. *Fatch Chand v. Emperor.*

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 : 21 C. W. N. 33 :
A. I. R. 1917 Cal. 123.

INVESTIGATION

See also (i) Criminal Procedure.
(ii) Criminal Trial.

—————*Detention of accused—Procedurc.*

If detention of an accused person is necessary during investigation, he should be taken to the nearest Magistrate who, whether he has or has not jurisdiction to try the case, can authorize detention of the accused in such custody as he thinks fit. *Ram Sanehi v. Emperor.* 12 Cr. L. J. 15 : 9 I. C. 148.

—————*Murder—Investigation, starting point of.*

Where a case of murder rises up in the mind of a Police Officer from very shadowy beginnings, the investigation must be held to start from the moment when he formed the opinion that there are grounds for investigating a crime. *Sit Ro Saw v. Emperor.* 37 Cr. L. J. 1137 : 165 I. C. 319 : 9 R. Rang. 204 : A. I. R. 1936 Rang. 455.

—————*Procedurc.*

Tendency among Police Officers to try to remove all discrepancies in evidence of witness, deprecated—Proper procedure in investigation of a case pointed out. *Jahangiri Lal v. Emperor.* 35 Cr. L. J. 1180 : 150 I. C. 1056 : 7 R. L. 58 : A. I. R. 1935 Lah. 230.

—————*Investigation.*

The duty of the Police in the investigation of any crime is to discover the truth and not simply to obtain evidence. *Shukul v. Emperor.* 34 Cr. L. J. 689 : 144 I. C. 207 : 55 All. 379 : 1933 A. L. J. 590 : I. R. 1933 All. 399 : A. I. R. 1933 All. 314.

—————*When starts.*

An investigation starts when the first step towards investigation is taken by the Police. *Emperor v. Aftab Mohammad Khan.* 41 Cr. L. J. 647 : 188 I. C. 649 : 1940 A. L. J. 206 : 13 R. A. 55 : A. I. R. 1940 All. 291.

IRREGULARITY

See also (i) Charge.
(ii) Cr. P. C., 1898, S. 537.

—————*Admission of evidence when writing judgment—Charge of theft, assertion of right in answer to—Bona fides, how negatived.*

A Magistrate cannot, after a trial is closed and while he is writing his judgment, admit in evidence a document without giving the accused an opportunity of raising objections to its relevancy or admissibility. There cannot be a *bona fide* assertion of right in answer to a charge of theft when the accused knew that he had no possession of the property and gathered the produce grown by the complainant thereon. *In re : Vayalappa Kelappa Nair.* 16 Cr. L. J. 458 : 29 I. C. 90 : A. I. R. 1916 Mad. 1084.

JAIL APPEAL

—————*Irregularity.*

Order awarding compensation not contained in order of discharge, effect of. *Nanheylal v. Musammal Ranibabu.* 15 Cr. R. J. 290 (b) : 23 I. C. 498 : 10 N. L. R. 8.

—————*Irregularity.*

Recording—Defence evidence in the absence of absconding accused cannot be cured. *Nga Po Shein v. Emperor.* 14 Cr. L. J. 287 : 19 I. C. 719 : 1912 U. B. R. 152.

—————*Irregularity.*

Separate complaints — Distinct offences—One trial—Omission to frame separate charges. *Musai Singh v. Emperor.* 15 Cr. L. J. 224 : 22 I. C. 1008 : 18 C. W. N. 183 : 41 Cal. 66.

IRRIGATION ACT (VIII OF 1879)

—————S. 61, Cl. 10—*Conviction under—Court's duty to specify the sub-section—Practicc.*

Under Clause 10 of S. 61, Bombay Irrigation Act, a person cannot be convicted unless it is found that (1) he was responsible for maintenance of a water course or used a water course, and (2) that there were certain proper precautions which should have been taken by him for preventing the waste of water, and that he neglected to take these precautions. In all convictions under a section of an Act which contains several sub-sections, the sub-section under which the accused is convicted must be stated in it, and it must be shown clearly how the act or omission complained of is an offence. *Crown v. Haji Mir Mahmud.* 9 Cr. L. J. 271 : 1 S. L. R. 32.

J

JAIL ADMINISTRATION

—————*Convicts, torture of.*

Whipping for insubordination may be legally administered in jails under proper precautions and in accordance with the rules given in the Jail Manual. In prisons where habitual and other long term convicts are confined, such a whipping for the purpose of enforcing discipline may at times be a regrettable necessity, but it is not arguable that an illegal and unauthorized beating or torture can afford a defence in the case of alleged insubordination. *Chaman Lal v. Emperor.* 41 Cr. L. J. 639 : 188 I. C. 440 : 13 R. L. 41 : I. L. R. 1940 Lah. 521 : A. I. R. 1940 Lah. 210.

JAIL APPEAL

—————*Dismissal of, effect of—Appeal, subsequent, presented by accused's Counsel—Entertainment of appeal—Court, duty of.*

The summary dismissal of a jail appeal is no bar to a subsequent entertainment of another appeal presented by the prisoner's Counsel who ought to be given an opportunity for arguing the case. *Hulai v. Emperor.* 17 Cr. L. J. 453 : 36 I. C. 133 : 3 O. L. J. 326 : A. I. R. 1916 Oudh 85.

JOINT TRIAL

———*Illegality—Omission to take objection—*
Cr. P. C., Ss. 233 and 234—S. 106.

Where three persons laid three separate complaints against the accused alleging that they (the accused) committed rioting and individually caused hurt to each of the complainants and threw away and spoilt their foreign salts and other articles : *Held*, that though the origin and the preparations for the commission of the offences might be the same, the offences were distinct from each other and the joint trial of the accused for the offences was illegal and the illegality could not be cured by the fact that no objection to the joint trial was taken either in the Court of first instance or in the Appellate Court. The illegality has affected the jurisdiction of the Court. That S. 284, Cr. P. C., does not authorise such a joint trial, as that section refers to different acts done by the same individual or sets of individuals against the same complainant or complainants so connected with each other that they may in law be taken to be one person. *Nanda Kumar v. Emperor.*

6 Cr. L. J. 321 :
11 C. W. N. 1128.

———*Illegality.*

Joint trial of different and unsimilar offences committed at different places on the same days, is illegal. *Emperor v. Nga Tok Gyi.*

1 Cr. L. J. 872 :
U. B. R. 1904, 2nd Qr. P. C. 9.

———*Illegality.*

Joint trial of receiver of stolen property with another found to be in possession of property stolen at a different time is illegal. *Bhagat Singh v. Crown.*

1 Cr. L. J. 971 :
5 P. W. R. 372.

———*Illegality—Of thief and receiver of stolen property, legality of.*

A joint trial of two accused, one for theft and the other for receiving stolen property is illegal. *In re : Govindarajulu Mudali.*

15 Cr. L. J. 256 :
23 I. C. 308 : 8 L. W. 171 :
1914 M. W. N. 352 : A. I. R. 1914 Mad. 637.

———*Irregularity—Property stolen at one and same theft and separately received by several accused—Irregularity, incurable—Cr. P. C., S. 537—Conviction, setting aside of.*

A joint trial of persons separately receiving property stolen at one and the same theft is bad, and, this defect is not an irregularity which can be cured under S. 537, Cr. P. C., and a conviction marred by this defect cannot stand. *Jagan Nath v. Emperor.*

16 Cr. L. J. 270 :
28 I. C. 158 : 2 O. L. J. 94 :
18 O. C. 92 : A. I. R. 1915 Oudh 4.

———*Legality of trial—Offence same, against different persons at different intervals.*

Accused—three in number—obtained the thumb-impressions of ten different persons on blank papers at different intervals by falsely representing that this was being done by order of the Government ; they subsequently used

JOINT TRIAL

these thumb-impressions for the purpose of extorting money from each of the ten persons, who filed a complaint against them under Ss. 417/100, Penal Code. The accused were charged with one offence and were tried jointly at one trial and convicted. The charge-sheet did not make it clear which of the accused persons was being charged with abetment and which of them was being charged with the substantive offence : *Held*, that the offences were separate and a joint trial of the accused for ten offences was not only irregular but illegal and that the accused had been prejudiced by the procedure adopted. *Girja Dayal v. Emperor.*

23 Cr. L. J. 687.
69 I. C. 271 : 25 O. C. 151 :
A. I. R. 1922 Oudh 250.

———*Misjoinder.*

Offences in different villages on different nights —One accused charged with offences under Ss. 457 and 380, Penal Code, and other with offences under Ss. 457 and 380 or 411, Penal Code—Irregularity or illegality is not curable. *In re : Mala Mkalakati Subbadu.*

16 Cr. L. J. 298 :
28 I. C. 522 : 2 L. W. 265 :
28 M. L. J. 381.

———*Misjoinder of parties.*

Misjoinder of parties is not a mere irregularity. *Lachchu v. Emperor.*

15 Cr. L. J. 420 :
24 I. C. 156 : 1 O. L. J. 141.

———*Objection to, when should be taken.*

An objection to the joint trial of accused persons ought to be taken at the beginning of the trial, or, at least, at an early stage thereof. Such an objection taken after the witnesses on both sides have been examined, and when the case is being argued, cannot be entertained. *Amjad Ali v. Emperor.*

25 Cr. L. J. 35 :
75 I. C. 723 : 5 P. L. T. 129 :
2 Pat. L. R. 79 Cr. : A. I. R. 1924 Pat. 498.

———*Transfer of case of witness for prosecution and accused, legality of.*

In the course of the trial of an accused person for offences under Ss. 403 and 476, Penal Code, the petitioner, a witness for the prosecution, made certain statements in his deposition showing his complicity in the offences and the Magistrate ordered him to be put on trial along with the accused ; *Held*, that the action taken by the Magistrate was quite legal, but inasmuch as the petitioner has been examined on oath before the Magistrate who may have been, to a certain extent, prejudiced against him, the case against him should be tried by a different Magistrate. *Radharaman Kundu v. Kamakshya Nath Roy.*

20 Cr. L. J. 385 :
50 I. C. 993 : A. I. R. 1919 Cal. 201.

———*Accused persons not belonging to one village—Joint trial not bad in law—Association.*

The joint trial of several persons in a proceeding under S. 110, Cr. P. C., is not bad in law by reason of the fact that all the accused persons do not come from one and

JUDGE

the same village, as that fact is not, by itself, sufficient for holding that they do not associate together for the purpose of committing offences. *Rahim Bux v. Emperor*.

23 Cr. L. J. 58 :
64 I. C. 842 : A. I. R. 1921 Oudh 226.

———*Not prejudicing the accused, illegality of.*

Where there is no evidence of habitual association beyond the fact of the two accused being master and servant, a joint trial is illegal but it need not be set aside unless it is shown that the accused was actually prejudiced or that the trial led to an improper order being passed. *Babu Murlaza Hussain v. Emperor*.

3 Cr. L. J. 290 :
9 O. C. 69.

———*Joint trial.*

S. 289, Cr. P. C., is not applicable where charge against each accused is mutually exclusive. *Azim-ud-Din v. Emperor*.

14 Cr. L. J. 563 :
21 I. C. 163 : 6 Bur. L. T. 191 :
7 L. B. R. 68.

JUDGE

See also Cr. P. C., 1898, Ss. 107, 303.

———*Duties—Duty of Judge.*

Political considerations should not influence the judicial mind of the Judge which should be free from all taint of bias on political, racial, social or personal grounds. *Superintendent and Remembrancer of Legal Affairs, Bengal v. G. G. Wilson*.

27 Cr. L. J. 926 :
96 I. C. 270 : 30 C. W. N. 693 :
43 C. L. J. 537 : A. I. R. 1926 Cal. 895.

———*Duty of.*

Where a witness supported prosecution in his statement before the Police under S. 161 but resiled from that statement before the Committing Magistrate and Sessions Court, it is the duty of the Judge to withhold from the Jury's knowledge the statement made by the witness to the Police unless it was proved in the manner provided by law at the request of the accused. *Gahur Howldar v. Emperor*.

27 Cr. L. J. 641 :
91 I. C. 593 : 30 C. W. N. 503 :
A. I. R. 1926 Cal. 793.

———*Exercise of power.*

It is wrong in principle for any Court or Judge to impose fetters on the exercise by themselves or others of powers which are left by law to their discretion in each case as it arises. *Ram Sagar Mondal v. Alek Naskar*. (F. B.)

23 Cr. L. J. 353 :
67 I. C. 177 : 26 C. W. N. 442 :
49 Cal. 682 : 35 C. L. J. 247 :
A. I. R. 1922 Cal. 59.

———*Meaning of.*

The Judge, who may make a reference under S. 307, Cr. P. C., must be one who held the trial and heard the evidence, and not the officer who succeeds him as Judge. *Emperor v. Dil Mohammed Sheikh*.

2 Cr. L. J. 386 :
2 C. L. J. 48.

JUDGE AND COUNSEL

———*Duty of Court—Respective obligations of—Cross-examination.*

It is for the Judge, when he sees that a Counsel is harassing or browbeating a witness unduly or trying to suppress his answers, to intervene and protect the witness in the interest of justice. *Nibaran Chandra Chatterji v. Emperor*.

18 Cr. L. J. 670 :
40 I. C. 318 : 1917 Pat. 230 :
2 P. L. W. 83 : A. I. R. 1917 Pat. 437.

JUDGMENT

See also (i) Cr. P. C., 1898, Ss. 195, 268, 367, 369, 476, 561-A.

(ii) Criminal trial.

(iii) Letters Patent, Cl. 15.

(iv) Practice.

———*Admissibility—Admissibility to show its date and legal consequence.*

A judgment is generally speaking only admissible to show its date and its legal consequences. *Raghunath Singh v. Emperor*.

37 Cr. L. J. 1126 :
165 I. C. 289 : 15 Pat. 336 :
17 P. L. T. 526 : 3 B. R. 30 :
9 R. P. 165 : A. I. R. 1936 Pat. 537.

———*Appeal—Cr. P. C., Ss. 435 and 439—Appeal—Disposal on the evidence of prosecution only—Procedure.*

If the Appellate Magistrate gives a judgment which makes it probable that he has not fully heard and considered the appeal, his disposal of the appeal ought not to be allowed to stand. *In re: Seperumal Udayan*.

11 Cr. L. J. 331 :
5 I. C. 928 : 7 M. L. T. 182.

———*Appellate Court—What it should contain—Judgment of the first Court, whether may be read as supplementing judgment of the Appellate Court—Joint trial of several accused.*

The judgment of an Appellate Court dealing with the case of several accused who were convicted in a joint trial, must show on the face of it that the case of each accused has been taken into consideration and should state the reasons as far as may be necessary to show that the Appellate Court has devoted judicial attention to the case of each accused. An Appellate judgment must be quite independent and stand by itself. It ought not to be read in connection with or as supplementary to the judgment of the Court of first instance. *Jamait Mullik v. Emperor*.

6 Cr. L. J. 427 :
12 C. W. N. 134 : I. L. R. 35 Cal. 138.

———*Contents—Irrelevant matter—Fair and legitimate comment—Language of judgments—Sober and temperate—High Court—Power to expunge irrelevant matter.*

A Judge should not admit irrelevant matter to the record. A judgment should confine itself to a consideration of the issues before the Court together with fair and legitimate comment on any errors or irregularities that may be disclosed in the course of the trial. The language of a judgment should be temperate and sober and not satirical. The High Court has power to order that irrelevant

JUDGMENT

matter in the judgment of a Lower Court should be expunged. *Emperor v. Thomas Pellako*.

13 Cr. L. J. 259 :
14 I. C. 643 : 5 Bur. L. T. 20.

—————*Duty of Court—Evidence of defence not taken into consideration—Looking into defence evidence—Cr. P. C. (Act V of 1898), S. 110.*

In an appeal in a case under S. 110, Cr. P. C., it is the duty of the Appellate Court to look into the evidence on the part of the defence even if the Counsel who appeared for the defence did not make any reference to that evidence. Where this was not done by the Appellate Court, the High Court directed the re-trial of the appeal. *Fidai Hossein v. Emperor*.

14 Cr. L. J. 419 :
20 I. C. 403 : 40 Cal. 376.

—————*Duty of Magistrate — Reflection on person neither witness nor party—Reflection not based on evidence—Expunging of such remarks.*

A Magistrate should not, in his judgment in a criminal case, make observations prejudicial to the character of a person who is neither a witness nor a party to the proceedings and who had had no opportunity of being heard and upon material which is not legal evidence in the case, and it would be denial of justice to allow such reflections to stand on the file. *Muharam v. Emperor*.

29 Cr. L. J. 1102 :
112 I. C. 686 : A. I. R. 1929 Lah. 201.

—————*Expression of.*

Judgment not pronounced is mere expression of opinion. *Ramdhir Rai v. Emperor*.

14 Cr. L. J. 562 :
21 I. C. 162 : 11 A. L. J. 745.

—————*Nature of—Final findings of fact—Conclusions inconsistent—Judgment bad in law.*

A Judge, in upholding a conviction of rioting on appeal, came to several conclusions which were quite inconsistent with his final findings of fact that the accused were guilty and there was no reason to interfere with the sentence, which was passed by the Court below, on an acceptance of the whole case for the prosecution : *Held*, that the judgment was bad in law and must be vacated. *Ambica Misir v. Emperor*.

13 Cr. L. 595 :
16 I. C. 163.

—————*Nature of—Temptation to pillory or pour ridicule should be restrained—Humorous judgment not necessarily a bad one.*

The immunity which Judges and Magistrates enjoy in writing judgments carries with it the duty of circumspection. Any temptations to pillory or pour ridicule on strangers should be restrained and comment on the conduct of parties and witnesses should not go beyond what is really necessary for the elucidation of the case. A humorous judgment is not necessarily a bad judgment. But its value does not depend on the quality of its humour. Facetious comments, which do not contribute to the disposal of the case and which are calculated to wound the feelings of persons who are not parties to the proceedings, should not

JUDICIAL PRECEDENTS

find place in a judgment. *Ma Kya v. Kin Lat Gya*.

12 Cr. L. J. 464 :
11 I. C. 1000 : 4 Bur. L. T. 173.

—————*Validity of—Based on materials not evidence—Personal knowledge of Judge.*

A judgment based on materials which are not evidence and which have been improperly admitted, or on the personal knowledge of the Judge, is wrong in law and invalid. *Durga Prosad Singh v. Ram Dayal*.

12 Cr. L. J. 355 :
10 I. C. 955 : 38 Cal. 153 :

JUDICIAL COMMISSIONS

—————*Criminal proceedings.*

Proceeding under Cr. P. C., S. 122, are criminal proceedings. *Emperor v. Haji Usman*.

11 Cr. L. J. 497 :
7 I. C. 592 : 4 S. L. R. 18.

JUDICIAL INQUIRY

See also Cr. P. C., 1898, S. 200.

JUDICIAL OFFICER

—————*Conduct of—Explanation—Statements reduced to writing.*

Where an officer, who purports to be conducting anything in the nature of a judicial or quasi-judicial enquiry, has the time and the opportunity to reduce into writing complaints or statements which are made to him, those written statements only should substantially be looked at when considering the subsequent conduct of that Judicial Officer. *Grant v. Emperor*.

22 Cr. L. J. 745 :
64 I. C. 137 : 2 P. L. T. 669 :
A. I. R. 1921 Pat. 440.

—————*Duty.*

It is highly improper for any Judicial Officer to direct or influence a Judicial Officer subordinate to him regarding an order which might be passed by the latter in exercise of the jurisdiction with which he had been entrusted. *Vellu Thevar v. Emperor*.

33 Cr. L. J. 550 :
137 I. C. 675 : 10 Rang. 180 :
I. R. 1932 Rang. 152 :
A. I. R. 1932 Rang. 90.

JUDICIAL ORDER.

—————*Construction.*

If a judicial order can be construed as either legal or illegal, the construction that makes it legal must prevail. *Gaji v. Jumanshah*.

13 Cr. L. J. 749 :
17 I. C. 61 : 6 S. L. R. 83.

JUDICIAL PRECEDENTS

—————*Authority of, limited to facts actually decided.*

The language of a judicial pronouncement must be understood as spoken in reference to the facts under consideration and limited in meaning by those facts ; the generality of the expression which may be found there is not

JURISDICTION

intended to be an exposition of the whole law, but is governed and qualified by the particular facts of the case in which such expressions are to be found. In other words a case is only an authority for what it actually decides and cannot be quoted for a proposition that may seem logically to follow from it. *Emperor v. Barendra Kumar Ghose*.

25 Cr. L. J. 817 :
81 I. C. 353 : 38 C. L. J. 411 :
28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

JUDICIAL PROCEEDINGS

See also (i) Cr. P. C., 1898, Ss. 4 (m) 195, 476.

(ii) Penal Code, 1860, Ss. 191, 193, 471.

(iii) Revision.

—————*Legality of prosecution.*

Transfer application—Examination of witnesses after disposal—Prosecution of witnesses not legal. *Emperor v. Baksho*.

12 Cr. L. J. 326 (b) :
10 I. C. 622.

—————*Power to grant sanction for prosecution—Registrar of Presidency Small Cause Court, inquiry by, as to service of summons, whether judicial proceeding—Oaths Act (X of 1873), S. 13—Omission to administer oath or affirmation, effect of.*

As the Registrar of the Presidency Small Cause Court is authorized to decide the question of service of summons and is, therefore, entitled to take evidence, the proceedings before him in such matters are in the nature of judicial proceedings and he is competent to grant sanction for prosecution. An omission to administer an oath or affirmation to a deponent is an irregularity which is cured by S. 13, Oaths Act. *Bal Chand v. Tarak Nath Sadau*.

16 Cr. L. J. 151 :
28 I. C. 623 : 19 C. W. N. 433 :
A. I. R. 1915 Cal. 834 (b).

—————*Judicial proceedings.*

An investigation under Chap. XIV, Cr. P. C., is a stage of a "judicial proceeding," and any person who makes on oath a statement which he knows to be false before the Magistrate conducting that investigation, gives false evidence and commits an offence under S. 193, I. P. C. *Suppa Tevan v. Emperor*.

3 Cr. L. J. 370 :
I. L. R. 29 Mad. 89.

—————*Judicial proceedings.*

Calling up for the records of a case from a Subordinate Magistrate under S. 485, Cr. P. C., will not constitute it a judicial proceeding within the meaning of S. 470. *In re : Subaraya Vathiyar*. 3 Cr. L. J. 118 : 15 Mad. L. J. 489 : 2 Weir 601.

JURISDICTION

—————"Administrative order."

—————Appeal.

—————Appeal filed in Sessions Court.

—————British Court.

JURISDICTION

—————Civil and Criminal Courts.

—————Conflict of.

—————Criminal breach of trust.

—————Criminal trial.

—————Determination.

—————Duty of Court.

—————Duty of Magistrate.

—————Excess, effect of.

—————Foreign subject.

—————How determined.

—————Illegality of arrest.

—————Imprisonment.

—————Inherent powers of Court can be taken away by legislation.

—————Interference by High Court.

—————Issuing warrant.

—————Judgment pronounced by Magistrate after transfer.

—————Municipal bye-law, violation of.

—————Native States.

—————Order of committal.

—————Order of re-trial, legality of.

—————Powers of High Court.

—————Powers of Magistrate.

—————Power of Revisional Court to direct commitment to Sessions.

—————Practice.

—————Procedure.

—————Public policy.

—————Revision.

—————Sessions Judge.

—————Sweeping prohibitory order.

—————Territorial jurisdiction.

—————Transfer of Magistrate.

—————Trial by British Court.

—————Use of processes of Criminal Court to enforce civil right.

See also (i) Acquittal by Court without local jurisdiction.

(ii) Agency tracts.

(iii) Cantonment Code, 1899, Rules 94 and 104.

(iv) Cr. P. C., 1898, Ss. 107, 138, 145, 145 cl. (i), 145 cl. (3), 179, 195, 200, 203, 209, 234, 259, 260, 438, 476, 488, 491, 556.

(v) Excise Act, 1896, S. 44.

(vi) Jury trial.

(vii) Penal Code, 1860, S. 4.

(viii) Summary trial.

(ix) Workman Breach of Contract Act, 1859, S. 5.

—————"Administrative order."

The term "administrative order" is not known to British or Indian Law—All Government orders are subject to tests in Courts of law. *Emperor v. Lakshman Chauji Narangikar*. (F. B.) 32 Cr. L. J. 1147 :

134 I. C. 347 : 33 Bom. L. R. 675 :
55 Bom. 576 : I. R. 1931 Bom. 459 :
A. I. R. 1931 Bom. 313.

—————*Appeal—Bhatinda Railway Station—Ferozepore and Hissar Magisterial Courts, jurisdiction of—Theft case—Political Agent, appeal to—Government of India Notifications Nos. 515 I. B., 516 I. B. of 17th March, 1913.*

In accordance with the Government of India

JURISDICTION

Notification No. 515 I. B., the Magisterial Courts of Hissar and Ferozepore Districts, have jurisdiction in respect of offences committed at Railway Station, Bhatinda. [The said arrangement being found inconvenient, it was directed that for the purposes of the Notification above referred to, the Ferozepore Courts shall exercise jurisdiction at Bhatinda Railway Station.] An appeal against conviction in a case of theft committed at Bhatinda Railway Station lies to the Political Agent for the Phulkian States and Bahawalpur. *Emperor v. Ram Lal*. 15 Cr. L. J. 550 :

24 I. C. 958 : 7 P. R. 1914 Cr. :

141 P. L. R. 1914 : A. I. R. 1914 Lah. 181.

—————*Jurisdiction.*

Appeal filed in Sessions Court A—Additional Sessions Judge hearing it at B—B farther from accused's house than A—Discretion is wrongly exercised. *Deodhari Rai v. Emperor*. 36 Cr. L. J. 371 :

153 I. C. 576 : 15 P. L. T. 604 : 7 R. P. 354 :

A. I. R. 1934 Pat. 643.

—————*British Court—Crime committed by British subject in Nepal territory.*

A British Court has jurisdiction to try a British subject for an offence committed by him in the Nepal territory. *Emperor v. Bandu Ali*. 29 Cr. L. J. 68 :

106 I. C. 580 : 4 O. W. N. 1121 :

A. I. R. 1927 Oudh 627.

—————*Civil and Criminal Courts—There can be no estoppel of criminal prosecution and no ratification of criminal offence—Non-compoundable offence should not be left unpunished if it can be proved—Decision in Civil Court does not bar criminal trial.*

There can be no estoppel of a criminal prosecution and no ratification of a criminal offence. However necessary and desirable it may be, as a matter of public policy, to prevent conflicts between decisions of Civil and Criminal Courts, it is of far greater moment to the State that no non-compoundable offence should be left unpunished if it is possible to secure evidence to prove such offence. There can be, besides, no "relating back" in the case of an offence as a result of a civil proceeding which treats the act as the foundation of the civil claim, although the Criminal Court ought, as a rule, to take into consideration the Civil Court's judgment relating to such claim. *Ramchandra Rango Soroekar v. Emperor*. 40 Cr. L. J. 579 :

181 I. C. 870 : 41 Bom. L. R. 98 :

11 R. B. 356 : A. I. R. 1939 Bom. 129.

—————*Conflict of.*

It is a general rule of procedure that where Courts of different rank have jurisdiction, then an application should be made in the lowest Court which has jurisdiction. *Haidari Begum v. Jawad Ali*. 36 Cr. L. J. 554 :

154 I. C. 638 : 1934 A. L. J. 946 :

4 A. W. R. 1406 : 7 R. A. 783 :

A. I. R. 1935 All. 55.

JURISDICTION

—————*Criminal breach of trust—Property must be received or retained within jurisdiction of the trying Court.*

In order to confer on a Court jurisdiction to try a case of criminal breach of trust, it must be shown that either the whole or part of the property, in respect of which the charge is laid, was either received or retained by the accused within the jurisdiction of the trying Court. An accused cannot be said to retain within the jurisdiction of the trying Court the unaccounted for balance, which he is alleged to have misappropriated, merely because he sent accounts and remittances to the complainant within the jurisdiction of that Court. *Shakur v. Nga Mc Gyi*. 11 Cr. L. J. 685 :

8 I. C. 595 : 3 Bur. L. T. 10.

—————*Criminal trial.*

Both under the Common Law of England and under the Cr. P. C., no Court, unless expressly authorised by Statute, can try any offences other than those committed within the area of its jurisdiction. *Sobhraj Dwarkadas v. Emperor*. 19 Cr. L. J. 591 :

45 I. C. 399 : 11 S. L. R. 128 :

A. I. R. 1918 Sind 22.

—————*Determination.*

Jurisdiction is to be determined not by the final result reached, but by the charges under which the trial is held. *Public Prosecutor, Peshawar Division v. Muqarrab*. 34 Cr. L. J. 212 :

141 I. C. 881 : I. R. 1933 Pesh. 1.

A. I. R. 1933 Pesh. 3.

—————*Determination of.*

It is an ordinary rule that the jurisdiction of the Court is determined by the place where the offence is committed and not by the place where the offender may happen to reside. *H. D. Rajah v. C. H. Witherington*. 35 Cr. L. J. 962 :

149 I. C. 238 : 66 M. L. J. 650 : 39 L. W. 680 :

1934 M. W. N. 607 : 57 Mad. 831 :

6 R. M. 613 : A. I. R. 1934 Mad. 423.

—————*Duty of Court.*

Jurisdiction depending on special authority—Prescribed conditions should be strictly fulfilled. *Chenveerappa v. Government of Mysore*. 9 Cr. L. J. 550 :

13 M. C. C. R. 115.

—————*Duty of Magistrate—Magistrate empowered under S. 70, Cr. P. C.—Jurisdiction to try cases falling under first part of S. 304, Penal Code—Conviction—Revision—Power of Revisional Court to direct trial after commitment to Sessions.*

A Magistrate empowered under S. 30, Cr. P. C. is not legally incompetent to try a case under the first part of S. 304, Penal Code, but the more proper course for him is to commit such a case to the Sessions. However, if he tries and convicts the accused, the Court of Revision is not bound to quash the proceedings as *ultra vires*, but may, in the ends of justice, quash them and direct the accused to be

JURISDICTION

committed to the Sessions. *Mir Alam v. Emperor*.
23 Cr. L. J. 726 :
69 I. C. 454.

—Excess of, effect of.

Where there has been excess of jurisdiction, the whole proceeding and the result following from that excess of jurisdiction is a nullity. *Hamidulhaq v. Atael Hossain*.

18 Cr. L. J. 145 :
37 I. C. 513 : 1 P. L. W. 81 :
2 P. L. J. 86 : A. I. R. 1917 Pat. 191.

—Foreign subject.

By mere entrance into British India he makes himself liable to laws of British India. Ignorance of the law does not affect his liability. *Jitendra Nath Ghosh v. Chief Secretary to the Bengal Government*.

34 Cr. L. J. 245 :
141 I. C. 866 : 36 C. W. N. 1088 :
60 Cal. 364 : I. R. 1933 Cal. 198.
A. I. R. 1932 Cal. 753.

—How determined.

The jurisdiction of a Court to hear a case depends on the allegations on which its help is sought. It may be that after a trial it is found that the case has been materially exaggerated, but unless it is found at the very outset that the allegations made by the complainant are exaggerated with the intention of seeking a particular Court for redress, the statement of the complainant must be accepted for purposes of jurisdiction. *Raghunandan Prasad v. Emperor*.

26 Cr. L. J. 586 :
85 I. C. 730 : 47 All. 64 :
A. I. R. 1925 All. 290.

—How determined.

The jurisdiction of a Magistrate arises from the fact that he has received certain information and that he is satisfied as to the truth of that information. The jurisdiction of the Magistrate does not depend on how he proceeds. *Kapoor Chand v. Suraj Prasad*. (F. B.)

34 Cr. L. J. 414 :
142 I. C. 537 : 1933 A. L. J. 188 :
I. R. 1933 All. 125 :
A. I. R. 1933 All. 264.

—Illegality of arrest—Criminal jurisdiction along railway running through Native State—Offence committed in British India—Accused, whether can be arrested at Railway Station in Native State—Cr. P. C., S. 58.

The Gwalior State did not cede to the British Government jurisdiction over the Railway lands in respect of offences not committed on those lands and having no connection with the Railway Administration. Therefore, the arrest of a person at the Gwalior Railway Station on a charge of an offence committed in British India is illegal. *Radha Kishan v. Emperor*.

21 Cr. L. J. 303 :
55 I. C. 351 : 1 Lah. 406 :
A. I. R. 1920 Lah. 235.

—Imprisonment.

A Magistrate is not competent to impose a sentence of imprisonment to take effect in

JURISDICTION

continuation of a period of sentence which the accused is undergoing in default of furnishing sufficient security. *In re : Gandella Ramudu*.

16 Cr. L. J. 137 :
27 I. C. 201 : 1914 M. W. N. 500 :
A. I. R. 1915 Mad. 587.

—Inherent powers of Court can be taken away by legislation.

An inherent power of a Court can certainly be curtailed or even taken away by legislation enacted by an authority competent to enact it. *Mohammad Yusuf v. Imtiaz Ahmad Khan*. (F. B.)

40 Cr. L. J. 421 :
180 I. C. 745 : 1939 O. W. N. 296 :
1939 O. L. R. 194 : 11 R. O. 248 :
14 Luck. 492 : A. I. R. 1939 Oudh 131.

—Interference by High Court—Absence of—Objection by accused—Trial, whether vitiated.

No Tribunal can properly clutch jurisdiction by intentionally ignoring facts of aggravation which make the offence really cognizable only by a higher Tribunal; and where the accused himself has objected to the jurisdiction in the lower Courts, the High Court will interfere in revision and set aside the conviction. *Setti Rangayya v. Somappa*.

25 Cr. L. J. 1193 :
82 I. C. 57 : 20 L. W. 919 :
A. I. R. 1925 Mad. 367.

—Issuing warrant.

Two persons were tried for murder but acquitted. It was alleged that there were three co-conspirators, of whom the petitioner was one. A warrant was issued against the petitioner which was re-called. Subsequently the District Magistrate, on the advice of the law officers of the Crown that the case against the petitioner could go on the evidence, again issued a warrant against the petitioner : *Held*, that the District Magistrate had jurisdiction to issue the warrant. *Manindra Chandra Ghose v. Emperor*.

15 Cr. L. J. 402 :
23 I. C. 1002 : 18 C. W. N. 580 :
41 Cal. 754 : A. I. R. 1914 Cal. 886.

—Judgment pronounced by Magistrate after transfer, validity of.

A final order passed in a proceeding by a Magistrate after making over charge of his duties as a Magistrate in the District is without jurisdiction. *Jagatbandu Saha v. Jagatbandhu Saha Sardar*.

25 Cr. L. J. 192 :
76 I. C. 432 : 38 C. L. J. 201 :
A. I. R. 1924 Cal. 192.

—Municipal Bye-law, violation of—Sanction for prosecution for one offence—Conviction for another, legality of.

When a Municipal Bye-law contains disjunctive and alternative offences, it is incompetent for a Magistrate to convict a person of one of such offences, when sanction has been given by the Municipality to prosecute him in connection with another. A Municipality sanctioned the prosecution of a person for "singing with a high sounding instrument" in violation of a bye-law forbidding persons to "beat a drum or tom tom or blow any high-

JURISDICTION

sounding instrument." The accused was convicted for "beating a drum." On revision : *Held*, that under no circumstances could the "beating of the drum" be regarded as "singing with a high-sounding instrument," and as sanction had been given by the Municipality to the latter offence, the conviction of the accused for the former could not stand. *Rahim v. Emperor*.

24 Cr. L. J. 478 :
72 I. C. 894 : 1 P. L. R. 45 Cr. :
A. I. R. 1924 Pat. 377.

———Native States.

The Notification No. 84 I. B. of January 14, 1937, issued by the Governor-General-in-Council contemplates that there should be some inquiry as to whether the person arrested is or is not a subject of the State which has issued the warrant. Clearly, such an inquiry cannot be left to the Railway Police, and the only course which the Railway Police can follow in executing a warrant issued by a Magistrate in a Native State is to produce the arrested man before a Magistrate having jurisdiction over railway lands. Such Magistrate can then make the necessary inquiry and order detention of the arrested man until arrangements are made for taking him to the Native State. *Haramohan Patnaik v. Emperor*.

40 Cr. L. J. 500 :
180 I. C. 787 : 19 P. L. T. 909 :
18 Pat. 121 : 5 B. R. 491 : 11 R. P. 533 :
A. I. R. 1939 Pat. 129.

———Order of committal—Kidnapping from lawful guardianship—Occurrence at a place beyond jurisdiction.

A was convicted of kidnapping a girl from lawful guardianship by the Joint Magistrate at Chingleput. It appeared that A's offence consisted in the fact that B produced the girl at Trichinopoly before A and said she was his daughter; A, too, easily accepted this statement and registered the girl there with a view to her being sent to Ceylon. The Sessions Judge, Chingleput, on appeal acquitted A in regard to the offence of kidnapping from lawful guardianship but directed that A should be committed for trial for the other offence : *Held*, that as the charge, on which the Sessions Judge directed A's committal, related to occurrences at Trichinopoly, which was not within his jurisdiction, his order directing committal was without jurisdiction. *Sadaya Pillai v. Emperor*.

12 Cr. L. J. 533 :
12 I. C. 301 : (1911) 2 M. W. N. 191.

———Order of re-trial, legality of—Discharge of accused by High Court at Criminal Sessions—Re-trial of accused—Whether order of discharge any bar to re-trial—Cr. P. C., Ss. 403, 437.

An order of discharge does not operate as any bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a Police report or under S. 190 (c), Cr. P. C. Therefore a Magistrate has jurisdiction and is bound to adjudicate on any criminal information properly laid before him against an accused person who

JURISDICTION

had been discharged by the High Court in the exercise of its original criminal jurisdiction, without the order of discharge being set aside. *Emperor v. Idoo*.

13 Cr. L. J. 488 (b) :
15 I. C. 488 : 16 C. W. N. 983 :
40 Cal. 71.

———Powers of High Court—Criminal case pending in another Province, stay of.

A High Court has no jurisdiction to declare that a criminal case pending in a Court not subject to its jurisdiction is triable exclusively in another Court, nor has it jurisdiction to stay all further proceedings in a criminal case which is in course of hearing in a Court not subject to its jurisdiction. *Radhika Natha Saha v. Jotish Chandra Sadhu*.

24 Cr. L. J. 635 :
73 I. C. 523 : A. I. R. 1924 All. 71.

———Powers of High Court—Dispute concerning land—Jurisdiction of Magistrate—Order on Written Statement without any Evidence of Cr. P. C., S. 145, Sub-Ss. (1), (4).

Sub-section (2) is not the only provision in S. 145, Cr. P. C., which lays down what matters relate to the jurisdiction of the Magistrate. There are other provisions in the section, the contravention of which affects his jurisdiction, and so gives the High Court power to interfere. Where the Magistrate passed an order under S. 146 of the Code, only upon the written statements of the parties and without taking any evidence : *Held*, that the order was without jurisdiction, and that the High Court had power to set it aside. *Kolha Koer v. Muneswar Tewari*.

6 Cr. L. J. 452 :
I. L. R. 34 Cal. 840.

———Powers of High Court—Opinion of accused—Weight of—Hearing of appeals against convictions under Act.

The only persons capable of weighing the respective advantages or disadvantages of trial before different types of Tribunals are the accused persons themselves, and it is only their opinion in the matter which is entitled to any serious consideration. The Judges of the High Court in hearing appeals from convictions for offences under the Bengal Suppression of Terrorists Outrages Act, retain their full rights of procedure and their full rights of alteration or acquittal. They would, therefore, act as they would act in similar circumstances in any ordinary appeal. *Netai Chandra Jana v. Emperor*.

37 Cr. L. J. 1092 :
165 I. C. 162 : 40 C. W. N. 959 :
9 R. C. 351 : 64 C. L. J. 421 :
A. I. R. 1936 Cal. 529.

———Power of High Court—Power of the High Court to commit for contempt of Mofussil Magistrate—Comment on case pending before Mofussil Magistrate.

The High Court has no jurisdiction to punish as an offence in a summary proceeding conduct in relation to a proceeding in the Mofussil Criminal Court, such as com-

JURISDICTION

menting on a case pending before that Court, as such jurisdiction is not inherited from any of the three abolished Courts—the Supreme Court, the Sudder Dewany and the Sudder Nizamat Adalats—and is not vested in the High Court by the Charter Act of 1861 or the Letters Patent under that Act, and as such conduct is not contempt of the High Court and the High Court's power of superintendence over the Mofussil Courts does not imply any power of protecting those Courts from improper interference. *Governor of Bengal in Council v. Moti Lal Ghosh*. 14 Cr. L. J. 321 : 20 I. C. 81 : 17 C. W. N. 1253 : 18 C. L. J. 452.

———*Powers of Magistrate—Complaint, filing of, effect of—Revision—Complainant, whether can object to jurisdiction—Madras Town Nuisances Act (III of 1889), S. 3 (12), offence under, whether cognizable by Bench of Honorary Magistrates.*

The mere filing of a complaint invoking the jurisdiction of a Magistrate, does not invest the Magistrate with jurisdiction if otherwise he had no jurisdiction to try the offence, and it is open to a complainant, in revision to the High Court, to object to the jurisdiction of the Magistrate. Inasmuch as an offence under S. 3 (12), Madras Town Nuisances Act, falls within clause (2) of r. 1, Rules for the guidance of Honorary Magistrates, a Bench of Honorary Magistrates has power to entertain a complaint in respect of such an offence. *Ramasami Chettiar v. Muthuvelu Mudali*.

24 Cr. L. J. 110 :
71 I. C. 238 : 16 L. W. 562 :
31 M. L. T. 420 : 45 Mad. 843 :
1923 M. W. N. 57 : A. I. R. 1923 Mad. 191.

———*Power of Magistrate — Dacoity—Penal Code, S. 460.*

The words "may be inquired into and tried by a Court within the local limits of whose jurisdiction the person charged is" in S. 181 (1), Cr. P. C., justify the commitment by a Magistrate in a District of British India, to the Court of Session which has jurisdiction over that District, of a resident of a Native Indian State arrested in the State and accused of the offence of belonging to a gang of dacoits, although the accused's participation in any dacoity or association with dacoits in that District has not been alleged. *Emperor v. Gobindo*.

12 Cr. L. J. 113 :
9 I. C. 677 : 1 P. R. 1911 Cr. :
4 P. W. R. 1911 Cr. : 84 P. L. R. 1911.

———*Power of Magistrate—Forging hundi—Hundi, a valuable security—Power of Magistrate, First Class, to try a case of forging hundi—Serious offence including a minor offence—Penal Code (Act XLV of 1860), Ss. 420, 467, 468.*

A hundi is a valuable security. The offence of forging a hundi falls under S. 467 of the Penal Code, and is triable only by the Sessions Court or by a Magistrate invested with enhanced powers. The fact that the offence includes a minor offence, which is triable by an ordinary First Class Magistrate, does not

JURISDICTION

give an ordinary First Class Magistrate power to deal with the case. A First Class Magistrate can only dispose of a Sessions case either by an order of discharge or by committal to the Sessions. *Lekhroj v. Emperor*.

11 Cr. L. J. 639 :
8 I. C. 389 : 31 P. R. 1910 Cr.

———*Power of Magistrate.*

Magistrate cannot take cognizance of offence in the absence of a Police report under S. 173, if he is not empowered under S. 190 (1) (c). *Ahmed Khan v. Emperor*. 12 Cr. L. J. 92 : 9 I. C. 492 : 5 S. L. R. 1.

———*Power of Magistrate—Order against bad character to leave any place—Executive order.*

A Magistrate has no authority to order a man to leave any place under threat of being prosecuted as a bad character. Magistrates have no business to issue executive orders for which they can produce no statutory authority. *Ram Prasad v. Emperor*. 23 Cr. L. J. 122 :

65 I. C. 554 : 19 A. L. J. 951 :
A. I. R. 1921 All. 145.

———*Power of Revisional Court to direct commitment to Sessions.*

All cases under the first part of S. 304, Penal Code, if the evidence is sufficient to establish the charge, should be committed to the Sessions. Where the charge made was one of murder under S. 302, Penal Code, but the Additional District Magistrate, exercising powers under S. 30, Cr. P. C., convicted the accused under the first part of S. 304, Cr. P. C., the Judicial Commissioner, in the exercise of the powers of revision, quashed the proceedings and directed the accused to be committed for trial to the Sessions. *Emperor v. Sardor*.

23 Cr. L. J. 731 :
69 I. C. 459.

———*Practice—Civil dispute—Complaint.*

Every discouragement should be given to the habit of rushing into the Criminal Court where a civil dispute arises. *Anant Singh v. Emperor*.

14 Cr. L. J. 128 :
18 I. C. 588 : 33 P. L. R. 1913 :
10 P. W. R. 1913 Cr.

———*Procedure — Commitment to Court of Session not having territorial jurisdiction.*

Where a case cognizable only upon a complaint of the aggrieved party is committed to a Court of Session which has no territorial jurisdiction to try the case, the proper procedure is for the High Court to set aside the proceedings as being without jurisdiction, and leave the complainant, if he sees fit, to prosecute his case in Court having jurisdiction. *Emperor v. Sheo Dyol*.

21 Cr. L. J. 635 :
57 I. C. 459 : 23 O. C. 87 :
A. I. R. 1919 Oudh 69.

———*Applicability — Criminal and Civil Courts—Harmony between decisions of Civil and Criminal Courts.*

In order to avoid the conflict, the Criminal Court cannot be allowed to try over again,

JURISDICTION

matters which have been thoroughly dealt with and finally decided by a Civil Court of competent jurisdiction. On grounds of public policy, harmony between the decisions of the two Courts must be secured. For that purpose it is of great importance to secure the grounds of the decision of the Civil Court and consequently, the judgment of that Court becomes relevant and admissible. If the Civil Court's decree constitutes the composition of non-compoundable and felonious acts, the objection cannot be permitted to prevail against the Crown prosecution. The decree of the Civil Court in such a case does not serve as an effective bar to the criminal prosecution. *Ramchandra Rango Sawkar v. Emperor*.

40 Cr. L. J. 579 :
181 I. C. 870 : 41 Bom. L. R. 98 :
11 R. B. 356 : A. I. R. 1939 Bom. 129.

—————*Revision — Criminal Bench — Order by Civil or Revenue Court under S. 476, Cr. P. C.*

When action is taken by a Civil or Revenue Court under S. 476, Cr. P. C., its proceedings may be revised by the High Court under S. 115, Cr. P. C., on any of the grounds mentioned therein or may be examined under S. 15, High Courts Act. A Bench of the High Court exercising criminal jurisdiction cannot, as such, deal with these matters unless authorised by the Chief Justice under S. 14, High Courts Act to do so. But when action under S. 476, is taken by a Criminal Court, subordinate to the High Court, its proceedings are open to revision under S. 430, Cr. P. C. *Har Prasad Das v. Emperor*. (F. B.) 14 Cr. L. J. 197 : 19 I. C. 197 : 17 C. L. J. 245 : 17 C. W. N. 647 : 40 Cal. 477.

—————*Sessions Judge — Further inquiry — Discharge of accused by Magistrate and direction of complainant's prosecution — Cr. P. C., Ss. 437, 476 — Sessions Judge to refer matter to High Court.*

A Sessions Judge has no jurisdiction to direct further inquiry in a case in which the Magistrate had not only discharged the accused, but under S. 476, Cr. P. C., had directed the complainant's prosecution under S. 211, Penal Code. The Sessions Judge ought to have referred the case to the High Court. *Arjun Naik v. Bira Bhoi*. 15 Cr. L. J. 16 : 22 I. C. 160 : A. I. R. 1914 Cal. 312.

—————*Sweeping prohibitory order — Closing burial place — Omission to record provision of law — Ultra vires.*

A District Magistrate acts without jurisdiction in issuing a sweeping public prohibitory order without referring to any provision of law as authorising such an order. *In re : Munkundrai Atharam Desai*. 18 Cr. L. J. 137 : 37 I. C. 489 : 18 Bom. L. R. 554 : A. I. R. 1916 Bom. 122.

—————*Territorial jurisdiction.*

Where a subject of a Native State is charged with abetting an offence committed in British India, and the alleged abetment consists entirely of what the accused did or said at a place within the State territory, he cannot be

JURISDICTION

tried in a Court in British India for such abetment. The accused, a subject of the Patiala State, was arrested in a Railway carriage at Bhatinda by the British Police : *Held*, that the arrest was lawful as full and exclusive power and jurisdiction of every kind over the Railway lines and over all persons within those lines had been ceded by the Patiala State to the British Government. *Bahcant Singh v. Emperor*. 20 Cr. L. J. 65 : 48 I. C. 865 : 31 P. R. 1918 Cr. : A. I. R. 1919 Lah. 459.

—————*Transfer of Magistrate — Magistrate's power to try case after having made over charge of his duties to his successor.*

A Magistrate has no jurisdiction to try a case after having made over charge of his duties to his successor. *Hira Lal v. Emperor*.

14 Cr. L. J. 239 :
19 I. C. 335.

—————*Trial by British Courts — Accused found to be in possession of stolen articles beyond British territory.*

A person who is not prosecuted for theft committed in British India, but for having been found beyond British territory in possession of stolen articles, cannot be tried by the British Court. *Moheswari Prasad Singh Deo v. Emperor*.

15 Cr. L. J. 537 :
24 I. C. 945 : 18 C. W. N. 1478 :
A. I. R. 1914 Cal. 725.

—————*Use of processes of Criminal Court to enforce civil right.*

Where a hire-purchase agreement in respect of a motor bus contained a stipulation that in default of payment of any instalment, the vendor could seize the bus and determine the agreement, and there was a further clause in the agreement, that the purchaser should notify any change in the address of the garage where the bus was kept and the purchaser makes default in payment of instalments and refuses either to pay or to return the bus, and removes the bus from the address where it was originally kept, without notice to the vendor, the Magistrate has got no jurisdiction to seize the bus and order that it should remain with the vendor, upon a complaint by the vendor. The case is one of breach of a hire-purchase agreement and is not a criminal matter at all. The vendor has his rights under the contract into which the purchaser entered with him, and those rights can be enforced in the ordinary way by an action in the Civil Court. *Hrishikesh Ghose v. R. P. Michael*.

40 Cr. L. J. 216 :
179 I. C. 484 : 67 C. L. J. 569 :
11 R. C. 551 : A. I. R. 1939 Cal. 45.

—————*Accused enticing married woman in Madras and taking her to Bombay — Bombay Court, if has jurisdiction — Offence, if continuing offence.*

The 'taking' under S. 408, Penal Code, is not a continuing offence but is complete as soon as the person concerned is out of the keeping

JURISDICTION

or control of the guardian. The same applies to enticing also. No doubt enticing in itself may be a continuous process, but enticing from a particular person cannot be so, *i.e.*, it cannot continue after that person's control has ceased. The word 'ordinarily' in S. 177 means "except where provided otherwise in the Code." Consequently, where the accused entices and takes a married woman in Madras and brings her to Bombay, the Magistrate in Bombay has no jurisdiction to try the offence. *Ramnarayan Baburao Kapur v. Emperor*.

38 Cr. L. J. 769 :
169 I. C. 526 : 39 Bom. L. R. 61 :
I. L. R. 1937 Bom. 244 : 10 R. B. 34 :
A. I. R. 1937 Bom. 186.

————Evidence recorded by Assistant Sessions Judge and judgment given by Sessions Judge.

An Assistant Sessions Judge recorded the evidence in a Sessions case and the Sessions Judge pronounced judgment upon the evidence so recorded : *Held*, that the Sessions Judge had no jurisdiction to do so. *Badri Prasad v. Emperor*.

13 Cr. L. J. 861 :
17 I. C. 797 : 10 A. L. J. 473 :
35 All. 63.

————Magistrate taking cognizance of case, making it over to First Class Magistrate to make local inquiry and dispose of the case—Course, whether legal—Local inquiry by First Class Magistrate, whether good—Order for prosecution of complainant under S. 211, Penal Code, whether good.

The Magistrate of a District taking cognizance of a case sent it for disposal to a First Class Magistrate after a local inquiry. The First Class Magistrate held a local inquiry and dismissed the complaint under S. 203, Cr. P. C., and directed, under S. 470, the prosecution of the petitioner under S. 211 of the Penal Code : *Held*, (1) that the order of the Magistrate, before whom the complaint was laid, was bad in directing the First Class Magistrate to hold a local inquiry, inasmuch as the Cr. P. C. did not make any provision for such a course by a Magistrate to whom a case is made over for disposal ; (2) that the proceedings before the First Class Magistrate were bad ; (3) that the prosecution of the petitioner under S. 211, consequently, was illegal. *Mahamad Imaruddin v. Debendra Nath*.

15 Cr. L. J. 70 :
22 I. C. 422 : 18 C. W. N. 95 :
A. I. R. 1915 Cal. 20.

————Non-British subject retaining stolen property in Native State—Theft committed in British India—Cr. P. C., S. 80, application of.

A non-British subject retaining property in a Native State stolen from British India, is not amenable to the jurisdiction of British Courts and S. 80, Cr. P. C., does not confer any such jurisdiction on them. *Muhammad Husain v. Emperor*.

23 Cr. L. J. 560 :
68 I. C. 160 : 2 L. L. J. 348.

————Offence committed in British India—Accused committed to Sessions—Subsequent

JURISDICTION

transfer of the place where offence was committed to a Native State—Appeal—Revision—Cr. P. C., S. 435.

The accused were charged with the commission of an offence within the British territory and were committed to the Sessions Court at Mirzapur. Subsequent to the commitment, the place where the offence had been committed was transferred to the State of Benares. The High Court, however, transferred the case from the Court at Mirzapur to the Sessions Court at Benares for trial. The Sessions Judge of Benares held that he had no jurisdiction to try the case. The Government appealed against the order and also applied in revision against it : *Held*, that the constitution of the State of Benares did not deprive the Court at Mirzapur of jurisdiction to dispose of criminal appeals then pending in it or cases which had been committed to it for trial. At the time of the constitution of the State of Benares, the accused were in British India in the custody, in point of law if not in fact, of a Court competent to try them. *Emperor v. Ram Naresh Singh*.

13 Cr. L. J. 169 :
13 I. C. 921 : 9 A. L. J. 51 :
34 All. 118.

————Offender subject of Native State—Offence committed in Native State—Trial, whether can be held in British India.

A subject of a Native State cannot be tried in British India for an offence committed in the Native State, but he can be tried in British India for an offence committed in British India. *Emperor v. Anandgir*.

15 Cr. L. J. 511 :
24 I. C. 599 : 7 S. L. R. 128 :
A. I. R. 1914 Sind 80.

————Jurisdiction.

The words "any consequence that has ensued" in S. 179, Cr. P. C., mean some consequence modifying or completing the act or acts constituting the offence, and do not include the loss resulting to an employer from criminal breach of trust by his servant. The complainant despatched goods from Delhi to the accused at Calcutta for sale on commission. The accused mortgaged the goods and appropriated the money to their own use : *Held*, that the Calcutta Court alone had jurisdiction to try the offence ; the offence alleged was complete as soon as the money had been misappropriated, and the fact that the money should have been, and was not, sent to Delhi, did not give the Delhi Court jurisdiction. *Gokal Chand v. Phul Chand*.

11 Cr. L. J. 253 :
5 I. C. 830 : 7 P. R. 1910 Cr. :
7 P. W. R. 1910 Cr.

————Jurisdiction.

Where a person commits the offence of murder on a British ship anchored opposite the mouth of the Ye River, in the Ahmerst District, and is convicted and sentenced to death by the Sessions Court of the Tennesserim Division : *Held*, that the Tennesserim Sessions Judge has jurisdiction over the case,

JURISDICTION OF CRIMINAL COURTS

such jurisdiction having been conferred upon him by the Admiralty Offences Act, 1849, S. 1, the Admiralty Jurisdiction Act, 1860, S. 1, and S. 686, Merchant Shipping Act, 1804. The word 'territory' used in the first proviso to S. 188, Cr. P. C., refers only to territories of any Native Prince or Chief in India, and it cannot include the high seas since they are not part of the territories of any State. *Po Thauing v. Emperor*.

12 Cr. L. J. 198 :
10 I. C. 705 : 5 L. B. R. 221 :
4 Bur. L. T. 58.

JURISDICTION OF BRITISH COURTS

—*Abetment out of British India of offence committed in British India.*

Courts in British India have no jurisdiction to try a person who is not a British subject for abetting out of British India an offence committed by another in British India. *Raj Bahadur v. Emperor*.

19 Cr. L. J. 931 :
47 I. C. 447 : 23 P. R. 1918 Cr. :
28 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 49.

JURISDICTION OF COURT

—*Cr. P. C., Ss. 1 and 480—Penal Code, S. 179—Refusal to answer by expert witness unless fees were paid.*

The appellant, a European British subject, who was a witness in a criminal case refused to answer a question regarding certain injuries caused to a person by an explosion on the ground that he had to be paid expert fees before answering the question. The Magistrate convicted him under S. 480, Cr. P. C. of an offence under S. 179, Penal Code : *Held*, overruling the contention of the appellant that the Court had jurisdiction and that the appellant's act in refusing to answer amounted to contempt since the defendant was bound as a witness to answer questions put to him, without any fee. *Louis Patrick Stokes v. Government of Mysore*.

10 Cr. L. J. 257 :
12 M. C. C. R. 170.

JURISDICTION OF CRIMINAL COURTS

—*Interference by High Court—Joint occupants of house—Lock put on by one—Magistrate's order to break open door, legality of.*

On the application of one of the tenants of a house that another tenant had locked up the whole house with the applicant's goods in it, a Magistrate directed the Police to break open the house and make a list of its contents. The Police did this and put the goods in the hands of a custodian. The other tenant then appeared and applied to the Magistrate for possession of the house and his goods. The Magistrate declined to take any further action and referred him to the Civil Court. He moved the High Court in revision : *Held*, (1) that the Magistrate had no jurisdiction to direct the lock to be broken and the property to be handed over to a custodian ; (2) that the High Court had

JURY

no jurisdiction to interfere in the matter ; (3) that the remedy of the petitioner was by a suit in a Civil Court. *Ovid v. Chandra Bhan*.

25 Cr. L. J. 218 :
76 I. C. 650 : A. I. R. 1923 All. 473 (1).

JURY

See also (i) Charge.

(ii) Cr. P. C., 1898, Ss. 133, 297, 208, 303, 307, 423, 537.

(iii) Criminal trial.

(iv) Penal Code, 1860, Ss. 124-A, 147.

—*Duty of Judge—Reference against acquittal.*

In case of reference against the verdict of the Jury where acquittals are concerned, there is a much greater onus upon the Judge to convince an Appellate Court with extreme particularity than there is when he makes a reference with regard to a conviction. Where a case depends entirely on the statements of an approver and two retracted confessions of the type of non-incriminating nature and the Jury hold that the evidence is not sufficiently corroborated and acquits the accused, the Judge has absolutely no right to put up to the High Court a report which is intended to substitute his judgment on a pure question of fact, rather than the judgment and opinion of the Jury, who were sitting with him. *Emperor v. Goshio Sardar*.

37 Cr. L. J. 1149 :
165 I. C. 438 : 9 R. C. 400 :
A. I. R. 1936 Cal. 407.

—*Duty of Sessions Judge.*

A Sessions Judge in addressing a Jury should endeavour to speak in a simple and direct manner. The charge to the Jury should not be involved, and the language used should not be extravagant, so that the Jury may not experience any difficulty in appreciating his true intention and meaning. *Harendra Pal v. Emperor*.

11 Cr. L. J. 538 :
7 I. C. 915.

—*Duty of Sessions Judge—Trial by Jury—Incomplete definition of offence—Appeal—Interference.*

In a trial by Jury, it is the duty of the Judge to explain clearly the offence with which the accused are charged, and in doing so, the Judge should keep before him the words of the section defining the offence. But where no miscarriage of justice has been caused, the High Court will not interfere with an order of conviction merely because the nature of the offence was not fully explained to the Jury. *In re Venkatagadu*.

27 Cr. L. J. 1191 (a) :
97 I. C. 951 : 24 L. W. 415 :
A. I. R. 1926 Mad. 1121.

—*Fresh trial, necessity of—Expression of opinion by juror before delivery of charge—Fresh trial with fresh Jury—Necessity of—Criminal trial.*

If a juror expresses his opinion clearly regarding the guilt or innocence of an accused

JURY

person before the charge to the Jury has been delivered, the Sessions Judge would be well advised in discharging the Jury and holding a fresh trial with a fresh Jury. *Bideshi v. Emperor*.

37 Cr. L. J. 749 :
162 I. C. 705 : 1936 O. W. N. 457 :
1936 O. L. R. 287 : 8 R. O. 395 :
A. I. R. 1936 Oudh 268.

—————*Irregularity—Charge—Charge held misleading—Medical evidence—Evidence conflicting—Nature of charge regarding such evidence.*

Held, after considering the charge, that the passage in the charge seemed nevertheless to be open to very serious objection. It is not primarily or at all a general comment, which would be and was quite admissible, on the fact that the appellant was not called to give evidence. Nor was it a direction that any specific named fact was one which fell within the section with the result that the onus of proving that fact was upon the appellant. It was a direction as to facts generally, and, therefore, it was particularly unfortunate that the relevant passage in the charge should have been expressed thus: "He has got to explain.....In the absence of explanation, the only inference is that he is guilty." Its tendency would be to lead the Jury to suppose that if anything was unexplained which they thought the appellant could explain, they not only might but must find him guilty. In a very difficult and quite exceptionally mysterious case the area of the unexplained was extensive, and how much the appellant himself could explain depended on where he was at material times, and indeed, on the very matter at issue in the trial, namely his guilt or innocence. *Stephen Seneviratne v. The King*.

37 Cr. L. J. 963 P. C. :
164 I. C. 545 : 9 R. P. 83 :
44 L. W. 661 : 41 C. W. N. 65 :
1936 M. W. N. 340 : 39 Bom. L. R. 1 P. C. :
A. I. R. 1936 P. C. 289.

—————*Misdirection.*

Where in a trial on charges under Ss. 147, 149-304, 149-325 and 149-323, Penal Code, the Judge in his charge to the Jury said: "If therefore the Jury find that a riot took place they should, under S. 149, find every member of the unlawful assembly guilty of causing hurt or grievous hurt", but he nowhere instructed the Jury what their verdict should be if they found that there was no unlawful assembly but that grievous hurt or hurt was caused by any one or more of the accused persons: *Held*, that the omission of the Judge to do so amounted to a serious misdirection. *Jatindra Nath v. Emperor*.

5 Cr. L. J. 427 :
11 C. W. N. 666.

—————*Misdirection—Charge to Jury—Misdirection—Statements of witnesses taken under S. 164 of the Cr. P. C.*

In a trial by Jury, the Judge ought to tell the Jury that the evidence of witnesses taken under S. 164, Cr. P. C., must be accepted with a great deal of caution. He ought to point out that it is not always proper for the Police

JURY

officer to get such statements recorded for the purpose of pinning the witnesses down to some statement, especially at a time when they are not entirely free from police influence. It is misdirection for the Judge to say that he sees no reasons to disbelieve a particular witness. He ought to leave the question of believing or disbelieving to the Jury. In placing a suggestion made by the Crown Prosecutor without any evidence to support it, before the Jury, the Judge ought to point out that there is no evidence to support the suggestion. *Kali Singh v. Emperor*.

7 Cr. L. J. 315 :
7 C. L. J. 246.

—————*Misdirection—Death caused by injury with weapon—Omission to put case of grievous hurt before Jury—Penal Code, Ss. 301 (2), 320 (8).*

Where death has been caused by a blow with a weapon, that does not necessarily suggest an intention to cause such bodily injury as would, in the ordinary course of nature, cause death, and it is presumed, in the accused's favour, that he had no knowledge that the injury was likely to cause death. The Jury should be directed that it is open to them to find the accused guilty of the lesser offence, namely, of causing grievous hurt under S. 320 (8), Penal Code, S. 304 (2) is not appropriate to a case where there was a deliberate intention to inflict bodily injury to the person whose death resulted from such injury. *Emperor v. Chagan Rajaram*.

13 Cr. L. J. 750 :
17 I. C. 62 : 6 S. L. R. 116.

—————*Misdirection.*

Failure to set out clearly the nature of the defence of the several accused, and failure to warn the Jury in dealing with the retracted confession of one of the accused, that if the Jury found they could not set upon it against that accused, they must wholly disregard it as against the others, will vitiate the trial. *Harendra Pal v. Emperor*.

11 Cr. L. J. 538.
7 I. C. 915.

—————*Misdirection—Judge explaining away fact without leaving it to Jury to decide—Explanation not in accordance with evidence.*

A was charged with having committed a dacoity, at 7-30 p. m. on the evening of 20th August 1912. His defence was that at 8-30 that same evening he was acquitted and released by the Sub-Magistrate of Tenkasi in another case and that, therefore, he could not possibly have been present at the scene of this dacoity. After arrest in the present case, he took this ground in a bail application before the same Sub-Magistrate, but the Sub-Magistrate disposed of the application without taking notice of this ground. The Sub-Magistrate, in his evidence, stated that the point was not brought to his notice, but the Sessions Judge told the Jury that the obvious answer to the defence argument was that, if the Magistrate accepted the statement as true, he would have granted the bail: *Held*, that this was a clear misdirection.

JURY

tion and that it misled the Jury on the important point. *In re : Subbu Tevan.*

14 Cr. L. J. 623 :
21 I. C. 671 : 14 M. L. T. 442.

———*Misdirection—Material ingredient of offence not stated—Judge's opinion on facts.*

A Sessions Judge in charging the Jury in a case of culpable homicide not amounting to murder, omitted to tell them that they must come to a conclusion as to whether in causing the death of the deceased the accused had the intention to cause death or such injury as was likely to cause death or the knowledge that he was likely to cause death. *Held*, such omission was a clear misdirection. *Natabar Ghose v. Emperor.*

8 Cr. L. J. 6 :
7 C. L. J. 599 : 35 Cal. 531 :
12 C. W. N. 774.

———*Misdirection—Right of private defence, when commences—Trespassers carrying away crop—Police Station at distance of nine miles—Rulings cited to Jury.*

The right of private defence of property commences when reasonable apprehension of danger to the property commences, and if persons have begun to cut and carry away one's crop, it cannot be said that he is bound to go nine miles to fetch the Police. It was, therefore, misdirection on the part of the Judge to leave it to the Jury to say whether the fact that the *Thana* was only nine miles distant from the place of occurrence, did not take away the right of private defence. No rulings or authorities are even to be cited by the Judge to the Jury, nor are they to be asked to differentiate or form any opinion whatever on any authorities. Such procedure constitutes misdirection. *Mcher Sardar v. Emperor.*

13 Cr. L. J. 26 :
13 I. C. 218 : 16 C. W. N. 46.

———*Misdirection—Rioting—Common—Suggestion by Judge that real case might be between cases alleged by both sides—Statement by prosecution witness that accused had been bound down, whether admissible—Evidence of bad character—Evidence Act (I of 1872), S. 54.*

In a case of rioting in which one common object was alleged throughout, the Judge suggested to the Jury that the case might not be precisely as the prosecution alleged, nor what the defence set up, but something between the two: *Held*, that there was no misdirection; that the Judge left it entirely open to the Jury as to whether they would accept his suggestion or not; and that the acceptance of it by the Jury would not destroy the case for the prosecution. In his charge to the Jury, it is not necessary for the Judge to go into the minutest details in the evidence. In a prosecution for riot, the statement by a prosecution witness that he had brought a case under S. 107, Cr. P. C., against some of the accused who had been bound down, is admissible, if introduced not for the purpose of proving the bad character of the accused, but as part of the *res gestae* the events which had transpired before, and which eventually led

JURY

up to the riot with which the accused were charged. *Samaruddin v. Emperor.*

13 Cr. L. J. 821 :
17 I. C. 565.

———*Misdirection—Stab wound penetrating abdominal wall—Absence of evidence to show that accused had any other than normal intention—Held, there was no misdirection.*

There was absolutely no evidence on the record to show that the accused when he inflicted a stab wound had any intention other than the one which must normally be drawn in cases in which one man intentionally stabs another with sufficient force to penetrate the abdominal walls. In the charge to the Jury, the Judge stated: "if you find that A. P. (accused) was there and inflicted this stab wound, you ought to find him guilty of murder". The trial was impeached on the ground that this constituted misdirection as the question of what the intention of the accused was, was a matter of fact, and that should have been left to the Jury; and the direction to the Jury to find as a matter of law that if stab wound was inflicted by accused, they must find him guilty of murder, amounted to misdirection: *Held*, that the summing-up was correct and there was no misdirection. *Emperor v. Nga E Pe. (F. B.)*

37 Cr. L. J. 1050 :
164 I. C. 884 : 9 R. Rang. 165 ;
A. I. R. 1936 Rang. 421.

———*Misdirection.*

Trials by Jury would become useless and farcical if the question of the competency of a particular juror were made to depend upon opinion that he was not able to understand the summing up of the Judge. *Emperor v. Bhavanrao Vilhalrao.*

1 Cr. L. J. 598 :
6 Bom. L. R. 535.

———*Misdirection.*

Where a Sessions Judge has failed to warn a Jury that it is unsafe to convict merely upon the testimony of the approver and where the Judge has not properly explained to the Jury the law and practice regarding such cases, there is a misdirection of a very serious kind and the verdict of the Jury cannot be sustained. *Makbul Ahmed v. Emperor.*

12 Cr. L. J. 537 :
12 I. C. 513.

———*Misdirection, what is—Trial by Jury—Verdict, interference with.*

The High Court will not, as a rule, interfere with the verdict of a Jury except when it is shown to be clearly and manifestly wrong. There cannot be said to be any misdirection to the Jury where though the Judge in his charge gives expression to his own opinion regarding certain parts of the evidence, nevertheless cautions them by telling them that they are not to accept his view of the evidence but should form their own appreciation of the evidence as they are the sole Judges of evidence. *C. E. Ring v. Emperor.*

31 Cr. L. J. 65 :
120 I. C. 340 : 53 Bom. 479 :
31 Bom. L. R. 545 :
A. I. R. 1929 Bom. 296.

JURY

———*Nature of questions by Judge to Jury.*

The Judge may ask the Jury such questions only as are necessary to ascertain what their verdict is. To ask questions demanding their reasons for acquitting the accused of a charge on which they had delivered a unanimous verdict without any uncertain sound, is exceeding the limits of questioning which the law contemplates. *Emperor v. Bharmia*.

1 Cr. L. J. 265 :
6 Bom. L. R. 258.

———*Opinion of—Cr. P. C., S. 307, Cl. (e) —Judge differing from verdict of Jury, whether bound to ascertain grounds of verdict.*

The expression "opinions of the Sessions Judge and of the Jury" in S. 307, Cl. (e), Cr. P. C., is equivalent to opinion of the Sessions Judge and verdict of the Jury. The omission to ascertain from the Jurors the grounds for their verdict would not vitiate a reference to the High Court. *Emperor v. Tara Pada Naskar*.

15 Cr. L. J. 31 :
22 I. C. 175 : 18 C. L. J. 522 :
41 Cal. 425 : A. I. R. 1914 Cal. 394.

———*Powers of—Verdict with respect to an offence of which the accused was not charged, validity of—High Court, interference by, with the verdict of a Jury.*

Where an accused, who was tried with the aid of a Jury, was charged of an offence of rape and the verdict of the Jury was to the effect that the charge of rape was not proved, but that the prisoner was guilty of an attempt to commit rape which verdict was accepted by the Sessions Judge: *Held*, that it was competent to the Jury to return a verdict of guilty with respect to an offence of which the accused was not formally charged: *Held further*, that a High Court will not interfere with the verdict of a Jury unless it is shown to be clearly and manifestly wrong. *Shubraati v. Emperor*.

11 Cr. L. J. 630 :
8 I. C. 373 : 13 O. C. 295.

———*Power of Appellate Court to set aside verdict.*

An Appellate Court is entitled to set aside the verdict of a Jury where their inference is a matter of speculation and there is not sufficient evidence to support their conclusion. *Basanta Kumar Gossain v. Emperor*.

28 Cr. L. J. 108 :
99 I. C. 236 : 44 C. L. J. 317.

———*Power to resort to law books.*

The Jury should take the law from the Judge. They are not entitled to resort to a law book during their consultation about the verdict. *Emperor v. Bharmia*.

1 Cr. L. J. 265 :
6 Bom. L. R. 258.

———*Practice—Re-trial—Whole case to go to Jury—High Court—Jurisdiction to uphold conviction under one section and to direct re-trial under another.*

When a person is to be re-tried, he must be placed before the Jury upon all the

JURY

charges which were framed against him. The High Court has no jurisdiction to uphold the conviction under one section of the Penal Code and to order him to be re-tried under another. The whole of his case must go back to the Jury. *Jamiruddi Biswas v. Emperor*.

13 Cr. L. J. 175 :
16 I. C. 523 : 16 C. W. N. 909.

———*Procedure — Procedure where Jury differ.*

Where the Jury are not unanimous, the proper course for the Judge is to require them, under S. 302, Cr. P. C., to retire for further consideration, and at the same time to give them further direction on matters of law. *Emperor v. Bharmia*.

1 Cr. L. J. 265 :
6 Bom. L. R. 258.

———*Procedure—Verdict not unanimous—Re-consideration after delivery, whether legal—Questions to Jury—Procedure—Cr. P. C., Ss. 302, 303, 307.*

When a Jury has returned a clear and unambiguous though not unanimous verdict, the Sessions Judge has no power to put questions to the Jury under S. 303, Cr. P. C. If he disagrees with the verdict of the majority, he should proceed under S. 307. *Kya Nyun v. Emperor*.

15 Cr. L. J. 678 :
25 I. C. 1006 : 7 L. B. R. 140 :
A. I. R. 1914 L. Bur. 244.

———*Procedure, legality of—Judge questioning the Jury as to their reasons for the verdict.*

There is no provision in the Cr. P. C. which empowers the Judge to question the Jury as to their reasons for a unanimous verdict when there is nothing ambiguous in the verdict itself and no lurking uncertainty in the minds of the Jury themselves regarding it. *Emperor v. Kondiba Dhondiba*.

1 Cr. L. J. 331 :
6 Bom. L. R. 361 :
I. L. R. 28 Bom. 412.

———*Statements by Judge—Charge to—Whether form part of judicial record.*

The statements made in the course of a criminal trial to the Jury by the Judge are part of the judicial record, and as such, they must be taken as correctly by a Bar Tribunal, making an enquiry as to certain undesirable communal remarks alleged to have been made by a Counsel during the course of the trial. *In re : Mahomed Aslam*.

37 Cr. L. J. 783 :
162 I. C. 919 : 8 R. S. 177 :
A. I. R. 1936 Sind 49.

———*Verdict—Casting lots—Verdict of Jury arrived at by casting lots—Evidence—Evidence of Jurymen, whether admissible.*

The separate statement of any of the individuals, who had in combination formed a Jury, in order to impeach their verdict, cannot be received. Consequently, a sworn statement of a Juror that the verdict was arrived

JURY TRIAL

at by casting lots is not admissible. *Hara Kumar Barman Roy v. Emperor*.

14 Cr. L. J. 392 :
20 I. C. 216 : 40 Cal. 693 :
17 C. W. N. 787.

———*Verdict, nature of—Jury refusing to convict on uncorroborated testimony of approver—Verdict, if perverse.*

Jury refusing to convict an accused merely on an uncorroborated testimony of an approver cannot be held to be acting perversely. *Emperor v. Goshi Sardar*.

37 Cr. L. J. 1149 :
165 I. C. 438 : 9 R. C. 400 :
A. I. R. 1936 Cal. 407.

JURY TRIAL

See also Cr. P. C., 1898, Ss. 272, 207, 423, 423 (2), 430, 470.

———*Charge to Jury, criminal conspiracy.*

In a charge to a Jury in a conspiracy case, it is very necessary not only that there should be a consideration of the conspiracy and a determination as to what was its nature and by what evidence it is proved, but unless it is quite clear that if there was a conspiracy, all the accused were members of it, there should be somewhere a separate statement and criticism of the proved actions of each of the members of the conspiracy. If this is not done, the Jury may take it for granted that all the accused were knowingly members of the conspiracy and that the only question before them was whether the conspiracy was criminal. *Topandas v. Emperor*.

25 Cr. L. J. 761 :
81 I. C. 249 : A. I. R. 1925 Sind 116.

———*Charge to Jury—Defective charge—Proposed amendments in law, reference to—Penal Code, Ss. 372, 373—Age of girl kidnapped—Prosecution, duty of.*

Where in delivering his charge to the Jury the Judge omits to set out all the questions that require decision, and the charge offers extremely little guidance for arriving at a decision, the charge is defective. Proposed amendments in the law, where they have not become part of the law, ought not to be referred to in charging a Jury. In a trial upon charges under Ss. 372 and 373, Penal Code, it is the duty of the prosecution to prove that the girl is under the age of 16 years. *Abdul Gahur v. Emperor*.

24 Cr. L. J. 76 :
71 I. C. 124 : 36 C. L. J. 152 :
26 C. W. N. 972 : A. I. R. 1922 Cal. 505.

———*Charge to Jury, essentials of.*

In his charge to the Jury it is not the duty of the Judge to discuss in detail each and every item of the evidence and any such discussion of the evidence by the Judge in the charge leads to a great risk of the Judge pressing his own view of the facts too positively. *Narayan Singh v. Emperor*.

31 Cr. L. J. 557 :
123 I. C. 477 : A. I. R. 1929 Nag. 295.

———*Charge to Jury—Mode of dealing with evidence of witnesses—Approver's evidence—*

JURY TRIAL

Duty to direct Jury regarding kind of corroboration required—Omission to do so—Effect.

In charging the Jury in a case in which an approver has been examined, the Judge should tell the Jury that the corroborative evidence must be such as to connect each of the accused with the offence charged. But omission to state the law on this point in precise language will not amount to a misdirection where the jury were well aware that the sort of corroboration required was corroboration in material particulars tending to connect each of the accused with the offence. *Hachumi Khan v. Emperor*.

32 Cr. L. J. 33 (b) :
127 I. C. 767 : 34 C. W. N. 390 :
I. R. 1930 Cal. 895 : A. I. R. 1930 Cal. 481.

———*Communications with Juror pending trial, effect of.*

It is undesirable that jurymen should have communications with strangers upon the subject of a pending trial, but the fact that the jurymen on his way to the Court house or to the waiting room is addressed by a stranger some remarks on the case to which he does not reply, cannot have the effect of invalidating the trial. The mere presence of a Police Officer near the Jury room during the jurymen's deliberations will not render the trial invalid, unless it is proved that the Police Officer spoke to the jurymen about the case or interfered in their deliberations. It is not desirable that a Policeman should be stationed anywhere or in any position in which he can hear the deliberations of the jurymen. There is nothing wrong in the Clerk of the Crown being sent to the jury-room during their deliberations to ascertain from the jurors if they require further assistance from Court, especially in complicated cases where verdict has to be given on a number of charges. A jurymen would be ill-advised to communicate, except to his fellow-jurymen, what happened in the jury-room and it will be dangerous for a Court to rely upon anything except the verdict of the Jury. *In the matter of: Bonomally Gupta*.

18 Cr. L. J. 311 :
38 I. C. 423 : 21 C. W. N. 167 :
44 Cal. 723 : A. I. R. 1917 Cal. 149.

———*Duty of Appellate Court—Penal Code—Ss. 302, 390—Robbery with murder—Conviction by trial Court—Reasonable doubt—Verdict of Jury as to robbery if can be interfered with—Conviction for murder, legality of—Inconsistent orders, propriety of.*

An Appellate Court is bound by a well-established principle of law not to interfere with the verdict of Jury if it is one which could be arrived at by an honest man and the Jury had been guided accurately by the Judge in matters of law. But, where the accused are charged with robbery, with murder, even though under such circumstances that the murder and robbery constitute one offence and could have been committed only by the same persons, the Appellate Court is bound to consider the case under S. 302 separately and to acquit the accused of murder if there is reasonable doubt, though it could not interfere with the verdict

JURY TRIAL

of the Jury that the accused were guilty of robbery. *Sia Lal v. Emperor*.

27 Cr. L. J. 1355 :
98 I. C. 475 : A. I. R. 1927 All. 108.

—————*Duty of Judge.*

A Judge should warn the Jury that the statement of an accused not amounting to confession cannot be considered against the co-accused. A Judge should not ridicule the defence at the very outset of the charge before the discussion of the evidence, for that may have a pernicious influence on the mind of the Jury and make them distrust the defence theory without giving sufficient consideration to it. A Judge may express his opinion in the charge to the Jury but at the same time he should be careful to add that it is for the Jury to form their opinion on the evidence. Misdirection itself is no ground for setting aside a trial. *Topandas v. Emperor*.

25 Cr. L. J. 761 :
81 I. C. 249 : A. I. R. 1925 Sind 116.

—————*Duty of Judge.*

Although in a Jury trial the law requires the Judge only to record the heads of his charge, these should be so recorded as to enable the High Court to know what was actually said. *Abdul Gafur Khan v. Emperor*.

24 Cr. L. J. 8 :
71 I. C. 56 : 35 C. L. J. 437 :
26 C. W. N. 996 : A. I. R. 1922 Cal. 192.

—————*Duty of Judge—Charge—Practice of having long series of charges, defects of—Reference to reports, propriety of.*

Where an accused person is put upon his trial, the charges against him should be so clear and so readily capable of explanation by the trial Judge that the Jury will have no difficulty in appreciating the law which they have to apply to the facts of the case before them. The practice of having a long series of charges and trying the accused on as many charges as could be devised is to be condemned. It is the duty of the Judge to tell the Jury how to apply the law to the facts found by them. He would be failing in the proper discharge of his duty if he merely places the proper facts before the Jury without telling them how they should decide the guilt or otherwise of the accused on the law. It is often useful to illustrate the meaning of a legal doctrine by relevant examples called from the books or stated by the learned Judge in his own words, but the practice of reading out headnotes or other portions of the report of a case not before them to the members of the Jury is a dangerous practice which is to be discouraged as more likely to mystify than enlighten the Jurors. *Jabannallah v. Emperor*.

32 Cr. L. J. 111 :
128 I. C. 254 : 34 C. W. N. 365 :
I. R. 1931 Cal. 78 : 57 Cal. 1162 :
A. I. R. 1930 Cal. 434.

—————*Duty of Judge—Evidence of bad character wrongly admitted in trial—Duty of Judge to warn Jury to reject such evidence.*

Where evidence of bad character of an ac-

JURY TRIAL

cused person has been admitted contrary to the provisions of S. 45, Evidence Act, the Judge should warn the Jury that they should exclude this part of the evidence from their minds. *Kailash Chandra Rishi v. Emperor*.

30 Cr. L. J. 57 :
113 I. C. 73 : 48 C. L. J. 481 :
I. R. 1929 Cal. 77.

—————*Duty of Judge.*

In his address to the Jury, the Judge should not merely place the depositions of the witnesses before the Jury in the order in which they were examined but group the witnesses in such a way as to direct the attention of the Jury to the evidence regarding each of the particular facts sought to be proved on either side. *Hachimi Khan v. Emperor*.

32 Cr. L. J. 33 (b) :
127 I. C. 767 : 34 C. W. N. 390 :
I. R. 1930 Cal. 895 : A. I. R. 1930 Cal. 481.

—————*Duty of Judge.*

The Judge's duty is to determine whether any evidence has been given on which the Jury could properly find the question for the party on whom the onus of proof lies, for that is a question of law. It is not enough to say that there was some evidence. A scintilla of evidence would not justify the Judge in leaving the case to the Jury. There must be evidence on which they might reasonably and properly conclude the fact to be established. It is the duty of the Judge to keep the Jury within proper limits, and for this purpose, to simplify as far as he can, the issues fairly and properly before the Court and direct the minds of the Jurors to those issues and those issues alone. *Emperor v. Upendra Nath Das*.

16 Cr. L. J. 561 :
30 I. C. 113 : 19 C. W. N. 653 :
21 C. L. J. 377 : A. I. R. 1915 Cal. 773.

—————*Duty of Sessions Judge—Evidence, statement of—Arguments of Counsel and discrepancies—Division of Jury on material points—Penal Code, S. 366-A, offence under—Omission to obtain Jury's finding on age—Misdirection.*

In a trial by Jury it is the duty of the Sessions Judge in making his summing-up to take care that whatever he says to the Jury must be true as the latter are bound to believe him. He should also obtain from the Jury a decision on all the material points which go towards establishing a particular offence under the Penal Code. In an offence under S. 366-A, Penal Code, the Judge must put the question of girl's age to the Jury and where he omits to do so, he misdirects himself and the whole trial is vitiated. It is the duty of a Judge in his summing-up to repeat in some form the gist of Counsel's arguments and the alleged discrepancies in the case and not to deal with the case as though the discrepancies in the evidence were of no value and the arguments of Counsel might safely be ignored. *Nehru Mal v. Emperor*.

28 Cr. L. J. 683 (b) :
103 I. C. 411 : 4 O. W. N. 616 :
2 Luck. 597 : A. I. R. 1927 Oudh 259.

JURY TRIAL

———*Function of Jury.*

It is for the Jury to say whether and how far the evidence is to be believed. And if the facts as to which evidence is given, are such that from them a further inference of fact may legitimately be drawn, it is for the Jury to say whether that inference is to be drawn or not. But it is for the Judge to determine, subject to review, as a matter of law, whether from those facts that further inference may legitimately be drawn. *Emperor v. Upendra Nath Das.*

16 Cr. L. J. 561 :
30 I. C. 113 : 19 C. W. N. 653 :
21 C. L. J. 377 : A. I. R. 1915 Cal. 773.

———*Function of Jury—Jury returning verdict that they agree with whatever opinion Judge may form—Legality of verdict—Verdict without considering case—Re-trial.*

The Jury are the only persons who can pronounce a definite opinion on the guilt or otherwise of the accused who are tried before them, and they cannot abdicate their functions in favour of the Judge. Where a Jury returned a verdict that they agreed with whatever opinion the Sessions Judge might form, and on being asked to give a proper verdict, came back within 9 minutes with another verdict and the Judge accepted the verdict remarking that he disagreed with it: *Held*, that it could not be held under the circumstances that the Jury had properly considered the case and brought in a genuine verdict, and that the case should be re-tried. *Abdul Barik v. Emperor.*

30 Cr. L. J. 54 :
113 I. C. 70 : 48 C. L. J. 477 :
I. R. 1929 Cal. 81 : A. I. R. 1928 Cal. 827.

———*Interference—Charge fair and accurate—Conclusion of Jury reasonable, conviction.*

Where the charge to the Jury is fair and accurate and the conclusion of the Jury is reasonable, the High Court will not interfere with the conviction. *Babban v. Emperor.*

28 Cr. L. J. 937 :
105 I. C. 457 : 4 O. W. N. 901 :
A. I. R. 1927 Oudh 549.

———*Interference—Verdict of Jury—Miscarriage of justice.*

It is a cardinal rule of procedure that a Court should not interfere with the verdict of a Jury in Jury trials unless it is satisfied that there has been a miscarriage of justice. *Azimuddy v. Emperor.*

28 Cr. L. J. 485 :
101 I. C. 661 : 31 C. W. N. 410 :
A. I. R. 1927 Cal. 398.

———*Irregularity—Procedure.*

Where irregularities are discovered after the conclusion of a trial, pointing to a miscarriage of justice, the proper course for the aggrieved party is to carry the matter to the Crown for remedy. *In the matter of: Bonomally Gupta.*

18 Cr. L. J. 311 :
38 I. C. 423 : 21 C. W. N. 167 : 44 Cal. 723 :
A. I. R. 1917 Cal. 149.

———*Legality of conviction—Statement of approver—Charge to Jury—Duty of Judge.*

A conviction based upon the uncorroborated

JURY TRIAL

evidence of an approver would ordinarily not be sustainable unless the Judge had explained carefully to the Jury that they were taking a grave risk in convicting upon uncorroborated evidence. But a conviction cannot be upset on this ground where the evidence of the approver is corroborated and the Judge explains to the Jury in his charge the nature of the corroboration and directs the Jury to arrive at their verdict after considering the evidence of the approver and the evidence of corroboration together. *Mani Ram v. Emperor.*

29 Cr. L. J. 311 :
107 I. C. 876 : 5 O. W. N. 33 :
A. I. R. 1928 Oudh 207.

———*Legality of verdict—Jury retiring for consideration—Separation before returning verdict.*

Where the Jury who were 9 in number retired to consider their verdict and at 4 p.m., 5 of them came out and sat in Court and the remaining 4 came out at 4-30 p.m. and the Jury then gave the verdict: *Held*, that the verdict was not a legal verdict as the Jury had separated before they returned the verdict and the accused had thereby been deprived of the benefit of their joint consultation and consideration. If the jurymen are not able to come to a decision or agree upon a verdict before retiring, then the law requires that they should retire to consider their verdict, and it follows that they should all be in their retiring room together during the whole of the time between the moment of their retirement and the moment when their verdict is taken by the presiding Judge. The rule against separation of the Jury has a great deal of common sense in it and it should be strictly adhered to. *Kaseruddin Mahaldar v. Emperor.*

31 Cr. L. J. 1090 :
126 I. C. 753 : A. I. R. 1930 Cal. 446.

———*Misdirection.*

A Judge should not, in his charge to the Jury, express his opinions in terms too dogmatic and unqualified and state his own view on important matters of fact so positively as to leave the Jury no loophole for taking any other view; his doing so vitiates the verdict of the Jury. A charge to the Jury must be read as a whole, and if upon the general view taken, the case has been fairly left within the Jury's province, there is no misdirection. It is not to be expected that the Judge should comment on every point that could possibly be urged in favour of the accused. It is sufficient if he deals with the more important points and does not unduly press on the Jury his own view on questions of fact. Where the summing-up is calculated to leave a misleading impression on the mind of the Jury, it amounts to a misdirection. A Judge in his charge to the Jury must not make an appeal or exhortation to the Jury. When the High Court finds that there is a misdirection such as to vitiate the verdict of

JURY TRIAL

the Jury, it has the power either to direct a re-trial of the accused or enter into the merits of the case and dispose of it. It is permissible for a Judge and indeed (especially in India) it is often necessary for a Judge to express his opinion extremely clearly to the Jury. It is also permissible though not always or indeed often advisable to admonish the Jury as to their duty. But it is unfair to the Jury if the Judge says to them: "I am thoroughly convinced of the guilt of the accused, return a just verdict. If you do not, both you and I will be disgraced for ever." *Topandas v. Emperor*. 25 Cr. L. J. 761 : 81 I. C. 249 : A. I. R. 1925 Sind 116.

———*Misdirection—Advice to ignore certain witnesses—Dogmatic opinion, expression of—Summing-up—Judge, duty of.*

An advice given to the Jury to ignore the evidence of certain witnesses for the prosecution, is not a proper direction to the Jury. The duty of the Judge in summing-up is to place the entire evidence, for or against the accused, before the Jury and leave the ultimate decision of questions of fact to it. He is not debarred from expressing his own opinion on the evidence; but it should be done in such a way as not to create any impression in the mind of the Jury that it was a direction from the Judge which they should follow; and such opinion should not be expressed strongly and dogmatically. Where there are no eye-witnesses and no sufficient evidence of motive, it is proper to leave the whole case to the Jury. *Naiballa (Nayab-ullah) Sheikh v. Emperor*. 27 Cr. L. J. 1038 : 96 I. C. 990 : 43 C. L. J. 488 : A. I. R. 1926 Cal. 996.

———*Misdirection—Charge to Jury.*

Where the accused was found in possession of stolen property three weeks after the theft : *Held*, that the proper presumption was not that he committed the theft, but that he received the property knowing or having reason to believe it to be stolen. Where a Sessions Judge directed the Jury, in a case, where the accused was found in possession of stolen property, that the presumption was more in favour of the possessor being the thief than the receiver unless there was evidence to the contrary and that no presumption as to the latter should be made unless, besides the discovery of the stolen property, there was something to show that the accused received it knowing it to be stolen : *Held*, that there was misdirection. *In re : Gorle Kandungadu*. 13 Cr. L. J. 140 : 13 I. C. 828 : 1912 M. W. N. 97.

———*Misdirection—Direction by Judge that retracted confession of no value, whether desirable—Whether Judge to comment on every point that could possibly be argued in favour of accused.*

A Judge is unnecessarily favourable to an accused when he tells the Jury that the value of a retracted confession is almost nil even against the maker of it. A Judge is not expected in his charge to the Jury to comment on

JURY TRIAL

every point that could be possibly argued in favour of accused. It is sufficient if he deals with more important points and does not unduly press on the Jury his own views on questions of fact. In deciding whether there had been misdirection on the facts, the charge to the Jury must be considered as a whole. *Abdul Salim v. Emperor*. 23 Cr. L. J. 657 : 69 I. C. 145 : 35 C. L. J. 279 : 26 C. W. N. 680 : 49 Cal. 573 : A. I. R. 1922 Cal. 107.

———*Misdirection—Judge's charge to Jury—Judge, duty of, in stating law—Judge giving his own opinion.*

Where in a trial by Jury the Judge wishes to inform the Jury as to what are the terms of a particular provision of the law, it is necessary for him to read the actual words of the section containing that provision to the Jury, and, if necessary, to explain what is meant by the section; if instead of doing this, the Judge gives his own opinion of the meaning of the section, that would amount to a misdirection. *Emperor v. Durga Charan Bepari*. 23 Cr. L. J. 567 (b) : 68 I. C. 407 : 36 C. L. J. 171 : 26 C. W. N. 1002 : A. I. R. 1922 Cal. 124.

———*Misdirection—Penal Code, Ss. 392, 404—Robbery, gist of—Madras Criminal Rules of Practice, r. 238—Offence of robbery and murder—Joint trial, legality of.*

Under r. 238, Madras Criminal Rules of Practice, in a trial on charges of robbery and murder, the charges should be tried separately. It is irregular for a Sessions Judge to try both charges together, the first with a Jury and the second with jurors sitting as assessors. Where the jewellery of a deceased child was discovered in the possession of an accused charged with robbery and murder and the Judge told the Jury that if it had been removed from her person after her death, the offence committed was one under S. 404, Penal Code : *Held*, that that was not a proper direction, inasmuch as the question for consideration was whether the murder had been committed for the purpose of stealing the jewels, and if it had been committed for that purpose, the offence was one under S. 302, Penal Code. *In re : Muniyan*. 27 Cr. L. J. 1368 : 98 I. C. 488 : A. I. R. 1927 Mad. 243.

———*Misdirection—Procedure.*

Where grave and sudden provocation was no part of the defence case in the Sessions Court nor is any direct evidence given at the trial of such grave and sudden provocation or of facts from which this exception can be legitimately inferred, the trial Judge is quite justified in excluding inquiry into the exception. In fact, it would be an error on his part to lay down law as to a matter which is not legally and properly before the Jury. Where a trial for culpable homicide is proceeding before a Jury, it is not an appropriate mode of laying down the law to discourse on all branches and departments of this complicated topic of crime. To do so is calculated to confuse

JURY TRIAL

the Jury and possibly to direct their deliberations into channels that have nothing to do with the case. The duty of the Judge is to lay down the law in reference to the case presented to the Court and the facts of the case, and not to perplex the minds of the Jury with considerations that are outside the legitimate scope of the inquiry. *Emperor v. Upendra Nath Das.*

16 Cr. L. J. 561 :
30 I. C. 113 : 19 C. W. N. 653 :
21 C. L. J. 377 : A. I. R. 1915 Cal. 773.

— — — — — *Misdirection—Unanimous verdict—Failure of justice.*

To justify the reversal of a unanimous verdict of a Jury on the ground that the Judge in his charge misdirected the Jury, it must be shown that the verdict has occasioned a failure of justice, that the verdict was due to the misdirection, and that, apart from this, the Jury would not have come to the same conclusion. *Superintendent and Remembrancer, Legal Affairs, Bengal v. Shyam Sardar Bhumi.*

24 Cr. L. J. 143 :
71 I. C. 367 : 26 C. W. N. 558 :
A. I. R. 1922 Cal. 106.

— — — — — *Misdirection.*

Where the Judge directs the Jury that they should remember that there was a presumption in law that a witness who comes to the Court and deposes on oath, should be believed until there is good reason to disbelieve him, there is a misdirection. *Saroj Kumar Chakravarty v. Emperor.*

33 Cr. L. J. 854 :
139 I. C. 873 : 59 Cal. 1361 :
55 C. L. J. 439 :
I. R. 1932 Cal. 667 :
A. I. R. 1932 Cal. 474.

— — — — — *Power of Judge to state his opinion to Jury.*

A trial Judge is entitled to express his opinion to a Jury freely and emphatically when it seems to him to be necessary to do so provided that he warns the Jury that his opinion is in no way binding upon them and that it is the Jury's opinion on the facts of the case alone which matters. *Rathanasabapathi Goundan v. Public Prosecutor.*

37 Cr. L. J. 909 :
164 I. C. 243 : 1936 M. W. N. 459 :
44 L. W. 155 : 71 M. L. J. 231 :
59 Mad. 904 : 9 R. M. 99 :
A. I. R. 1936 Mad. 516.

— — — — — *Procedure.*

In cases where an appeal lies or where an application is made to the Government Advocate for a fiat, which may happen in any case, it is essential that there should be an official record of the charge delivered by the Judge to the Jury. At the criminal sessions of the High Court, the charge of the Judge to the Jury should be taken down in shorthand and a transcript of the shorthand notes must be made and tendered to the Judge in order that he may make such corrections therein as may be necessary and the transcript, as amended and signed

JURY TRIAL

by the Judge, should form the record of the charge. *Ba Thein v. Emperor.*

32 Cr. L. J. 23 :
127 I. C. 730 : 8 Rang. 372 :
I. R. 1930 Rang. 410 :
A. I. R. 1930 Rang. 351.

— — — — — *Procedure, legality of—Charge to Jury—Address in vernacular read by Government Pleader—Verdict of doubt—Direction to re-consider part of a case, legality of.*

The fact that the Judge's charge to the Jury after being translated into the vernacular was read to the Jury by the Government Pleader does not render a trial illegal. A Jury returned a unanimous verdict of 'doubt' and when the Judge asked them their opinion about a certain part of the case they admitted that they had not considered it and the Judge sent the Jury back to consider that part of the case and the Jury returned with a verdict of guilty : *Held*, that there was nothing illegal in the procedure adopted by the trying Judge. *Sur Nath Bhaduri v. Emperor.*

28 Cr. L. J. 950 :
105 I. C. 662 : 25 A. L. J. 1077 :
A. I. R. 1927 All. 721,

— — — — — *Procedure, legality of—Juror not acquainted with English—Duty of Judge to translate charge or have it translated by peshkar—Translation by Public Prosecutor—Defence Pleader given right to object.*

One of the Jurors not being well-versed in English, the Public Prosecutor, who was the best man available, was asked to translate the charge, to the Jury. The *mukhtear* of the defence was told that if he wanted to object to any translation, he was at liberty to do so then and there. The Jury unanimously found the accused guilty : *Held*, that the procedure followed, though unfortunate, was not unfair and did not vitiate the trial as it did not cause any prejudice to the accused. It is desirable that *peshkars* or the Judges themselves should explain the charge to the Jurymen who do not know English. *Dwijapada Haldar v. Emperor.*

29 Cr. L. J. 638 :
109 I. C. 910 : 47 C. L. J. 449 :
A. I. R. 1928 Cal. 401.

— — — — — *Re-charge of Jury, legality of—Absurd or unintelligible verdict of Jury—Procedure to be followed by Judge—Cross-examining Jury, propriety of.*

If a Jury give an absurd verdict, the Judge is not bound to interpret it for himself and accept it either as a verdict of guilty or not guilty. He may re-charge the Jury on specific points and there is nothing in the Cr. P. C., to prevent him from doing so. Cross-examining the Jury is, in such cases, generally a most unsatisfactory procedure. *Hamid Ali Haldar v. Emperor.*

31 Cr. L. J. 761 :
125 I. C. 97 : 57 Cal. 61 :
A. I. R. 1930 Cal. 320.

KARACHI CITY MUNICIPAL ACT (XVII OF 1933)

-----Unanimous verdict of Jury.

A unanimous verdict of a Jury is bound to be accepted by the Judge and under S. 305, Cr. P. C., it is only when the Jury are not unanimous that it lies with the Judge to take one of the courses specified in the section. The fact that an accused has been charged with dacoity only, does not necessarily invalidate a verdict of guilty of abetment of robbery. *S. P. Ghosh v. Emperor*.

16 Cr. L. J. 676 :
30 I. C. 724 : 8 Bur. L. T. 247 :
A. I. R. 1915 L. Bur. 39.

-----Verdict of Jury—Charge to Jury to be read as a whole—Verdict of Jury not to be lightly set aside.

A charge to the Jury must be read as a whole and a Judge is not expected to go on repeating what he has said in a previous part of the charge when dealing with the cases of the individual accused. In a Jury trial, the Court cannot lightly interfere with or set aside the verdict of the Jury unless it is satisfied that there has been such misdirection as, in its opinion, has occasioned a failure of justice. *Ayub Mandal v. Emperor*.

28 Cr. L. J. 689 :
103 I. C. 545 : 54 Cal. 539 :
A. I. R. 1927 Cal. 680.

-----Verdict of Jury—Interference—Mere miscarriage of justice, whether ground for interference—Charge to Jury, essentials of—Non-direction, when amounts to misdirection—Charge against several accused—Case against each accused to be set out separately.

The verdict of the Jury cannot be set aside on the mere ground that there has been a miscarriage of justice. To entitle the Court to interfere with such a verdict, it must further be established that the failure of justice was the result of a misdirection of the Judge in his charge to the Jury. A non-direction is not a misdirection unless the Jury has been misled or unless the non-direction is of primary importance. A charge must be such as to enable the Jury to grasp the points for decision. A charge should set out the case against each of the accused separately. *Champa Pasin v. Emperor*.

29 Cr. L. J. 325 :
108 I. C. 81 : A. I. R. 1928 Pat. 326.

-----Right could be taken away by Cr. P. C., Councils Act (24 and 25 Vict. C. 67), S. 22, proviso.

The right to a trial by Jury could be taken away by the Cr. P. C., notwithstanding the proviso to S. 22, Councils Act, 1861. *Barindra Kumar v. Emperor*.

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 467.

K

KARACHI CITY MUNICIPAL ACT (XVII OF 1933)

-----S. 116.

See also Karachi City Municipal Act, 1938, S. 117 (1).

KARACHI PORT TRUST ACT (VI OF 1866)

-----S. 116—Duty of Magistrate—Appeal against amount of assessment—Magistrate to record evidence for and against assessment—Nature of his order—Inspection of site.

When there is an appeal against the amount of the assessment under S. 116, Karachi City Municipal Act, the Magistrate must himself record the evidence for and against the assessment. The order of a Magistrate should contain the substance of the evidence and a brief statement of the reasons for his decision. It may be necessary and indeed most useful, that a Magistrate should visit the site in enquiries of this nature, but he should use his inspection to interpret the evidence recorded by him as in the inspection of sites under the Cr. P. C. *Bhojraj v. Emperor*.

41 Cr. L. J. 345 :
186 I. C. 608 : 1939 Kar. 669 :
12 R. S. 211 : A. I. R. 1940 Sind 30.

-----Ss. 117 (1), 251, 116 — Revisional powers under.

So far as applications in revision against orders passed in appeal are concerned, S. 251, Karachi City Municipal Act, applies and the powers and procedure of the Court in these proceedings are the powers exercisable by the Judicial Commissioner's Court and the procedure provided under the Cr. P. C. Therefore, when exercising revisional powers that Court will be guided and controlled by S. 115, Cr. P. C. The Courts and Judges and Magistrates referred to in S. 117 (1) and cognate sections, are *persona designatae*. "The Court of the Judicial Commissioner of Sind" in S. 251 of the Act, means a Judge of that Court whereto an application in revision lies from the order of the Magistrate, whether in Sessions Court jurisdiction or otherwise. *Bhojraj v. Emperor*.

41 Cr. L. J. 345 :
186 I. C. 608 : 1939 Kar. 669 :
12 R. S. 211 : A. I. R. 1940 Sind 30.

-----Ss. 195 (1) (a), 197—Plea of adverse possession.

Chief Officer empowered to take action in respect of fixture—Plea of adverse possession cannot be availed of by person owning fixture. *Durlabji Hansraj v. Municipal Corporation, Karachi*.

37 Cr. L. J. 82 :
159 I. C. 247 : 29 S. L. R. 315 :
8 R. S. 76 : A. I. R. 1935 Sind 222.

-----S. 251.

See also Karachi City Municipal Act, 1933, S. 117 (1).

KARACHI PORT TRUST ACT (VI OF 1866)

-----S. 84—Levy of Port Trust dues—Cr. P. C., S. 386—Order directing issue of warrant—Revision, whether competent.

The order of a Magistrate directing a warrant to issue under S. 386, Cr. P. C., for recovery of an amount due to the Karachi Port Trust on application being made to him for the purpose under S. 84, Karachi Port Trust Act, is not a judicial order but an executive

SENTENCE

———*Injured person, taking lenient view of injury—Nature of offence.*

The lenient view of the injury taken by the injured person cannot reduce the offence which the accused committed, even if it is taken into consideration as a mitigation which would justify a lenient view in passing sentence. *Nga Sit Tun v. Emperor.*

39 Cr. L. J. 79 :
172 I. C. 134 : 10 R. Rang. 228 :
A. I. R. 1937 Rang. 401.

———*Interference.*

Adequacy of sentence—Lower Courts taking everything into consideration—Interference in revision is not proper. *Ramdeo v. Emperor.*

36 Cr. L. J. 558 :
154 I. C. 740 : 1935 A. W. R. 469 :
7 R. A. 789 : A. I. R. 1935 All. 516.

———*Interference by High Court.*

Where the sentence though light, is substantial, it is not the practice of the Lahore High Court to interfere with it. *Emperor v. Tayab.*

36 Cr. L. J. 681 :
155 I. C. 241 : 36 P. L. R. 184 :
7 R. L. 665 : A. I. R. 1934 Lah. 975.

———*Sentence.*

Magistrate awarding aggregate sentence for two offences without specification—High Court apportioning sentences and setting aside one. *Kesri Mal v. Emperor.*

15 Cr. L. J. 502 :
24 I. C. 590 : 1 O. L. J. 200 :
A. I. R. 1914 Oudh 361.

———*Measure of.*

The principal object of punishment is the prevention of crime and the measure of punishment must consequently vary from time to time according to the prevalence of a particular form of crime and other circumstances. *Om Parkash v. Emperor.*

31 Cr. L. J. 1182 :
127 I. C. 209 : A. I. R. 1930 Lah. 867.

———*Recommendation for mercy.*

In the case of a conviction for such a grave offence as waging war against the King, it is not the function of the Court to recommend or suggest that mercy should be extended to the accused or any of them. *Aung Hla v. Emperor.* (S. B.)

33 Cr. L. J. 205 :
135 I. C. 849 : 9 Rang. 404 :
I. R. 1932 Rang. 65 :
A. I. R. 1931 Rang. 235.

———*Miscellaneous.*

Theories of punishment discussed. *S. H. Jhabwala v. Emperor.*

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

———*Mitigating circumstances.*

A man is not entitled to get off with a small sentence merely because he is a person of high position and one who has done good service for the Government in the past. An accused is, however, entitled

SENTENCE

to some sympathy on account of his previous blameless character, and on account of the fact that in a case of embezzlement, he has made good the whole of the defalcations. The fact that a person of high position, undergoes in the loss of his reputation and of his position, a much greater punishment than would be represented by rigorous imprisonment to a common man must also be considered. *Qabul Ahmad v. Emperor.*

28 Cr. L. J. 749 :
103 I. C. 797 : 1 Luck. Cas. 220.
A. I. R. 1927 Oudh 319.

———*Motive, effect of—Extenuating circumstances.*

In awarding sentence, the motive is not one which merits commendation. *Sheoshankar Dhondiji Mahar v. Emperor.*

41 Cr. L. J. 697 :
188 I. C. 885 : 1940 N. L. J. 165 :
13 R. N. 14 : A. I. R. 1940 Nag. 410.

———*Murder—Age.*

That the accused in a murder case is only 18 years old is not by itself a sufficient ground for the Court to reduce the sentence. This will be a matter for the Local Government when the case comes before them. *Gian Chand v. Emperor.*

38 Cr. L. J. 879 :
170 I. C. 5 : 10 R. L. 101 :
I. L. R. 1937 Lah. 481 ; 39 P. L. R. 834 :
A. I. R. 1937 Lah. 399.

———*Murder—Sentences open to Judge.*

If a Judge accepts a finding of murder, there are only two penalties, and he cannot pass inadequate sentences. Where he does not believe the verdict of the Jury, it is his duty to refer the case to the High Court. *Arajali v. Emperor.*

27 Cr. L. J. 1254 :
98 I. C. 102 : 30 C. W. N. 276.

———*Murder—Wife unfaithful—Murder, deliberate premeditation.*

The mere fact that a woman has been unfaithful to her husband is not in itself sufficient ground for substitution of the lesser sentence where there has been deliberate premeditation. *Fazal Karim v. Emperor.*

A. I. R. 1936 Lah. 580.

———*Murder, mitigating circumstances.*

In a murder case, the mere youth of the accused without any other extenuating circumstance is not a sufficient ground for not imposing the capital sentence. The bare fact that a brutal murder has been committed without any apparent motive is no ground for assuming that there has been some provoking cause which would amount to a mitigating circumstance. *Gehnu v. Emperor.*

31 Cr. L. J. 81 :
120 I. C. 276 : A. I. R. 1930 Lah. 50.

———*Murder case—Mitigating circumstances.*

The accused was a girl less than 17 years old at the time of the murder. Her husband and mother were the chief actors in the plot, and though she failed to earn her pardon, her statement as approver led to a successful investiga-

SENTENCE

tion and to the conviction of the principal criminal. She had already served a considerable sentence and had also suffered by reason of the birth of her child in jail: *Held*, that the situation of a girl whose mother and husband were determined on murder, was not an enviable one and that though her sentence of transportation for life on the charge of murder could not be reduced, there could not be a stronger case for prerogative of mercy. *Aziz Begum v. Emperor*. 39 Cr. L. J. 16 : 171 I. C. 954 : 39 P. L. R. 394 : 10 R. L. 254 : A. I. R. 1937 Lah. 689.

—Murder case—Extent.

Where two persons are convicted under S. 302, Penal Code, for the murder of two men, the reasoning that five persons should not be sentenced to death for the murder of two, is not in accordance with law and cannot be sustained. *Kuar Kocri v. Emperor*. 38 Cr. L. J. 1007 : 170 I. C. 785 : 18 P. L. T. 416 : 10 R. P. 170 : 3 B. R. 794 : A. I. R. 1937 Pat. 497.

—Murderous assault.

Where the assault is of a murderous and brutal nature and the injuries are inflicted deliberately on a vital part of the body, namely the head, and death has ensued, the accused should be sentenced to capital punishment. *Chail Singh v. Emperor*. 36 Cr. L. J. 249 : 153 I. C. 81 : 11 O. W. N. 1543 : 7 R. O. 286 : A. I. R. 1935 Oudh 110.

—Nature of.

Evidence against all accused precisely the same—Sentence on all should be the same. *Bharat Singh v. Emperor*. 37 Cr. L. J. 32 : 159 I. C. 155 (2) : 1935 A. W. R. 53 : 8 R. A. 387 : A. I. R. 1935 All. 362.

—Nature of—Punishment—Deterrent.

Combination of people to flout lawful authority—Punishment must be deterrent. *Ahmad Usman v. Emperor*. 35 Cr. L. J. 830 : 148 I. C. 982 : 28 S. L. R. 73 : 6 R. S. 212 : A. I. R. 1934 Sind 34.

—Nature of.

Sentence—Person trying to overawe witness of other side—Witness refusing—Assault on such witness—Case held serious and not fit for mere admonition. *Hira Kurmi v. Emperor*. 37 Cr. L. J. 502 : 161 I. C. 932 : 2 B. R. 392 : 17 P. L. T. 327 : 8 R. P. 493 : A. I. R. 1936 Pat. 175.

—Nature of.

Where the accused have had superior education and belong to superior social status, a sentence of imprisonment will be irksome and deterrent in their cases than in the cases of hardened criminals who actually carried out the dacoity. *Maung Tha Ka Do v. Emperor*. 37 Cr. L. J. 280 : 160 I. C. 292 : 8 R. Rang. 363 : A. I. R. 1935 Rang. 491.

SENTENCE

—Object of.

Every sentence must be as heavy as is necessary to deter others from doing it from fear of sharing the same fate and no heavier. *Emperor v. Daulat Singh*. 30 Cr. L. J. 220 : 113 I. C. 911 : 11 N. L. J. 245 : A. I. R. 1928 Nag. 343.

—Offence of petty theft.

S. a young man of 25, with no previous convictions against him, was convicted of theft of 8 annas worth green wheat and sentenced to one year's rigorous imprisonment: *Held*, that such a case was obviously one for whipping. Sentence reduced to 4 months. *Sangar Singh v. Emperor*. 4 Cr. L. J. 362 : 1 P. W. R. Cr. 16 : 7 P. L. R. 465.

—Offence punishable under two provisions.

Where a person is found guilty of a criminal act which is punishable under two different sections of Penal Code, he may be convicted under both the sections, but should be punished only under that section which imposes the higher penalty. *Emperor v. Lajji Mandan*. 41 Cr. L. J. 183 : 185 I. C. 413 (2) : 41 Bom. L. R. 980 : 12 R. B. 253 : A. I. R. 1939 Bom. 452.

—Offence punishable under two provisions of law.

Where there is one offence punishable under two different provisions of law, only one punishment can be legally inflicted. *Bhagat Singh v. Emperor*. 31 Cr. L. J. 290 : 121 I. C. 726 : 31 P. L. R. 73 : A. I. R. 1930 Lah. 266.

—Period of trial cannot be included in period of sentence.

A Magistrate in awarding a sentence has no jurisdiction to direct that any portion of the period during which the accused has been detained in custody as an under-trial prisoner should count as part of the sentence. *Dangar Khan v. Emperor*. 23 Cr. L. J. 593 : 68 I. C. 817 : A. I. R. 1923 Lah. 104.

—Policeman committing burglary.

Where a Policeman committed burglary and was sentenced to five years' rigorous imprisonment: *Held*, that the sentence was not by any means excessive. *Sardara v. Emperor*. 31 Cr. L. J. 877 : 125 I. C. 639 : A. I. R. 1930 Lah. 667.

—Political offences.

In the case of political offences, arising out of the beliefs of the accused, severe sentences defeat their object. In practice, such sentences confirm the offenders in their beliefs and create other offenders, thus increasing the evil and the danger to the public. *Jhabwala v. Emperor*. 34 Cr. L. J. 967 : 145 I. C. 481 : 1933 A. L. J. 799 : 6 R. A. 65 : A. I. R. 1933 All. 690.

—Previous character of accused—Relevancy.

The previous character may be taken into

SENTENCE

account in awarding sentence. *Khuda Bakhsh v. Emperor*. 38 Cr. L. J. 24 : 165 I. C. 909 : 17 Lah. 284 : 38 P. L. R. 630 : 9 R. L. 321 : A. I. R. 1936 Lah. 914.

—Previous conviction, effect of.

Where there has been previous conviction, short sentences are to be deprecated. *Govinda v. Emperor*. 38 Cr. L. J. 423 : 167 I. C. 521 : 9 R. N. 193 : I. L. R. 1937 Nag. 181 : A. I. R. 1936 Nag. 245.

—Principles governing apportionment.

When the Legislature has laid down a maximum punishment for an offence or a series of offences, it is the duty of the trial Court to apportion punishment in each case after considering all the circumstances having a bearing upon it, and not to shirk its responsibility by imposing the maximum penalty upon every offender. *Kher Singh v. Emperor*. 30 Cr. L. J. 15 : 112 I. C. 783 : I. R. 1929 Lah. 85 : 10 Lah. 524 : 30 P. L. R. 638 : A. I. R. 1929 Lah. 29.

—Prolonged proceedings, consideration of.

However guilty an accused person may be, it is most undesirable that he should be subjected to the strain and anxiety of prolonged proceedings unless it is absolutely unavoidable, and such delay may be legitimately taken into consideration in passing the sentence. *Billinghurst v. Emperor*.

25 Cr. L. J. 1313 : 82 I. C. 545 : 27 C. W. N. 821 : A. I. R. 1924 Cal. 18.

—Provocation, effect of.

A severe sentence is not called for where an offence has been committed on a considerable provocation caused by an unjustifiable act. *Emperor v. Sada*.

11 Cr. L. J. 99 : 4 I. C. 980 : 14 P. W. R. 1909 Cr.

—Punishment, necessity of.

There is no law that says a penalty must always follow a conviction. The maximum penalty for each breach of the law is fixed by it but there is no minimum except in a very few special cases. *Sitaram Kunbi v. Emperor*.

29 Cr. L. J. 506 : 109 I. C. 234 : 11 N. L. J. 46 : 24 N. L. R. 110 : A. I. R. 1928 Nag. 188.

—Rash and negligent driving—Accident—Accused pleading guilty and being repentant—Proper sentence.

Although cases of accident due to rash and negligent driving of motor cars should be adequately punished, where the accused is a young man, pleads guilty to the charge and is repentant and the car was not being driven at a speed of more than 25 miles an hour and the accident was unfor-

SENTENCE

unate, severe sentence is not called for. *Ganga Bux v. Emperor*.

147 I. C. 698 (1) : 10 O. W. N. 1349 : 1934 O. L. R. 148 : 6 R. O. 293 : A. I. R. 1934 Oudh 18.

—Reduction.

Accused, old man of 73, and co-accused young man of 20—Doubt as to who struck blow—Sudden fight—Sentence should be reduced. *Mohammad Nabi Khan v. Emperor*. 35 Cr. L. J. 943 : 149 I. C. 343 : 11 O. W. N. 698 : 6 R. O. 551 : A. I. R. 1934 Oudh 251.

—Reduction—Considerations.

In passing sentence, the Court should consider the period which the accused have already spent in Jail in the course of the proceedings and in the case of a lengthy trial, the sentences passed on the accused should be reduced on that account. *S. H. Jhabwala v. Emperor*. 34 Cr. L. J. 967 : 145 I. C. 481 : 6 R. A. 65 : 1933 A. L. J. 799 : A. I. R. 1933 All. 690.

—Reduction.

In view of the fact that the accused also was injured and of the possibility that he merely exceeded the right of private defence, his sentence was reduced. *Mala Singh v. Emperor*.

5 L. L. J. 121 : A. I. R. 1924 Lah. 61.

—Reduction.

The accused were convicted of having trespassed into the *haveli* of the complainant and beaten him causing severe injuries, and then having carried him to a house of one of the accused, where they charged him of having entered the house to commit theft. The accused were sentenced to rigorous imprisonment for eight months, including one month's solitary confinement. The Sessions Judge in appeal believed the version of the accused and disbelieved all the witnesses for the prosecution, but maintained the sentence : *Held*, that the sentence originally imposed should not have been maintained. *Ganda Singh v. Emperor*.

16 Cr. L. J. 175 : 27 I. C. 559 : 17 P. L. R. 1915 : A. I. R. 1914 Lah. 551.

—Reduction of.

Appeal and Reference from death sentence—Delay in preparation of paper books and detention of accused : *Held*, this may be considered in reducing capital sentence. *Benoyendra Chandra Pandey v. Emperor*.

37 Cr. L. J. 394 : 161 I. C. 74 : 40 C. W. N. 432 : 63 Cal. 929 : 8 R. C. 472 : A. I. R. 1936 Cal. 73.

—Reduction of.

Grave crime—Sentence awarded by Sessions Judge—Interference, is not proper. *Muhammad Panah v. Emperor*. 35 Cr. L. J. 1170 : 150 I. C. 917 : 7 R. S. 33 : A. I. R. 1934 Sind 78 (2) :

SENTENCE

—Reduction of.

Motor lorry driver not participating in crime of abduction at initial stages but circumstances compelling him to continue: *Held*, sentence could be reduced. *Mahammad Shafi v. Emperor.* 37 Cr. L. J. 430 : 161 I. C. 313 : 38 P. L. R. 323 : 8 R. L. 718 : A. I. R. 1936 Lah. 15.

—Reduction of.

Rash and negligent driving—Accident—Accused repentant—Speed of car not more than 25 miles—Severe sentence is not called for. *Ganga Bux v. Emperor.*

147 I. C. 698 (1) :
10 O. W. N. 1349 : 6 R. O. 293 :
A. I. R. 1934 Oudh 18.

—Reduction of.

Where the injuries inflicted are of a minor nature and are detected only after four or five days, a sentence of six months and three months on the accused is too severe. *Altaf Hussain Shah v. Emperor.*

35 Cr. L. J. 605 (1) :
147 I. C. 1226 (1) : 34 P. L. R. 68 :
6 R. L. 491 (1) : A. I. R. 1933 Lah. 311 (1).

—Reduction—Previous conviction.

The accused, on conviction of an offence under S. 457, Penal Code, was sentenced to transportation for life. The Sessions Judge, who convicted the accused, took into consideration against him his two previous convictions and a statement made by him as informer in another case wherein he had admitted having committed a long series of thefts and burglaries and that he belonged to a gang of dacoits. The Chief Court on appeal, reduced the sentence to one of seven years' transportation. *Imam Din v. Emperor.*

2 Cr. L. J. 206 :
6 P. L. R. 90.

—Reduction.

Where the evidence is not clear as to what part they actually took in the riot, the High Court will be justified in recommending that the local Government might consider the question of reducing the sentence of transportation for life imposed on them. *Ramhit v. Emperor.*

35 Cr. L. J. 919 :
149 I. C. 210 : 4 A. W. R. 191 :
6 R. A. 872 : A. I. R. 1934 All. 776.

—Respectable accused.

The law is not a respecter of persons, and a respectable person as such, must not escape with a lesser sentence. *Jehangir Ardeshir Cama v. Emperor.*

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
A. I. R. 1927 Bom. 501.

—Revision.

Unless there is something that is manifestly wrong with the sentence, unless it is clearly out of proportion to the offence, if it is within the jurisdiction of the Magistrate and he has exercised his discretion, no interfer-

SENTENCE

ence in revision should take place. *Sheikh Gulzar v. Emperor.*

35 Cr. L. J. 1327 :
151 I. C. 361 : 13 Pat. 63 :
15 P. L. T. 196 : 7 R. P. 82 :
A. I. R. 1934 Pat. 214.

—Robbery for political purposes.

The gravity of a robbery is not extenuated by the fact that it was committed not for the personal gain of the robbers but solely in order to obtain funds for the furtherance of a political cause. *Ram Prasad v. Emperor.*

29 Cr. L. J. 129 :
106 I. C. 721 : 1 Luck. Cas. 339 :
2 Luck. 631 : A. I. R. 1927 Oudh 369.

—Sentence.

Sentence of detention in Borstal School and whipping for separate offences is legal. *Nga Ohn Shwe v. Emperor.*

35 Cr. L. J. 959 :
149 I. C. 107 : 12 Rang. 344 :
6 R. Rang. 286 : A. I. R. 1934 Rang. 125.

—Sentence of fine.

Where fines were imposed on the accused and it was contended that the accused being unable to pay the fines, would have to stay in jail for a long period but it was found that the fine was imposed because it was represented to the Judge that a friend might pay it: *Held*, that the fines were rightly imposed. *Rattan Lal v. Emperor.*

38 Cr. L. J. 51 :
165 I. C. 544 : 9 R. L. 265.

—Sentence of solitary confinement.

Where a person is convicted of separate offences, separate sentences of solitary confinement are not illegal, but as a matter of practice, a sentence of more than 3 months' solitary confinement should not be passed at one trial. *Dangar Khan v. Emperor.*

23 Cr. L. J. 593 :
68 I. C. 817 : A. I. R. 1923 Lah. 104.

—Sentence under Penal Code, meaning of.

A sentence imposed upon a person for an offence punishable under the Penal Code, is a sentence under the Cr. P. C., for an offence rendered punishable by the Penal Code. *Akbar v. Emperor.*

35 Cr. L. J. 399 :
147 I. C. 180 : 6 R. Pesh. 26 :
A. I. R. 1933 Pesh. 90.

—Separate sentences.

The offence of conspiracy is a separate offence from the offence of participation in a particular dacoity or the dishonest reception of property stolen in a dacoity knowing it to be stolen. Separate sentences can be awarded to run consecutively for participation in separate dacoities and to these can also be added a consecutive sentence of participation in conspiracy. *Hazari Beria v. Emperor.*

30 Cr. L. J. 473 :
115 I. C. 276 : 5 O. W. N. 985 :
I. R. 1929 Oudh 228 :
A. I. R. 1928 Oudh 507.

SENTENCE

———*Separate sentences.*

Separate sentences passed upon persons for the offences of rioting and hurt are not legal where it is found that such persons individually did not cause hurt, but were guilty of that offence under S. 149, Penal Code. But where each of the accused took an individual part in the assault, separate sentences under Ss. 147 and 323, Penal Code, would be legal. *Harbans Pandey v. Emperor.*

14 Cr. L. J. 66 :
18 I. C. 402 : 40 Cal. 511.

———*Separate sentences.*

Separate punishments can be awarded if the offences committed are two separate and distinct dacoities. *Nga Po Nyein v. Emperor.*

35 Cr. L. J. 1161 (1) :
150 I. C. 747 : 7 R. Rang. 15 :
A. I. R. 1934 Rang. 122.

———*Servant acting under orders of his master.*

A servant acting under the direct orders of his master should not be punished as severely as the latter. *Yaswar Bakht Choudhury v. Emperor.*

41 Cr. L. J. 719 :
189 I. C. 173 : 71 C. L. J. 181 :
I. L. R. 1940, 1 Cal. 531 :
44 C. W. N. 474 : 13 R. C. 73 :
A. I. R. 1940 Cal. 277.

———*Severe punishment, when necessary.*

One element in awarding sentences is the element of vengeance; the natural resentment of the aggrieved persons must be satisfied lest they take the law into their own hands. In a case where this element does not arise, a severe punishment is not necessary. *Harnam Singh v. Emperor.*

37 Cr. L. J. 1079 :
165 I. C. 146 : 38 P. L. R. 203 :
9 R. L. 218 : A. I. R. 1936 Lah. 833.

———*Solitary confinements—Limit of.*

The prisoner was sentenced on one date to rigorous imprisonment for 2 years, including solitary confinement for 3 months, under S. 411, Penal Code, and to rigorous imprisonment for six months, including solitary confinement for one month under S. 379 of the Code: *Held*, that as more than 8 months of consecutive terms of imprisonment in solitary confinement cannot legally be awarded, the sentence must be reduced. *Abdulla Jan v. Emperor.*

2 Cr. L. J. 707 :
6 P. L. R. 495 : 37 P. R. 1905 Cr.

———*Tender age of accused—Mitigation.*

While sentencing the accused the Magistrate remarked: "the accused persons are young boys of tender ages. They have committed the offence in the heat of their youth and dashing courage unmindful of consequences. This weighs much before me. A light fine will meet the ends of justice." One of the accused was a young man of 25: *Held*, that to call a man of 25 years a boy of tender age is inaccurate. The remarks of the Magistrate were

SENTENCE

injudicious putting a premium on hooliganism. *Shankar v. Rama.*

41 Cr. L. J. 793 :
189 I. C. 731 : 13 R. N. 74 :
1940 N. L. J. 389 :
A. I. R. 1940 Nag. 276.

———*Transportation for life.*

The accused were sentenced to seven years' transportation under S. 307, Penal Code, and to three years' transportation under S. 440, Penal Code: *Held*, that the sentence of transportation under S. 440, Penal Code, was illegal, because (1) S. 59, Penal Code, is not applicable in the case of offences punishable with less than seven years' imprisonment, and (2) in cases where S. 59, Penal Code, is rightly applied, no sentence of less than seven years' transportation for each offence can be passed. *San Da v. Emperor.*

6 Cr. L. J. 290 :
4 L. B. R. 65.

———*Two lives for one.*

The argument that two lives should not be forfeited for one, should not be accepted. *Bhakta Bhusan Pramanik v. Emperor.*

37 Cr. L. J. 676 :
162 I. C. 636 : 40 C. W. N. 668 :
63 C. L. J. 142 : 63 Cal. 1089 :
8 R. C. 618 : A. I. R. 1936 Cal. 227.

———*Unreliability of witnesses, effect of.*

The fact that the prosecution witnesses have told lies and have falsely implicated innocent men is good reason for rejecting their testimony, but no reason for not passing sentence of death upon the person who is found guilty of a brutal murder. *Gendan Lal v. Emperor.*

32 Cr. L. J. 94 :
128 I. C. 211 : 7 O. W. N. 933 :
I. R. 1931 Oudh 19 : 6 Luck. 326 :
A. I. R. 1930 Oudh 460.

———*Sentence.*

The use of knife in a trivial fight with fists and hands, clearly amounts to the taking of undue advantage and makes the act unusual and cruel. *Nihal Singh v. Emperor.*

37 Cr. L. J. 87 :
159 I. C. 284 : 8 R. Pesh. 81 :
A. I. R. 1935 Pesh. 155.

———*Wealthy accused—Proper fine.*

The fact that a man may easily pay a fine is no ground for ordering him to pay the maximum fine fixed by law, if the nature of the offence committed by him is not of the most serious character. *Ganga Sagar v. Emperor.*

31 Cr. L. J. 88 :
120 I. C. 435 : 1930 A. L. J. 26 :
A. I. R. 1929 All. 919.

———*Sentence of death.*

Judges must not shrink from the duty, however painful it may be, of passing sentence of death in capital cases, when the offence is proved beyond reasonable doubt, and is of such a nature as to deserve the extreme penalty. *Emperor v. Nga Tun*

4 Cr. L. J. 132 :
3 L. B. R. 163.

SEPARATE CONVICTIONS

It is illegal to pass separate sentences for the offences of rioting and grievous hurt upon persons who are not proved to have individually committed any act which amounts to voluntarily causing hurt. *Sahadev Ahir v. Emperor*. 1 Cr. L. J. 199 : 8 C. W. N. 344.

SESSIONS CASE

———Adjournment.

Intention of the Cr. P. C., is that Sessions trial should proceed and be dealt with continuously from its inception to its finish. Adjournments should be granted only on the strongest possible ground and for the shortest possible period. *Badri Prasad v. Emperor*. 13 Cr. L. J. 861 : 17 I. C. 797 : 10 A. L. J. 473 : 35 All. 63.

———Power of Committing Magistrate.

A Magistrate should not treat a grave offence beyond his jurisdiction as a less grave offence in order to bring it within his jurisdiction, and he should not ordinarily go into the defence evidence in a case triable exclusively by the Court of Session in which a *prima facie* case for committal has been made out by the prosecution. *Jamal Mahomed v. Moideen*. 12 Cr. L. J. 20 : 8 I. C. 1103 : 1910 M. W. N. 852 : 9 M. L. T. 71.

SESSIONS TRIAL

———De novo trial—Change of Judge—Evidence recorded by one Judge and orders passed by another—Validity—Difference of Judge and Assessors—Retrial.

A Sessions Judge cannot act on evidence recorded by his predecessor in office. On a change of the Judge, a Sessions trial must commence *de novo*. The judgment on evidence partly recorded by his predecessor in office is illegal. Where a trial has been invalidated on legal grounds and the real question in the case has not been legally tried, a retrial ought to be held, unless it appears from the record that there is no evidence against the prisoner or that there is very little chance of a conviction. Mere disagreement between Judge and assessors is no sufficient reason for refusing a retrial. *Durga Charan Sanyal v. Emperor*. 8 Cr. L. J. 121 : 8 C. L. J. 59 : 4 M. L. T. 148.

———De novo trial.

In a Sessions trial, after the conclusion of the evidence and after the conclusion of the address of the Public Prosecutor and before the defence had been heard in full and before the Sessions Judge had summed up the case to the Jury, one of the Jurors, in a room occupied by the clerks of Pleaders, in answer to some questions put to him, made a fairly distinct intimation that he had formed the opinion that the accused was guilty of the charge against him: Held, that there should be a fresh trial

SHOLAPUR MARTIAL LAW ORDINANCE (IV OF 1930)

before a fresh Jury. *Emperor v. Nazir Ali Beg*. 22 Cr. L. J. 510 (a) :

62 I. C. 334 : 33 C. L. J. 122 :

25 C. W. N. 240 :

A. I. R. 1921 Cal. 631.

———Same transaction—Concerted action by accused—Acts forming part of same transaction—Misjoinder of charges.

Where a number of accused persons are charged with having associated themselves to commit an offence and having done acts forming part of the same transaction, it is not necessary, in order to sustain the charge, to prove that all of them acted together from start to finish in order to make their acts parts of one single transaction. It is enough to show that as each batch of them joined the principal accused they adopted his intention. *Madasamy Chetty v. Emperor*. 12 Cr. L. J. 268 :

10 I. C. 349 : 10 M. L. T. 23 :

1911, 2 M. W. N. 189.

———Sessions trial and transfer.

In transferring a case, no consideration should be had to the fact that by a transfer to a particular district, the accused will have the benefit of a trial by Jury, where previously he had none. The real question is that of convenience of parties. *Durga Charan Sanyal v. Emperor*. 8 Cr. L. J. 121 :

8 C. L. J. 59 : 4 M. L. T. 148.

SEYCHELLES PENAL CODE

———S. 2, 16—Mixture of funds—Conclusion.

The mixture of the funds of another with one's own fund may be in many cases natural and proper and in another case convenient but irregular and in the third both irregular and criminal. The distinctions between these cases require to be treated with the greatest judicial care, so as, while preserving the amplest civil responsibility, to prevent the third or criminal category from being extended to mistaken though convenient acts. *Louis Edouard Lanier v. The King*. 15 Cr. L. J. 305 :

23 I. C. 657 : 18 C. W. N. 98 :

1914 A. C. 221 : 26 M. L. J. 1 :

83 L. J. P. C. 116 P. C.

SHOLAPUR MARTIAL LAW ORDINANCE (IV OF 1930)

———Existence of necessity.

The justification for the acts of the military lies not merely in their *bona fides* but in the existence of necessity, i. e., in the proof of such a state of war, insurrection or armed resistance as to justify the cessation of the ordinary law and its replacement by military force, pure and simple. The question of necessity or whether the proved facts amount to necessity is a

SIND COURTS ACT (XII OF 1866)

question of fact for the Courts. *Chanappa Shantirappa v. Emperor*. (S. B.)

32 Cr. L. J. 403 :
129 I. C. 596 : 32 Bom. L. R. 1613 :
55 Bom. 263 : I. R. 1931 Bom. 196 :
A. I. R. 1931 Bom. 57.

—S. 11—Scope of.

Validates all sentences by the Military whether valid or invalid and the High Court cannot go into the question whether the Martial Law has been properly declared. The sentences by the Military are not subject to appeal or revision. *Chanappa Shantirappa v. Emperor*. (S. B.)

32 Cr. L. J. 403 :
129 I. C. 596 : 32 Bom. L. R. 1613 :
55 Bom. 263 : I. R. 1931 Bom. 196 :
A. I. R. 1931 Bom. 51.

SIND COURTS ACT (XII OF 1866)

—S. 9-A—Rules of Sind Judicial Commissioner's Court, Ch. I, S. 2, (2)—Judicial Commissioner sitting as Sessions Judge, whether can quash commitment—Single Judge, whether can deal with application.

The Judicial Commissioner when sitting in the Sessions Division is not divested of his dual capacity as a High Court Judge, and he has full power to make an order under S. 215, Cr. P. C., even when sitting as a Sessions Judge. Clause (2) of S. 2 of Chapter I of the Rules of the Court of the Judicial Commissioner of Sind, which provides that every application for quashing a commitment under S. 215 of the Cr. P. C., shall ordinarily be heard and determined by a Single Judge, is not inconsistent with the provision contained in S. 9-A of the Sind Courts Act of 1866. *Ullibai v. Emperor*.

26 Cr. L. J. 148 :
83 I. C. 708 : 17 S. L. R. 188 :
A. I. R. 1924 Sind 61.

—S. 9-C—Reference to third Judge—Power of third Judge.

S. 9-C, Sind Courts Act, does not restrict the third Judge to giving his opinion on the point or points of difference only, but makes it obligatory on him to give his opinion on the appeal or confirmation case as the case may be. But the third Judge should not differ from the other two on the points on which they have agreed unless there is a mistake of law or some fact which tells in favour of the accused has escaped notice. *Mohammad Yusuf v. Emperor*.

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

—S. 15-A—Tout—Proceedings to declare persons as tout, nature of.

Proceedings to declare a man a tout are not judicial proceedings but proceedings of a departmental nature which relate to the working of the Courts. *Achar Khuda Baksh v. Bar Association, Karachi*.

38 Cr. L. J. 316 :
166 I. C. 643 : 9 R. S. 153 :
30 S. L. R. 340 : A. I. R. 1937 Sind 4.

—S. 16—Duty of Pleader.

A Pleader by virtue of his *sanad* has certain rights and privileges, but he is not a chartered libertine and those rights and privileges carry

SIND COURTS ACT (XII OF 1866)

with them corresponding duties and restraints. A Pleader is an officer of the Court and is bound to assist the Court in the administration of justice. Criticism which is permissible to a private individual is not permissible to a Pleader. The co-operation of Pleader and Judge would be impossible if the Pleader were attacking the Judge in the public press. Nor would it be possible for the business of the Court to be conducted with dignity, decorum and impartiality when the Pleader is posing in public as the chastiser of the Judge. Such conduct is not only a breach of the Pleader's duty to the Court but must also result in an actual obstruction to the administration of justice. *Mr. M. Pleader, Re : Enquiry against*.

19 Cr. L. J. 322 :
44 I. C. 338 : 11 S. L. R. 81 :
A. I. R. 1918 Sind 54.

—S. 16—Duty of Pleader.

A legal practitioner has the right to entertain political opinions, but that should be in conformity with the position he has obtained by virtue of the licence granted to him. One cardinal principle a practising Pleader wishing to remain on the roll has to remember is, that those who live by the law should keep the law and not encourage others in its breach by publicly extolling and glorifying persons sentenced and by showing hearty sympathy towards a seditious and disloyal movement. *In re : Hurbuz v. Rai*.

131 I. C. 187 : I. R. 1931 Sind 59 :
25 S. L. R. 131 : A. I. R. 1931 Sind 33.

—S. 16—Jurisdiction of Judicial Commissioner.

The jurisdiction of the Judicial Commissioner under S. 16, Sind Courts Act, extends not only to professional misbehaviour but to general misbehaviour, but while this jurisdiction is unlimited, the Court is reluctant to take cognizance of misconduct not connected with the office of Pleader unless it is morally disgraceful or shows that the individual is not a proper person to hold that office. *Mr. M. Pleader, Re : Enquiry against*.

19 Cr. L. J. 322 :
44 I. C. 338 : 11 S. L. R. 81 :
A. I. R. 1918 Sind 54.

—S. 16—Misbehaviour.

A letter published by a Pleader, alleging that a certain Judge is indolent and takes credit for cases not tried but compromised, even if written in good faith and even if it does not constitute the offence of libel, amounts to misbehaviour under S. 16, Sind Courts Act. *Mr. M. Pleader, Re : Enquiry against*.

19 Cr. L. J. 322 :
44 I. C. 338 : 11 S. L. R. 81 :
A. I. R. 1918 Sind 54.

—S. 16—Misbehaviour—Inquiry under, nature of—Disciplinary action against Pleader—When to be taken.

The inquiry contemplated by S. 16, Sind Courts Act, is of a quasi-criminal character and strong proof is necessary for action. But the proposition to be proved is not that the

SIND COURTS ACT (XII OF 1866)

inculpated Pleader has brought himself within one of the sections of the Penal Code. What is to be proved is that he has been guilty of some such misbehaviour as would justify the High Court in removing or suspending him from practice. A notice was issued to a Pleader to show cause why action should not be taken against him under S. 16, Sind Courts Act. It was admitted (1) that the Pleader drew out moneys belonging to his client; (2) that he paid the cheque to his own credit in his own bank; (8) that he did not enter those moneys in his client's account; (4) that he was not able to refund those moneys when called upon, and that he had not refunded them in full even at the time of hearing of the case: *Held*, that the Pleader was guilty of such misbehaviour as to justify the court in taking action under S. 16, Sind Courts Act. *In re: G. Pleader*.

143 I. C. 631 : I. R. 1933 Sind 141 :
A. I. R. 1933 Sind 65.

———S. 16—*Misconduct*.

Misconduct must be made out by the admission of the party concerned or on evidence to the satisfaction of the Court. Where there is a positive sworn denial and repudiation of misconduct by the attorney coupled with an explanation which was not demonstrably false, even a strong case of suspicion would not justify disciplinary action against the attorney on a summary proceeding. *Re: Enquiry against Mr. L. Bar.-at-Law. (F. B.)*

30 Cr. L. J. 445 :
115 I. C. 318 : 23 S. L. R. 245 :
I. R. 1929 Sind 78 :
A. I. R. 1929 Sind 121.

———S. 16—*Pleader, if can be put on oath during inquiry against him.*

It is extremely undesirable that a Pleader should be compelled to answer questions on oath in an inquiry against him and then be prosecuted for perjury, for giving false answer to such questions. There is no reason, however, why a Pleader who voluntarily and deliberately commits perjury for the purpose of avoiding punishment in disciplinary proceedings, should not likewise be dealt with. A broad distinction has to be drawn between acts done by a Pleader in his professional capacity or in the presence of the Court, and acts not done in such capacity and not in the presence of the Court. *Re: Enquiry against Mr. L. Bar.-at-Law. (F. B.)*

30 Cr. L. J. 445 :
115 I. C. 318 : 23 S. L. R. 245 :
I. R. 1929 Sind 78 :
A. I. R. 1929 Sind 121.

———S. 16—*Power of Court.*

The Court, which under S. 16 (3), Sind Courts Act, has power to remove or to suspend from practice for misbehaviour any Pleader has, by necessary implication, power to define by judicial decision or otherwise what constitutes misbehaviour and laying down canons of good behaviour, departure from which may constitute misbehaviour. The rules framed by

SIND COURTS ACT (XII OF 1866)

the Bar Association with the approval of the Court must be regarded as laying a standard of good behaviour to which Pleaders should ordinarily conform. *Re: Enquiry against Mr. L., Bar-at-Law. (F. B.)*

30 Cr. L. J. 445 :
115 I. C. 318 : I. R. 1929 Sind 78 :
23 S. L. R. 245 :
A. I. R. 1929 Sind 121.

———S. 16—*Proceedings under disciplinary jurisdiction, nature of.*

Proceedings under the disciplinary jurisdiction of the Court are not of a criminal nature. They are neither civil suits nor criminal prosecutions but special proceedings resulting from the inherent power of the Courts over their officers. *Re: Enquiry against Mr. L., Bar-at-Law. (F. B.)*

30 Cr. L. J. 445 :
115 I. C. 318 : I. R. 1929 Sind 78 :
23 S. L. R. 245 :
A. I. R. 1929 Sind 121.

———S. 16—*Pleader—Professional misconduct.*

A pleader was engaged by the relatives of certain accused persons, who refrained from appearing themselves as warrants were out for their arrest. The pleader, thereupon, proceeded to draw up and hand to the relatives an application for copies together with a *Vakalatnama* purporting to have been executed in his favour by the absent accused, but as a matter of fact, executed for them by himself: *Held*, that the *Vakalatnama* was a false document as it purported to have been executed by the absent accused by whom it was never executed and that the act of the pleader was an attempted deception which could not be too strongly condemned on the part of a pleader. *In re: Mr. G., Pleader.*

12 Cr. L. J. 390 :
11 I. C. 254 : 4 S. L. R. 242.

———S. 16—*Professional misconduct.*

The professional conduct of a Solicitor or Pleader must be judged by the rules and standard of his profession and if he has done something which would be reasonably regarded as disgraceful and dishonourable by pleader or solicitors of good repute and competency, he is guilty of professional misconduct. *Re: Enquiry against Mr. L., Bar-at-Law. (F. B.)*

30 Cr. L. J. 445 :
115 I. C. 318 : I. R. 1929 Sind 78 :
23 S. L. R. 245 :
A. I. R. 1929 Sind 121.

———S. 16—*Suspension—Duties of Pleaders.*

Active participation in the passing of resolutions sympathizing with the spirit of a movement which preaches open defiance of law and authority and congratulating persons sentenced for breach of laws, is misbehaviour on the part of a Pleader which renders him liable to suspension under S. 16, Sind Courts Act. Participating in passing such resolutions is not mere expression of opinion. *In re: Harbunrai.*

131 I. C. 187 : 25 S. L. R. 131 :
I. R. 1931 Sind 59 :
A. I. R. 1931 Sind 33.

SIND COURTS CRIMINAL CIRCULARS, CHAP. V

—R. 22—*Duty of Magistrate—Court, inherent power of, to check prolix examination and cross-examination of witnesses.*

It is the duty of a Magistrate to insist on the trial proceeding from day to day as required by rule 22 of Chapter V of the Sind Courts Criminal Circulars. The Courts should rigidly check prolix examination and cross-examination of witnesses in the exercise of their inherent powers to prevent abuse of the process, i.e., proceedings of the Court. *Soler F. W. v. Emperor.*

18 Cr. L. J. 834 :
41 I. C. 658 : 11 S. L. R. 27 :
A. I. R. 1917 Sind 46.

—Chap. V, r. 22—*Procedure—Practice.*

Protracted examinations of witnesses should be stopped by a strict regard to the provisions of the Evidence Act and the rules of procedure and, where necessary, by the exercise of the inherent powers vested in every Magistrate to prevent the abuse of the process, i.e., the proceedings of his Court. Granting of frequent and lengthy adjournments in disregard of Rule 22, Chapter V of the Sind Courts Criminal Circulars, condemned. *Jehangir Perozshah v. Gangaram Naumal.*

18 Cr. L. J. 54 :
37 I. C. 38 : 10 S. L. R. 148 :
A. I. R. 1917 Sind 73.

SIND ENCUMBERED ESTATES ACT (XX OF 1896).

—Ss. 8, 10, 12—*Power of management by manager.*

Under S. 8, the order of management extends, *inter alia* to all the immovable property including any interest in joint immovable property of which the debtor is possessed or entitled, and quite clearly such order necessarily implies some inquiry as to what the property is and some decision upon that inquiry. Immovable property does not describe or name itself or itself proclaim the identity of its owner, and where, a certain share in the lands is shown as the property of the *zamindar* in the Record of Rights published by the Manager under S. 12 of the Act in the *Sind Official Gazette*, the manager can rely upon the presumption raised by S. 135-J, Land Revenue Code, and the share can be held to be property of which he is in management under S. 10 in spite of a third person disputing the title of the *zamindar* to that share. *Sher Khan Dhani Baksh v. Emperor.*

40 Cr. L. J. 710 :
182 I. C. 963 : 12 R. S. 37 :
A. I. R. 1939 Sind 155.

—S. 9—*Surety bond by ward, validity of.*

A person whose estate is under the management of the Manager, Sind Encumbered Estate, cannot enter into any contract involving him in any pecuniary liability, and this applies to surety-bonds entered into by him. A surety-bond entered into by such a

SIND FRONTIERS REGULATION ACT (V OF 1872)

person cannot, therefore, be enforced against him. *Allah Bachayo v. Emperor.*

26 Cr. L. J. 193 :
83 I. C. 897 : 16 S. L. R. 195 :
A. I. R. 1921 Sind 128.

—S. 10—*Power of manager—Essentials to be mentioned in order of arrest, stated.*

The Manager of Encumbered Estates has power under S. 10, to arrest during the management of the property. It is, however, incumbent upon the Manager when he purports to exercise the powers of arrest conferred by the Act, to mention in his order the section of the Act under which he passes his order, and the survey numbers in respect of which he proposes to recover by his power of arrest, sums due. *Sher Khan Dhani Baksh v. Emperor.*

40 Cr. L. J. 710 :
182 I. C. 963 : 12 R. S. 37 :
A. I. R. 1939 Sind 155.

—S. 10—*Scope of—General principles in S. 4 of Repealing Act of 1938 and S. 6-A, General Clauses Act (X of 1897), stated—S. 10 as it now stands, whether relates to rents, profits and other sums in respect of property under management.*

The general principle embodied in S. 4 of Repealing Act of 1938 and in S. 6-A, General Clauses Act, 1897, is that textual alterations remained fixed in the parent Act, after the Amending Act has come into force, though the Amending Act be subsequently repealed. S. 10, Sind Encumbered Estates Act, therefore even now relates to "all rents, profits and other sums in respect of property under management" as amended by the Repealing Act II of 1906 though that Act itself was afterwards repealed by the Repealing Act of 1938. *Sher Khan Dhani Baksh v. Emperor.*

40 Cr. L. J. 710 :
182 I. C. 963 : 12 R. S. 37 :
A. I. R. 1939 Sind 155.

SIND FRONTIER REGULATION (ACT V OF 1872)

—*Construction of statute.*

The construction of an Act must be taken from the bare words of the Act. When there is no ambiguity in those words, it is not for the Court to inquire what was the intention of the Legislature. *Imperator v. Jaro.*

12 Cr. L. J. 558 :
12 I. C. 646 : 5 S. L. R. 54.

—*Scope of.*

The Regulation has no application to the villages in the *Karachi Taluka* outside *Kohistan Mahal*. Having regard to the highly penal nature of the Regulation, it must be assumed, until the contrary is shown, that the districts to which it applies are definite ascertainable areas. The word "District" does not mean a Collectorate but is merely equivalent to *Taluka*. *Imperator v. Jaro.*

12 Cr. L. J. 558 :
12 I. C. 646 : 5 S. L. R. 54.

SIND FRONTIER REGULATION ACT (III OF 1872)

———S. 3—Order executive—Magistrate not inferior Criminal Court—Revision.

An order under S. 3, Sind Frontier Regulation is an executive order; a Magistrate when proceeding under this section is not an inferior Criminal Court. Consequently, his order is not subject to the revisional jurisdiction of the High Court. *Imperator v. Jaro*.

12 Cr. L. J. 558 :
12 I. C. 646 : 5 S. L. R. 54.

SIND FRONTIER REGULATION (III OF 1892)

———Ss. 8, 12, 13—Scope of S. 13, if repugnant to general provisions of Regulation—Ss. 8, 12 and 13 are reconcilable—Public Prosecutor, if can withdraw case from Sessions Court after trial has begun.

Ss. 12 and 13 must be read along with and in the light of S. 8 which is the general section empowering the Commissioner-in-Sind and the District Magistrate to refer cases to a Council of Elders. S. 8 puts no limitation of time within which such powers may be exercised, this power may be exercised before a case is challaned in Court, or it may be exercised before the case is sent up to the Sessions Court or it may be exercised after the trial of such a case has commenced in that Court. A Public Prosecutor can, therefore, withdraw a case from the Sessions Court, even after its trial has begun but before an order of conviction or acquittal has been passed in order to refer it to the Council of Elders under S. 13. *Minho v. Emperor*.

39 Cr. L. J. 294 :
173 I. C. 325 : 32 S. L. R. 129 :
10 R. S. 201 : A. I. R. 1938 Sind 9.

———Ss. 17, 20, 24—Power of Judicial Commissioner to interfere—Security for good behaviour, order for—Revision.

The Court of the Judicial Commissioner of Sind has no jurisdiction to interfere in revision with an order made by a District Magistrate under Ss. 20 (1) and 24 (1), Sind Frontier Regulation requiring a person to furnish security for good behaviour. *Bhawal Khan v. Emperor*.

21 Cr. L. J. 513 :
56 I. C. 769 : 13 S. L. R. 215 :
A. I. R. 1920 Sind 51.

———Ss. 20, 21, 23—Powers of District Magistrate—Breach of conditions of bond under Ss. 20, 21.

S. 23, Sind Frontier Regulation, is a comprehensive statement of what involves forfeiture of a bond taken under S. 20 and S. 21 and the District Magistrate has no authority to determine, beyond the limits of the section, what acts or omissions shall constitute a breach of the bond. *Emperor v. Imambux*.

15 Cr. L. J. 544 :
24 I. C. 952 : 7 S. L. R. 194 :
A. I. R. 1914 Sind 67.

SIND JUDICIAL COMMISSIONER'S COURT RULES

———R. 2 (4)—Quashing commitment.

Single Judge can quash commitment under S. 215, Cr. P. C. *Maniram v. Emperor*.

34 Cr. L. J. 14 :
140 I. C. 485 : 26 S. L. R. 407 :
I. R. 1932 Sind 189 :
A. I. R. 1932 Sind 157.

SOLICITOR

———Conviction for forgery—Forgery—Intention to defraud—Substituting name of another witness in sub pœna.

If a Solicitor on behalf of his client has recourse to another Tribunal and a different process, in order to get what one Court has decided he was not entitled to have, the Solicitor does not commit any contempt of the first Court. The appellant, a Solicitor, was desirous of securing the attendance of two witnesses on behalf of his client, *sub pœnas* were issued upon them and duly served. It turned out that the witnesses said they knew nothing about the case, so the appellant asked them to return the *sub pœnas* to him, which they did. He then struck out their names and substituted for them the names of two other witnesses: *Held*, that the appellant was not guilty of forgery as there was no intent to defraud on the part of the appellant. *In re : Moses Amado Taylor*.

13 Cr. L. J. 440 :
15 I. C. 72 : 16 C. W. N. 386 :
9 A. L. J. 676 : 15 C. L. J. 639 :
14 Bom. L. R. 471 :
23 M. L. J. 194 : 12 M. L. T. 106 :
1912 M. W. N. 683.

———Misconduct of.

Though those things which an Attorney learns from his client, or in consequence of his employment by his client, he is forbidden to disclose and any betrayal of his confidence would be visited by the Court as gross misconduct, yet if he learns matters relating to his client under such circumstances that if questioned about them in a Court of Justice, he could not refuse to answer them, he is not within the Court's jurisdiction. A solicitor is not guilty of misconduct because, having changed sides, he uses for his new client information acquired from his old client, if it was open to him to obtain such information from public sources. *In re : Chothia*.

5 Cr. L. J. 265 :
9 Bom. L. R. 38.

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893)

———S. 4, Cl. (1)—Cr. P. C., S. 526—Inquiry by Deputy Magistrate in Sonthal Parganas—Jurisdiction of High Court to order transfer.

High Court of Patna has no jurisdiction during an enquiry by a Deputy Magistrate of Sonthal Parganas prior to commitment to Sessions, to interfere by way of ordering a

KIDNAPPING

order which can be revised by the High Court.
Yusifally Lookmanji v. Emperor.

26 Cr. L. J. 1263 :
88 I. C. 1007 : A. I. R. 1926 Sind 57.

KARACHI PORT TRUST BYE-LAWS

See also Criminal liability.

—Removal of goods irregularly landed.

Under Bye-law 6 of the Karachi Port Trust Bye-laws, all goods even if originally irregularly landed must be removed when the storers are called upon to so remove. *Punjab National Bank v. Bundir Inspector, Karachi Port Trust.*

26 Cr. L. J. 137 :
83 I. C. 697 : 16 S. L. R. 169 :
A. I. R. 1921 Sind 142.

KARACHI TRAMWAYS ACT (II OF 1883)

—S. 15.

See also Penal Code, 1860, S. 279.

KATHIAWAR POLICE LAWS

—S. 35—Scope of—Corresponding to S. 44 of Bombay District Police Act.

A District Magistrate having ordered, owing to the existence of a dispute creating a likelihood of a breach of the peace, that in future all music in processions or of any sort on the road should be stopped within 15 paces of a certain *masjid* on either side at any time of the day or night, some Hindus applied for revision stating that S. 35, Kathiwar Police Law, did not contemplate such a permanent order: *Held*, that the terms of the section justified the order, because if they referred only to a particular settled festival (such as the *Holi*) then no order could be passed under that section in respect of any future procession of uncertain date and the very mischief which the section was intended to prevent would be permissible by a little ingenuity of the mischief-makers. *Thakore Jagdishji Joraji v. Sepai Bhaimian Aju.*

7 Cr. L. J. 68.

KIDNAPPING

See also Penal Code, 1860, Ss. 361, 363, 366, 368.

—Continuing wrong.

The offence of kidnapping is not a continuing offence. *Narain v. Emperor.*

20 Cr. L. J. 276 :
50 I. C. 164 : 17 A. L. J. 450 : 41 All. 452 :
A. I. R. 1919 All. 370.

—Kidnapping and concealing minor girl (under 16) of low caste to marry her in high caste—*Penal Code, Ss. 366, 368, 373.*

Where an accused kidnapped a married minor *Koli* girl of about 15 years of age, in order to marry her to a *Soni*, and was arrested while he had concealed her in his house before she was to be taken away for that purpose: *Held*, that if the girl was already married in her own caste, the intercourse intended was undoubtedly most illicit; that the word "seduce" in S. 366, I. P. C., properly meant,

LAHORE CONSPIRACY CASE ORDINANCE (III OF 1930)

not merely to procure a first surrender of chastity, but rather to draw aside from the path of rectitude and duty in any manner, to entice to evil, to lead astray, to tempt and to lead to iniquity: *Held, further*, that the language of S. 373, I. P. C., did not necessarily imply or demand the intervention of a third person; that, though buying or importing a minor girl for marriage would not necessarily come under S. 373, I. P. C., yet here, as the accused knew that the girl was already married, it was undoubtedly immoral to marry her again for his own profit; that there was a breach of Hindu Law and an attempt to procure bigamy and surely the ultimate necessity of cheating by personation or cheating to obtain a personal advantage; that the accused was guilty both under S. 366 read with S. 368, and under S. 373, I. P. C., but that, as the offences formed part of one transaction, a single sentence should be passed. *Emperor v. Mauji Govind.*

10 Cr. L. J. 176.

KIRPAN

See also Arms Act, 1878, S. 19.

KNOWLEDGE AND INTENTION

—*Penal Code, Ss. 392, 394, 325—Murder when culpable homicide—Grievous hurt.*

Where ill-feeling between the accused and the murdered person was proved, and the accused were seen among the assailants attacking him and his watchman with sticks at night in his field, owing to moonlight by the watchman who was attacked by one and grappled with the other: *Held*, that (1) as they were at close quarters and as he knew them well, it was perfectly natural and credible that he was able to identify them; (2) but that, as probably an ordinary bamboo stick, which would be metal shod, was the weapon employed in each case, there was probably no such knowledge or intention as would substantiate a conviction for murder; and that they should be convicted under S. 304, Part II in respect of the deceased, and under S. 385, I. P. C., in respect of the watchman grievously hurt. *Emperor v. Jiwa Devdan.*

10 Cr. L. J. 166.

L**LAHORE CONSPIRACY CASE ORDINANCE (III OF 1930)**

See also Government of India Act, 1919, S. 72.

—Sentence of death under—Tribunal ceasing to exist before execution—Government can suspend execution.

Special Tribunal—Sentence of death—Stay of sentence—Tribunal ceasing to exist before execution—Custody of prisoners held not illegal. Government has authority to suspend execution of the sentence. *Chint Ram Thapur v. Emperor.*

33 Cr. L. J. 126 :
135 I. C. 189 : I. R. 1932 Lah. 61 :
A. I. R. 1931 Lah. 359.

SPECIFIC RELIEF ACT, 1877

transfer. *Sailendra Nath Chakraverty v. Emperor*.
29 Cr. L. J. 427 :

108 I. C. 419 : 7 Pat. 337 :

9 P. L. T. 468 : A. I. R. 1928 Pat. 241.

—S. 4 (1) (II) (b)—*Gr. P. O., Act V of 1898*, S. 439—*Sonthal Parganas—Acquittal by Magistrate—Revision—Commissioner, whether can set aside acquittal—High Court, interference by*.

The Commissioner of the Bhagalpur Division can exercise the powers of a High Court under S. 439, Cr. P. C., and can set aside an order of acquittal passed by a Magistrate. In such a case, the jurisdiction of the Patna High Court is excluded and it cannot revise any order passed by the Commissioner. *Anwar Ali v. Chairman, Deoghar Municipality*.

28 Cr. L. J. 80 :

99 I. C. 112 : 6 Pat. 83 :

1926 Pat. 267 : 8 P. L. T. 271 :

A. I. R. 1926 Pat. 449.

SPECIAL MARRIAGE ACT (III OF 1872)

—S. 21—*Apostasy, if criminal offence*.

Apostasy or change of religion or a declaration that one does not profess any of the known or revealed religions of the world is not *per se* a criminal offence. *Mrs. M. J. Walter v. Emperor*.

35 Cr. L. J. 744 :

148 I. C. 689 : 6 R. O. 425 :

11 O. W. N. 404 :

A. I. R. 1934 Oudh 155.

SPECIAL POWERS ORDINANCE (X OF 1932)

—S. 80—*Sentence under*.

Sentence imposed under Ordinance (II of 1932) continues to have effect even after expiry of ordinance. *Jogendra Ohandra Roy v. Superintendent of the Dum Dum Special Jail*.

34 Cr. L. J. 291 (2) :

142 I. C. 204 : 60 Cal. 742 :

37 C. W. N. 363 :

I. R. 1933 Cal. 241 (2) :

A. I. R. 1933 Cal. 280.

—S. 17—*Conviction, illegality of*.

Where a prosecution is begun when the Ordinance is in force but it is not in force on date of conviction, conviction is illegal and *ultra vires*. *Kalyan Das v. Emperor*.

36 Cr. L. J. 735 :

155 I. C. 447 : 15 Lah. 782 :

37 P. L. R. 19 : 7 R. L. 716 :

A. I. R. 1935 Lah. 188.

SPECIFIC RELIEF ACT, 1877

—S. 9—*Proper remedy*.

Possession with applicant—Distribution of land among villagers—Applicant out of possession—Respondent in possession—Applicant returning to possession—Proper remedy on being dispossessed is suit under S. 9 and not criminal prosecution for trespass. *Maung Chan Tha v. Emperor*.

37 Cr. L. J. 527 :

161 I. C. 993 : 8 R. Rang. 533 :

A. I. R. 1936 Rang. 116.

STAMP ACT (II OF 1899)

—S. 9—*Scope of*.

Proceedings under S. 145, Cr. P. C., may be instituted during pendency of suit under S. 9. *Kishori Lal Ray Chowdhary v. Sri Nath Ray*.

9 Cr. L. J. 399 :

1 I. C. 817 : 36 Cal. 370 :

13 C. W. N. 530.

—S. 9—*Scope of*.

The words 'otherwise than in due course of law' in S. 9, are not synonymous with the word 'illegally.' *Jogendra Chandra Das v. Birendra Lal Das Chowdhury*.

156 I. C. 924 :

61 C. L. J. 307 : 8 R. C. 43 :

39 C. W. N. 394 :

A. I. R. 1935 Cal. 454.

—S. 9—*Suit under, maintainability of—Cr. P. C., S. 147—Proceedings under, in respect of pathway, by defendants—Plaintiffs putting up fence pending proceedings*.

The defendants started proceedings under S. 147, Cr. P. C., their case being that they had a right of way over the lands in suit and the plaintiffs were attempting to obstruct the pathway. At the date when this proceeding was started, there were no obstructions, but during the pendency of the proceedings, the plaintiffs fenced the lands. The proceedings under S. 147 terminated in favour of the defendants. The order was in terms of S. 147 (2), that is, the plaintiffs were prohibited from interfering with exercise of the right of the defendants to use the land as a pathway. The defendants removed the fencing and began to exercise their right of way. On January 9, 1938, a suit under S. 9, Specific Relief Act, was filed: *Held*, that the plaintiffs' suit under S. 9, Specific Relief Act, was not entertainable and that the act of the defendants in passing over the lands did not amount to dispossession within the meaning of that section. The plaintiffs had misconceived their remedy and if they felt aggrieved by the order passed by the Magistrate under S. 147 (2), Cr. P. C., their relief lay in instituting a regular suit. *Jogendra Ohandra Das v. Birendra Lal Das*.

156 I. C. 924 :

61 C. L. J. 307 : 39 C. W. N. 394 :

8 R. C. 43 : A. I. R. 1935 Cal. 454.

STAGE CARRIAGES ACT (XVI OF 1861)

—S. 7—*Jurisdiction—Jurisdiction of Second Class Magistrate*.

A Second Class Magistrate has no jurisdiction to try an offence under S. 7, Stage Carriages Act. *Gobind v. Emperor*.

23 Cr. L. J. 87 (a) :

65 I. C. 439 : 12 P. W. R. 1922 Cr.

STAMP ACT (II OF 1899)

—S. 2 (3)—*Applicability of*.

S. 2 (28) is applicable only to instruments executed by the payee in favour of the payer

STAMP ACT (II OF 1899)

and not to acknowledgment of payments made to a third person. *Emperor v. Mahipal Singh*.

33 Cr. L. J. 925 ;
140 I. C. 192 : 9 O. W. N. 852 :
8 Luck. 164 : I. R. 1932 Oudh 398 :
A. I. R. 1933 Oudh 51.

———S. 2 (5)—'Bond', scope of.

The date of payment does not form part of the definition of 'bond' under S. 2 (5). *Ohhaganlal v. Emperor*.
36 Cr. L. J. 493 :
153 I. C. 952 : 31 N. L. R. 108 :
7 R. N. 150 : A. I. R. 1934 Nag. 261.

———S. 2 (5) (c)—Promise to pay interest.

Even if the obligation to pay to order be left out of account, a promise to pay interest added to an acknowledgment of a debt in a *Mahajani* account book is an agreement chargeable under Cl. (5) (c) of S. 2. *Ohhaganlal v. Emperor*.
36 Cr. L. J. 493 :
153 I. C. 952 : 7 R. N. 150 :
31 N. L. R. 108 :
A. I. R. 1934 Nag. 261.

———Ss. 2 (23), 63—Stamp, necessity of.

In a *Sarkhat*, entries were made from time to time as to payments and receipts and the *Sarkhat* was left in the hands of the debtor so that the entry of each item might act as an acknowledgment thereof: *Held*, that each entry for over R. 20 required to be stamped as a receipt. *Tulshi Ram v. Emperor*.

14 Cr. L. J. 392 :
20 I. C. 216 : 35 All. 290 :
11 A. L. J. 309.

———S. 2 (24)—Settlement.

Where an instrument making a settlement includes an agreement by the beneficiary to act in a particular way in consideration of the settlement, the instrument can be regarded as a settlement within the meaning of S. 2 (24), Stamp Act. *Muhammad Rashid Ahmad v. Emperor*.
38 Cr. L. J. 1048 :
171 I. C. 16 : 39 P. L. R. 357 :
10 R. L. 176 : A. I. R. 1937 Lah. 684.

———S. 30—Scope of.

S. 30 does not require a person receiving money to specify the particular purpose for which the money is paid. *Balmakund v. Emperor*.

13 Cr. L. J. 122 (b) :
13 I. C. 778 : 9 A. L. J. 97 :
34 All. 192.

———Ss. 30, 65—Offence under Stamp Act—Sanction, necessity of.

A prosecution for an offence under Ss. 30 and 65, Stamp Act, cannot be validly initiated without the sanction of the Collector, and the defect in the initiation of a prosecution without such sanction cannot be cured by obtaining the necessary sanction at a subsequent stage of the proceedings. *Ramjiwan Marwadi v. Lachimi*.

28 Cr. L. J. 780 :
104 I. C. 108 : 10 N. L. J. 21 :
A. I. R. 1927 Nag. 202.

———Ss. 33, 35—Prohibition under—Scope of.

Under S. 33, Stamp Act, it is optional to the

STAMP ACT (II OF 1899)

Magistrate to examine or impound the instrument if it appears to be insufficiently stamped. But the prohibition contained in the first part of S. 35 that no instrument chargeable with duty shall be admitted in evidence for any purpose or acted upon unless it be duly stamped, does not apply to proceedings in a Criminal Court. *Jagannath Rahatgir v. Devkinandan*.

16 Cr. L. J. 543 :
29 I. C. 671 : A. I. R. 1916 Cal. 310.

———Ss. 35, 62—Conviction under, maintainability of.

In connection with receipts for money, which are unstamped, the Stamp Act provides for the payment of the stamp duty and penalty, but not for a prosecution under the provisions of this Act. Where a person files an unstamped receipt for money, and there is nothing to show that he was given an opportunity of paying the stamp duty and penalty, or that he had any criminal intent, his conviction under S. 62, Stamp Act, cannot be sustained. *Nemani Charan Sahu v. Emperor*.

22 Cr. L. J. 766 (a) :
64 I. C. 296 : 3 U. P. L. R. Pat. 38 :
1921 Pat. 173 : 2 P. L. T. 623 :
A. I. R. 1921 Pat. 233.

———S. 43—Scope of.

The proviso to S. 43, Stamp Act, does not justify a Magistrate in acquitting of an offence under S. 63, for the reason that there was no intent to evade the law, but may be a good ground for passing a merely nominal sentence. *Emperor v. Nataraj Ayer*.

2 Cr. L. J. 468 :
11 Bur. L. R. 379 :
U. B. R. 1905 Cr. P. C. 37.

———Ss. 43, 64—Omission to pay proper stamp duty—Conviction, legality of.

A person who has failed to pay the proper stamp duty for a document can be convicted under S. 64 only, where there is clear evidence to show that he had the intention of evading payment of the proper stamp duty or that the document was executed to defraud the Government. *Rang Lal Sahu v. Emperor*.

29 Cr. L. J. 397 :
108 I. C. 427.

———S. 61—Applicability of.

Before the order of the trial Court regarding the sufficiency or insufficiency of the stamp can be made the subject-matter of consideration by the Appellate Court for the purpose of making a declaration, such an order must have a real existence. An order by implication cannot be taken into consideration by an Appellate Court and cannot validly form the subject-matter of consideration for the purpose of issuing a declaration. S. 61, Stamp Act, has no applicability in a case where the Court of first instance makes no order with regard to the stamp. *Mirza Faridun Beg v. Emperor*.

161 I. C. 484 : 8 R. L. 762 :
A. I. R. 1935 Lah. 909.

STAMP ACT (II OF 1899)

—S. 61—*Decree on basis of award—Declaration by District Judge under S. 61 that award should not have been received in evidence without payment of deficient stamp duty and penalty.*

Where on an application under Para. 20, Sch. II, C. P. C., a decree is passed on the basis of the award and the District Judge makes a declaration under S. 61, that the award should not have been received in evidence without levying the deficient stamp duty and penalty, it is not necessary to set aside the declaration on the ground that the High Court alone had jurisdiction to make it as the appeal from the decree passed on the basis of the award lay to it. The declaration made by the District Judge can be treated as declaration made by High Court as the High Court could do it of its own motion and also because Collector would refer the matter to the High Court. *Mirza Faridun Beg v. Emperor.*

161 I. C. 484 : 8 R. L. 762 :
A. I. R. 1935 Lah. 909.

—S. 62—*Abetment.*

The mere receipt of an unstamped instrument does not constitute abetment of any offence. *Emperor v. Rajlingam.*

2 Cr. L. J. 787 :
1 N. L. R. 163.

—S. 62—*Compromise, oral—Petition to Court praying for decree.*

The parties to a suit came to an oral agreement and thereupon presented a petition to the Court informing it of the terms of the agreement and praying that a decree might be passed in accordance therewith: *Held*, that the petition did not require to be engrossed upon a general stamp, but only required the ordinary Court-fee label. *Ram Saran Lal v. Emperor.*

19 Cr. L. J. 48 :
42 I. C. 1008 : 15 A. L. J. 846 :
40 All. 19 : A. I. R. 1918 All. 307.

—S. 62—*Offence under.*

In order to secure a conviction under S. 62, there must be a definite intention to evade the payment of the stamp duty. *Kanhaiya Lal v. Emperor.*

21 Cr. L. J. 54 :
54 I. C. 406 : 1 U. P. L. R. All. 186 :
A. I. R. 1919 All. 40.

—S. 62—*Presumption.*

Raju cum chitti system—Debtor signing in account books and *chittis* attested on same date—Creditor paying penalty for insufficient stamp—Presumption regarding obligation to supply stamps is on creditor. *Chhaganlal v. Emperor.*

36 Cr. L. J. 493 :
153 I. C. 952 : 31 N. L. R. 108 :
7 R. N. 150 : A. I. R. 1934 Nag. 261.

—S. 62—*Scope of.*

Intention to defraud is not necessary for an offence under S. 62, Stamp Act. *Emperor v. Panna Lal.*

27 Cr. L. J. 470 :
93 I. C. 694 : 24 A. L. J. 358 :
A. I. R. 1926 All. 89.

STAMP ACT (II OF 1899)

—S. 62 (1) (b)—*Abetment.*

The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of the instrument. *Emperor v. Nga Shwe Bwin.*

1 Cr. L. J. 874 :
U. B. R. 1904 2nd Qr. Stamp 1.

—S. 62 (2)—*Award directing partition—Stamp, liability to—Arbitrator, signature by.*

Where an arbitrator signs, otherwise than as a witness, an award directing partition on an unstamped paper, he is liable to prosecution under S. 62 (2), if the instrument is chargeable with duty. *Emperor v. Pultoo Lal.*

24 Cr. L. J. 592 :
73 I. C. 336 : A. I. R. 1924 Oudh 240.

—S. 62 (b)—*Conviction, legality of—Signing otherwise than as a witness.*

An arbitration award duly signed and executed by the arbitrator bore also the signatures of the applicants under the head "signatures of the heirs". The award not being duly stamped: *Held*, that the conviction of the applicants was bad. *Brijpal Saran v. Emperor.*

11 Cr. L. J. 52 :
5 I. C. 180 : 7 A. L. J. 180 : 32 All. 198.

—S. 62 (b)—*'Executing', meaning of.*

The word "executing" in S. 62 (b) must mean "signing", so as to complete the document so that it may have full legal effect. A Penal Act must be read as favourably as possible for the subjects. *Brijpal Saran v. Emperor.*

11 Cr. L. J. 52 :
5 I. C. 180 : 7 A. L. J. 180 : 32 All. 198.

—S. 62, Cl. (b)—*Liability of Master.*

Where it is not proved that the master of a firm was present or authorised the grant of an unduly stamped receipt on behalf of the firm, he is not liable under S. 62. *Gulam Hussain Ariff v. Emperor.*

1 Cr. L. J. 254 :
8 C. W. N. 378.

—Ss. 62 (b), 68 (c)—*Stamp, necessity of.*

An application was made to a Bank for a loan on a prescribed form, which contained columns intended to show the signature of the person recommending the loan or undertaking any responsibility on behalf of the applicant. A person recommended the loan by saying: "I guarantee the payment". The accused, who was the Manager of the Bank, approved the proposal by saying in the last column of the form that the application for the loan should be granted. No stamp was affixed to the form: *Held*, (1) that the words "I guarantee the payment" did not represent a completely executed security bond, so that the Manager could not be held to have appended his signature to that security bond by way of acceptance thereof. Therefore the conviction of the Manager under S. 62 (b) could not be supported. *Rajeswar Bagchi v. Emperor.*

18 Cr. L. J. 725 :
40 I. C. 725 : 21 C. W. N. 758 :
A. I. R. 1918 Cal. 495.

STAMP ACT (II OF 1899)

———S. 62 (b), Sch. I, Art. 35—*Stamp, necessity of.*

The Schedule attached to the Stamp Act must be treated as exhaustive. An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the Schedule and does not require a stamp. An *amaldustak* for a term of seven years wherein no rent is fixed, does not require a stamp and the executant of such a document cannot be convicted for failure to stamp it under S. 62 (b). *Sunder Koer v. Emperor.*

17 Cr. L. J. 495 :
36 I. C. 175 : 20 C. W. N. 923 :
1 P. L. J. 366 : A. I. R. 1916 Pat. 250 (b).

———S. 62 (b), Sch. I, Art. 53—*Stamp when required—Construction of document—Receipt—Memorandum.*

Where under the orders of his employer a servant received some money from a co-servant for the purpose of paying it to the employer's creditor and wrote a document which he handed over to the co-servant by way of a voucher to show that he had taken the money as his employer had directed him: *Held*, that the document was simply a memorandum and did not amount to a receipt requiring a one-anna stamp to be affixed to it. *Shadi Lal v. Emperor.*

18 Cr. L. J. 968 :
42 I. C. 328 : 4 O. L. J. 490 :
A. I. R. 1917 Oudh 151.

———S. 62, Sch. I, Art. 53 (c)—*Stamp, when necessary.*

Article 53 (c), Stamp Act, does not exempt from payment of stamp, a receipt of payment of a decree for rent although it makes an exception in favour of a receipt for payment of rent of an agricultural holding. When the debt of rent merges into a decree, a receipt for money paid must be stamped. Absence of fraudulent intention in not stamping a receipt of payment of a decree is not sufficient to make a conviction bad. *Doongar Singh v. Emperor.*

9 Cr. L. J. 37 :
1 I. C. 568 : 28 A. W. N. 272 :
5 A. L. J. 747 : 31 All. 36.

———S. 64—*Conviction under.*

In order to maintain a conviction under S. 64, Stamp Act, it is necessary to prove intent to defraud. This intent can only be inferred from the circumstances. *Ram Chand v. Emperor.*

41 Cr. L. J. 729 :
189 I. C. 343 : 42 P. L. R. 215 :
13 R. L. 88 : A. I. R. 1940 Lah. 274.

———S. 64—*Failure to stamp document—Fraudulent intent.*

Mere non-payment of a proper stamp duty does not make a person liable to prosecution under S. 64, unless it is proved that he had an intention to defraud the Government of its stamp revenue. *Brojendra Nath Bakshi v. Emperor.*

19 Cr. L. J. 515 :
45 I. C. 275 : A. I. R. 1918 Cal. 113.

STAMP ACT (II OF 1899)

———S. 64 (a)—*Applicability of.*

S. 64, cl. (a) applies only to the person who executes a document and a person in whose favour a document is executed cannot, therefore, be convicted under the said clause. *Panchanan Roy v. Emperor.* 31 Cr. L. J. 700 :
124 I. C. 524 : A. I. R. 1929 Cal. 723.

———S. 64-A—*Duty of Magistrate.*

On receipt of a complaint under S. 64-A, the Magistrate should direct the attention of the accused to the fact that though the complaint was brought under S. 64-A, he also stood in jeopardy under S. 62-B. *Maya Shah v. Emperor.* 35 Cr. L. J. 291 :
146 I. C. 1055 : 34 P. L. R. 1072 :
6 R. L. 316 : A. I. R. 1933 Lah. 959.

———S. 64 (a)—*Offence under—Conveyance—Re-conveyance—Non-disclosure of consideration.*

M and S executed a sale-deed conveying certain property to R. The consideration for the sale was Rs. 20,000 of which only Rs. 1,000 was paid down in cash, the covenant for the remainder being that R should keep the sum of Rs. 19,000 in deposit to the credit of the vendors, the latter to draw upon it at their convenience. Before anything more was paid, R re-conveyed the same property to M, the sale-deed purporting to be simply for a consideration of Rs. 1,000 paid down in cash: *Held*, that R committed an offence punishable under S. 64 (a). *Remeshar Das v. Emperor.*

11 Cr. L. J. 204 :
5 I. C. 697 : 7 A. L. J. 110.

———S. 64-A—*Sanction to prosecution.*

It cannot be presumed that a sanction to a prosecution under S. 64-A is a sanction by implication to a prosecution under S. 62-B. *Maya Shah v. Emperor.* 35 Cr. L. J. 291 :
146 I. C. 1055 : 34 P. L. R. 1072 :
6 R. L. 316 : A. I. R. 1933 Lah. 959.

———S. 64 (b)—*Offence under.*

Where the sale is made subject to encumbrances, the stamp would be chargeable on the amount due under the mortgage plus the sale price. Where the stamp duty is paid only on Rs. 100, the sale price, knowing fully of the existence of an encumbrance of Rs. 2,000, the party is guilty under S. 64 (b). *Trimbak Madhao Kshirsagar v. Emperor.*

38 Cr. L. J. 258 :
166 I. C. 681 : 19 N. L. J. 259 :
I. L. R. 1937 Nag. 432 : 9 R. N. 138 :
A. I. R. 1937 Nag. 57.

———S. 54 (c)—*Offence under, what amounts to.*

The words 'any other act' in S. 64 (c) mean an act of a like nature to those which are specified in Cls. (a) and (b) of the section. The mere fact, therefore, that a person puts a stamp on a document, which he knows is not of proper value,

STAMP ACT (II OF 1899)

does not amount to an offence under S. 64 (c). *Chhagmal Chopra v. Emperor*.

17 Cr. L. J. 466 :
36 I. C. 146 : 24 C. L. J. 441 :
21 C. W. N. 248 :
A. I. R. 1917 Cal. 665.

—S. 65—Conviction under, legality of.

G remitted a sum of Rs. 34 to B by a postal money order. B on receipt of the money, signed a receipt in duplicate and delivered the same to the postal peon but G demanded a duly stamped receipt from B which B refused to give: Held, that B ought not to be convicted under S. 65, Stamp Act, for having refused to give the second stamped receipt to G. *Balmukund v. Emperor*.

13 Cr. L. J. 122 (b) :
13 I. C. 778 : 9 A. L. J. 97 : 34 All. 192.

—Ss. 65, 70—Offence—Sanction, necessity of.

A Magistrate has no jurisdiction to try a person in respect of an offence alleged to have been committed under S. 65, 1899, without the sanction of the Collector being first obtained to the institution of the prosecution. *Emperor v. Ramji Lal*.

16 Cr. L. J. 787 :
31 I. C. 643 : 21 P. R. 1915 Cr. :
38 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 241.

—S. 68 (c)—Fraud, inference of.

No fraudulent intention under S. 68 (c) can be inferred from mere receipts or acknowledgments made in *vijayvahi* kept by a money-lender without the requisite stamp, simply because as a result the Government is deprived of duty though the execution of the receipts falls under the category of acts and not of contrivance or device. *Emperor v. Ramchandra Raoji Gujar*.

39 Cr. L. J. 284 :
173 I. C. 13 : 10 R. B. 318 :
39 Bom. L. R. 1184 :
I. L. R. 1938 Bom. 114 :
A. I. R. 1938 Bom. 87.

—S. 69 (a) (b)—Abetment, what amounts to.

The mere making of an endorsement on a stamp sold by a licensed vendor or the making of entries in the Sale Register without anything more, does not amount to abetment of an offence under S. 69, Cl. (a) or (b) by the licensed vendor. *Nenumal v. Emperor*.

30 Cr. L. J. 881 :
118 I. C. 206 : I. R. 1929 Sind 174 :
A. I. R. 1929 Sind 118.

—Art. 5, Exemp. (a)—Memoranda of agreement.

Two documents bearing one anna stamp each—One reciting purchase by exchange of goods and some cash and payment of balance in instalments—Other acknowledging the receipt of consideration: Held, documents did not amount to deed of exchange, but were memoranda of agreement. *Imam Bakhsh v. Emperor*.

37 Cr. L. J. 597 (2) :
162 I. C. 504 (6) : 8 R. A. 871 :
1936 A. L. J. 368.

STATUTES

—Sch. I, Art. 53, Exemp. (b)—Exemption—Stolen money directed to be returned to owner—Receipt, whether liable to stamp duty.

Where at the conclusion of a trial a Criminal Court directed that money which has been found to have been stolen from a person should be returned to him, and the latter on receiving the money, gives a receipt for the amount, the receipt is exempted from the payment of stamp duty under exemption (b) to Art. 53 of Sch. I, Stamp Act. *Kanhailal v. Emperor*.

25 Cr. L. J. 1008 :
81 I. C. 720 : 22 A. L. J. 288 :
46 All. 354 : A. I. R. 1924 All. 578.

STATEMENT

—Of accused, value of.

If a conviction is to be based solely on a statement of the accused, it is fair that that statement should be taken in its entirety. *Kamakha v. Emperor*.

12 Cr. L. J. 142 :
9 I. C. 790 : 1911, 2 M. W. N. 199 :
9 M. L. T. 316.

STATEMENT TO POLICE

—Evidence, manner of proving—Cr. P. O., S. 162.

Although S. 162, Cr. P. C., forbids the obtaining of signature to a statement taken down in writing by the Police, there is no prohibition to evidence being given of a statement recorded in writing by the Police, provided it is otherwise relevant, nor can the provisions of the section be evaded by the Police recording as the first information report a statement obtained after the commencement of the investigation. *Ajodhi v. Emperor*.

21 Cr. L. J. 486 :
56 I. C. 582 : 16 N. L. R. 30 :
A. I. R. 1920 Nag. 170.

STATUTES

—Construction of.

A Criminal Statute has to be rigidly interpreted. *In re : Panannr Athamu*.

26 Cr. L. J. 747 :
86 I. C. 283 : 20 L. W. 914 :
A. I. R. 1925 Mad. 239.

—Construction of.

As the Whipping Act is a highly penal enactment, it must be construed in a sense most favourable to the subject. *Emperor v. Po Han*.

15 Cr. L. J. 3 :
22 I. C. 147 : 7 L. B. R. 63 :
7 Bur. L. T. 99 : A. I. R. 1914 L. Bur. 145.

—Construction of.

Debates in a Legislative Council or reports of Committees which precede the passing of an Act, cannot be referred to as legitimate aids to the construction of a particular section of the Act. *Ram Bali Singh v. Emperor*.

11 Cr. L. J. 250 :
5 I. C. 805 : 13 O. C. 55.

—Construction of.

Enactments which render the public liable

STATUTES

to pay taxes or charges must be construed strictly, *i. e.*, unless the language under which they are sought to be charged is perfectly clear, the charging authorities are not entitled to assess a charge. *George Banerji v. Emperor*.

18 Cr. L. J. 45 :
36 I. C. 877 : 14 A. L. J. 850 :
A. I. R. 1917 All. 414.

Construction of.

In case of doubt, a penal provision in a Statute should always be construed in favour of the subject. *Madan Gopal v. Emperor*.

11 Cr. L. J. 382 :
6 I. C. 620 : 14 P. W. R. 1910 Cr. :
17 P. R. 1910 Cr. : 92 P. L. R. 1910.

Construction of.

It is a well-known rule of construction that each part of a Statute must expound every other part. *Lalji Tewari v. Emperor*.

21 Cr. L. J. 190 :
54 I. C. 894 : 1 P. L. T. 147 :
1920 Pat. 125 : 5 P. L. J. 58 :
A. I. R. 1920 Pat. 428.

Construction of.

In the absence of any specific provision of law giving finality to the acts of the executive authorities, the initial presumption is that a Court of law will have jurisdiction to enquire whether the conditions imposed by law for the exercise of their powers have been fulfilled if it becomes necessary to do so in order to determine any question properly coming before it for decision, and where the language used by the Legislature is ambiguous, the construction giving jurisdiction to Court must be preferred as it is beneficial to the subject. *Des Raj v. Emperor*.

31 Cr. L. J. 987 :
126 I. C. 177 : 31 P. L. R. 677 :
A. I. R. 1930 Lah. 781.

Construction of.

So far as it deals with any point specifically, the Cr. P. C. must be deemed to be exhaustive and the law must be ascertained by reference to its provisions, but where a case arises which obviously demands interference and it is not within those for which the Code specially provides, it would not be reasonable to say that the Court has not the power to make such order as the ends of justice require. *Rahim Sheikh v. Emperor*.

24 Cr. L. J. 677 (b) :
73 I. C. 773 : 50 Cal. 872 :
37 C. L. J. 595 : A. I. R. 1923 Cal. 724.

Construction of.

The enactment regulating the employment of workers, and their work in a 'factory' as defined in the Factories Act, has to be construed in favour of the employee, and strictly against the employer. *Superintendent and Remembrancer of Legal Affairs, Bengal v. H. E. Watson*.

152 I. C. 566 : 38 C. W. N. 1008 :
7 R. C. 292 : A. I. R. 1934 Cal. 730.

Construction of.

The evidence Act is an Act dealing with a particular matter, and the Penal Code deals

STATUTES

with defamation in general, and therefore, a special Act, with regard to the special class of defamation arising out of depositions made in Court by witnesses would certainly override its provisions. *Rasool Bhai v. The King*.

41 Cr. L. J. 48 :
184 I. C. 566 : 1939 Rang. 479 :
12 R. Rang. 159 :
A. I. R. 1939 Rang. 371.

Construction of.

The first canon of construction of a Statute is that you must take the language as it stands and if it is clear, give effect to it. *Mehr Sardar v. Emperor*.

31 Cr. L. J. 1117 :
126 I. C. 780 : 34 C. W. N. 956 :
52 C. L. J. 171 :
A. I. R. 1930 Cal. 577.

Construction of.

The paramount object, in construing penal as well as other Statutes, is to ascertain the Legislative intent and the strict rule of construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. *Harumal Parmanand v. Emperor*.

16 Cr. L. J. 632 :
33 I. C. 456 : 9 S. L. R. 43 :
A. I. R. 1915 Sind 43.

Construction of.

The proper course is to examine the language of the Statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. The purpose of a Statute surely is that, on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions. *Ram Sagar Mondal v. Alek Naskar*.

23 Cr. L. J. 353 :
67 I. C. 177 : 26 C. W. N. 442 :
49 Cal. 682 : 35 C. L. J. 247 :
A. I. R. 1922 Cal. 59.

Construction of.

The terms of a Statute should not be so construed as to involve an inconsistency between its different parts. *Kambam Bali Reddy v. Emperor*.

15 Cr. L. J. 180 :
22 I. C. 756 : 37 Mad. 149 :
A. I. R. 1914 Mad. 258.

Construction of.

The words of a Statute should be given the extended meaning of which they are reasonably susceptible rather than the meaning as restricted by context, when such restriction would reduce them to mere surplusage. *Har Narayan v. Ramji Das*.

15 Cr. L. J. 375 :
23 I. C. 743 : 12 A. L. J. 465 :
A. I. R. 1914 All. 191.

STATUTES

—Construction of.

The U. P. Municipal Act is a Local Act, and must be strictly construed in favour of the subject. *Piare Lal v. Emperor*.

18 Cr. L. J. 276 :
38 I. C. 308 : 15 A. L. J. 187 :
39 All. 309 : A. I. R. 1917 All. 181.

—Construction of.

Where the words of a Statute leave the intention of the Legislature in doubt, the Courts will lean against the construction which imposes a burden on the subject. A law which interferes with common law rights or imposes fresh obligations, must not operate through implication, but should be expressed in clear and unambiguous language. *Mitho v. Emperor*.

17 Cr. L. J. 364 :
35 I. C. 668 : 10 S. L. R. 9 :
A. I. R. 1916 Sind 8.

—Construction of.

Where two provisions defining different offences, one specific and the other general, are applicable to a case, the specific provision ought to be applied in preference to the general one. *Ram Nath v. Emperor*.

26 Cr. L. J. 362 :
84 I. C. 714 : 22 A. L. J. 1106 :
47 All. 268 : A. I. R. 1925 All. 230.

—Interpretation of.

A case decided years before upon another Statute cannot be any guide to the Court in interpreting the particular Statute before it. *Khirode Kumar Mukerji v. Emperor*.

26 Cr. L. J. 532 :
85 I. C. 372 : 29 C. W. N. 54 :
40 C. L. J. 555 :
A. I. R. 1925 Cal. 260.

—Interpretation of.

A Code must be considered exhaustive on the subject with which it deals, and it is not permissible to add to its provisions. *Emperor v. Maheshwar*.

11 Cr. L. J. 190 (b) :
4 I. C. 1113 : 5 M. L. T. 184.

—Interpretation of—"Any offence referred to in S. 195," whether incorporates conditions in S. 195.

The words "any offence referred to in S. 195" refer to offences within the scope of S. 195, and not to all offences against sections of the Penal Code, enumerated in S. 195, whether or not they are within the scope of that section. Where sections are repealed and re-enacted in slightly different form, there is a presumption against implied, as contrasted with express alterations in the scope of the section. *Govinda Iyer v. Rex*.

20 Cr. L. J. 344 :
50 I. C. 824 : 9 L. W. 422 :
36 M. L. J. 448 : 42 Mad. 540 :
1919 M. W. N. 459 : 26 M. L. T. 92 :
A. I. R. 1919 Mad. 7.

—Interpretation of—Jurisdiction of Superior Court, ousting of.

It is a cardinal principle of interpretation of

STAY OF CRIMINAL CASE

Statutes that the construction which produces the greatest harmony and the least inconsistency between different parts of the same Statute should prevail, and this rule equally applies where the Court is called upon to examine if the general words "employed in any one part of the Statute were not intended to be applied without some limitation." Jurisdiction vested in a superior Court is not to be ousted except by express language in or obvious inference from the provisions of a Statute. *Mahammad Abdul Majid v. Emperor*.

28 Cr. L. J. 439 :
100 I. C. 471 : A. I. R. 1927 Sind 173.

—Interpretation of—Previous Statute, repeal of.

Where there is an earlier Act with certain penalties and a subsequent Act with other penalties, as a general proposition, the earlier Statute is repealed by the latter Statute even if there are no express words in the latter Statute repealing the former. *Abdul Jabbar v. Mafizuddin*.

25 Cr. L. J. 1107 :
81 I. C. 931 : 28 C. W. N. 783 :
A. I. R. 1924 Cal. 980.

—Interpretation of.

Where in a Statute the same word is used in different sections, it ought to be interpreted in the same sense throughout unless the context in any particular section plainly requires that it should be understood in a different sense. *In re : Baba Yeshwant Desai*.

12 Cr. L. J. 430 :
11 I. C. 614 : 13 Bom. L. R. 505 :
35 Bom. 401.

—Offences under special and General Acts.

The distinction between a Statute creating a new offence with a particular penalty and a Statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty, is well settled. In the former case, the new offence is punishable by the new penalty only; in the latter, it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included. *Bhalchandra Trimbak Ranadive v. Emperor*.

31 Cr. L. J. 495 :
123 I. C. 497 : 31 Bom. L. R. 1151 :
54 Bom. 35 : A. I. R. 1929 Bom. 433.

STAY OF CRIMINAL CASE

—Desirability of—Pending civil suit—Suit on promissory note.

The fact standing alone that there is a civil suit would not, in all cases, be a sound reason for staying the criminal proceedings, yet where the document in question is a necessary part of the case of the defendant and the question whether it is genuine will be a principal issue in the suit, it is desirable that the criminal proceedings should be stayed. *Sasi Bhusan Seal v. Manik Lal Nundy*.

11 Cr. L. J. 448 :
7 I. C. 317 : 12 C. L. J. 270.

STAY OF CRIMINAL PROCEEDINGS

———*General rule pending civil suit.*

The general rule is that where a civil suit is brought subsequently to criminal proceedings, there should not be any stay of the latter. *Hari Pada Pal v. Jotish Chandra Chatterji.*

11 Cr. L. J. 291 :
6 I. C. 181.

———*Power of High Court and District Magistrate.*

There is no provision in the Cr. P. C., which gives a District Magistrate the power to stay proceedings in a Criminal Court subordinate to him, and the power of the High Court to pass such an order can be exercised only under its general powers of superintendence under S. 107, Government of India Act. *Krishna Roy v. Seshasubramania Iyer.*

25 Cr. L. J. 277 :
76 I. C. 869 : 1923 M. W. N. 251 :
A. I. R. 1923 Mad. 688.

———*Practice—Civil suit instituted in respect of the same matter.*

Where a person, against whom criminal proceedings are started in respect of a matter, has instituted a civil suit without waste of time, the decision of which is likely to throw considerable further light on the case, the criminal prosecution should be stayed pending the decision of the civil suit. *Bhoja Ram v. Emperor.*

13 Cr. L. J. 175 :
13 I. C. 927 : 21 P. W. R. 1912 Cr. :
115 P. L. R. 1912.

STAY OF CRIMINAL TRIAL

———*When to be ordered.*

Where the charge in a criminal case is a defence to a civil suit, criminal proceedings should be stayed only if there is a likelihood of the civil proceedings ending soon. *Chaplamadugu v. Mulhiyalu.*

15 Cr. L. J. 568 :
24 I. C. 976 : A. I. R. 1914 Mad. 144.

STOLEN PROPERTY

———*Recovery of incriminating objects several days after arrest.*

Recovery of incriminating articles several days after the arrest of the accused from his room where it is not shown in whose possession they remained after his arrest, is of no consequence. *Hans Raj v. Emperor.*

30 Cr. L. J. 478 :
115 I. C. 469 : 10 Lah. L. J. 555 :
I. R. 1929 Lah. 389 : 30 P. L. R. 424.

STREET PRIVATE

———*What is—Requisition to level, etc.—Street at first part of bustee, whether remains private street, and for how long.*

A roadway made in the first instance as part of a bustee and in accordance with a standard plan approved by the General Committee of the Corporation remains, as prescribed by S. 416 (1), a private street unless the General Committee and the owner otherwise agree, or until the owner of the bustee initiates a proceeding under S. 419, Calcutta Municipal Act. In order to create a public right of way, there must be a dedication by the owner. The effect

SUGARCANE ACT (VIII OF 1934)

of Sub-s. (1) of S. 416 is that the owner cannot dedicate without the consent of the General Committee. *Corporation of Calcutta v. Mahamaya Debi.*

14 Cr. L. J. 511 :
20 I. C. 991 : 17 C. W. N. 1250.

SUBURBS OF CALCUTTA

———*Station of Howrah—Order and good Government—Act XXI of 1857, S. 2, Cl. 1.*

The accused was convicted for being in possession of a certain quantity of cement : and because there was a heap of cement lying on the premises of the East Indian Railway Company at L and because the accused was a mistry in the employ of the Company at L, it was assumed that this cement was stolen from the Company : Held, that, in the absence of any evidence that shortly or immediately previous to the finding of the cement in the possession of the accused, a quantity of cement belonging to the Company had been missing, there could not be any reasonable suspicion which could bring the case within S. 2 of Act XXI of 1857. *Abdul Karim v. Emperor.*

13 Cr. L. J. 492 :
15 I. C. 492.

SUCCESSION (PROPERTY PROTECTION) ACT XIX OF 1841

———*Scope—Dispute regarding succession—Remedy.*

The Succession (Property Protection) Act, has a larger scope than S. 145, Cr. P. C., and is a more appropriate remedy in cases involving disputes as to succession in large estates involving breach of peace. *Biso Ram v. Emperor.*

23 Cr. L. J. 236 :
66 I. C. 76 : A. I. R. 1922 Pat. 372.

SUGARCANE ACT (VIII OF 1934)

———*Rules under—Bihar and Orissa Sugarcane Rules, Rr. 15, 20—Sanction; necessity of.*

R. 15 of the Rules under the Sugarcane Act, creates a number of new penal offences in connection with the administration of the Act, but R. 20 debars the institution of a prosecution under the rules except by an order of, or under authority from, the District Magistrate. The Act contemplates first the sanction by the District Magistrate, and secondly, a complaint to a Court within the period of limitation prescribed and then the trial of the person complained against according to the procedure provided by Cr. P. C. *Ram Sabhag Singh v. Emperor.*

38 Cr. L. J. 136 :
166 I. C. 136 : 17 P. L. T. 896 :
9 R. P. 260 : 3 B. R. 134 :
A. I. R. 1937 Pat. 146.

———*U. P. Sugarcane Rules, 1936, R. 13—Conviction under.*

Where two persons are acting jointly as agents of persons mentioned under R. 13, U. P. Sugarcane Rules, 1936, and one of them is already convicted on the ground that he did not pay the price of sugarcane purchased, it cannot be said that as the two cases against

SUGARCANE ACT (VIII OF 1934)

them related to the price of the same cane purchased on the same day and one of them has already been convicted, the other should not be convicted. *Emperor v. Babu Ram*.

40 Cr. L. J. 161 :
178 I. C. 632 (1) : 1938 O. L. R. 489 :
1938 O. W. N. 1134 :
11 R. O. 120 : 14 Luck. 342 :
A. I. R. 1939 Oudh 36.

—S. 7—*Bihar and Orissa Sugarcane Rules (1934), Rr. 15, 20—Liability under.*

The purchasing agent is also liable under R. 15, Bihar and Orissa Sugarcane Rules (1934), if it is found that the person acting on his behalf is guilty unless it has been shown that the purchasing agent had used all due diligence to enforce the observance of the rules and that the offence was committed without his knowledge or consent. *Bala Buz v. Emperor*.

39 Cr. L. J. 732 :
176 I. C. 558 : 19 P. L. T. 395 :
4 B. R. 734 : 11 R. P. 85 :
A. I. R. 1938 Pat. 366.

—S. 7—*Object of the Act.*

The object of the Sugarcane Act is to secure to sugarcane growers a fair price for their produce and the method adopted by the Legislature to achieve this end, is to regulate the price at which sugarcane, intended to be used in the manufacture of sugar, may be purchased by or for factories. *Ram Saran Jha v. Emperor*.

38 Cr. L. J. 750 (b) :
169 I. C. 312 : 18 P. L. T. 182 :
16 Pat. 251 : 3 B. R. 538 :
10 R. P. 1 : A. I. R. 1937 Pat. 242.

—S. 7—*U. P. Sugarcane Rules, Rule 13, (1) (i)—Scope of—"Fails to make available at a purchasing centre", meaning of.*

Sub-r. (1) (i) of r. 13 of Sugarcane Rules, has to be read with r. 11 (7). Sub-r. (1) (i) distinctly lays down the words "as required by r. 11 (7)." Under r. 11 (7) registers and records shall be kept at the purchasing centre. What sub-r. (1) (i) of r. 13 means is that all the registers and records as required by r. 11 (7) shall be kept at the purchasing centre and shall be "made available," which means shall be produced for inspection when asked for by the Inspector. The contention that the words "fails to make available at a purchasing centre," does not mean that the register and other necessary papers should be kept at the purchasing centre is wrong. *Emperor v. Ohholey Lal*.

39 Cr. L. J. 160 :
172 I. C. 670 : 10 R. O. 192 :
1938 O. W. N. 115 :
1938 O. L. R. 24 :
A. I. R. 1938 Oudh 56.

—S. 7—*U. P. Sugarcane Rules, rr. 14 (1), 12 (1), (j)—Conviction under.*

Where it cannot be said that the District Magistrate either complained or authorised a complaint about the charge on account of charity, there cannot be a prosecution under the U. P. Sugarcane Rules and there can be

SUGARCANE ACT (VIII OF 1934)

no prosecution in respect of a charge not mentioned in that complaint. In such circumstances, a conviction under r. 12 (1) (j) cannot stand. *Raghubar Dayal v. Emperor*.

37 Cr. L. J. 782 :
163 I. C. 250 : 8 R. A. 926 :
1936 A. L. J. 60 :
1936 A. W. R. 163 :
A. I. R. 1936 All. 370.

—S. 7 (1)—*U. P. Sugarcane Rules, 1934, rr. 8 (2) and 9—R. 8 (2), scope of.*

R. 8 (2), of U. P. Sugarcane Rules, 1934, relates only to weighments; it has nothing to do with the rules for payment with which r. 9 deals. The weight has to be ascertained only for the purpose of payment. After having once ascertained the weight in accordance with the rules given in r. 8, there remains no occasion or justification for making again any allowance for any fraction. *Ayub Ali v. Emperor*.

38 Cr. L. J. 795 :
169 I. C. 626 : 10 R. A. 40 :
1937 A. L. J. 362 :
A. I. R. 1937 All. 423.

—S. 7 (b)—*Rules under—Scope of.*

R. 14 of U. P. Sugarcane Rules, 1934, deals with two matters, namely (1) the cognizance of a complaint by a Court, and (2) the making of a complaint made by a District Magistrate. The word 'shall' in Part 2 of the rule deals with the second matter and is only for the guidance of the District Magistrates. As soon as a complaint is made by a District Magistrate, it would be presumed that he has satisfied himself that there was a general complaint of non-payment within the prescribed time. Unless a District Magistrate is so satisfied, he would never make a complaint. *Zahid Husain v. Emperor*.

38 Cr. L. J. 800 :
169 I. C. 627 (1) : 10 R. A. 41 (2) :
1937 A. L. J. 354 :
A. I. R. 1937 All. 421.

—S. 7 (3)—*Breach of rules under—Offence.*

In Ss. 64 to 67, Penal Code, the word 'offence' is used in the meaning given in Cl. 2, S. 40, Penal Code. The definitions are in Ss. 41 and 42, a 'special law' being a law applicable to a particular subject and a 'local law' being a law applicable only to a particular part of British India. Thus an offence under a local or special law (e. g., under rules made under Sugarcane Act) is an offence for the purpose of Ss. 64 to 67. *Sakaldeo Singh v. Emperor*.

38 Cr. L. J. 210 :
166 I. C. 345 : 17 P. L. T. 806 :
16 Pat. 92 : 3 B. R. 162 : 9 R. P. 287 :
A. I. R. 1937 Pat. 4.

—S. 7 (3)—*Interpretation of rules under.*

Where prosecution was started under the Sugarcane Act, for breach of Rules (Patna) rr. 9, 11 under r. 13, with sanction, but it was subsequently found by Sessions Judge that accused committed breach of r. 13 also, was further sanction required for prosecution for

SUGARCANE ACT (VIII OF 1934)

breach of r. 13? The interpretation of rules under Sugarcane Act, under S. 7, is controlled by the General Clauses Act. S. 25 of that Act makes applicable Ss 63 to 70, Penal Code, to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary. *Sakaldeo Singh v. Emperor*.

38 Cr. L. J. 210 :
166 I. C. 345 : 17 P. L. T. 806 :
16 Pat. 92 : 3 B. R. 162 : 9 R. P. 287 :
A. I. R. 1937 Pat. 4.

—S. 7 (3)—Power under, scope of—Rr. 11 and 13 are not ultra vires of the powers under S. 7.

The power to make rules for the regulation of the purchase and sale of sugarcane by and to licenced purchasing agents, is a very wide power indeed; and rr. 11 and 13 making it obligatory on purchasing agents to buy sugarcane in a particular manner by weight are within the powers conferred by S. 7, Sugarcane Act. *Sakaldeo Singh v. Emperor*.

38 Cr. L. J. 210 :
166 I. C. 345 : 17 P. L. T. 806 :
3 B. R. 162 : 9 R. P. 287 :
16 Pat. 92 : A. I. R. 1937 Pat. 4.

—S. 8—Duty of Magistrate.

Although it is not incumbent upon a Magistrate to frame a charge against an accused in a case which is being tried as a summons case, yet it would be proper if the Magistrate actually frames a charge or summarises the ingredients of the offence (and read them over to the accused, before the trial begins) which the accused are required to meet in the case under the Sugar Excise Duty Act of 1934. In order to see whether the persons accused under S. 8 evaded payment of duty, it is necessary to consider the provisions under which the duty payable by the owner of a factory is assessed. *Behari Ram v. Emperor*.

39 Cr. L. J. 610 :
175 I. C. 531 : 19 P. L. T. 415 :
4 B. R. 602 : 10 R. P. 634 :
A. I. R. 1938 Pat. 440.

—S. 8—Late payment of duty, effect of.

The omission to file a return in Form B, cannot be held to be an evasion to pay the duty. The prosecution has to establish other facts from which an inference could be drawn that the accused failed to file the return with the object of evading payment of the duty. *Behari Ram v. Emperor*.

39 Cr. L. J. 610 :
175 I. C. 531 : 19 P. L. T. 415 :
4 B. R. 602 : 10 R. P. 634 :
A. I. R. 1938 Pat. 440.

—S. 8—Scope of.

Failure to keep an account is an offence punishable under Art. 8. *Behari Ram v. Emperor*.

39 Cr. L. J. 610 :
175 I. C. 531 : 19 P. L. T. 415 :
4 B. R. 602 : 10 R. P. 634 :
A. I. R. 1938 Pat. 440.

SUMMARY TRIAL

—Art. 15—Power of Collector.

The language of Art. 15, Sugar Excise Duty Order makes it clear that the Collector has the power to accept a sum of money only in lieu of punishment for breach of any of the provisions of the order but not of the Act. *Behari Ram v. Emperor*.

39 Cr. L. J. 610 :
175 I. C. 531 : 19 P. L. T. 415 :
4 B. R. 602 : 10 R. P. 634 :
A. I. R. 1938 Pat. 440.

SUITS VALUATION ACT, 1887

—S. 8—Suit, valuation of.

A suit must be valued according to the nature of the plaint. *Mohammad v. Mst. Wahab Jan.*

37 Cr. L. J. 197 :
159 I. C. 819 : 8 R. Pesh. 87 :
A. I. R. 1935 Pesh. 174.

SUMMARY TRIAL

—Duty of Magistrate—Notes of evidence.

Although the object of summary procedure is to shorten the course of a trial, it is nevertheless incumbent on a Magistrate to put on record sufficient evidence to justify his order. The notes of evidence should form part of the record and their destruction renders a conviction improper. *Atma Ram v. Emperor*.

28 Cr. L. J. 88 :
99 I. C. 120 : 49 All. 131 :
A. I. R. 1927 All. 157.

—Duty of Magistrate—Short notes of evidence—Notes not kept of record—Conviction.

Where, in a summary trial, the Magistrate makes short notes of the evidence of the witnesses heard by him in the course of the trial, such notes form part of the record and the Magistrate is bound to keep them on the record and not destroy them. Where such notes have not been kept, the conviction is liable to be set aside. *Lal Chand v. Emperor*.

26 Cr. L. J. 1454 :
89 I. C. 974 : A. I. R. 1926 Nag. 79.

—Illegality of—Offence punishable with one year's rigorous imprisonment—Opium Act, S. 9—Subsequent regular trial without summary trial being quashed—Ultra vires.

The accused was prosecuted for an offence under S. 9, Opium Act, punishable with one year's rigorous imprisonment. The Additional Township Magistrate tried the case in a summary manner and imposed a sentence for four months' rigorous imprisonment. The District Magistrate having declared the trial void, the Magistrate retried the case in the regular manner and imposed the same punishment: *Held*, that both the trials were void *ab initio*. The summary trial was *ultra vires*, as the offence being punishable with one year's rigorous imprisonment, the Magistrate had no jurisdiction to try the case summarily. The regular trial was *ultra vires*, as the former proceedings not having been quashed by the High Court, the accused could not be tried over again. *Emperor v. Nga Sit Cho*.

13 Cr. L. J. 58 :
13 I. C. 394 : 4 Bur. L. T. 271.

LAHORE HIGH COURT RULES

————Chap. 3-B, r. 2—*Conduct of legal practitioner—Bench of 3 Judges can inquire into.*

A Bench of three Judges constituted by the Chief Justice under r. 2, Ch. 3-B is competent to enquire into and pass final orders about the conduct of legal practitioner. *In the matter of: Barrister-at-Law and Advocate. (S. B.)*

35 Cr. L. J. 1010 :
149 I. C. 764 : 15 Lah. 354 :
6 R. L. 741 : A. I. R. 1934 Lah. 251.

————Chap. VII-A, r. 10—*Affidavit under—Objectionable portions in forfeited book—Whether should be set out.*

Rule 10, Chap. VII-A of the Lahore High Court Rules applies to any additional evidence, which the petitioner or the Local Government respectively wish to produce in support of or against the petition, and lays down that such evidence shall be in the form of affidavits. *Parkash Chand v. Emperor. (S. B.)*

38 Cr. L. J. 898 ;
170 I. C. 439 : I. L. R. 1937 Lah. 445 :
39 P. L. R. 782 : 10 R. L. 116 :
A. I. R. 1937 Lah. 513.

LAHORE HIGH COURT RULES AND ORDERS

————R. 48 (5).

See also Penal Code, 1800, S. 167.

————Vol. II, Chap. VI, para. 67.

See also Cr. P. C., 1808, S. 257.

————Vol. II, para. 16.

See also Cr. P. C., 1808, S. 561-A.

————Vol. III, Chap. IX-A, r. 1—*Summoning defence witnesses at Government expense—Criminal case—Charge of defamation—Accused, whether entitled to have witnesses summoned at Government expense.*

An accused person in a case under S. 500, Penal Code, is not entitled to claim that his witnesses should be summoned at Government expense. *Dhwan Singh v. Jowala Das.*

I. R. 1932 Lah. 662.

LAMBARDAR

————Duty of.

It is Lambardar's duty to give information of absence of bad characters from villages. *Emperor v. Mula.*

1 Cr. L. J. 108 :
5 P. L. R. 83 : 20 P. R. Cr. of 1903.

LAND CUSTOMS ACT (XIX OF 1924)

————S. 7—*Offence regarding non-dutiable goods—Land Customs officer—Jurisdiction.*

Under S. 7 of the Land Customs Act, as amended, an offence in respect of non-dutiable goods is one to be dealt with only by the Land Customs Officer himself under S. 7; it would not constitute an offence for which a complaint could be made to a Magistrate. *In re: Santhana-krishna Chetty.*

35 Cr. L. J. 331 :
147 I. C. 46 : 65 M. L. J. 837 :
38 L. W. 979 : 6 R. M. 325 :
A. I. R. 1933 Mad. 888 (2).

LANDLORD AND TENANT

————S. 7—*Prosecution for smuggling—Proof of.*

In a prosecution for smuggling under S. 7 (1) (c), it is for the prosecution to prove that the dutiable article was taken by land from the Foreign territory into British India at a time when the article was dutiable. *In re: Santhanakrishna Chetty.*

35 Cr. L. J. 331 :
147 I. C. 46 : 65 M. L. J. 837 :
38 L. W. 979 : 6 R. M. 325 :
A. I. R. 1933 Mad. 888 (2).

————S. 7 (2)—*Sub-Inspector of Customs, whether can file complaint.*

A Sub-Inspector of Customs is a Land Customs Officer, and under S. 7 (2), Land Customs Act, Land Customs Officer is competent to make a complaint to a Magistrate. *Public Prosecutor v. M. S. Krishnamurthi Ayyar.*

39 Cr. L. J. 867 :
177 I. C. 335 : 47 L. W. 576 :
1938, 1 M. L. J. 815 : 1938 M. W. N. 511 :
11 R. M. 308 : A. I. R. 1938 Mad. 712.

LANDLORD

————*Landlord keeping tenants of bad character, liability of.*

The fact that a landlord has tenants of bad character under him and lends them money when they are in difficulty or meditates between his tenants who are accused of theft and their victims, are not grounds for requiring security from the landlord under S. 110. *Kripasindhu Naiko v. Emperor.*

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

LANDLORD AND TENANT

————*Ejectment.*

A decree in ejectment passed against a lessee at the instance of a lessor is not binding upon the lessee but also upon his sub-tenants provided they have no right independent of the right of their lessor in the demised premises, and the sub-tenants can be evicted in execution of such a decree. *Yusuf v. Jyotish Chandra Banerjee.*

34 Cr. L. J. 493 :
137 I. C. 139 : 35 C. W. N. 1132 :
59 Cal. 739 : I. R. 1932 Cal. 267 :
A. I. R. 1932 Cal. 241.

————*Tenant holding over after expiry of lease—Landlord, right of, to re-enter.*

A tenant whose right is determined has no right to remain forcibly upon the land and say to his landlord that he will cultivate the land till such time as he is evicted by a Civil Court. From the moment the title of the tenant expires, the landlord is in possession in the eye of the law, and provided that he does not use undue force, he is entitled to go upon the land, and if necessary, to use force for the purpose of asserting and maintaining his possession. *Gita Prasad Singh v. Emperor.*

25 Cr. L. J. 919 :
81 I. C. 535 : 1924 Pat. 29 :
5 P. L. T. 656 : 3 Pat. L. R. 27 Cr. :
A. I. R. 1925 Pat. 17.

SUPPRESSION OF IMMORAL TRAFFIC ACT

———*Method of recording evidence—Record must show ingredients of offence charged—S. 355, Cr. P. C., not applicable.*

The Magistrate's record in summary trials, however, brief, must show the necessary ingredients of the offence charged. It is not necessary for a record of evidence to be made in summary trials even where an appeal lies, but S. 264 provides that the substance of the evidence must be embodied in a judgment as well as the particulars in S. 263. S. 355 merely prescribes a briefer record in summons cases and other cases which may be tried summarily when they are, as a matter of fact, tried regularly. *Kuchi v. Emperor.*

2 Cr. L. J. 375 :
3 L. B. R. 3.

———*Procedure—Jurisdiction of the Court to hold—How to be determined—Cr. P. C., Ss. 260 and 261.*

In determining whether a case is triable summarily under the provisions of the Cr. P. C., the facts stated in the petition of complaint as well as the sworn statements of the complainant must be taken into consideration. *Phanindra Nath Chatterji v. Emperor.*

8 Cr. L. J. 227 :
1 I. C. 519 : 36 Cal. 67 :
12 C. W. N. 1041 :

SUMMONS AGAINST ACCUSED

———*Duty of Court.*

When the allegations in a petition of complaint appear to be made on information and not on the personal knowledge of the complainant, it is reasonable that a Court before issuing summons against the accused should satisfy itself on proper materials that a case has been made out for issuing summons. *Thakur Prosad Singh v. Emperor.*

4 Cr. L. J. 217 :
10 C. W. N. 1090.

SUMMONS CASE

———*Procedure.*

A Magistrate tried a summons case as a warrant case and framed charge against the accused who intimated their desire to further cross-examine prosecution witnesses and produce defence. But when the witnesses were re-called, the Court discovering its mistake, cancelled the charge, refused to permit cross-examination and gave judgment against the accused: *Held*, that the accused were prejudiced in their defence owing to the wrong procedure of the Court and must be given a further opportunity of cross-examining prosecution witnesses. *Ram Ratan v. Ram Sagar.*

25 Cr. L. J. 1271 :
82 I. C. 279 : A. I. R. 1925 Oudh 200.

SUPPRESSION OF IMMORAL TRAFFIC ACT

———Ss. 5 (1), 8-A (1)—*Girl used for prostitution not found to be jointly keeping or assisting in management of brothel.*

Where there is no evidence that a girl

SURETY

who was being used for prostitution was jointly keeping or managing or acting or assisting in the management of the brothel, she cannot be convicted under S 5 (1) of the Suppression of Immoral Traffic Act. It cannot be said that she was living on the earnings of the prostitution of another person. Her conviction under S. 8-A (1) of the Act is also unsustainable. *Manonmani Ammal v. Emperor.*

41 Cr. L. J. 960 :
190 I. C. 655 : 1940 M. W. N. 529 (2) :
1940, 2 M. L. J. 33 :
52 L. W. 67 : 13 R. M. 452.

SUPPRESSION OF TERRORISTS OUTRAGES (SUPPLEMENTARY) ACT (XXIV B. C. OF 1932)

———S. 5.

See also Bengal Suppression of Terrorist Outrages (Supplementary, Act, 1932), S. 35.

SURETIES

———*Duty of Magistrate — Police report, acting on, illegal.*

A Magistrate ought not to reject sureties on the report of the Police when sureties are offered, it is the duty of the Magistrate to accept them, unless he is satisfied that they are not proper persons. *Gopi Khatik v. Emperor.*

23 Cr. L. J. 499 :
68 I. C. 35 : 20 A. L. J. 760 :
A. I. R. 1922 All. 541.

SURETY

———*Bail bond—Forfeiture.*

There can be no forfeiture of penalty in bail bond except on its own terms. *A. N. Bhat-tacharjee v. Emperor.*

39 Cr. L. J. 523 :
174 I. C. 984 : 10 R. P. 566 :
4 B. R. 503 : 17 Pat. 436 :
A. I. R. 1938 Pat. 211.

———*For appearance of accused—Money deposited by surety—Fine.*

Fine cannot be deducted from the money deposited by a surety for the appearance of the accused, even if the surety and the accused are brothers and even if they be assumed to be members of a joint Hindu family. *Girdhari Lal v. Emperor.*

22 Cr. L. J. 744 :
64 I. C. 136 : 19 A. L. J. 887 :
A. I. R. 1921 All. 71.

———*Responsibility of.*

Magistrate absent on date fixed but accused present—Sureties are not responsible for next appearance—Compromise accepted by Court—Proceedings against sureties cannot be taken. *Emperor v. Muhammad Shah.*

36 Cr. L. J. 557 :
154 I. C. 522 : 7 R. L. 580 :
A. I. R. 1934 Lah. 294.

———*Surety's solvency—Proof.*

In criminal proceedings, the Courts should not accept the certificates given by Pleaders as to the solvency or fitness of sureties

TELEGRAPHY ACT (XIII OF 1885)

proposed by their clients as sufficient, without further inquiry. *In the matter of: P., a Pleader.*

35 Cr. L. J. 1455 :
151 I. C. 747 : 28 S. L. R. 293 :
7 R. S. 65 (2) : A. I. R. 1934 Sind 142.

SURETY BOND FOR APPEARANCE

———*Police Officer, power of.*

A Police Officer is not authorised under the Cr. P. C., to take a surety bond for the production of any person before the Police and such a bond is *ab initio* void. *Hamid Ali v. Emperor.*

25 Cr. L. J. 712 :
81 I. C. 200 : A. I. R. 1925 Lah. 152.

T**TEA DISTRICTS EMIGRANT LABOUR ACT**

———*Irregularity.*

In cases under the Tea Districts Emigrant Labour Act, a Magistrate is inclined to proceed on the minimum of witnesses with the result that a superior Court may find it necessary to remand the case for further evidence. This is a serious mistake productive in the long run of general inconvenience. *Birsa Sardor v. Emperor.*

158 I. C. 1124 : 16 P. L. T. 423 :
2 B. R. 39 : 8 R. P. 240 :
A. I. R. 1935 Pat. 411.

———*Ss. 32, 18 (1), 21 — Offence under — Knowingly assisting married woman living with her husband to emigrate without husband's consent — Rules under S. 21 — R. 30, validity of — Recruiter's liability.*

A person knowingly assisting a married woman living with her husband to emigrate as a labourer to a tea garden without the consent of her husband and despatching her to the tea garden with his name as recruiter comes not only within the description of S. 18 (1), but also within the description of recruiter in respect of such woman as also within the provision of S. 32 of the Act. The provisions of S. 18 (1), relate only to taking the recruit to the depot; it has no bearing on any inquiry which may be necessary before the recruiter makes the arrangement with the recruit. The rule-making power is expressed very widely in S. 21 (1), and under it R. 30, is validly made and certainly so far as a woman unaccompanied by her husband is concerned. It makes no difference that the local forwarding agent also incurs liabilities under Rr. 19 and 20 read with R. 32 in respect of "women unaccompanied by their husbands." *Bissa Sardar v. Emperor.*

158 I. C. 1124 : 8 R. P. 240 :
16 P. L. T. 423 : 2 B. R. 39 :
A. I. R. 1935 Pat. 411.

TELEGRAPHY ACT (XIII OF 1885)

———*S. 20—Nominal fine, sufficiency of.*

Subsequent issuing of licence to take effect from date earlier than one on which person was in possession without licence, if converts possession to one with licence : *Held,*

THEFT

that under the circumstances, nominal fine was sufficient. *In re: A. S. Pandian.*

39 Cr. L. J. 991 :
178 I. C. 59 : 1938 M. W. N. 823 :
1938, 2 M. L. J. 281 :
48 L. W. 330 : 11 R. M. 399 :
A. I. R. 1938 Mad. 821.

———*S. 20 — Separate conviction under, if justified.*

Where a person is convicted and sentenced under Ss. 3 and 6, Wireless Telegraphy Act, there is no justification for a separate conviction under S. 20, Telegraphy Act or for a separate sentence under that section in respect of the same wireless receiving set. *In re: A. S. Pandian.*

39 Cr. L. J. 991 :
178 I. C. 59 : 1938 M. W. N. 823 :
1938, 2 M. L. J. 281 :
48 L. W. 330 : 11 R. M. 399 :
A. I. R. 1938 Mad. 821.

———*S. 27—Applicability of—Offence under, Essentials of.*

S. 27, Telegraphs Act, contemplates, that the defrauding should be the result of the transmission of the message without recovering the prescribed charge. The section is intended only to apply to those cases in which the charge prescribed is recoverable before transmission of the message. *Emperor v. Jagiri Lal.*

39 Cr. L. J. 551 :
175 I. C. 155 : I. L. R. 1938 Lah. 236 :
40 P. L. R. 1029 : 10 R. L. 694 :
A. I. R. 1938 Lah. 251.

TENDER OF PARDON BY LOCAL GOVERNMENT

———*Validity of.*

The tender of a pardon by the Local Government, though of doubtful validity in law, can in no way be regarded as an inducement or threat illegally held out to an accused person to disclose or withhold any matter within his knowledge. *Deputy Legal Remembrancer v. Banu Singh.*

5 Cr. L. J. 142 :
5 C. L. J. 224.

THEFT

———*Criminal intent.*

A cow strayed away when returning from grazing. There was an immediate search and the animal was found half a mile from the village being driven by two brothers A and B of the ages of 20 and 14, respectively. Both were convicted of theft : *Held,* that there was no reason for assuming that B acted with criminal intent, being a mere child, B would naturally do whatever his grown-up brother told him without knowing what was meant. *Emperor v. Bakhtawar.*

12 Cr. L. J. 56 :
8 I. C. 1166 : 34 P. R. 1910 Cr.

———*Lapse of time—Effect of — Husband's responsibility for possession of wife.*

Where sundry articles of stolen property are

TORT

traced to the hands of accused four months after theft; a conviction under S. 411, I. P. C., is not possible. The accused cannot be held to be responsible for the possession of articles found in his wife's house when he is not living there at the time of the search, and his wife and her people are not on good terms with him. *In re : Dusthoo Gulam.*

12 Cr. L. J. 549 :
12 I. C. 525 : 10 M. L. T. 237.

—————*Search—Responsibility of servant.*

A servant should not be held guilty of theft where he acted under the order of his master, unless he knew of his master's dishonest intention. *Radha Madhab Pakra v. Emperor.*

12 Cr. L. J. 7 :
9 I. C. 46 : 15 C. W. N. 414.

THUMB IMPRESSIONS

—————*Expert evidence, value of—Conviction.*

A Court cannot refuse to convict a person on the evidence of a finger print expert merely on the ground that it is unsafe to base a conviction upon such evidence. *Sardara v. Emperor.*

31 Cr. L. J. 877 :
125 I. C. 639 : A. I. R. 1930 Lah. 667.

—————*Legality of conviction.*

It is most unsafe, without any corroborative circumstances, to convict a person of a serious crime solely and entirely upon similarity of thumb marks on finger prints. *Bazari Hajam v. Emperor.*

23 Cr. L. J. 638 :
68 I. C. 958 : 4 U. P. L. R. Pat. 1 :
1922 Pat. 46 : 3 P. L. T. 526 :
1 Pat. 292 : A. I. R. 1922 Pat. 73.

—————*Value of—Evidence Act, S. 132, proviso.*

Where an accused has made a statement voluntarily and without compulsion on the part of the Court, it may be used against him on his trial, if relevant; that is, the proviso to S. 132, Evidence Act, does not apply unless the witness objects to answer the question. Therefore, even if taking a thumb impression is equivalent to an answer, no objection being made to the thumb impression being taken, the proviso to S. 132 does not apply. *Tunoo Mia v. Emperor.*

13 Cr. L. J. 173 :
13 I. C. 925 : 16 C. W. N. 502 :
15 C. L. J. 399 : 39 Cal. 348.

TORT

—————*Defamation.*

Accused purchasing watch with guarantee for two years—Company demanding payment for repairs made within six months—Accused publishing letter importing deceit to company : Held, it was not justified and imputations were defamatory. *O. T. N. R. Narayanan Chelthar v. Emperor.*

37 Cr. L. J. 328 :
160 I. C. 746 : 8 Rang. 424 :
A. I. R. 1935 Rang. 509.

—————*Defamation.*

There can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is, to a party

TOUT

other than the person defamed. The question whether there is such publication or not is one of fact and the question may be decided either by direct evidence or on the circumstances of the case. *Khima Naud v. Emperor.*

38 Cr. L. J. 806 :
169 I. C. 622 : 1937 A. L. J. 128 :
10 R. A. 41 (1).

—————*Negligence.*

In the case of collision, negligence is a question of fact not of law; each case must depend upon its own facts; and there is no rule of law which in every case disqualified a motorist from recovering damages where he had run into a stationary unlighted object. *Holford Stewart v. George Alfred Francis Hancock.*

41 Cr. L. J. 730 (P. C.) :
189 I. C. 321 : 6 B. R. 845 :
1940 O. L. R. 483 : 13 R. P. C. 31 :
A. I. R. 1940 P. C. 128.

—————*Representative suit—Damages.*

A representative suit does not lie for damages in tort though when a representative suit properly framed for other reliefs incidentally involves a claim for damages put forward by certain individuals among the plaintiffs, such a claim has been permitted to be urged as ancillary to the main suit. *Narayana Mudali v. Peria Kalathi.*

41 Cr. L. J. 677 :
188 I. C. 801 : 49 L. W. 664 :
1939 M. W. N. 593 :
1939, 2 M. L. J. 296 : 13 R. M. 110 :
A. I. R. 1939 Mad. 783.

—————*Secretary of State, liability of, for acts of Government servants.*

The Secretary of State is not usually liable for acts done by Government servants and would only be liable in such cases as the East India Company was formerly liable. As regards the East India Company, a distinction was drawn between sovereign acts and acts of trading. As regards sovereign acts, the Company was held not to be liable for defaults of its servants. Consequently, when a Constable during investigation seizes property suspected of having been stolen, no argument can be put forward that the Constable was not entrusted with dominion over the property on behalf of Government because Government would not be liable for his tortious acts. *Local Government v. Abasalli.*

36 Cr. L. J. 867 :
156 I. C. 184 : 31 N. L. R. 312 :
7 R. N. 224 : A. I. R. 1935 Nag. 139.

TOUT

—————*Evidence.*

A person cannot be declared a habitual tout when evidence of his being so is vague and general, while there is the testimony of apparently respectable witnesses to the contrary. *Faiz Ali v. Emperor.*

11 Cr. L. J. 147 :
4 I. C. 1021 : 26 P. W. R. 1909 Cr.

—————*Habitual tout—Evidence.*

The evidence of an ordinary witness to the effect that a Barrister pays a person commis-

TRADE MARK

sion on any case brought to him, while the Barrister himself denies the fact, is not sufficient to declare that person a habitual tout. *Baisakhi Ram v. Emperor*.

11 Cr. L. J. 148 :
4 I. C. 1022 : 27 P. W. R. 1909 Cr.

TRACK EVIDENCE

———*Main evidence unsatisfactory—Conviction.*

It is impossible to base a conviction merely on track evidence when the main evidence has been shown to be extremely discrepant and unsatisfactory. *Ranga Singh v. Emperor*.

27 Cr. L. J. 946 :
96 I. C. 498 : 2 Lah. Cás. 323 :
8 L. L. J. 457 : 27 P. L. R. 612.

TRADE DISPUTES ACT (ACT VII OF 1929)

———*S. 16—Hardship to community.*

Pecuniary losses occasioned to individuals or industries cannot be said to amount to severe, general and prolonged hardship to the community. *Emperor v. A. A. Alwe*.

37 Cr. L. J. 252 :
160 I. C. 189 : 37 Bom. L. R. 892 :
60 Bom. 108 : 8 R. B. 250 :
A. I. R. 1936 Bom. 5.

———*S. 16—Scope of.*

Where the strike has objects beyond the furtherance of the trade dispute in the particular trade, the case falls within Sub-s. (1) (a) of S. 16. *Emperor v. A. A. Alwe*.

37 Cr. L. J. 252 :
160 I. C. 189 : 37 Bom. L. R. 892 :
60 Bom. 108 : 8 R. B. 250 :
A. I. R. 1936 Bom. 5.

———*S. 17—'Design', meaning of.*

The word "designed" is equivalent to "planned". "Design" must be by the persons responsible for the strike. *Emperor v. A. A. Alwe*.

37 Cr. L. J. 252 :
160 I. C. 189 : 37 Bom. L. R. 892 :
60 Bom. 108 : 8 R. B. 250 :
A. I. R. 1936 Bom. 5.

———*S. 17—'Designed or calculated'.*

The words "designed or calculated" were intended to bear distinct meanings, and it is sufficient to prove either design or calculation. *Emperor v. A. A. Alwe*.

37 Cr. L. J. 252 :
160 I. C. 189 : 37 Bom. L. R. 892 :
60 Bom. 108 : 8 R. B. 250 :
A. I. R. 1936 Bom. 5.

TRADE MARK

———*Circumspection.*

Infringement alleged—Search warrant for production of accounts—Circumspection is to be used in issuing. *Rajasingh v. Tikamdas Pritamdas*.

36 Cr. L. J. 908 :
156 I. C. 321 : 29 S. L. R. 179 :
7 R. S. 242 : A. I. R. 1935 Sind 107 (2).

TRADE MARK

———*Colourable imitation—Infringement.*

The question whether the trade mark, the subject-matter of the prosecution, is a colourable imitation of another trade mark is one of fact and the Court must come to its own conclusion after having placed itself in the position of an unwary customer. It is enough that there should be such similarity that an unwary customer may not be able to distinguish the one from the other, especially when he sees the one without having the other before him. The question is not whether anyone has been deceived in fact but whether an average customer can be deceived. *Girdharilal Marwari v. Emperor*.

38 Cr. L. J. 35 :
165 I. C. 745 (2) : 17 P. L. T. 667 :
3 B. R. 71 : 9 R. P. 203 :
A. I. R. 1936 Pat. 579.

———*Counterfeit.*

A counterfeit trade mark may be defined as a trade mark which is either designed and used with the intention of deceiving or which, by reason of its resemblance to another pre-existing and already established mark, is calculated to deceive, apart from any dishonest intention. *Nemi Chand v. Wallace*.

4 Cr. L. J. 247 :
4 C. L. J. 268.

———*Deliberate design—Expert evidence, if admissible—Malice in law, not sufficient—Malice in fact to be proved.*

It lies upon the plaintiff to establish affirmatively that the marks of resemblance were accidental and not designed. If the plaintiff, having the opportunity, deliberately abstains from showing that the resemblance adopted by him was accidental and innocent, it necessarily follows that it was the result and outcome of deliberate design and intention. If the Court, on the facts before it, must presume that the resemblance is not accidental but intentional and designed, then the imitation must have been designed with the object of deceiving. If the object was to deceive, then the Court will presume as against the wrong-doer, that the means employed to cause deception, were calculated to effect that purpose. This is the effect of the ruling in *John Smidt v. Reddaway*. It is only if the fraudulent design is negatived, that it becomes material to enquire whether the resemblance between the two combinations of marks, was calculated to deceive. Evidence of experts or men in the trade cannot be given to show whether or not a combination is such as is calculated to deceive the purchaser. It is a question entirely for the Judge. Evidence of facts, which may assist the Judge to come to a conclusion whether one mark is a colourable imitation of another may be given. Malice in law is not sufficient, i.e., it is not sufficient to show that the mark or combination of the plaintiff was falsely charged as a colourable imitation without legal justification or excuse. Malice in fact must be proved. *Nemi Chand v. Wallace*.

4 Cr. L. J. 247 :
4 C. L. J. 268.

TRADE MARK

———Bona fide dispute as to right of, user of.

Where there is a *bona fide* dispute as to whether the complainant has any trade mark at all or whether the accused is or is not entitled to use the mark he is using, and the Magistrate is satisfied as to this *bona fide* dispute, he should not deal with the matter as a criminal matter, but leave it to the complainant to establish his right in a Civil Court. After the Civil Court declares the complainant's right, the case can be brought into a Criminal Court. *Dowlal Ram v. Emperor*.

2 Cr. L. J. 326 :
I. L. R. 32 Cal. 431.

———How can be acquired.

In India, where there is no provision for registration of trade marks, a trade mark may be acquired by adoption and user upon a vendible article, and a trade mark so acquired, falls within S. 478, Penal Code. Photographs, such as those produced before the Magistrate, are vendible articles, and if a photographer applies a trade mark to photographs which he sells, the provisions of the Penal Code are as applicable to such trade mark as they are to trade marks on other goods and vendible articles. The trade mark claimed was "P. Klier." It was contended that, because, the name was printed in ordinary type, it could not be trade mark: *Held*, that this would be so in England, because, under the Patents, Designs and Trade Marks Act of 1883, a name of an individual cannot be registered as a trade mark unless it is printed, impressed or woven in some particular and distinctive manner; but that in India there is no similar provision of law and S. 478 of the Penal Code covers any and every mark used for denoting that goods are the manufacture or merchandise of a particular person. *Klier v. Ahuja*.

6 Cr. L. J. 392 :
13 Bur. L. R. 336.

———Infringement.

It is doubtful whether there can be a continuing offence in respect of infringement of trade mark in the sense in which there can be a continuing tort or continuing breach of contract. A person cannot be charged with committing an offence *de die in diem* over a substantial period. *Emperor v. Ohhotlal Amarchand*. (F. B.).

38 Cr. L. J. 156 :
166 I. C. 7 : 38 Bom. L. R. 1164 :
9 R. B. 221 : I. L. R. 1937 Bom. 183 :
A. I. R. 1937 Bom. 1.

———Infringement of.

The complainant was using a certain label for his cheroots for 14 or 15 years. The accused began to use a label which had been got up to resemble his label very closely but with certain additions to it. Subsequently complainant registered a label with further additions but incorporating one of the additions introduced by the accused. He filed a complaint for infringement of trade mark: *Held*, that the complainant was entitled to have his case tried and the accused entitled to argue

TRADE MARK

that complainant had counterfeited his trade mark. *Ma Sein Mai v. Ko Aye Wa*.

38 Cr. L. J. 840 :
169 I. C. 880 : 10 R. Rang. 46 :
A. I. R. 1937 Rang. 203.

———Infringement.

The improper use of a trade name may fall within the purview of S. 5, Merchandise Marks Act, and be punishable under S. 6 or 7 as a false trade description. But when the accused is charged under Ss. 482, 485 and 486, Penal Code, the complainant must prove that he has a trade mark which the accused has infringed. The complainant claimed simply the use of a certain name on umbrellas manufactured by him and charged the accused under Ss. 482, 485 and 486, Penal Code: *Held*, that the dispute between the parties was one of a civil nature and ought never to have been brought in the Criminal Court. *Anath Nath Dey v. Emperor*.

14 Cr. L. J. 68 :
18 I. C. 404 : 17 C. W. N. 227 :
40 Cal. 281.

———Infringement, test of.

The proper test for determining whether a trade mark has been infringed is whether the get-up of the defendant's goods is likely to deceive a purchaser who is acquainted with the plaintiff's 'get-up' but trusts to his memory. The adoption by a rival trader of any mark which will cause his goods to be known under the same name in the market as another's is not necessarily a violation of the rights of the owner of the first mark. *A. M. Malumiar & Co. v. Finlay Fleming & Co*.

30 Cr. L. J. 882 :
118 I. C. 113 : 7 Rang. 169 :
I. R. 1929 Rang. 225 : A. I. R. 1929 Rang. 345.

———Infringement.

There must be some inherent similarity in the marks themselves which justifies the use of the same name for both. *Abdul Shakur v. Emperor*.

37 Cr. L. J. 528 :
161 I. C. 1007 : 8 Rang. 534 :
A. I. R. 1936 Rang. 96.

———Kind of customers 'who are likely to be deceived.'

In considering whether customers are likely to be deceived, the kind of customer which the Courts ought to think of is not the ignorant customer, but the customer who knows the distinguishing characteristics of the plaintiff's goods from other goods on the market so far as relates to general characteristics. An intent to defraud is an ingredient of the offence under S. 482 of the Penal Code. *A. M. Malumiar & Co. v. Finlay Fleming & Co*.

30 Cr. L. J. 882 :
118 I. C. 113 : 7 Rang. 169 :
I. R. 1929 Rang. 225 : A. I. R. 1929 Rang. 345.

———Dispute over—Jurisdiction of Civil and Criminal Court—Test.

In deciding the question whether a dispute over trade marks and commercial designs should be brought in Civil and Criminal Court, the real practical test is this that the Criminal

TRADE MARK

Procedure Code is only to be used in simple and clear-cut cases where a very speedy relief is required by the prosecution. In all cases where complicated matters of registration, abandonment of user and so on are concerned, it is very much better that the dispute should be given to the decision of the Civil Courts. *Ashutosh Das v. Keshab Chandra Ghosh*.

38 Cr. L. J. 143 :
166 I. C. 193 : 9 R. C. 487 :
64 C. L. J. 539 : A. I. R. 1936 Cal. 488.

Registration.

In India there is no method by which a trade mark may be registered, but property in or right in respect of a mark may be acquired by user. *P. A. Pakir Mohammad v. Emperor*.

A. I. R. 1929 Rang. 322.

Combination of letters—Infringement of trade mark—Right of aggrieved party to proceed criminally.

There is no authority for the proposition that a letter or a combination of letters cannot constitute a trade mark. A person aggrieved by the infringement of his trade mark has two remedies open to him; (1) he can institute criminal proceedings under the Penal Code, or (2) he can bring an action for an injunction and damages. But a Criminal Court may in view of the peculiar circumstances of a particular case, stay its own hands and direct the complainant to establish his right in a Civil Court. *Banarsi Das v. Emperor*.

29 Cr. L. J. 425 :
108 I. C. 607 : 29 P. L. R. 610 :
9 Lah. 491 : A. I. R. 1928 Lah. 186.

Using false trade mark.

Where the accused had, in close proximity to the shop of the complainant, opened a shop from which he was selling rose-water in bottles which were similar to those which contained rose-water sold by the complainant and the accused had applied labels to his bottles which were similar to those used by the complainant, but on closer examination, great differences in the labels were discernible: *Held*, that the accused was not guilty under Ss. 482 and 486, Penal Code, of using a false trade mark or of selling goods to which a counterfeit trade mark was applied. When a *bona fide* dispute exists between the parties as to the right to use a trade mark, action should be taken before a Civil and not before a Criminal Court. *Surja Prasad v. Mahabir Prasad*.

6 Cr. L. J. 151 :
11 C. W. N. 887.

Trade mark—What is.

A trade mark must be some visible concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade mark is. It may consist of a name impressed in some distinctive way. The distinction between a trade mark and a trade name is clear. *Anath Nath Dey v. Emperor*.

14 Cr. L. J. 68 :
18 I. C. 404 : 17 C. W. N. 227 : 40 Cal. 281.

TRAMWAYS ACT (XI OF 1886)

Conviction under.

A passenger on a tramcar took and paid for a ticket entitling him to travel for a certain distance; he alighted at an intermediate stopping place, and boarded another tramcar, which was performing the same journey, in order to get to the point which he might have travelled by the first car. He refused to pay the fare demanded of him on the second car, contending that he was entitled to complete his journey with his original ticket: *Held*, that the contract of carriage had been determined by the passenger's own act and he was rightly convicted. *Nga Ba Thin v. Rangoon Electric Tramway Co.*

14 Cr. L. J. 564 :
21 I. C. 164 : 6 Bur. L. T. 193 :
7 L. B. R. 53.

TRANSFER

Bias of Magistrate.

Making reference to a statement made by another accused in another case is improper and it indicates bias of the Magistrate. It is advisable that the case is transferred to some other Magistrate even if the case does not come under the Provisions of S. 190 (c). *Jogendra Nath Gorai v. Emperor*.

36 Cr. L. J. 1366 :
158 I. C. 385 : 40 C. W. N. 29 :
8 R. C. 181 : A. I. R. 1935 Cal. 621.

Transfer.

Complaint against District Superintendent of Police in respect of actions done by him in official capacity—Complaint should be tried by Magistrate of equal rank—Complaint against near relation of District Magistrate—It should be tried by Magistrate not subordinate to him—Such complaint transferred to Subordinate Magistrate—Objection that Magistrate may be called as witness and so case to be transferred—Magistrate discharging accused for want of sanction of Local Government—Order, held illegal—Case should have been transferred. *J. W. Atkinson v. S. W. H. Xavier*.

37 Cr. L. J. 723 :
162 I. C. 988 : 8 R. Rang. 603 :
A. I. R. 1936 Rang. 242.

Complaint under S. 406, Penal Code—Case sent for inquiry to another Magistrate and report received—Magistrate starting fresh inquiry under S. 202, Cr. P. C.—Considerable delay caused—Apprehension.

Where a Magistrate starts a fresh inquiry on his own account under S. 202, Cr. P. C. after having sent the complaint under S. 406, Penal Code, for inquiry to another Magistrate and receiving his report, the procedure is irregular. And where apart from the irregularity of conducting a second inquiry, there is also the inordinate delay, the complainant may well feel some apprehension that the fate of his case so far as the admission of the complaint under S. 406, Penal Code is concerned, will not rest entirely on the consideration of the

TRANSFER

report and the Magistrate's conclusion thereon and his application for transfer, therefore, will be justified. *Tyob Ali v. Husain Ali*.

39 Cr. L. J. 80 :
172 I. C. 203 : 10 R. N. 174 :
A. I. R. 1937 Nag. 389.

—————*Dismissal by District Magistrate—Refusal to supply copy of order—Apprehension—Transfer.*

An order of a District Magistrate dismissing an application for transfer is a judicial order, a copy of which ought to be given on requisition. It is absurd for the Court to refuse to supply the copy on the ground that the District Magistrate's sanction was necessary. Where the copy is refused on such a ground together with refusal to supply copy of statement of prosecution witnesses, the party has a reasonable apprehension that he may not receive a fair trial in the Magistrate's Court, and in such a case, the case should be transferred under S. 520 (1) (a). *Gurdas Ram v. Emperor*.

41 Cr. L. J. 756 :
189 I. C. 605 : 42 P. L. R. 192 :
13 R. L. 109 : A. I. R. 1940 Lah. 283.

—————*Duties of Courts.*

Judges and Magistrates should not only be fair and impartial but also should appear to reasonable persons to be fair and impartial, and neither accused persons nor litigants should have any reasonable ground for supposing that the Judge or Magistrate who is trying a case in which they are concerned, is biased either in their favour or against them. *Nga Win v. Emperor*.

35 Cr. L. J. 1362 :
151 I. C. 615 : 7 R. Rang. 98 :
A. I. R. 1934 Rang. 105.

—————*Groundless fears of accused.*

In an application for transfer of a case, the Court should not give weight to groundless fears which the accused may entertain. The mere fact that a Police Officer who was in Court, addressed the Magistrate during the proceeding is not a ground for suspecting that the Magistrate would be prejudiced in the trial. *Tha Shan v. Emperor*.

28 Cr. L. J. 902 :
105 I. C. 230 : 1 Luck. Cas. 186 :
A. I. R. 1927 Oudh 294.

—————*Grounds.*

During the fast of Ramzan, the Magistrate fixed time from 11-30 a. m. to 5 p. m. and again from 5-30 to 10 p. m. for the hearing of the case, though the defence lawyers were Mubammadans. By an earlier order he had refused adjournment to give reasonable opportunity to the accused of engaging and instructing another lawyer when the first lawyer fell ill: *Held*, that the attitude and orders of the Magistrate created a reasonable apprehension in the minds of the accused and the case should be transferred. *Lal Bahadur Raut v. Emperor*.

39 Cr. L. J. 527 :
175 I. C. 110 : 10 R. P. 581 :
4 B. R. 533 : A. I. R. 1938 Pat. 238.

TRANSFER

—————*Grounds for.*

A Magistrate has discretion to refuse bail and the fact that he has refused bail will not constitute a ground for transferring a case from his Board. An error in disallowing certain questions in the cross-examination of a witness does not afford sufficient ground for the transfer of the case. The question of improper exclusion of evidence is not one which should ordinarily be gone into during the pendency of a case. *Mahomed Ally v. Emperor*.

12 Cr. L. J. 277 :
10 I. C. 917 : 4 Bur. L. T. 113.

—————*Ground for.*

Magistrate putting questions to witness prejudicial to accused—Sufficient ground for transfer. *Suraj Prasad Vaish v. Emperor*.

15 Cr. L. J. 234 :
23 I. C. 186 : 12 A. L. J. 50.

—————*Grounds for—Preventive proceeding—Transfer of preventive proceedings from one District to another.*

As a rule, the High Court will not transfer any preventive proceeding from one District to another. It must be an extremely exceptional case that would justify the interference of the High Court with the jurisdiction of the Magistrate of the District taking preventive action within his own boundaries and imposing such foreign and extraneous duty on the Magistrate of another District. *Chandi Prasad Singh v. Emperor*.

14 Cr. L. J. 382 :
20 I. C. 142 : 17 C. W. N. 536.

—————*Ground for—Report of the trying Magistrate containing aspersions against accused.*

Where the trying Magistrate had, during the pendency of the prosecution, made a report to his superior officer, containing aspersions on the conduct of the accused and even suggesting that the accused might have committed the offence she was charged with: *Held*, that the effect of such a report must have been to shake the confidence of the accused in the tribunal and was a strong ground for the transfer. *Imperator v. Kaisar Khan*.

10 Cr. L. J. 199 :
2 S. L. R. 33.

—————*Transfer.*

If case is made out for transfer, application should not be kept pending till entire evidence is recorded specially when ground for transfer is want of jurisdiction. *Kashi Ram Mehta v. Emperor*. (F. B.)

35 Cr. L. J. 982 :
149 I. C. 420 : 3 A. W. R. 506 :
1934 A. L. J. 308 : 6 R. A. 902 :
A. I. R. 1934 All. 499.

—————*Transfer.*

Magistrate hearing major part of case before his transfer is no sufficient ground for transfer of case to him, where prejudice and pecuniary loss to accused will occur. *Emperor v. Tara Chand*.

36 Cr. L. J. 1495 :
158 I. C. 964 : 8 R. S. 61 :
A. I. R. 1935 Sind 197.

TRANSFER

———*Magistrate showing haste in trial of case failing to give opportunity to engage proper legal assistance—Effect.*

Where the Magistrate has displayed far too much haste in the trial of the case and has wrongly failed to give the accused opportunity to engage such legal assistance as he thought proper, the conduct of the Magistrate is such as to fill the mind of the accused with an apprehension that he will not secure a fair trial before him entitling him to transfer of the case. *U Po Mya v. The King.* 39 Cr. L. J. 576 : 175 I. C. 350 : 10 R. Rang. 483 : A. I. R. 1938 Rang. 198.

———*Transfer.*

Magistrate using words in order passed suggesting that he believed in guilt of accused before having heard him in defence—*Held*, case should be transferred. *Bagomal v. Emperor.*

37 Cr. L. J. 152 :
159 I. C. 687 : 29 S. L. R. 339 :
8 R. S. 93 : A. I. R. 1935 Sind 223.

———*Magistrate unwilling to proceed with case.*

That Magistrate is himself unwilling to proceed with the case is certainly no reason for removing the case from his file. *Fakira v. Goma.*

37 Cr. L. J. 861 :
163 I. C. 694 : 9 R. N. 15 :
18 N. L. J. 279.

———*Magistrate wrongly admitting evidence.*

It is true the duty lies upon the Court to exclude evidence which is inadmissible in law but the fact that the Magistrate wrongly admits evidence, is not of itself necessarily good ground to transfer a case. *Om Radhe v. Emperor.*

40 Cr. L. J. 803 :
183 I. C. 460 : 12 R. S. 55 :
A. I. R. 1939 Sind 238.

———*Refusal to allow proper question, ground for transfer.*

A witness who had been examined by the Police can reasonably be asked whether a particular version which he was giving in Court was given by him to the Police. If he did give it, he is not contradicted. But if he did not, or if there is no mention of it in the diary, the value to be attached to the omission will depend upon the circumstances and may even mean the rejection of the version. The question, in any case, would be perfectly relevant and legitimate. However, rejection of the question cannot be a ground for transfer. It is necessary not only that justice should be done but that it should appear that justice is being done. *Lal Bahadur Raut v. Emperor.* 39 Cr. L. J. 527 : 175 I. C. 110 : 10 R. P. 581 : 4 B. R. 533 : A. I. R. 1938 Pat. 238.

———*Setting aside.*

Where absence of notice has led to miscarriage

TRANSFER OF CASE

of justice, the order transferring the case should be set aside. *Kesho Datt v. Ram Kishen.*

35 Cr. L. J. 1439 (1) :
151 I. C. 839 : 7 R. L. 210 :
36 P. L. R. 274 :
A. I. R. 1934 Lah. 194 (2).

TRANSFER APPLICATION

———*State of mind of applicant, to be taken into consideration.*

In case of an ignorant villager who is frightened by the Magistrate being angry with him in one case and believes that in another case the Magistrate will be for that reason prejudiced against him the state of mind of the accused with whom the Magistrate had grown angry will be taken into consideration while deciding upon an application for transfer made by him. *Bagridee v. Emperor.*

31 Cr. L. J. 764 :
125 I. C. 32 : A. I. R. 1930 All. 495.

TRANSFER OF CASE

———*Communal basis.*

It is desirable that a suit relating to a mosque between Hindus and Muhammadans should be tried by some European Magistrate. *Kadir Bakhsh v. Sunder Lall.*

16 Cr. L. J. 213 :
27 I. C. 837 : 127 P. L. R. 1915 :
1 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 449.

———*Ground.*

On the plea that the trying Magistrate is to be summoned as a witness. *Emperor v. Abdul Latif.*

1 Cr. L. J. 338 :
24 A. W. N. 94 :
I. L. R. 26 All. 536.

———*Grounds for—Gr. P. O., S. 526 (8)—Refusal to grant postponement—Application made two months after commencement of hearing.*

It is only when an application for postponement is made before the commencement of the hearing that postponement must be granted under S. 526 (8), Cr. P. C. Where the application has been delayed for two months after the hearing of the case had commenced, a refusal to grant postponement is no ground for transfer of the case. Where the accused are mostly in custody, and the prosecution witnesses have been mostly examined and the accused have not disclosed the names of the witnesses for the defence, the accused cannot ask for a transfer of the case on the ground of convenience. *Emperor v. Aziz Din Ahmad.*

11 Cr. L. J. 500 :
7 I. C. 603 : 4 S. L. R. 42.

———*Ground for.*

Magistrate declined to admit to bail a person whom he considered dangerous. The High Court declined to transfer the case. *In the matter of the Petition of Mithu Khan.*

1 Cr. L. J. 807 :
24 A. W. N. 206 : I. L. R. 27 All. 172 :
1 A. L. J. 685.

TRANSFER OF PROPERTY ACT (IV OF 1882)

———Ground for.

Magistrate expressing opinion before commencement of trial. *Sita Nath v. Emperor.*

1 Cr. L. J. 630 :
8 C. W. N. 641.

———Ground for.

Magistrate making a remark against the accused not based upon evidence in the case. *In re: Virji Tricumji.*

1 Cr. L. J. 934 :
6 Bom. L. R. 856.

———Transfer of case—Notice to parties before transfer, if necessary—Person entitled to apply for transfer.

It may well be that it is advisable for a District Magistrate ordinarily to issue notice to the accused or complainant or both before transferring a case from one Court to another but there is certainly no law which requires him to do so. Any person may bring facts to the notice of the District Magistrate which might suggest to that Magistrate that it is advisable to transfer a case from one Court to another. The mere fact that the District Magistrate received information on an application would not deprive him, from making an order for transfer if it appeared to be a proper order. *Kamni Begam v. Emperor.*

39 Cr. L. J. 878 :
177 I. C. 460 : 1938 A. L. J. 703 :
I. L. R. 1938 All. 738 :
11 R. A. 198 : 1938 A. W. R. 477 :
A. I. R. 1938 All. 517.

———Transfer of case.

Where the Magistrate was honestly of the belief that it was his duty to ascertain that the security tendered was sufficient, and that the sufficiency of the security was to be judged only by the amount of the movable property owned by the sureties, the Magistrate will not be committing an illegality in insisting that, in the light of the provisions laid down in S. 514, Cr. P. C., that security alone can be termed sufficient which is backed by movable property of the value of the amount secured. *K. L. Gauba v. Emperor.*

38 Cr. L. J. 955 :
170 I. C. 586 : I. L. R. 1937 Lah. 114 :
39 P. L. R. 643 : 10 R. L. 135 :
A. I. R. 1937 Lah. 411.

TRANSFER OF PROCEEDINGS

———Ground for.

Under S. 110, Cr. P. C., application for—Ground of transfer—Apprehension of not having fair and impartial trial. *Jafar Husain v. Emperor.*

16 Cr. L. J. 56 :
26 I. C. 648 : 12 A. L. J. 736.

TRANSFER OF PROPERTY ACT (IV OF 1882)

———S. 100—Enforceability.

Decree creating charge—Subsequent mortgage of the same property—Mortgagee taking without notice and for considera-

TREASURE TROVE ACT (VI OF 1878)

tion—No offence under S. 420, Penal Code—Previous charge cannot be enforced. *Ramkishnanandram v. Ganesh Narain.*

35 Cr. L. J. 1063 :
150 I. C. 20 : 6 R. N. 279 :
30 N. L. R. 303 :
A. I. R. 1934 Nag. 149.

———S. 105—Prosecution—City of Bombay Municipal Act (III of 1888), S. 231.

The Bombay Municipality acquired some stables but allowed the occupants to continue on the premises by leave and licence. Later on the Municipality entered into an agreement with the applicant whereby the applicant was to pay to the Municipality a monthly sum of Rs. 180 as compensation for the use and occupation by him as licensee of the said premises. During the continuance of the agreement, the licensee was to be at liberty to continue the occupancy of the remaining occupants of the premises as licensees, to recover from them the amounts they had agreed to pay for their occupancy of the premises as licensees, and in case any of them vacated the premises, to substitute for him any other occupant but on condition that such new occupant was to occupy the premises only as licensee and would vacate the same on being given forty-eight hours' notice. The agreement further provided that the applicant was to give vacant possession of the premises to the Municipality on being given one month's notice. In a prosecution of the applicant for non-compliance with a notice issued by the Municipality under S. 231 of the City of Bombay Municipal Act, the applicant contended that he was not an "occupier" within the meaning of the said section but only a licensee : *Held*, (i) that the agreement amounted to a lease and was not a mere licence : (ii) that if the applicant was the sole tenant of the premises, he would be the occupier within the meaning of S. 231, and, therefore, liable to comply with the requisition : (iii) that if the applicant had allowed other persons to occupy parts of the premises and recovered money or any other consideration from them in respect of such occupancy, whether it be called rent or compensation for use and occupation, he would be a rent farmer, and he would then be an 'owner' and would be liable to comply with a requisition under S. 231. *Sherif Dadumiyaji v. Emperor.*

31 Cr. L. J. 1100 :
126 I. C. 872 : 32 Bom. L. R. 332 :
A. I. R. 1930 Bom. 165.

TREASURE TROVE ACT (VI OF 1878)

———S. 4—Conviction for abetment, legality of—Three persons finding treasure and deciding not to report to Collector.

Three persons found a treasure and finally decided not to report the matter to the Collector. The accused were not present at the finding of the treasure and until the three finders had finally decided not to report, neither of the accused had any sort of connection with the matter. The accused shared the treasure with the finders : *Held*, that the accused were not guilty of abetment of an

TRESPASS

offence under S. 4, Treasure Trove Act.
In re : Srinivasa Naicker. 39 Cr. L. J. 600 :
 175 I. C. 502 : 47 L. W. 320 :
 1938 M. W. N. 350 : 10 R. M. 787 :
 A. I. R. 1938 Mad. 508.

———Ss. 4, 20—'Finder.' meaning of—Labourer, whether "finder"—Finder, liability of—Possession taken by employer—Criminal liability.

The petitioners discovered a treasure buried in the ground while they were cutting a tree under the orders and in the presence of their employer. The latter at once assumed control over the treasure of which the former obtained no share at all: *Held*, that even though the petitioners found the treasure in the course of the performance of labour for an employer, they were "finders" of it. No body can be convicted under the criminal law for not doing an impossible act unless the terms and intention of the Statute are absolutely clear and inflict a penalty even on an innocent person. *In re : Mala Naicken.*

15 Cr. L. J. 632 :
 25 I. C. 640 : 27 M. L. J. 477 :
 A. I. R. 1915 Mad. 78.

———Ss. 10, 21—Abetment—Forbidding person not a finder to give notice—Offence.

Forbidding a person, who is not the finder of a treasure and who has not been employed or instructed by the finder to give notice on his account, to give the notice required by S. 4, Treasure Trove Act, is not an offence within S. 21. *Sital v. Emperor.*

19 Cr. L. J. 35 :
 42 I. C. 995 : 15 A. L. J. 796 :
 A. I. R. 1918 All. 322.

———S. 20—Power of Government—Person finding bangle and selling it—Sale proceeds deposited in Bank.

Where a person finds a bangle and sells it, the sale proceeds are Government money. But when he deposits those proceeds in a Bank or if he purchases other things with those moneys, the money ceases to be Government money. The Crown cannot, therefore, claim in criminal proceedings the refund of the money deposited in the Banks out of the proceeds of the sale of the bangle. *Nadungadi Bank, Ltd. Ollopalam v. Collector of Malabar.*

39 Cr. L. J. 953 :
 177 I. C. 924 : 47 L. W. 813 :
 1938 M. W. N. 603 : 11 R. M. 391 :
 1938, 1 M. L. J. 767 :
 A. I. R. 1938 Mad. 710.

TRESPASS

———Charge of theft—Occupier of land reaping crop sown by a trespasser.

If a person trespasses on land in the possession of another and sows paddy on it that does not entitle him to property in the paddy that results from the sowing; and if the person in possession reaps and removes such paddy he does not thereby commit theft. *Nga Hmyin v. Emperor.*

4 Cr. L. J. 465 :
 3 L. B. R. 199.

TRIAL

———Trespass.

Owner getting possession—Person dispossessed cannot remove crops though grown by him. *Osman v. Emperor.*

37 Cr. L. J. 495 :
 161 I. C. 647 (a) : 8 R. C. 539 :
 61 C. L. J. 586 :
 A. I. R. 1936 Cal. 124.

———Right of owner to turn out trespasser—Right of decree-holder to oust judgment-debtor.

A rightful owner is entitled to physically turn out a trespasser or one trying to infringe upon his right. A person exercising this right should, however, not use more force than is reasonable to defend his possession from a trespasser. It is not incumbent upon a decree-holder to obtain possession of the property through Court. If he can turn out the judgment-debtor peacefully without using unnecessary force he will save the trouble of going to the Executing Court. It is only when a decree-holder finds that it is not possible for him without breach of the peace to obtain possession of the property or properties decreed in his favour in the Civil Court that he resorts to execution proceedings. *Jang Bahadur Singh v. Emperor.*

27 Cr. L. J. 392 :
 93 I. C. 40 : 7 P. L. T. 79 :
 A. I. R. 1926 Pat. 244.

———Trespasser, when guilty—Removal of crops by trespasser—Mischief.

A trespasser taking possession of land has no right either to the land or the profit thereof. Therefore, when a person who has been given a decree for possession and mesne profits against a trespasser, peacefully cuts and takes away the crops raised on the land by the trespasser, he is not guilty of any offence. No mischief is committed by a person with respect to damage done to his own property. Under S. 425, Penal Code, the mischief must be done to the property belonging to another person but where a person's right is declared by a Civil Court he commits no mischief by damaging the property. *Jang Bahadur Singh v. Emperor.*

27 Cr. L. J. 392 :
 93 I. C. 40 : 7 P. L. T. 79 :
 A. I. R. 1926 Pat. 244.

TRIAL

———Duty of trying Court—Admission by accused of some facts alleged by prosecution—Plea of not guilty—Trial to proceed according to law.

An accused person may admit some or even all of the facts alleged by the prosecution, but if he pleads not guilty the Court trying him is bound to proceed according to law by examining the witnesses and giving an opportunity to the accused to cross-examine the witnesses for the prosecution and adduce his own evidence. *Emperor v. Somabhai.*

6 Cr. L. J. 424 :
 9 Bom. L. R. 1346.

LEAVE TO APPEAL

———*Tenant's right to enclose land by wall—It is no prima facie interference with Landlord's right.*

The enclosing by a tenant of agricultural land in his occupation with a wall instead of hedge is not *prima facie* an interference with the landlord's rights. *Arunachallam Chettiar v. Chidambaram Chettiar.* 3 Cr. L. J. 31 : 15 M. L. J. 394 : I. L. R. 29 Mad. 97.

LAND REGISTRATION ACT (VII OF 1876) BENGAL,

———Ss. 52, 53, 84—*Whether witness bound to state truth in proceeding under the Land Registration Act—Sanction to prosecute—Legality of.*

In a proceeding held by a Sub-Deputy Collector under Ss. 52 and 84, Land Registration Act (VII B. C. of 1846) a witness is bound to state the truth. And even if the proceeding be not considered a judicial proceeding within the meaning of S. 191, I. P. C. the case of a person making a false statement would fall under the second part of S. 193 Penal Code. *Hiranand Ojha v. Emperor.* 2 Cr. L. J. 15,575 : 9 C. W. N. 127, 983 : 2 C. L. J. 149.

———S. 53.

Sec also Land Registration Act, 1876, S. 52.

———S. 84.

Sec also Land Registration Act, 1876, S. 52.

LAND REGISTRATION ACT (VII, B. C. OF 1876)

———S. 88.

Sec Board of Revenue.

LAST RESIDED

———*Sec also Cr. P. C., 1808, S. 488.*

LAW DEPARTMENT MANUAL

———S. 80 (3)—*Rule issued—Explanation of District Magistrate, how to be submitted.*

A District Magistrate to whom a rule is issued by the Court of the Judicial Commissioner is required under r. 80 (3) of the Law Department Manual to submit his explanation through the Legal Remembrancer. *Tula Ram v. Emperor.*

27 Cr. L. J. 1063 : 97 I. C. 39 : A. I. R. 1927 Nag. 53.

LEAVE TO APPEAL

———*To the Privy Council in criminal cases—Grave and substantial injustice to be shown.*

Before granting leave to appeal, in criminal cases, to the Judicial Committee of the Privy Council, the High Court must be satisfied that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. *In re : Bal Gangadhar Tilak.*

9 Cr. L. J. 226 : 2 I. C. 277 : 33 Bom. 221 : 10 Bom. L. R. 973 : 4 M. L. T. 450.

LEGAL KEEPING

Sec also Penal Code, 1860, S. 363.

LEGAL PRACTITIONER

———Appearance.
 ——Compromise.
 ——Contempt of Court.
 ——Criminal prosecution.
 ——Disciplinary action.
 ——Dismissal from profession.
 ——Duties of.
 ——Duty of counsel.
 ——Enrolment, application for.
 ——Fees.
 ——Improper conduct.
 ——Misconduct.
 ——Misconduct and suspension.
 ——Political opinions.
 ——Privilege.
 ——Reference to Tribunal.
 ——Relation with client.
 ——Rights and duties.
 ——Rights and duties of counsel.
 ——Rights of.
 ——Rights of appearance.
 ——Rival claims of sections of—Who can inquire into.
 ——Status.
 ——Withdrawal.
*Sec also (i) Barrister.
 (ii) Criminal trial.
 (iii) Legal Practitioners' Act, 1879, S. 13.
 (iv) Penal Code, 1860, S. 385.*

———*Appearance.*

A Counsel ought not to accept a brief against a party even though the party refuses to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by that party. An Advocate allowed a person to give him instructions in full without warning him that the other side had approached him with an offer to represent them in the matter and that he had not declined that offer. The Advocate not being retained by such person accepted brief by the other side. The trial Court refused him permission to appear in the suit : *Held*, that the action of the trial Court was perfectly justified. *U. Ko Ko Gyi v. San Mya.*

32 Cr. L. J. 115 (b) : 128 I. C. 354 : 8 Rang. 446 : I. R. 1931 Rang. 2 : A. I. R. 1930 Rang. 355.

———*Appearance of.*

Defence asserting that Pleader for opposite party may be required as witness—Court cannot, in suitable cases, restrain Pleader from appearing in the case. *Mohammad Ghazi v. U Tun Kywe.*

40 Cr. L. J. 936 : 184 I. C. 182 : 22 R. Rang. 137 : 1939 Rang. 224 : A. I. R. 1939 Rang. 342.

———*Compromise.*

Premature threat from Bench—Pleader must protest then and there and apply for transfer—Compromise—Pleader settling case on such threat

TRIAL BY JURY

———On holiday—Irregularity.

A trial of an accused person on a Sunday or any other holiday would not necessarily make the proceedings invalid, but is irregular as being contrary to the provisions of Circular No. 87, Criminal Circulars of the Bombay High Court. *Baban Daud v. Emperor*.

16 Cr. L. J. 752 :
31 I. C. 452 : 17 Bom. L. R. 918 :
A. I. R. 1915 Bom. 254.

———Evidence for prosecution—Separate trial for distinct offences—S. 233, Cr. P. C.

Seven persons were accused together of theft or dishonest receipt and disposal of stolen property. The Magistrate heard the evidence for the prosecution against all seven together, and after discharging two, decided that the acts of the remainder did not form part of one transaction. He, therefore, charged them in three separate groups and proceeded against them in three separate trials, but without rehearing of the evidence for the prosecution separately, although parts of it which were relevant against others of the accused had no connection with the case of the appellant: *Held*, that the word "trial" includes the hearing of the evidence for the prosecution, as well as the subsequent procedure laid down in Chap. XXI, Cr. P. C., for the trial of warrant cases, and that under S. 233, Cr. P. C., the appellant was entitled to a separate trial from the beginning. *Paw Tha v. Emperor*.

5 Cr. L. J. 417 :
3 L. B. R. 280.

TRIAL BY JURY

———Charge to Jury.

In a charge to the Jury it is not the duty of the Judge to go out of his way to explain a hypothesis for which there was no foundation either in the evidence or in the arguments before the Court. *Vasudeo Balwant Gogle v. Emperor*.

33 Cr. L. J. 613 :
138 I. C. 503 : 56 Bom. 434 :
34 Bom. L. R. 571 :
I. R. 1932 Bom. 388 :
A. I. R. 1932 Bom. 279.

———Duty of Court.

The Court should put such a plea on one side and proceed to consider the evidence to satisfy itself of the guilt of the accused, and also of the precise nature of the offence committed and the appropriate punishment for it. *Sukhia v. Emperor*.

24 Cr. L. J. 609 :
73 I. C. 497 : 20 A. L. J. 669 :
A. I. R. 1922 All. 266.

———Duty of Judge—Charge—Magistrate.

In determining whether there has been misdirection to a Jury the charge must be judged as a whole, and it must be seen whether the case for both sides has been fairly put, so that the Jury understood what they had to decide and come to a right decision. *Hari Charan Das v. Emperor*.

23 Cr. L. J. 342 :
66 I. C. 998 : 34 C. L. J. 512 :
A. I. R. 1921 Cal. 73.

TRIAL BY JURY

———Charge of rioting and murder—Deceased already suffering from infirmity. Charge to Jury—Duty of Judge—Misdirection.

Where in a trial by Jury upon charges of rioting armed with deadly weapons, and murder, it appears that the person whose death was caused was suffering from a disease which accelerated his death, and the injuries described in the medical evidence were in themselves not apparently sufficient to cause immediate death it is the duty of the Judge in his charge to the Jury, to place these facts before them. An omission on the part of the Judge to do this amounts to a misdirection to the Jury. *Ainudi Chowkidar v. Emperor*.

23 Cr. L. J. 344 :
66 I. C. 1000 : 34 C. L. J. 515 :
A. I. R. 1921 Cal. 64.

———Duty of Judge.

Under S. 367, Cr. P. C., a Judge is called upon to show by the heads of his charge to the Jury in what way the law on the subject was explained to the Jury, and the heads of charge ought to show that the evidence was properly laid before the Jury. Whatever the Judge's opinion of the defence evidence may be and whatever he may think of the prisoner's Counsel in dealing with his own evidence he should state to the Jury accurately the substance of the evidence relied upon by each accused. It is for the Jury and the Jury alone to decide whether that evidence is worthy of consideration. *Ikramuddin v. Emperor*.

18 Cr. L. J. 491 :
39 I. C. 331 : 15 A. L. J. 205 :
39 All. 348 : A. I. R. 1917 All. 173.

———Essence of.

The whole essence of a trial by Jury is that if an accused has a right to a Jury, he is entitled as of right to call upon the prosecution to obtain a verdict against him on the facts laid before the Jury before he can be convicted at all. It is not for the Appellate Court to look at the evidence with a view to see whether another Jury might not have arrived at a verdict of guilty upon another charge. That is to usurp the function of the Jury and to substitute the Appellate Court's opinion for the verdict of the Jury. *Ikramuddin v. Emperor*.

18 Cr. L. J. 491 :
39 I. C. 331 : 15 A. L. J. 205 :
39 All. 348 : A. I. R. 1917 All. 173.

———Functions of Jury.

The question of the relevancy and admissibility of a confession is for the Judge to decide. When he has decided that it is relevant and it has been laid before the Jury, it is for them to appraise its value as evidence and one test which they will have to apply is whether it appears to them to have been freely and voluntarily made. *Emperor v. Kabili Katoni*.

19 Cr. L. J. 959 :
47 I. C. 811 : 22 C. W. N. 809 :
A. I. R. 1918 Cal. 72.

TRIAL OF SESSIONS CASES

———*Perverse verdict of acquittal—Interference.*

The Chief Court will interfere in cases of acquittal by a Jury where the acquittal stands out as patently bad and perverse. *Emperor v. Maharaj Behari.*

29 Cr. L. J. 452 :
108 I. C. 900 : 5 O. W. N. 216 :
3 Luck. 456 : A. I. R. 1929 Oudh 86.

———*Misdirection.*

Omission to draw the attention of the Jury to matters which vitally affect the trustworthiness of some of the important witnesses amounts to a misdirection of the Jury. *In re: Muthaya Thevan.*

28 Cr. L. J. 307 :
100 I. C. 531 : 25 L. W. 487 :
A. I. R. 1927 Mad. 475.

———*Power of Appellate Court to alter conviction.*

An Appellate Court in the case of a trial by Jury may look at the evidence to see whether the misdirection has caused a miscarriage of justice in this sense, namely whether in spite of the misdirection the conviction and the verdict are not justified in law as they stand, and if they are, it will refuse to interfere. It may also look at the evidence to see whether there is a case worthy to be sent down for a retrial. But it has no power to look at the evidence and find the accused guilty of any offence with which he was not charged in the Trial Court and which was not laid before the Jury. *Ikram-ud-Din v. Emperor.*

18 Cr. L. J. 491 :
39 I. C. 331 : 15 A. L. J. 205 : 39 All. 348 :
A. I. R. 1917 All. 173.

———*Question for determination—Verdict sought to be set aside.*

In a case where the verdict of the Jury is sought to be set aside, the question is not whether their Lordships would have arrived at the same conclusion as the Jury arrived at after seeing and hearing the witnesses, but whether the Jury arrived at an unreasonable conclusion or one unsupported by evidence fit for their consideration. *Holford Stewart v. George Alfred Francis Hancock.*

41 Cr. L. J. 730 P. C. :
189 I. C. 321 : 6 B. R. 845 :
1940 O. L. R. 483 : 13 R. P. C. 31 :
A. I. R. 1940 P. C. 128.

TRIAL OF SESSIONS CASES

———*Procedure as to postponement of Sessions cases—Oudh Criminal Digest, Rule 69.*

Sessions cases should not be tried piecemeal. Before commencing a trial a Judge should satisfy himself that all necessary evidence is available. If it is not, he may postpone the case; but once having commenced, he should, except for some very pressing reason to be recorded by him according to Rule 69 of the Oudh Criminal Digest, proceed *de die*

U. P. DISTRICT BOARDS ACT (X OF 1922)

in diem till the trial is finished. *Emperor v. Ali Mohammad.* 2 Cr. L. J. 191 :
8 O. C. 55.

TRUSTS ACT (II OF 1882)

———S. 3—*Possession as legal owner.*

Where any one holds property in trust *bona fide*, whether the trust is express or implied, he is in possession as legal owner. *Chartered Bank of India, Australia and China v. Imperial Bank of India.*

149 I. C. 903 : 60 Cal. 262 : 6 R. C. 652 :
A. I. R. 1933 Cal. 366.

U

U. P. DISTRICT BOARDS ACT (X OF 1922)

———S. 34—*Applicability of, to S. 169, Penal Code.*

S. 34 is not intended to apply to S. 169, Penal Code, at all and it definitely refers only to S. 168, Penal Code. *Suraj Narain Chaube v. Emperor.*

39 Cr. L. J. 925 :
177 I. C. 462 : 1938 A. L. J. 649 :
11 R. A. 201 : 1938 A. W. R. 453 :
I. L. R. 1938 All. 776 :
A. I. R. 1938 All. 513.

———S. 34—*Exemptions under—Scope.*

Contracts for the supply of thousand yards of coir matting cannot be considered to be occasional sales of single articles. The exemptions under S. 34 (2) (f) do not apply to such contracts. *Rudra Dal Bhatt v. Emperor.*

34 Cr. L. J. 1208 :
146 I. C. 149 (2) : 1933 A. L. J. 1559 :
55 All. 798 : 6 R. A. 270 :
A. I. R. 1933 All. 543.

———S. 34—*Penal Code (Act XLV of 1860), S. 168 — 'Interest in a contract,' — Meaning of.*

An 'interest in a contract' in S. 34 means a financial interest with profit or hope of profits from the contract as the object of the person interested, and this is a matter of inference from the facts in evidence in each case. *Emperor v. Narbada Prasad.*

31 Cr. L. J. 356 :
121 I. C. 819 : 51 All. 864 :
A. I. R. 1930 All. 38.

———S. 34—*Prosecutions.*

Prosecution under S. 168, Penal Code, read with S. 34, U. P. District Boards Act, need not be started on a complaint of the Board or of some person authorized by the Board. *Rudra Dal Bhatt v. Emperor.*

34 Cr. L. J. 1208 :
146 I. C. 149 (2) : 1933 A. L. J. 1559 :
55 All. 798 : 6 R. A. 270 :
A. I. R. 1933 All. 543.

———S. 34—*Purchase of Board's property by member at auction.*

Under S. 34 it is difficult to say that by purchasing property at an auction-sale, the

U. P. EXCISE ACT (IV OF 1910)

property being property of the Board, a member would be acquiring an interest in a contract of the Board. *Suraj Narain Chaube v. Emperor*.

39 Cr. L. J. 925 :
177 I. C. 462 : 1938 A. L. J. 649 :
11 R. A. 201 : 1938 A. W. R. 453 :
I. L. R. 1938 All. 776 :
A. I. R. 1938 All. 513.

———S. 34—Scope.

S. 34 (1) refers in general terms to "A member of the Board" and is not limited to members of particular communities. *Rudra Dat Bhatt v. Emperor*.

34 Cr. L. J. 1208 :
146 I. C. 149 (2) : 1933 A. L. J. 1559 :
55 All. 798 : 6 R. A. 270 :
A. I. R. 1933 All. 543.

———S. 126 (2) — Answering questions — Truthfully under—Whether offence under S. 179, Penal Code.

A person is not legally bound to answer the questions truthfully put to him orally under S. 126, U. P. District Boards Act, and he cannot be convicted under S. 179, Penal Code, on the ground that he did not answer the question truthfully. *Kunwar Sen v. Emperor*.

36 Cr. L. J. 1102 (1) :
157 I. C. 119 : 1935 A. W. R. 791 :
1935 A. L. J. 1021 : 8 R. A. 105 :
A. I. R. 1935 All. 620 (1).

U. P. EXCISE ACT (IV OF 1910)

———Executive order by Excise Commissioner to Local Government—Effect of on law.

Per—Executive orders issued by the Excise Commissioner to the U. P. Government do not, in any way, affect the law which the Courts are called upon to administer. They may guide the officers of the Excise Department in deciding whether a particular person should or should not be prosecuted; but if they chose to prosecute in disregard of those orders, the Court cannot refuse to convict only because the executive orders were not properly obeyed. *Emperor v. Sita Ram*.

39 Cr. L. J. 18 :
171 I. C. 915 : 1939 A. L. J. 951 :
10 R. A. 342 : 1937 A. W. R. 823 :
A. I. R. 1937 All. 735.

———Ss. 3, 60 — "Import," meaning of.

A person who sends liquor from a Native State to a place in the United Provinces but does not take delivery of it in the United Provinces does not import liquor in the United Provinces and, consequently, commits no offence under S. 60, United Provinces Excise Act. To "import" goods to a place means to take delivery of the goods inside that area. *Munshi Lal v. Emperor*.

23 Cr. L. J. 248 :
66 I. C. 184 : 20 A. L. J. 198 :
A. I. R. 1922 All. 21.

———Ss. 3 (11) (13), 60, 71.

Interpretation and object—Conjoint effect of Ss. 3 (11), 3 (13), 60 and 71, pointed out—

U. P. EXCISE ACT (IV OF 1910)

Orders issued by Excise Commissioner, Law, if effected. *Emperor v. Sita Ram*.

39 Cr. L. J. 18 :
171 I. C. 915 : 1937 A. W. R. 823 :
1939 A. L. J. 951 : 10 R. A. 342 :
A. I. R. 1937 All. 735.

———Ss. 7, 60 (a). 71—'Possession,' 'actual offender,' meanings of—Sentence.

The accused who were closely related to each other and who carried on a joint business were all in a room when cocaine was recovered from that room. No one of them ever dissociated with the other in any respect and all of them set up a common defence that they saw a constable throw the packets into the room: *Held*, that, each of the accused must be held to have been in possession of the cocaine and was an actual offender liable to be punished with imprisonment. *Emperor v. Ismail*.

30 Cr. L. J. 523 :
115 I. C. 648 : I. R. 1929 All. 424 :
1929 A. L. J. 609 : 51 All. 747 :
A. I. R. 1929 All. 705.

———S. 10—Excise Officer—Who is.

Police Officers, being invested with powers under S. 10, U. P. Excise Act, are Excise Officers. *Prag v. Emperor*.

16 Cr. L. J. 591 :
30 I. C. 143 : A. I. R. 1915 All. 456.

———S. 10 Local Power of Government to empower any Police Officer to act under Excise Act.

Under S. 10 the Local Government has authority to empower, not only a Sub-Inspector of Police, but any Police Officer to perform duties and exercise powers under that Act, including the conferment of authority to make a report or complaint. *Emperor v. Chitar Singh*.

25 Cr. L. J. 1345 :
82 I. C. 705 : 21 A. L. J. 922 :
46 All. 158 : A. I. R. 1924 All. 267.

———Ss. 10, 70—Excise Officer—Who is.

A Sub-Inspector, on whom any of the powers referred to in S. 10 has been conferred, is an Excise Officer, as defined in S. 3 (2) of the Act. Consequently where a Sub-Inspector on whom under a Government Notification certain powers referred to in S. 10 have been conferred, moves the Magistrate to convict the accused of the offence of being in possession of liquor in excess of the authorised quantity, the Magistrate must be deemed to have taken cognizance of the offence on the report of an "Excise Officer", as required by S. 70 of the Act. *Sunder v. Emperor*.

37 Cr. L. J. 1018 :
164 I. C. 659 : 1936 A. L. J. 577 :
9 R. A. 192.

———S. 40—Liability of, minor son of licensee.

Licensee putting minor son in charge of drug shop—Minor not putting himself in charge of it—Offence, is not committed by minor. *Lachmi Shanker v. Emperor*.

37 Cr. L. J. 719 :
162 I. C. 899 : 1936 A. W. R. 324 :
1936 A. L. J. 279 : 8 R. A. 910 :
A. I. R. 1936 All. 372.

U. P. EXCISE ACT (IV OF 1910)

———S. 50—*Excise Officer—Who is.*

Police Officer who arrests an accused under S. 50 in connection with an offence under S. 60 (a) is an Excise Officer within the meaning of the Excise Act and a Magistrate can take cognizance of such an offence on the complaint or report of the Police Officer who arrests the offender. *Emperor v. Chunni.*

32 Cr. L. J. 833 :
132 I. C. 73 : 8 O. W. N. 300 :
I. R. 1931 Oudh 233 :
A. I. R. 1931 Oudh 395.

———S. 53—*Procedure for search.*

A search under Chap. VII, Cr. P. C., must be conducted in the presence of two respectable persons of the locality. Assuming that a Sub-Inspector of Police, is authorised to make a search under S. 53, Excise Act, he cannot make a search without recording the grounds of his belief that the house intended to be searched contains prohibited liquor. Any officer authorised by law to make a search ought to exercise the very greatest caution in fulfilling the formalities required by law for making a search and providing every possible safe-guard so as not to allow any handle for adverse criticism. *Faqira v. Emperor.*

31 Cr. L. J. 10 :
120 I. C. 204 : A. I. R. 1929 All. 901.

———S. 53—*Search irregular—Conviction, legality of.*

An irregularity in the search does not render illegal the conviction of a person who is found in possession of an excisable article on such search. *Abdul Hafiz Khan v. Emperor.*

27 Cr. L. J. 265 :
92 I. C. 441 : 24 A. L. J. 173 :
A. I. R. 1926 All. 188.

———Ss. 53, 63—*Procedure for search—Search without warrant—Officer's duty to record reasons—Omission to record—Mere irregularity.*

It is the duty of a Police Officer before proceeding to make a search without a search warrant, under S. 53, U. P. Excise Act, to record his grounds for believing that the obtaining of a search warrant might afford the offender an opportunity of escaping or of concealing the evidence of the offence. But the omission to record such grounds is not an illegality but a mere irregularity. In making a search without a search warrant under the U. P. Excise Act a Police Officer is not confined to the strict provisions of the Cr. P. C., relating to searches but only to those provisions, in so far as they are applicable under the Act. *Ali Abbas v. Emperor.*

28 Cr. L. J. 321 :
100 I. C. 705 : 29 O. C. 374 :
1 Luck. 301 : A. I. R. 1927 Oudh 132.

———S. 60—*Assistant handing over liquor to person authorised to sell—Whether guilty.*

The mere handing up of a bottle of liquor for sale by an assistant in a liquor shop to the person authorised to sell liquor is not selling liquor and the assistant does not thereby commit any offence. *Janki Das v. Emperor.*

18 Cr. L. J. 496 :
39 I. C. 336 : A. I. R. 1917 All. 165.

U. P. EXCISE ACT (IV OF 1910)

———S. 60—*Imprisonment.*

Excise offences are widely prevalent in the United Provinces and the actual illicit distiller or trafficker when detected, should be sentenced to substantial terms of imprisonment. *Emperor v. Maiku.*

31 Cr. L. J. 631 :
124 I. C. 46 : A. I. R. 1930 All. 279.

———S. 60—*Liability of owner.*

Cocaine found in house occupied by several persons, owner can be fined only. *Abdul Rahman v. Emperor.*

29 Cr. L. J. 483 (a) :
109 I. C. 211 : 26 A. L. J. 414.

———S. 60—*Offence under—Cognizance of.*

A Magistrate can take cognizance of an offence under S. 60, United Provinces Excise Act, 1910, on the report of a Police Officer in charge of a Police Station. *Prag v. Emperor.*

16 Cr. L. J. 591 :
30 I. C. 143 : A. I. R. 1915 All. 456.

———S. 60—*'Possession' meaning of.*

For the purposes of preventive Statutes, such as the Excise Acts, there may be and often is, in commercial dealings possession, other than that which may be called strict legal possession. In such cases, control or dominion may amount to criminal possession, although actual legal possession, such as that of a bailee or an agent, may be in another. *Emperor v. Zawar Hussain.*

24 Cr. L. J. 705 :
73 I. C. 929 : 21 A. L. J. 481 :
45 All. 541 : A. I. R. 1923 All. 592.

———S. 60—*Possession, what constitutes.*

Where cocaine was found on premises belonging to the accused in a locked receptacle in a locked room and the accused had the key which opened the room : *Held*, that the accused was in possession of the cocaine. *Rahim Bakhsh v. Emperor.*

29 Cr. L. J. 525 :
109 I. C. 349 : 5 O. W. N. 124 :
A. I. R. 1928 Oudh 215.

———S. 60—*Procedure for search.*

Search party entering accused's house—Entry not against accused's wishes—Accused admitting illicit distillation—Question of legality of search has no connection with guilt or innocence of accused. *Emperor v. Chandewa Pasi.*

35 Cr. L. J. 939 :
149 I. C. 255 : 11 O. W. N. 727 :
6 R. O. 543 : A. I. R. 1934 Oudh 321.

———S. 60—*Transport of cocaine.*

The transport of cocaine from one place to another is in itself a criminal offence and so is its abetment. *Emperor v. Mohammad Yaqub.*

33 Cr. L. J. 373 :
137 I. C. 73 : I. R. 1932 All. 270 :
A. I. R. 1932 All. 73.

———Ss. 60, 64—*Selling liquor after hours.*

Unless a report concerning the commission of an offence of selling liquor after prescribed hours is made, a Police Officer has no power to arrest. *Shankar Lal v. Emperor.*

23 Cr. L. J. 81 :
65 I. C. 433 : A. I. R. 1922 All. 64.

U. P. EXCISE ACT (IV OF 1910)

———Ss. 60, 71—*Possession of implements for manufacture of liquor—Proof necessary.*

In order to support a charge under S. 60 (f) relating to possession of implements for the manufacture of an excisable article, it must be explained to the Court what the implement is and for what purpose, it is supposed, it is in the possession of the accused. *Mahadev v. Emperor.*

26 Cr. L. J. 1107 :
88 I. C. 275 : 23 A. L. J. 417 :
47 All. 611 : A. I. R. 1925 All. 388.

———S. 60-A—*Possessing illicit cocaine.*

The owner or occupier of a house who knowingly keeps an illicit supply of cocaine on the premises renders himself liable to punishment under S. 60-A and no burden is laid on the prosecution of proving that the said illicit supply had been kept there for any length of time, or that the premises had been used for this purpose on previous occasions. The mere discovery of a phial of illicit cocaine, however, on certain premises affords only a slender basis for the inference that the owner of such premises, not himself residing there, knew or had reason to believe that the resident or residents of the house were breaking the law in the matter. *Durga v. Emperor.*

21 Cr. L. J. 742 :
58 I. C. 246 : 18 A. L. J. 348 :
A. I. R. 1920 All. 180.

———S. 60 (a)—*Cocaine discovered in room occupied by two brothers—Both brothers, whether liable.*

Where in a small common house occupied by two brothers belonging to a joint Hindu family and running a common business, an enormous quantity of cocaine and weighing machines and packing material to deal with it were discovered: Held, that the cocaine must be held to have been in the possession of both of them, and both of them could be convicted. *Emperor v. Kashi Nath.*

31 Cr. L. J. 286 :
121 I. C. 547 : 1930 A. L. J. 249 :
A. I. R. 1930 All. 161.

———S. 60 (a)—*Cr. P. C. (Act V of 1898), S. 562—S. 562, whether applicable to offences under Excise Act.*

S. 502, Cr. P. C., dealing with first offenders should not be applied to the case of people discovered with cocaine and other dangerous drugs. *Emperor v. Timman.*

31 Cr. L. J. 32 :
120 I. C. 264 : A. I. R. 1930 All. 19.

———S. 60 (a)—*Duty of prosecution.*

Search lists and witnesses should invariably be produced by prosecution. *Muhammad Bashir v. Emperor.*

33 Cr. L. J. 943 :
140 I. C. 246 : 1932 A. L. J. 104 :
I. R. 1932 All. 634.
A. I. R. 1932 All. 185.

———S. 60 (a)—*Illegal possession of liquor.*

Charge for being in possession of liquor in excess of quantity allowed by law—Conviction for possession of liquor not lawfully

U. P. EXCISE ACT (IV OF 1910)

obtained cannot be made. *Shconandan v. Emperor.*

36 Cr. L. J. 777 :
155 I. C. 492 : 1935 A. W. R. 511 :
1935 A. L. J. 393 : 7 R. A. 934 :
A. I. R. 1935 All. 597.

———S. 60 (a)—*Interpretation.*

All that S. 60 (a) requires is that the accused should be in possession of an excisable article. His object is perfectly immaterial. A penal provision should be construed strictly and the word "possess" occurring in S. 60 (a) should be taken in the strict legal sense. As such, it does not imply mere physical detention. A person cannot be said to be in possession of liquor, unless he is conscious of the fact that the liquid in his possession contains alcohol. But by S. 71 the burden of proving want of knowledge is thrown on the person who is found to possess such liquor. *Emperor v. Sita Ram.*

39 Cr. L. J. 18 :
171 I. C. 915 : 1937 A. L. J. 951 :
10 R. A. 342 : 1937 A. W. R. 823 :
A. I. R. 1937 All. 735.

———S. 60-A—*Preventing sale of cocaine.*

It is only the person who has the use of the house in such a way as to be in a position to prevent, if he so likes, the illicit sale of cocaine in that building who is liable. *Wilayat Husain v. Emperor.*

33 Cr. L. J. 225 :
136 I. C. 218 : 8 O. W. N. 857 :
7 Luck. 208 : I. R. 1932 Oudh 90 :
A. I. R. 1931 Oudh 388.

———S. 60-A—*Procedure.*

Irregularity in search and failure to obtain warrant would always afford ground for scrutiny. *Muhammad Bashir v. Emperor.*

33 Cr. L. J. 943 :
140 I. C. 246 : 1932 A. L. J. 104 :
I. R. 1932 All. 634 :
A. I. R. 1932 All. 185.

———S. 60 (a)—*Scope.*

The words of S. 60-A of the U. P. Excise Act imply a single person in a controlling position over the premises. *Wilayat Husain v. Emperor.*

33 Cr. L. J. 225 :
136 I. C. 218 : 8 O. W. N. 857 :
7 Luck. 208 : I. R. 1932 Oudh 90 :
A. I. R. 1931 Oudh 388.

———S. 60 (a)—*Scope.*

Under S. 60 (a), ownership of the house is not an essential element, but the nature of the occupation of the house might and often is a circumstance of very great importance in estimating whether the particular accused in any given case possesses the excisable article. *Emperor v. Ismail.*

30 Cr. L. J. 523 :
115 I. C. 648 : I. R. 1929 All. 424 :
1929 A. L. J. 609 : 51 All. 747 :
A. I. R. 1929 All. 705.

———S. 60 (a)—*Joint possession—Conviction.*

A finding that more persons than one were in unlawful possession of an excisable

U. P. EXCISE ACT (IV OF 1910)

article is justifiable in law, provided guilty knowledge is brought home to each of them. *Ganeshi v. Emperor*. 26 Cr. L. J. 188 : 83 I. C. 892 : A. I. R. 1924 All. 776.

—S. 60 (a) (f)—*Possession of liquor and materials for manufacture of liquor—Other persons living in his house—Presumption.*

Fermented liquor and materials for the purpose of manufacturing it were found in a house occupied by the accused. The wife and a young brother-in-law of the accused also lived with him, and it was urged that the liquor might have been manufactured by the wife or the brother-in-law of the accused: *Held*, (1) that the accused must be presumed to have had full authority over his wife and his brother-in-law and could not have permitted the manufacture of the liquor by them unless he was himself a party to it. *Maiku v. Emperor*.

26 Cr. L. J. 851 : 86 I. C. 707 : A. I. R. 1925 Oudh 684.

—S. 60 (b)—*Miscellaneous.*

Sub-Inspector putting person having two convictions, as search witness—Adverse comment against Sub-Inspector and brother of such witness in prior case—*Held*, case was not genuine. *Ramchandra v. Emperor*.

36 Cr. L. J. 551 : 154 I. C. 635 : 1935 A. W. R. 313 : 7 R. A. 781 : A. I. R. 1935 All. 520.

—S. 60 (b)—*Search without warrant—Permissibility.*

Sub-Inspector may make search without warrant only in urgent cases. *Ramchandra v. Emperor*.

36 Cr. L. J. 551 : 154 I. C. 635 : 1935 A. W. R. 313 : 7 R. A. 781 : A. I. R. 1935 All. 520.

—S. 61—*Selling liquor to boy below 16.*

Where an Excise Inspector gave some money to a boy aged 10 to buy some liquor and the latter bought it after 9 p. m. and was arrested by the *chaprasi*: *Held*, that the licensed vendor was guilty of an offence under S. 61. To engineer an offence in order to find out whether a person when tempted will commit an offence, strongly deprecated. *Bhim Sen v. Emperor*.

17 Cr. L. J. 139 : 33 I. C. 315 : A. I. R. 1916 All. 242.

—S. 63—*Search illegal—Conviction under—Legality of.*

In a case under S. 63 where it is necessary to search a house, a search warrant should be obtained beforehand. Even if the search is illegal, the occupier of the house searched can be convicted under S. 63 for unlawful possession of an excisable article. *Emperor v. Allahdad Khan*.

14 Cr. L. J. 236 : 19 I. C. 332 : 35 All. 358 : 11 A. L. J. 442.

—Ss. 63, 71—*Offence under—When constituted.*

Person in possession for pitcher containing fermented wash containing alcohol—*Explana-*

U. P. EXCISE ACT (IV OF 1910)

tion that wash was intended for manufacturing vinegar—Knowledge under S. 63 not proved—Offence under S. 63 is not committed—presumption under S. 71, rebutted—Conviction under S. 60 (a) is not legal. *Emperor v. Sita Ram*.

39 Cr. L. J. 18 : 171 I. C. 915 : 10 R. A. 342 : 1937 A. L. J. 951 : 1937 A. W. R. 823 : A. I. R. 1937 All. 735.

—S. 64—*Exposing for sale many packets of drugs short in weight—Offence.*

Where an excise licensee whose duty it was to sell packets of drugs at a certain weight, exposed for sale upwards of 60 packets, all of which were short in weight: *Held*, that he must have acted wilfully or must at least have been culpably negligent in not making proper arrangements, and was guilty. *Ram Harak v. Emperor*.

32 Cr. L. J. 124 (a) : 128 I. C. 275 : 7 O. W. N. 751 : I. R. 1931 Oudh 24 : A. I. R. 1931 Oudh 80.

—Ss. 64, 71—*Liability of Master—Servant appointed to watch in grove—Sale of toddy by servant after prescribed hours.*

Under S. 71 the holder of a licence who puts his servant, however innocently, in a position in which he would have an opportunity of contravening the law, is as much guilty as the servant, if the latter commits an offence. But where a licensee allows his servant to remain in a palm grove to watch the trees and the juice, and the servant keeps some of the toddy for himself and sells it after prescribed hours in the grove, the licensee cannot be convicted of an offence under S. 64 read with S. 71. *Azimuddin v. Emperor*.

26 Cr. L. J. 832 : 86 I. C. 480 : 23 A. L. J. 136 : 47 All. 287 : A. I. R. 1925 All. 307.

—S. 64 (c)—*Breach of condition of licence by servant—Master, liability of.*

A licence-holder cannot be convicted under S. 64 in respect of a breach of the licence committed by his servant, unless it is shown that he himself allowed the breach to be committed by his servant or was cognizant of what his servant was doing. *Ram Das v. Emperor*.

19 Cr. L. J. 718 : 46 I. C. 302 : 16 A. L. J. 474 : 40 All. 563 : A. I. R. 1918 All. 124.

—S. 64 (c)—*Sale of liquor—Sale by one partner out of prescribed hours—Other partner, liability of.*

For purposes of agency, two partners stand to one another in the same relation as master and servant. Where, therefore, one of the partners in a liquor shop commits a wilful breach of the licence and sells liquor after prescribed hours, he does so as agent for the other partner who is, therefore, equally liable. *Emperor v. Jawala Prasad*.

25 Cr. L. J. 1211 : 82 I. C. 139 : 45 All. 642 : A. I. R. 1924 All. 101.

U. P. EXCISE ACT (IV OF 1910)

—Ss. 66 (a), 71—*Accused in possession of liquor—Presumption—Offence.*

Accused admitted that his son was ill and that he had brought a small quantity of liquor from his brother-in-law: *Held*, that the accused was in possession of an excisable article, and not that he had himself manufactured the liquor. *Sukru v. Emperor*.

19 Cr. L. J. 710 (a) :
46 I. C. 294 : 16 A. L. J. 488 :
A. I. R. 1918 All. 181.

—S. 69—*Illegal possession of cocaine—Previous conviction for traffic in cocaine, admissibility of.*

Although in a prosecution for illegal possession of cocaine, a previous conviction of the accused for trafficking in cocaine could be used under S. 69 to afford ground for enhancement of sentence after the guilt of the accused has been determined, such evidence cannot be admitted to prove the charge. *Rahim Bakhsh v. Emperor*.

29 Cr. L. J. 525 :
109 I. C. 349 : 5 O. W. N. 124 :
A. I. R. 1928 Oudh 215.

—S. 70—*Filing complaint.*

A Sub-Inspector of Police who has been empowered by a notification under the U. P. Excise Act, to arrest without warrant a person found committing an offence under S. 60 and to seize and detain excisable articles can, under S. 70, submit a report or file a complaint to the Magistrate. *Chidi v. Emperor*.

33 Cr. L. J. 888 :
140 I. C. 116 : 1932 A. L. J. 107 :
I. R. 1932 All. 624 :
A. I. R. 1932 All. 187.

—S. 71—*Excise Officer—Who is.*

A Sub-Inspector of Police who has been invested with powers under the Excise Act by the Government is an "Excise Officer" within the Act and is competent to make a complaint or report to a Magistrate under S. 71 (a). *Emperor v. Ohilar Singh*.

25 Cr. L. J. 1345 :
82 I. C. 705 : 21 A. L. J. 922 :
46 All. 158 : A. I. R. 1924 All. 267.

—S. 71—*Liability of licensee.*

S. 71 places the burden upon the licensee-holder, for any offence wilfully committed by any person in his employ, and acting on his behalf, of establishing that he took all due and reasonable precaution to prevent the commission of the offence. *Emperor v. Sital Prasad*.

26 Cr. L. J. 729 (a) :
86 I. C. 217 : 23 A. L. J. 62 :
A. I. R. 1925 All. 313.

—Ss. 60 (a), 71—*Scope of.*

The proviso to S. 71 which provides that no person other than the actual offender shall be punished with imprisonment does not, in any way, modify the effect of S. 60 (a) which provides that a person in possession of cocaine may be punished with imprisonment. The said proviso applies only to that person who is able to show that he is the employer or principal, that he did not personally com-

U. P. LAND REVENUE ACT (III OF 1901)

mit the act complained of, and that he took all due and reasonable precaution to prevent the commission of such act. *Emperor v. Ismail*.

30 Cr. L. J. 523 :
115 I. C. 648 : I. R. 1929 All. 424 :
1929 A. L. J. 609 : 51 All. 747 :
A. I. R. 1929 All. 705.

U. P. EXCISE ACT (I OF 1914).

—S. 69—*Sepr.*

Where a Court considers that a higher sentence should be inflicted because of a previous conviction, then alone it is necessary to call in aid the provisions of S. 69, Excise Act. *Maqbul Ahmad Khan v. Emperor*. 35 Cr. L. J. 832 :
148 I. C. 934 : 6 R. O. 472 :
A. I. R. 1934 Oudh 232.

U. P. EXCISE (AMENDMENT) ACT (II OF 1923).

—S. 60-A—*Offence whether triable summarily.*

An offence under S. 60-A, U. P. Excise Act, is not triable summarily. *Emperor v. Ram Narain*. 25 Cr. L. J. 806 :
81 I. C. 342 : 46 All. 446 :
A. I. R. 1924 All. 675.

U. P. LAND REVENUE ACT (III OF 1901)

—S. 40—*Jurisdiction to decide possession.*

Under S. 40, the Revenue Court is competent to decide as to which of the parties is entitled to the possession of the property in dispute although it has no jurisdiction to determine finally the question of the title to that property. *Surendra Bikram Singh v. Emperor*.

24 Cr. L. J. 537 :
73 I. C. 153 : 25 O. C. 242 :
A. I. R. 1922 Oudh 300.

—S. 147—*Appearance—Failure to attend—Offence.*

The issue of a citation to an alleged defaulter under S. 147 does not involve him in any legal liability to attend, and consequently, failure to attend in obedience to such citation is not an offence under S. 174, Penal Code. *Emperor v. Bhirgu Singh*.

28 Cr. L. J. 28 :
99 I. C. 60 : 24 A. L. J. 1001 :
49 All. 205 : A. I. R. 1927 All. 122.

—S. 147—*Appearance—Service of notice on defaulter—Reasonable time for appearance not given—Conviction for non-appearance—Legality of conviction.*

Where a citation under S. 147 was served upon the accused who resided a long way from the *Tahsil* at 5 p. m. on a certain day, to appear with the arrears of revenue due, on the next day, in case the entire arrears together with the process-fee were not paid very soon, and the accused was convicted for failure to appear on the next day: *Held*, that the accused was entitled to expect a reasonable time within which to

U. P. MOTOR VEHICLES RULES

make the necessary arrangements, and the conviction was illegal. *Emperor v. Tilka Ram*.

29 Cr. L. J. 910 :
111 I. C. 670 : 26 A. L. J. 1021 :
A. I. R. 1928 All. 680.

—S. 147—*Citation to appear*.

A citation to appear issued under S. 147, is not a mere invitation but an order to the defaulter to appear at the time and place named therein and intentional disobedience of it is an offence under S. 174, I. P. C. *Chandrika Singh v. Emperor*.

29 Cr. L. J. 94 :
106 I. C. 686 : 4 O. W. N. 1211 :
A. I. R. 1928 Oudh 122.

—Ss. 147, 227 and 228—*Recovery of Land Revenue—Power of Tahsildar to issue warrants of attachment for realization of revenue*.

A Tahsildar has no power under the U. P. Land Revenue Act, to issue a warrant of attachment in order to realise arrears of revenue, nor is a warrant issued by a Tahsildar validated by a general authority to that effect given to him by the Collector of the District. *Emperor v. Radhe Lal*.

5 Cr. L. J. 110 :
27 A. W. N. 42 : 4 A. L. J. 132 :
I. L. R. 29 All. 272.

U. P. MOTOR VEHICLES ACT (II OF 1911)

—S. 13 (b)—*'Employs,' meaning of*.

The word 'employs', as used in S. 13 (b), means 'has' or 'retains' in his employ, and not 'takes into his employ.' *Muhammad Ali Muhammad Khan v. Emperor*.

15 Cr. L. J. 677 :
25 I. C. 1005 : 17 O. C. 311 :
A. I. R. 1914 Oudh 272.

—S. 13 (b)—*Licence to drive motor*.

The section provides *imprimis* for the case of a man who at the time in question is driving a motor vehicle without a licence, and therefore, clearly refers to the case of a licence in force at the time of such driving. *Muhammad Ali Muhammad Khan v. Emperor*.

15 Cr. L. J. 677 :
25 I. C. 1005 : 17 O. C. 311 :
A. I. R. 1914 Oudh 272.

U. P. MOTOR VEHICLES RULES

—r. 79—*Contravention of S. 81—What is*.

Permit for lorry specifying District and route—Lorry driven through other route within District—Violation of S. 81 is no offence. *Subhani v. Emperor*.

34 Cr. L. J. 620 :
143 I. C. 582 : 1933 A. L. J. 499 :
I. R. 1933 All. 301 :
A. I. R. 1933 All. 465.

—r. 81—*Contravention of—What is*.

Where the permit does not state the maximum number of passengers to be carried,

U. P. MUNICIPALITIES ACT (I OF 1900)

there can be no conviction for contravening r. 81. *Subhani v. Emperor*.

34 Cr. L. J. 620 :
143 I. C. 582 : 1933 A. L. J. 499 :
I. R. 1933 All. 301 :
A. I. R. 1933 All. 465.

U. P. MUNICIPAL ACCOUNT CODE

—r. 40—*Octroi duty*.

A consignment of cloth addressed to the accused arrived at the octroi barriers and he was asked to pay a certain amount as octroi duty. Accused considered the sum as excessive and the matter was referred to the Octroi Superintendent who assessed the duty at Rs. 1-0-9. The accused failed to pay the sum within sixty days: *Held*, (1) that the accused was guilty of a breach of r. 60 of the U. P. Municipal Account Code framed under the provisions of the U. P. Municipalities Act of 1900; (2) that although the U. P. Municipalities Act of 1900 has been repealed by the Act of 1916, the jurisdiction of the Court was saved by S. 24, U. P. General Clauses Act. *Manik Chand v. Emperor*.

19 Cr. L. J. 158 :
43 I. C. 446 : 15 A. L. J. 909 :
40 All. 105 : A. I. R. 1918 All. 320.

—S. 132 (14) (16)—*Octroi duty—Parts of motor car—Exemption from octroi duty*.

Parts of the machine of a motor car are exempted from octroi duty under Sub-s. (14) of S. 132, U. P. Municipal Account Code. Persons subject to taxation are entitled to claim exemption under any head under which such exemption can be claimed. *Surjan Lal v. Emperor*.

30 Cr. L. J. 468 :
115 I. C. 452 : 1929 A. L. J. 395 :
I. R. 1929 All. 372 : A. I. R. 1929 All. 278.

U. P. MUNICIPALITIES ACT (I OF 1900)

—S. 17 — *Amendments — Retrospective effect of—U. P. Municipalities Act (II of 1916), retrospective effect of—Offence under old Act—Sanction under new Act, validity of*.

A Municipal Board has power to grant sanction under the provisions of U. P. Municipalities Act, 1916, for the prosecution of a person in respect of an offence committed under the Act of 1900 inasmuch as by S. 17 of that Act a Municipal Board is a corporate body with a perpetual succession and a common seal and has power to do all things necessary for its constitution and can sue and be sued in its corporate name; and these powers have not been altered or limited by the Act of 1916. *Bacha Lal v. Emperor*.

18 Cr. L. J. 700 :
40 I. C. 700 : 15 A. L. J. 530 :
A. I. R. 1917 All. 350.

—S. 59 (c)—*Bicycle with auto-wheel, if motor car, motor bicycle or bicycle—Tax, liability for—Statutes, interpretation of*.

An ordinary bicycle with a motor wheel which may be affixed to or detached from the bicycle

U. P. MUNICIPALITIES ACT (I OF 1900)

itself as the rider chooses is neither a motor car nor a motor bicycle and cannot be taxed unless a clear notification bringing it within the terms and imposing additional liability by way of tax is obtained. *George Banerji v. Emperor*.

18 Cr. L. J. 45 :
36 I. C. 877 : 14 A. L. J. 850 :
A. I. R. 1917 All 414.

———Ss. 82, 87 (3)—*Application for permission to build—Implied permission—Power to erect necessary scaffolding.*

Where application for permission to build has been made to a Municipal Board and the period mentioned in S. 87 (3) has expired, the applicant is in the same position as if the erection of the building specified in his application had been formally sanctioned by the Board. A sanction, express or implied, to the erection of a specified building necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. *Emperor v. Gokul*.

17 Cr. L. J. 233 :
29 All. 737 : 27 A. W. N. 251.

———S. 87—*Pump, erection of—Proceedings under S. 87, legality of.*

Proceedings against a person, who erects a pump in a public street, brought under S. 87, U. P. Municipalities Act, are wholly misconceived. *Jagannath v. Emperor*.

17 Cr. L. J. 350 :
35 I. C. 526 : A. I. R. 1916 All. 166.

———S. 87-A—*Implied sanction to build.*

Under S. 87 the applicant gave notice to the Board, on September 30th, 1912, of his intention to erect a building. The Municipal Board took no notice of it. On 28th November, 1912, the applicant by written communication called the attention of the Board to its omission. But the reminder had no effect on the Board: *Held*, that under S. 87 (3), the Board must be deemed to have sanctioned the proposed building. *Ram Nath v. Municipal Board of Multra*.

16 Cr. L. J. 78 :
26 I. C. 670 : 12 A. L. J. 740 :
A. I. R. 1914 All. 204.

———Ss. 87, 88—*Notice under S. 88—Prosecution under S. 87—Conviction, whether legal—Daily fine, whether legal under S. 88—Evidence—Report of Municipal Overseer, admissibility of.*

Where a notice is issued by a Board under S. 88 but the prosecution and conviction are under S. 87, the order of conviction cannot stand. A daily fine cannot be imposed for an offence under S. 88. The report of a Municipal Overseer as to when the construction of a *chhajja* took place, is not admissible in evidence and no finding can be based on such a report. *Ram Nath v. Municipal Board of Multra*.

16 Cr. L. J. 78 :
26 I. C. 670 : 12 A. L. J. 740 :
A. I. R. 1914 All. 204.

———S. 87-A—*Re-erection of a balcony—Offence.*

U. P. MUNICIPALITIES ACT (I OF 1900)

The accused dismantled an old balcony and in its place erected a covered balcony without obtaining the sanction of the Municipal Authorities: *Held*, that the erection amounted to an alteration of a building but not to a material alteration or enlargement as would bring the act within the penal sections. *Shiam Lal v. Emperor*.

13 Cr. L. J. 250 :
14 I. C. 602 : 9 A. L. J. 694.

———Ss. 87 (1) (a), 168—*“Erect or re-erect,” meaning of.*

The digging of a grain pit cannot be said to amount to an erection or re-erection within the meaning of S. 87 (1) (a). *Har Saran Das v. Emperor*.

14 Cr. L. J. 451 :
20 I. C. 611 : 11 A. L. J. 688.

———Ss. 87 (5), 149, 152—*Illegal notice to remove building—Conviction.*

S. 87 is not intended to empower a Board to require a man to pull down his house, though the house may have been standing for 50 years or more. If the Board have no power to issue a notice under S. 87, it cannot be considered a notice under that section and the provisions of S. 152 do not apply. For disobeying a notice of the above kind, a conviction under S. 149 is illegal. *Ram Dayal v. Emperor*.

11 Cr. L. J. 681 :
8 I. C. 569 : 7 A. L. J. 1075.

———S. 88—*Encroachment on public street.*

S. 88 gives ample power to a Municipal Board to give notice requiring the removal of a balcony over-hanging a public road. It is not necessary that the Board should give reasons for the notice and should tender compensation along with the notice. *Nauna Mal v. Municipal Board of Hathras*.

14 Cr. L. J. 421 :
20 I. C. 405 : 35 All. 375 :
11 A. L. J. 486.

———S. 91—*Sanctioning building.*

S. 91 does not apply to a case where a person rebuilds a portion of the screening wall of a privy, which had fallen down, without the permission of the Board. *Nauna Mal v. Municipal Board of Hathras*.

14 Cr. L. J. 421 :
20 I. C. 405 : 35 All. 375 :
11 A. L. J. 486.

———S. 128—*Interpretation.*

The words ‘place of public entertainment and resort’ in S. 128 (b) cannot be read distributively and they do not include a street or a *patri* adjoining a street. *Imami v. Emperor*.

13 Cr. L. J. 685 :
16 I. C. 333 : 35 All. 24 :
10 A. L. J. 426.

———S. 128 (a)—*Digging up road.*

The applicant had been allowed to put a stone over a drain in front of his shop for the use of himself and persons visiting his shop. Expecting a visit from the Chairman of the Municipal Board, the appli-

U. P. MUNICIPALITIES ACT (I OF 1900)

cant was getting the soil from underneath the projection removed when he was charged for having dug up the road: *Held*, that the applicant was not guilty of digging the road. *Gulab Singh v. Emperor*.

17 Cr. L. J. 404 :

35 I. C. 964 : A. I. R. 1916 All. 133.

—Ss. 128 (b) (1)—Licence fee for hawking eatables on public streets.

A Municipality has no power to make rules under S. 128 (b) (1) of the Municipalities Act, (I of 1900), charging fees for licences to hawk for sale of articles of food on a public street and the *patri* adjoining thereto. *Imami v. Emperor*.

13 Cr. L. J. 685 :

16 I. C. 333 : 35 All. 24 :

10 A. L. J. 426.

—S. 128. Cls. (h) (i)—“Dandidar,” meaning of.

A *dandidar*, who only weighs things brought to a market to be sold, is not a seller of those things. *Jabber Singh v. Emperor*.

13 Cr. L. J. 797 :

17 I. C. 541 : 11 A. L. J. 39.

—S. 130, Cls. (a), (e)—Breach of rules—Notice, necessity of.

In order to render a person liable to punishment for committing breach of any rules made under Cl. (a) or Cl. (e) of S. 130, it is necessary that notice should have been served upon him as provided by the section. *Jhamman v. Emperor*.

17 Cr. L. J. 269 :

34 I. C. 989 : 14 A. L. J. 604 :

A. I. R. 1916 All. 270.

—Ss. 132 and 147 and r. (2) of Ss. 128 and 132—Daily fine—Legality of.

The imposition of a prospective fine is illegal. *Mahadeo Parshad v. Municipal Board, Lucknow*.

7 Cr. L. J. 454 :

11 O. C. 122.

—S. 133—Resolution neither published nor sanctioned—Breach—Offence.

The accused dug a certain grain pit on his own land in contravention of a resolution passed by the Municipal Board of Ghaziabad. The resolution had neither been published nor sanctioned as required by S. 133 of the Act: *Held*, that the accused could not be convicted for the breach of such a resolution. *Har Saran Das v. Emperor*.

14 Cr. L. J. 576 :

21 I. C. 176.

—S. 147—Board's order disobeyed—Conviction—Disobedience persisted in—Second trial—Correctness of Board's order, whether can be challenged.

On his disobeying the order of the Municipal Board to remove an objectionable *chhajja*; the applicant was prosecuted and fined Rs. 5 under S. 147. He challenged the correctness of that conviction by applications to the District Magistrate and to the High Court, but his applications were thrown out. On his persisting in disobeying the Board's order, he was again prosecuted. At the second trial, he wished to challenge the correctness of the first

U. P. MUNICIPALITIES ACT (I OF 1900)

conviction by showing that the Board's notice was illegal and so forth: *Held*, that he could not now challenge the correctness of the first conviction. *Sital Parshad v. Municipal Board, Cawnpore*.

15 Cr. L. J. 571 :

25 I. C. 323 : 12 A. L. J. 595 :

36 All. 430 : A. I. R. 1914 All. 409.

—S. 147—Material alteration—What is.

The mere addition of a masonry edging to a *chabutra* attached to a house within the Municipality is not a material alteration of it so as to furnish ground for conviction under S. 147. *Radha Ballabh v. Emperor*.

15 Cr. L. J. 240 :

22 I. C. 192 : 12 A. L. J. 227 :

A. I. R. 1914 All. 106.

—S. 147—Offence under old Act—Conviction under new Act, whether valid.

The U. P. Municipalities Act, 1916, contains no saving clause, and therefore, an offence committed before the coming into force of that Act cannot be punished under the provisions of that Act. *Amir Hasan Khan v. Emperor*.

18 Cr. L. J. 352 :

38 I. C. 736 : 15 A. L. J. 159 :

A. I. R. 1917 All. 61.

—S. 147—Power of Municipal Board to have shop lawfully possessed vacated.

A Municipal Board is not empowered to require a person to give up his shop situated on land, not belonging to Municipality, of which he is lawfully in possession. *Jiwa v. Emperor*.

13 Cr. L. J. 841 :

17 I. C. 713 : 10 A. L. J. 286.

—S. 147—Prosecution pending decision in Civil Court.

It is not open to a Municipal Board to start the prosecution of a person pending the decision of a dispute in the Civil Court, nor should it continue the prosecution after the Civil Court has decided the matter in favour of that person. *Baldeo Prasad v. Emperor*.

11 Cr. L. J. 445 :

7 I. C. 288 : 7 A. L. J. 735.

—S. 147—Disobedience of notice, conviction.

A conviction cannot be had under S. 147 for the disobedience of a notice issued by a Municipal Board unless the Court is satisfied that the notice was lawfully issued by the Board. *Emperor v. Piare Lal*.

15 Cr. L. J. 377 :

23 I. C. 745 : 12 A. L. J. 254 :

36 All. 485 : A. I. R. 1914 All. 41.

—S. 152—Invalid notice—Duty of Magistrate to ask prosecution to prove validity of notice.

S. 152 does not prevent an accused person from setting up the defence that the paper served upon him was not a notice issued by the Board or by the authority of any person to whom the powers exercisable by the Board as a whole had been lawfully delegated. If such a defence is set up, the Magistrate ought to inquire into it and call upon the prosecution to produce evidence sufficient to satisfy him on the point. *Hazari Lal v. Emperor*.

15 Cr. L. J. 574 :

25 I. C. 326 : 12 A. L. J. 312 : 36 All. 227 :

A. I. R. 1914 All. 206.

LEGAL PRACTITIONER

—Compromise is to be set aside. *Mousel & Co., Ltd. v. Ghanshyamdas Jamnadas.*

36 Cr. L. J. 698 :
155 I. C. 297 : 60 C. L. J. 179 :
39 C. W. N. 61 : 62 Cal. 223 :
7 R. C. 576 : A. I. R. 1935 Cal. 231.

————Contempt of Court.

No amount of irritation or disappointment would be any justification for any legal practitioner casting imputations upon the honesty and integrity of one of the officers of the Court before which he was appearing. If such an observation is made actually when the proceedings before an officer are taking place, the Pleader may be dealt with on the footing that it is a gross contempt of Court. *In re : Mr. H., Pleader.*

143 I. C. 359 :
56 C. L. J. 595 : I. R. 1933 Cal. 407 :
A. I. R. 1933 Cal. 344.

————Criminal prosecution.

In cases where the allegations against a legal practitioner amount to a criminal charge, the proper procedure is to prosecute the accused criminally in the first instance before bringing proceedings under the Legal Practitioners' Act. Otherwise the accused is likely to be prejudiced inasmuch as these are summary proceedings in the nature of a summons trial. *Emperor v. Sachindra Nath Mouluk.*

40 Cr. L. J. 87 :
178 I. C. 456 : 11 R. C. 362 :
I. L. R. 1938, 2 Cal. 138 :
A. I. R. 1938 Cal. 783.

————Criminal prosecution.

Where the allegation against a legal practitioner amounts to a charge of criminal prosecution, the correct procedure to be followed is that proceedings under the Legal Practitioners' Act should not be taken, but that, if it was thought necessary to take action, it should be by way of criminal prosecution. *Emperor v. Prasanna Kumar Das.*

149 I. C. 874 (1) : 6 R. C. 646 (1) :
38 C. W. N. 87 : A. I. R. 1934 Cal. 272.

————Criminal prosecution.

While conviction for a criminal offence is *prima facie* evidence of misconduct, all criminal convictions are not grounds for the exercise of the Court's disciplinary jurisdiction. A mere conviction of a legal practitioner under S. 124-A, Penal Code, does not necessarily involve his removal or suspension but the Court must take into consideration the facts on which the conviction is based. *In the matter of : N, an Advocate.*

37 Cr. L. J. 534 :
162 I. C. 170 : 40 C. W. N. 366 :
63 Cal. 867 : 8 R. C. 575 :
A. I. R. 1936 Cal. 158.

————Disciplinary action.

A speech calling upon the audience to break those laws which the All-India Congress Committee orders to be broken, is a clear incitement to break laws which another body might decide should be broken and is inconsistent with the duty of a legal practitioner to assist in the administration of the laws. Such a

LEGAL PRACTITIONER

speech as well as a speech exhorting the audience to resist an order for dispersal will attract the disciplinary jurisdiction of the High Court. *In the matter of : Barrister-at-Law & Advocate. (S. B.)*

35 Cr. L. J. 1010 :
149 I. C. 764 : 6 R. L. 741 :
15 Lah. 354 : A. I. R. 1934 Lah. 251.

————Disciplinary action—Allahabad High Court can take action against vakil or advocate on its roll but practising at Ajmere even though Ajmere Court does not choose to deal with him—Regulation 9 of 1926.

The mere fact that the Ajmere Court might have power to deal with a legal practitioner practising there and did not choose to exercise that power would in no way whatever prevent Allahabad High Court, if it thought fit, taking action against that legal practitioner if he was on the rolls of Allahabad High Court as a vakil or an advocate. *In the matter of : A Vakil of Bcawar.*

128 I. C. 388 :
1930 A. L. J. 839 : I. R. 1931 All. 36 :
A. I. R. 1930 All. 887.

————Disciplinary action.

Where a legal practitioner has been convicted for sedition, he cannot, in an inquiry under the disciplinary jurisdiction of the High Court, contend that his conviction was not justified on the facts found. *In the matter of : Bar-at-Law and Advocate. (S.B.)*

35 Cr. L. J. 1010 :
149 I. C. 764 : 15 Lah. 354 :
6 R. L. 741 : A. I. R. 1934 Lah. 251.

————Dismissal from profession—Reinstatement.

When a legal practitioner is debarred from further practice by a High Court, the latter has jurisdiction to rescind the order and reinstate him under its inherent powers. But before exercising such powers, the Court should be clearly convinced, that the delinquent has reformed his character. In such a case, the legal practitioner should apply to a Bench presided over by the Chief Justice and ask for a rule in the matter. The Bench may, if a *prima facie* case is made out, direct that a rule be issued and call upon the Government Advocate to show cause why the applicant should not be reinstated. The matter will then come up before and be determined by a Bench specially constituted. *In the matter of : Mathra Prasad.*

24 Cr. L. J. 74 :
71 I. C. 122 : 1 Pat. 684 :
4 P. L. T. 303 : A. I. R. 1922 Pat. 604.

————Duties of.

They cannot be permitted to act, or to combine with others against such authority and in a manner calculated to impede or interfere with the administration of justice. *In the matter of : Shyamapada Bhattacharji.*

33 Cr. L. J. 466 :
137 I. C. 434 : 54 C. L. J. 530 :
36 C. W. N. 294 : 59 Cal. 709 :
I. R. 1932 Cal. 311 : A. I. R. 1932 Cal. 370.

————Duty of Crown Counsel.

It is the duty of the Counsel for the Crown to assist the Court in arriving at the truth

U. P. MUNICIPALITIES ACT (II OF 1916)

—Election Rules, rr. 16, 17—*Election matters—Prosecutions—Revised.*

Under S. 195 (5), Cr. P. C., the District Magistrate has jurisdiction to hear an appeal from an order of a Returning Officer directing the prosecution of a person for having given false information in connection with the preparation of an electoral roll. An order of the District Magistrate denying jurisdiction in such a case is not, however, open to revision by the High Court inasmuch as, when exercising jurisdiction under the Election Rules of the District Board, the District Magistrate does not act as a Criminal Court but acts as an authority to whom the Returning Officer is subordinate. *Madhusudan Lal v. Emperor.*

30 Cr. L. J. 1159 :
120 I. C. 128 : I. R. 1930 All. 16 :
1930 A. L. J. 216 :
A. I. R. 1929 All. 931.

—S. 2—'Building', what is.

A permanent *chabutra* with a roof upon it comes within the definition of 'building' in S. 2. *Munshi Lal v. Emperor.*

34 Cr. L. J. 1217 :
146 I. C. 254 : 1933 A. L. J. 1190 :
55 All. 603 : 6 R. A. 278 :
A. I. R. 1933 All. 657.

—S. 2 (2)—'Building,' meaning of.

A tin-roofed shed erected in front of a shop is a "shed" and also a "roofed structure" within the meaning of the definition of the word "building" in S. 2 (2). *Emperor v. Hashim Ali.*

18 Cr. L. J. 659 :
40 I. C. 307 : 15 A. L. J. 461 : 39 All. 482 :
A. I. R. 1917 All. 397.

—S. 2 (2)—Interpretation.

Words 'other such portable and merely temporary shelter' should be taken *ejusdem generis*. *Chattar* may be a building if its dimensions are sufficiently large. *Bala Prasad v. Muzammil Husain.*

35 Cr. L. J. 998 :
149 I. C. 612 : 4 A. W. R. 569 :
1934 A. L. J. 541 : 6 R. A. 930 :
A. I. R. 1934 All. 190.

—S. 23 (e)—C. P. O. (Act V of 1908), S. 115—*Municipal election petition—Commissioner, powers of—Revision.*

All matters which arise in the course of a Municipal election petition and which are disposed of one way or another by the Commissioner, are matters which are within his jurisdiction and the High Court has no power to deal with any such matter in revision under S. 115 of the C. P. C., having regard to the provision contained in Sub-s. (e) of S. 23, U. P. Municipalities Act. *Ram Nath v. Emperor.*

26 Cr. L. J. 94 :
83 I. C. 654 : 22 A. L. J. 497 :
46 All. 611 : A. I. R. 1924 All. 684.

—Ss. 50, 307—*Notice—Essentials of valid notice.*

To render a person liable under S. 807, for

U. P. MUNICIPALITIES ACT (II OF 1916)

failure to comply with a notice, the notice must be a legal notice and a notice issued by some authority competent to issue it. Where that authority is the Board or the Chairman of the Board, a notice issued and signed by any other officer of the Municipality is not a legal notice. *Ram Partab v. Emperor.*

21 Cr. L. J. 286 :
55 I. C. 302 : 18 A. L. J. 229 :
2 U. P. L. R. All. 97 :
A. I. R. 1920 All. 103.

—S. 50 (e)—*Prosecution for adultery—U. P. Prevention of Adulteration Act (VI of 1912), S. 12.*

The fact that a Municipal Board had expressed itself against a prosecution and had even formally resolved against the prosecution, does not affect the legality of a sanction for prosecution granted by the Chairman of Board under S. 50 (e). *Kishan Lal v. Emperor.*

29 Cr. L. J. 340 :
108 I. C. 148 : 26 A. L. J. 239 :
A. I. R. 1928 All. 254.

—S. 50 (e)—*Whether controlled by S. 12, U. P. Prevention of Adulteration Act.*

S. 12, U. P. Prevention of Adulteration Act, 1912, which is a general provision as to sanctions of prosecution for adultery, cannot control S. 50 (e) of the U. P. Municipalities Act. *Kishan Lal v. Emperor.*

29 Cr. L. J. 340 :
108 I. C. 148 : 26 A. L. J. 239 :
A. I. R. 1928 All. 254.

—S. 82—*Contract by member of Board with Municipality—Offence—'Occasional dealings,' meaning of—Duty to apply for permission in case of doubt.*

Where there is a doubt as to whether a particular contract falls within S. 82, U. P. Municipalities Act, the Commissioner should be applied to for his permission. *Bhairo Prasad v. Emperor.*

32 Cr. L. J. 142 :
128 I. C. 394 : 1930 A. L. J. 1465 :
I. R. 1931 All. 42 :
A. I. R. 1930 All. 739.

—S. 82—Interpretation.

The expression 'occasional dealings' in S. 82 (f), is wholly inapplicable to a continuing arrangement for supply of goods as needed. *Bhairo Prasad v. Emperor.*

32 Cr. L. J. 142 :
128 I. C. 394 : 1930 A. L. J. 1465 :
I. R. 1931 All. 42 :
A. I. R. 1930 All. 739.

—S. 85 (1)—*Sweepers striking work after notice—Offence.*

Certain sweepers employed by a Municipality sent a notice to the Municipality on 10th April demanding an increase of pay. Having received no reply to this, they sent a further notice on the 20th threatening to strike on 1st May, unless their demands were granted, and on the latter date, they abandoned their work in accordance with the notice: *Held,*

U. P. MUNICIPALITIES ACT (II OF 1916)

that the sweepers were guilty under S. 85 (1).
Angnoo v. Emperor. 25 Cr. L. J. 655 :
 81 I. C. 143 : 21 A. L. J. 808 :
 46 All. 41 : A. I. R. 1924 All. 188.

—S. 116 — *Encroachment on public street.*

Prosecution for breach of bye-law by constructing projections over land claimed by Board as public street—Land, private property of another—User by public for three or four years—*Held* not sufficient to create public right of way—"Land under control of Board" in S. 116 means 'under lawful control.' *Sohan Lal v. Emperor.* 37 Cr. L. J. 451 :
 161 I. C. 445 : 1936 A. W. R. 110 :
 1936 A. L. J. 48 : 8 R. A. 738 :
 A. I. R. 1936 All. 192.

—S. 128—*Licence fee for motor.*

The accused who resided in a village near a Municipality visited the Municipality occasionally but never resided within the Municipality at any one time for a consecutive period longer than seven days. During these visits they brought with them duly licensed and registered motor cars and used them during their visits : *Held*, that there was no such keeping within the Municipality as to render the proprietors liable to pay the payment of a tax to the Municipality. *Lachhmi Nath v. Lucknow Municipal Board.* 29 Cr. L. J. 543 :
 109 I. C. 367 : 5 O. W. N. 441 :
 3 Luck. 608 : A. I. R. 1928 Oudh 306.

—S. 128—*Scope.*

Motor cars brought by chance visitors into a Municipality and not used in the Municipality for more than short periods, are not vehicles "kept" within the Municipality as contemplated by S. 128. Before it can be found that such a vehicle is kept within the Municipality, it must be established that it is retained within the Municipality for more than short periods. There must be something in the nature of permanent retention. *Lachhmi Nath v. Lucknow Municipal Board.*

29 Cr. L. J. 543 :
 109 I. C. 367 : 3 Luck. 608 :
 5 O. W. N. 441 :
 A. I. R. 1928 Oudh 306.

—Ss. 128, 135 (2)—*Octroi duty—Bye-laws Nos. 3, 2—Toll, whether on passengers or on laden vehicles—Liability of person in charge to pay tax.*

The toll is leviable not on passengers but on a laden vehicle. The amount of toll would vary according to the number of passengers in a laden vehicle. In spite of the fact that the amount of toll tax has to be calculated according to the number of passengers, the tax remains leviable on the vehicle. Under bye-law No. 3 it is the person in charge of a laden vehicle who is liable for the payment of the toll due on the laden vehicle in his charge. As soon as the person in charge of a laden vehicle passes into the Municipal limits, he becomes liable for the toll tax, and if he does not pay it, he becomes liable for the penalty extending to Rs. 50 provided in the bye-laws for their breach. The question whe-

U. P. MUNICIPALITIES ACT (II OF 1916)

ther the tax is in accordance with the provisions of the Municipalities Act or not, is concluded by the fact that the imposition of the tax has been notified in the *Gazette* by the Government. After the notification, it is not open to anybody to question the validity of the tax. *Emperor v. Har Dall.*

37 Cr. L. J. 1147 :
 165 I. C. 465 : 9 R. A. 281 :
 1936 A. L. J. 962 :
 1936 A. W. R. 840 :
 A. I. R. 1936 All. 743.

—S. 128 (viii)—*Interpretation.*

Cattle imported for being slaughtered for preparing dry meat are cattle imported for use. *Ajmeri v. Emperor.*

35 Cr. L. J. 704 :
 148 I. C. 603 : 3 A. W. R. 181 :
 1934 A. L. J. 80 :
 56 All. 241 : 6 R. A. 727 :
 A. I. R. 1934 All. 39.

—S. 128 (viii)—*Refund of octroi duty.*

Rules framed under S. 128 (viii)—Rule for refund of octroi duty does not contemplate refund for transit of goods within Municipality. *Ajmeri v. Emperor.*

35 Cr. L. J. 704 :
 148 I. C. 603 : 3 A. W. R. 181 :
 1934 A. L. J. 80 :
 56 All. 241 : 6 R. A. 727 :
 A. I. R. 1934 All. 39.

—S. 128 (1) (viii)—*Scope.*

S. 128 (1) (viii) and S. 155 do not cover case of transit of goods from one part of Municipality to another part within its limits even though goods have to cross non-municipal land in transit. *Ajmeri v. Emperor.*

35 Cr. L. J. 704 :
 148 I. C. 603 : 3 A. W. R. 181 :
 1934 A. L. J. 80 :
 56 All. 241 : 6 R. A. 727 :
 A. I. R. 1934 All. 39.

—S. 148 (2)—*Offence — Prosecution, if must establish bad motive or dishonest intention.*

Any person who fails to give notice of completion of construction or enlargement of a building within the period fixed by S. 148 (1) renders himself liable to the penalty prescribed in S. 148 (2) irrespective of his motive, knowledge or intention. In order to establish an offence under S. 148 (2), it is not necessary for the prosecution to establish some bad motive or guilty knowledge or dishonest intention on the part of the accused. *Executive Officer, Municipal Board, Ghaziabad v. Harsaran Das.*

41 Cr. L. J. 281 :
 186 I. C. 261 : 12 R. A. 397 :
 1939 A. L. J. 1034 :
 A. I. R. 1940 All. 19.

—S. 155—*Construction.*

S. 155 is penal enactment and has to be construed strictly against prosecution. *Ajmeri v. Emperor.*

35 Cr. L. J. 704 :
 148 I. C. 603 : 3 A. W. R. 181 :
 1934 A. L. J. 80 :
 56 All. 241 : 6 R. A. 727 :
 A. I. R. 1934 All. 39.

U. P. MUNICIPALITIES ACT (II OF 1916)

———S. 155—*Foreign goods.*

Goods brought into Municipal limits—Onus is on accused to show that they have come from Municipal limits. *Ajmeri v. Emperor.*

35 Cr. L. J. 704 :
148 I. C. 603 : 3 A. W. R. 181 :
1934 A. L. J. 80 :
56 All. 241 : 6 R. A. 727 :
A. I. R. 1934 All. 39.

———S. 155—*Octroi duty.*

Correspondence between Board and proprietor relating to importation of dutiable goods without payment of duty—Once proprietor willing to pay but not paying—Inference that he abetted introduction of goods held not justified. *Emperor v. Ram Narain Saraswat.*

37 Cr. L. J. 358 :
160 I. C. 1035 : 8 R. A. 690 :
1936 A. L. J. 191 :
1936 A. W. R. 124 :
A. I. R. 1936 All. 88.

———S. 155—*Octroi duty.*

Municipal Account Code, r. 132 (14)—Parts of car are parts of machinery—Tubes and tyres of motor cars are exempt from payment of octroi under Cl. 14 of r. 131. *Kashi Prasad Verma v. Municipal Board, Benares.*

36 Cr. L. J. 560 :
154 I. C. 750 : 7 R. A. 790 :
1935 A. L. J. 68 : 4 A. W. R. 1299 :
A. I. R. 1935 All. 28.

———S. 155—*Octroi duty not paid—Offence.*

S. 155 is applicable to a case where there has been no attempt to defraud and octroi duty has not been paid through an absolutely honest mistake. *Municipal Board, Rae Bareilly v. Muhammad Mugim.*

20 Cr. L. J. 493 :
51 I. C. 477 : 6 O. L. J. 174 :
A. I. R. 1919 Oudh 180.

———S. 155—*Failure to pay octroi duty—Offence.*

The person liable to punishment under S. 155, is the person who introduces the goods into the limits of the Municipality without payment of octroi duty. Where the broker of a consignee took delivery of certain goods without paying octroi duty in respect thereof : *Held*, that he was guilty of an offence under S. 155. *Babu Ram v. Emperor.*

19 Cr. L. J. 832 :
46 I. C. 848 : 16 A. L. J. 632 :
A. I. R. 1918 All. 85.

———S. 155—*Octroi duty.*

Offence under S. 155—Essentials of, stated—Burden of proof that goods are liable to duty is on Municipality. *Kashi Prasad Verma v. Municipal Board, Benares.*

36 Cr. L. J. 560 :
154 I. C. 750 : 1935 A. L. J. 68 :
4 A. W. R. 1299 : 7 R. A. 790 :
A. I. R. 1935 All. 28.

———Ss. 155, 164—*Octroi duty.*

Complaint under S. 155—Liability to pay octroi duty can be questioned by accused

U. P. MUNICIPALITIES ACT (II OF 1916)

person—Plea is not barred. *Kashi Prasad Verma v. Municipal Board, Benares.*

36 Cr. L. J. 560 :
154 I. C. 750 : 1935 A. L. J. 68 :
4 A. W. R. 1299 : 7 R. A. 790 :
A. I. R. 1935 All. 28.

———S. 160—*Revision.*

Appeal to District Magistrate from order of Octroi Superintendent—Order of District Magistrate is not open to revision by High Court. *Municipal Board, Benares v. Ram Sahai Gupta.*

34 Cr. L. J. 1105 :
145 I. C. 959 : 1933 A. L. J. 469 :
6 R. A. 212 : A. I. R. 1933 All. 284.

———S. 169—*Recovery of taxes.*

Defaulters in tax—Warrant of distress issued by Chairman on his own initiative—*Held*, warrant was of doubtful legality—Superintendent signing bill and notice of demand against defaulters—Superintendent not authorised—Resistance to execution by Superintendent of such warrant—Offence is under Penal Code, Ss 352 and 353. *Chhotelal v. Emperor.*

37 Cr. L. J. 382 :
160 I. C. 1089 : 1935 A. W. R. 1318 :
1936 A. L. J. 427 : 8 R. A. 702 :
A. I. R. 1936 All. 74.

———S. 178—*'Alteration in building,' what is—Raising wall above prescribed height—Penalties when should be inflicted.*

The expression "an alteration in a building" in S. 178 includes a part of such building. To raise a wall above the prescribed height of the building, is clearly within the mischief aimed at by S. 178. *Nihal Muhammad v. Emperor.*

26 Cr. L. J. 425 :
85 I. C. 41 : 21 A. L. J. 774 :
A. I. R. 1924 All. 200.

———S. 178—*Alteration of buildings—Notice to Municipality—Building separated by wall from public place—Notice, necessity of—'Adjacent,' meaning of.*

The notice referred to in Sub-s. (1) of S. 178 to be given by a person who desires to erect a new part of a building or to make material alterations, is necessary only when the building abuts on or is adjacent to a public street or place or property vested in His Majesty or in the Board. The word 'adjacent' in the said section means joining at some point. A building which is separated from a public road by a wall cannot be said to be adjacent to the road within the meaning of the said section. *Bhan Dev v. Emperor.*

29 Cr. L. J. 1084 :
112 I. C. 588 : 1929 A. L. J. 90 :
A. I. R. 1928 All. 696.

———S. 178—*Encroachment on public road—What is.*

A building situated at a distance from a public road but within a compound wall which abuts on the public road, cannot be said to be abutting on a public road within the meaning of S. 178, and therefore, no notice under S. 178 need be given to the Board if any addition or

U. P. MUNICIPALITIES ACT (II OF 1916)

material alteration is made in such a building.
Mahommad Raza v. Emperor.

23 Cr. L. J. 191 :
65 I. C. 767 : 8 O. L. J. 603 :
A. I. R. 1921 Oudh 236.

—Ss. 178, 185, 307—*Application for sanction to erect building—Building commenced before sanction—Notice to demolish, failure to comply with—Offence.*

Where a person who has made an application under S. 178 for sanction to erect a building, commences the construction of a building in anticipation of sanction, he is guilty of an offence under S. 185 and it is immaterial that the sanction is subsequently granted by the Municipality. Similarly, where such a person is required by notice, to pull down the construction erected by him without the sanction of the Municipality, and fails to comply with the requirements of the notice, he is guilty of an offence under S. 307 and the mere fact that the sanction was subsequently granted, does not absolve him from liability. *Munno Devi v. Municipal Board.*

26 Cr. L. J. 1103 :
88 I. C. 191 : 23 A. L. J. 361 :
A. I. R. 1925 All. 415.

—S. 180—*Amendments—Scope.*

The additions to Ss. 180 and 185 made by the Amending Act of 1919 do not apply to notified areas. *Emperor v. Bafatan.*

34 Cr. L. J. 854 :
144 I. C. 951 : 6 R. A. 17 :
1933 A. L. J. 1053 :
A. I. R. 1933 All. 617.

—S. 180—*Sanctioning buildings.*

No section of the Act as applied to notified areas provides that a person is not to construct a building without having previously obtained the sanction of the notified area. *Emperor v. Bafatan.*

34 Cr. L. J. 854 :
144 I. C. 951 : 6 R. A. 17 :
1933 A. L. J. 1053 :
A. I. R. 1933 All. 617.

—S. 180 (3)—*Interpretation.*

An application that he has already erected the building in anticipation of the Board's sanction, cannot be regarded as an application under S. 180 (3). *Municipal Board, Bahraich v. Jwala Prasad.*

36 Cr. L. J. 471 :
154 I. C. 45 : 11 O. W. N. 1622 :
7 R. O. 452 : A. I. R. 1935 Oudh 197.

—S. 180 (5)—*Scope.*

This sub-section does not require that the notice under S. 178 must be such notice as was absolutely necessary to be given. Where the notice has been given under that section, Sub-s. (5) is applicable. *Emperor v. Parshotam Kandau.*

37 Cr. L. J. 110 :
159 I. C. 513 : 8 R. A. 456 :
1935 A. L. J. 1101 :
1935 A. W. R. 1140 :
A. I. R. 1935 All. 986.

—S. 184—*Sanctioning building.*

Chairman empowered to give general sanction to construction—Construction coming under

U. P. MUNICIPALITIES ACT (II OF 1916)

S. 209—Separate sanction by Executive Officer is necessary. *Bajinath Ram v. Emperor.*

37 Cr. L. J. 348 :
160 I. C. 927 (2) : 8 R. A. 675 :
1935 A. L. J. 1260 :
1935 A. W. R. 1253 :
A. I. R. 1936 All. 56.

—S. 185—*Filing complaint.*

Where the Civil Court has declared the election of a person as President of the notified area to be invalid, he cannot legally file a complaint on behalf of the Notified Area Committee. *Emperor v. Bafatan.*

34 Cr. L. J. 854 :
144 I. C. 951 : 6 R. A. 17 :
1933 A. L. J. 1053 :
A. I. R. 1933 All. 617.

—S. 185—*Infringement of sanction—Alterations in size or number of doors.*

The mere raising of the plinth or making alterations in the size, position and number of the doors or windows of a house are not material alterations in the original plan, and consequently do not constitute an infringement of the sanction within S. 185. *Emperor v. Babu Ram.*

23 Cr. L. J. 476 :
67 I. C. 828 : 25 O. C. 1 :
A. I. R. 1923 Oudh 35.

—Ss. 185, 178—*Making of doorways in house opening on common courtyard—Conviction under S. 185—Legality.*

Whether the opening of a doorway upon a common courtyard is or is not a material alteration within the meaning of 178, is a question of fact. But there is no reason for thinking that the opening of these doors is a matter with which the Municipal Board is really concerned. Consequently, where a person is convicted under S. 185 for making two doorways in his house opening upon a common courtyard, the conviction cannot be sustained. *Joti Prasad v. Emperor.*

38 Cr. L. J. 669 :
168 I. C. 951 : 9 R. A. 690 :
1937 A. L. J. 136 :
1937 A. W. R. 106 :
A. I. R. 1937 All. 361.

—Ss. 185, 186—*Notice under S. 186, whether necessary before conviction under S. 185—Erection of building after lapse of sanction—Prosecution.*

The issuing of a notice by the Board under the provisions of S. 186 is not a condition precedent to the institution of a prosecution under S. 185. In a case in which a person allows a sanction by the Municipal Board to erect a building to lapse and then proceeds to set up the building without giving fresh notice or submitting any fresh application to the Municipal Board, a prosecution for an offence against the Act is a more appropriate remedy than an order for the demolition of the building. *Emperor v. Hashim Ali.*

18 Cr. L. J. 659 :
40 I. C. 307 : 15 A. L. J. 461 :
39 All. 482 : A. I. R. 1917 All. 397.

U. P. MUNICIPALITIES ACT (II OF 1916)

———Ss. 185, 307—Daily fine—Legality of.

A sentence imposing a continuing fine in respect of an offence under S. 307 read with S. 185 is illegal. *Ramzan v. Municipal Board, Benares.* 26 Cr. L. J. 1135 (a) :

88 I. C. 367 : A. I. R. 1926 All. 204.

———Ss. 185, 307—Building erected without sanction—Notice to demolish, proof.

In a prosecution in respect of an offence under S. 307, where the charge against the accused is that he has failed to comply with a notice by the Municipality to demolish a building erected by him without obtaining permission from the Municipality, the mere verbal assertion of the servants of the Municipality that the notice was issued, without producing the notice cannot be regarded as sufficient proof that the notice was so issued. *Ramzan v. Municipal Board, Benares.* 26 Cr. L. J. 1135 (a) :

88 I. C. 367 : A. I. R. 1926 All. 204.

———S. 186—Encroachment on public street.

Where the Municipal Board issues a notice to remove a *chabutra*, the Board cannot be said to waive their rights to have the *chabutra* removed by issuing a second notice to quit the land for failure to remove it. *Munshi Lal v. Emperor.* 34 Cr. L. J. 1217 :

146 I. C. 254 : 1933 A. L. J. 1190 :

55 All. 603 : 6 R. A. 278 :

A. I. R. 1933 All. 657.

———S. 186—Encroachment on public street—What is.

Setting up a roof on a *chabutra* already existing, is at least altering part of a building if it is not actually erecting a building. In such cases, a notice under S. 186, is not illegal. *Munshi Lal v. Emperor.* 34 Cr. L. J. 1217 :

146 I. C. 254 : 1933 A. L. J. 1190 :

55 All. 603 : 6 R. A. 278 :

A. I. R. 1933 All. 657.

———S. 186—Notice, requisites of.

S. 186 does not require that notice under that section should be given only after orders have been passed on a notice under S. 178. That section is quite general, and applies to cases in which such a notice has been given to the Board as well as to those in which it has not been so given. *Kausila v. Emperor.* 39 Cr. L. J. 862 :

177 I. C. 90 : 1938 O. W. N. 833 :

11 R. O. 24 : 1938 O. L. R. 373 :

A. I. R. 1938 Oudh 199.

———S. 186.

Three days' time given for demolishing a wall by notice under S. 186 is not a reasonable time. *Kausila v. Emperor.* 39 Cr. L. J. 862 :

177 I. C. 90 : 1938 O. W. N. 833 :

11 R. O. 24 : 1938 O. L. R. 373 :

A. I. R. 1938 Oudh 199.

———S. 186—Sanction to build, interpretation of.

Where a sanction to erect a *chabutra* does

U. P. MUNICIPALITIES ACT (II OF 1916)

not limit the discretion of the builder to build it in any particular form, it is open to him to erect stone brackets for supporting the new *chabutra* and his refusal to stop the erection of the brackets on a notice being served on him under S. 186, does not make him criminally liable. *Ram Sarup v. Emperor.* 27 Cr. L. J. 250 :

92 I. C. 426 : 24 A. L. J. 163 : 48 All. 230 :

A. I. R. 1926 All. 122.

———Ss. 186, 307—Removal of encroachment.

Where a person upon whom a notice has been served by a Municipal Board for removal of a structure under S. 186 alleges that the structure is an old one, he cannot be convicted for disobedience of the notice without determining whether the structure is old or new. *Narayan Das v. Municipal Board, Jhansi.* 27 Cr. L. J. 1372 :

98 I. C. 492.

———Ss. 186, 318, 321—Order under S. 186 whether can be questioned in Criminal Court.

Orders under S. 186 are referred to in S. 318, and therefore, an order issued under S. 186 can be questioned only by the appellate authority mentioned in S. 318, and it cannot be questioned in a Criminal Court. The argument that because S. 318 begins by reference to any order or direction made by a Board under the powers conferred by certain sections, these words presuppose that the order is legally issued under the sections, is not a sound one, for otherwise S. 321 would have no meaning. *Emperor v. Ambika Prasad.* 37 Cr. L. J. 1114 :

165 I. C. 223 : 1936 A. L. J. 805 :

1936 A. W. R. 628 : 9 R. A. 251 :

A. I. R. 1936 All. 693.

———S. 209—Scope.

The operation of cl. (b) to S. 209 is not confined to public drains. *Baijnath Ram v. Emperor.* 37 Cr. L. J. 348 :

160 I. C. 927 (2) : 8 R. A. 675 :

1936 A. L. J. 1260 :

1935 A. W. R. 1253 :

A. I. R. 1936 All. 56 :

———Ss. 209, 210—"Structure," meaning of.

The word "structure" as used in S. 209 means a structure of a permanent character. Therefore, the fixing of a portable plank over a public drain cannot be deemed to be the erection of a structure. *Emperor v. Muhammad Yusaf.* 18 Cr. L. J. 669 :

40 I. C. 317 : 15 A. L. J. 290 : 39 All. 386 :

A. I. R. 1917 All. 403.

———S. 211—Failure to comply with notice under S. 211—Effect of.

Notice under S. 211 served on owner of block of shops—Shops sold to two purchasers in two lots—Notice to purchasers to comply with notice under S. 211 in respect of shops in their possession—One purchaser dispossessed of shops originally in his possession but given other shops—Failure to

U. P. MUNICIPALITIES ACT (II OF 1916)

comply with notice brings such purchaser within the clutches of law. *Moti Lal v. Emperor*.

41 Cr. L. J. 5 :
184 I. C. 434 : 1939 A. L. J. 703 :
1939 A. W. R. 605 : 12 R. A. 237 :
I. L. R. 1939 All 875 :
A. I. R. 1939 All 701.

-----Ss. 211, 307—*Lease*.

A Municipal Board leased certain plots on a road-side. Subsequently, the Board passed a resolution that the road-side should not be leased and that the lessees then in possession must be told to quit. The Executive Officer of the Board promptly issued a notice to the lessees under S. 211, treating them as trespassers encroaching on a public road, and the applicant, one of the lessees, was prosecuted for disobedience of the order; *Held*, that the notice under S. 211 was illegal inasmuch as the applicant was at the time of the notice a lessee. *Aminullah v. Emperor*.

29 Cr. L. J. 274 :
107 I. C. 690 : 26 A. L. J. 328 :
I. L. T. 40 All. 100 :
A. I. R. 1928 All. 95.

-----S. 247—*Offence under — Absence of complaint—Dismissal of complaint, legality of.*

A complaint of an offence under S. 247 cannot be dismissed for non-appearance of the complainant, as under that section, it is the Magistrate who takes cognizance of the offence upon information received. The proceedings are not instituted upon a "complaint" within S. 4 (h), Cr. P. C., and S. 247 of the Code has no application. *Basanti v. Magsud Ali Khan*.

26 Cr. L. J. 170 :
83 I. C. 730 : A. I. R. 1924 All. 528.

-----S. 247—*Complaint under—Duty of Court.*

Where a Magistrate receives information under S. 247, that a house is being used as a brothel or for the purposes of habitual prostitution to the annoyance of respectable inhabitants in the vicinity, he should, before taking action thereon, take evidence and satisfy himself first that the complainants are persons residing in the immediate vicinity of the house to which the complaint refers, and second, that the house is used for the purpose mentioned in S. 247 (b) to the annoyance of respectable inhabitants in the vicinity. *Imaman v. Emperor*.

21 Cr. L. J. 370 :
55 I. C. 850 : 18 A. L. J. 302 :
2 U. P. L. R. All. 73 :
A. I. R. 1920 All. 176.

-----S. 255—*Prosecution for offence—Failure to produce evidence—Dismissal of complaint—Retrial, whether can be ordered.*

The owner of certain cattle was prosecuted under the U. P. Municipalities Act for tying his cattle on a portion of a Municipal lane. The Magistrate called upon the Municipality to prove that the lane belonged to them and the Municipality having failed to adduce evidence in support

U. P. MUNICIPALITIES ACT (II OF 1916)

of this contention the accused was discharged. In revision: *Held*, that having failed to produce their evidence at the proper time, the Municipality were not entitled to an order for a retrial of the case. *Municipal Board of Benares v. Mahadco*.

28 Cr. L. J. 608 :
102 I. C. 784 : A. I. R. 1927 All. 618.

-----S. 261—*Drain to be gutter of public street must be part of street.*

The word 'gutter' in U. P. Municipalities Act, cannot be read apart from the words "of a public street". The provisions of S. 261 are intended to protect materials of a public street from damage or interference. The pavements, gutter and flags are part of the materials of the street; a drain which is not part of the street, is not material of the street. Such a drain, therefore, is not gutter of a public street. *Bafati v. Emperor*.

40 Cr. L. J. 234 :
179 I. C. 669 : 1939 A. L. J. 34 :
11 R. A. 382 : 1939 A. W. R. 68 :
I. L. R. 1939 All. 270 :
A. I. R. 1939 All. 95.

-----S. 265—*Bona fide dispute as to title—Procedurc.*

Where there is a dispute between a Municipal Board on the one side and a private individual on the other with reference to some property, the proper course to be adopted by the Board is to institute a suit in the Civil Court. *Gauri Shankar v. Emperor*.

31 Cr. L. J. 133 :
120 I. C. 547 : 1930 A. L. J. 244 :
A. I. R. 1930 All. 26.

-----S. 265—*Encroachment on public street.*

Where a person is prosecuted for having erected a scaffolding in a street in contravention of the provisions of S. 265, it is not the duty of the prosecution to prove affirmatively that the scaffolding caused actual obstruction except in so far as that fact can be inferred from its existence. *Bhatibhai Ghunni Lal v. Emperor*.

21 Cr. L. J. 864 :
58 I. C. 944 : A. I. R. 1920 All. 279.

-----S. 265—*Object.*

S. 265 is not intended to arm the Municipal Board with power in such a case to disturb the possession of a person asserting title. *Gauri Shankar v. Emperor*.

31 Cr. L. J. 133 :
120 I. C. 547 : 1930 A. L. J. 244 :
A. I. R. 1930 All. 26.

-----S. 265 (c)—*Shopkeeper keeping bench on public road—Offence — Presumption of obstruction.*

If a man puts a bench on a public road, obstruction of the road must be presumed. *Tufail Ahmad v. Emperor*.

29 Cr. L. J. 617 :
109 I. C. 809 : A. I. R. 1928 All. 60.

-----S. 267—*Notice under, contents of.*

A notice under S. 207 must be confined to the removal of insanitary defects. A

U. P. MUNICIPALITIES ACT (II OF 1916)

notice under that section which complains of matters other than sanitation, *e. g.*, a dangerous structure, or a nuisance in the sense of a danger on the highway, is not a good notice. *Municipal Board, Etawah v. Debi Prasad.* 21 Cr. L. J. 772 : 58 I. C. 146 : 18 A. L. J. 572 : 42 All. 485.

—S. 274—"Occupier", meaning of.

Semble.—A person who is held responsible for the up-keep and cleanliness of a temple and all work connected with it, is not the "occupier" of it within S. 274. *Piars Lal v. Emperor.* 18 Cr. L. J. 276 : 38 I. C. 308 : 15 A. L. J. 187 : 39 All. 309 : A. I. R. 1917 All. 181.

—S. 295—Contract against Act—Penalty for obstruction.

The words "under the Act" in S. 295, signify that the Municipal Board must have acted according to directions given in the Act. Therefore, no contract arbitrarily given by the Municipality in contravention of the provisions of the Act can render obstruction thereof liable to penalty. *Chhitaria v. Municipal Board, Bindraban.* 30 Cr. L. J. 691 : 116 I. C. 798 : 1929 A. L. J. 99 : I. R. 1929 All. 622 : A. I. R. 1929 All. 16.

—S. 295—Obstructing Municipal peon performing duties—What is.

A refusal to pay a Municipal charge is not an offence. An advice to a person not to pay a Municipal charge to a Municipal peon does not amount to obstruction of a Municipal servant in the performance of his duties. *Baldeo Pandey v. Emperor.* 22 Cr. L. J. 738 : 64 I. C. 130 : 19 A. L. J. 914 : A. I. R. 1921 All. 168.

—S. 295—Scope.

S. 295 deals only with the obstruction to or molestation of a person employed by the Board under the Act. *Kallu v. H. S. Dube.* 36 Cr. L. J. 1386 : 158 I. C. 481 : 1935 O. W. N. 1124 : 1935 O. L. R. 591 : 8 R. O. 104 : A. I. R. 1936 Oudh 20.

—S. 296.

Both the words 'bring' and 'import' in notifications of 1919 and No. 48 of 1932 to R. 2, Municipal Act, contain an element of pause and repose. *Nek Mohamed v. Emperor.* 37 Cr. L. J. 335 : 160 I. C. 862 : 8 R. A. 650 : 1935 A. W. R. 1405 : A. I. R. 1936 All. 83.

—S. 296.

Under R. 3 of the Rules framed under the U. P. Municipalities Act, if a person possessing a motor car does not apply for renewal of his licence on the expiry of its period he commits a breach of the rule. *Dr. M. H. Farugi v. Municipal Board, Allahabad.* 35 Cr. L. J. 175 : 146 I. C. 691 : 6 R. A. 320 : 1933 A. L. J. 1369 : A. I. R. 1933 All. 814.

U. P. MUNICIPALITIES ACT (II OF 1916)

—S. 296.

Rules under, R. 2—Notifications No. 48 of 1932 and of 1919—Carts passing through Municipality through *kachcha* road are within toll barriers. *Nek Mohammed v. Emperor.* 37 Cr. L. J. 335 : 160 I. C. 862 : 8 R. A. 650 : 1935 A. W. R. 1405 : A. I. R. 1936 All. 83.

—S. 298.

The bye-law framed by the Agra Municipality with reference to motor lorries plying for hire, under S. 298 (2) H (e) of the U. P. Municipalities Act, is not *ultra vires* of the Municipal Board. *Brij Mohan Lal v. Emperor.* 35 Cr. L. J. 931 : 149 I. C. 11 : 1934 A. L. J. 244 : 3 A. W. R. 592 : 6 R. A. 879 : A. I. R. 1934 All. 497.

—S. 298—Licence fee for wheeled vehicles—Whether *ultra vires*.

Imposition of licence fee for wheeled vehicles is not *ultra vires* of the Municipal Board. It is not a tax. *Brij Mohan Lal v. Emperor.* 35 Cr. L. J. 931 : 149 I. C. 11 : 1934 A. L. J. 244 : 3 A. W. R. 592 : 6 R. A. 879 : A. I. R. 1934 All. 497.

—S. 298—Regulation of brothels.

Bye-law prohibiting residence of prostitutes within Municipal limits except in certain areas, making any discrimination and not laying down an absolute prohibition is *ultra vires* and illegal. *Mst. Naziran v. Emperor.* 33 Cr. L. J. 437 : 137 I. C. 209 : 1932 A. L. J. 399 : I. R. 1932 All. 315 : A. I. R. 1932 All. 537.

—S. 298—Regulation of brothels.

By-law prohibiting prostitutes from residing in a particular area may be validly made—But prohibition must be of general application and must not hit particular prostitutes while leaving others to ply their trade. *Mst. Chanchal v. Emperor.* 33 Cr. L. J. 348 : 136 I. C. 787 : 1932 A. L. J. 28 : I. R. 1932 All. 261 : A. I. R. 1932 All. 70.

—S. 298—Wood—Meaning of—Bye-laws under — Bye-law regarding storing of 'wood' framed by Roorkee Municipal Board—Timber sawn into logs and planks, if included.

The word "wood" is undoubtedly a generic term which includes timber, and the same word used in the bye-law framed by Roorkee Municipal Board under S. 298, U. P. Municipalities Act, cannot be held to be confined to only one variety of it, namely fire-wood or wood used as fuel. All wood may not be timber, but all timber is certainly wood. A stack of fire-wood is in no sense more dangerously inflammable material than a stack of timber which consists only of wooden logs and planks. There is consequently

U. P. MUNICIPALITIES ACT (II OF 1916)

no ground for holding that in framing the bye-law, the Board did not intend to include such timber within the purview of wood. *Daulat Singh v. Emperor*.

41 Cr. L. J. 285 :
186 I. C. 283 : 1939 A. L. J. 1026 :
12 R. A. 394 : A. I. R. 1940 All. 35.

-----S. 298 (2)—*Licence for sale of milk.*

Bye-law requiring licence for sale of milk, etc., is *ultra vires*. Power to regulate place does not empower requiring of licence. *Asa Ram v. Emperor*.

34 Cr. L. J. 647 :
143 I. C. 796 : 1933 A. L. J. 905 :
55 All. 538 : I. R. 1933 All. 339 :
A. I. R. 1933 All. 593.

-----S. 298 (f)—*Applicability.*

Bye-laws framed under S. 298-F, cannot be made applicable even to areas within one mile outside Municipal limits, unless such limits are extended by Local Government under S. 3 of the Act. *Imam Baksh v. Emperor*.

36 Cr. L. J. 1481 :
158 I. C. 919 : 8 R. A. 351 :
1935 A. W. R. 932 :
A. I. R. 1935 All. 903.

-----Ss. 298 (g) (x), 299, 318 — *Licence to store wood, refusal of—Appeal, failure to prefer—Storing wood—Offence.*

Accused, after having been twice convicted for storing fire-wood on a plot of land without a licence from the Municipal Board, applied for the grant of a licence, but the Board, without assigning any reason, definitely and peremptorily refused the application. He continued, however, to use the site for the purpose of storing wood, with the result that he was again prosecuted and convicted: *Held*, that on his application for a licence being refused, accused had a remedy by an appeal under S. 318, and not having preferred such appeal but having persisted in using the land for storing wood without a licence, he had been rightly convicted. *Mannu v. Emperor*.

21 Cr. L. J. 729 :
58 I. C. 153 : 18 A. L. J. 187 :
42 All. 294 : A. I. R. 1920 All. 236.

-----S. 298-H—*Sanctioning building—Bye-law No. 3 by Bareilly Municipality—Safety and suitability of place proposed, whether sole criterion for granting or refusing permission under Bye-law No. 3—Discretion of Executive Officer—Impropriety of grounds of refusal whether defence for prosecution under S. 299.*

Under the provisions of Bye-law No. 3 framed under S. 298-H, U. P. Municipalities Act, by Bareilly Municipality, the safety and suitability of the site proposed is not the sole criterion for granting or refusing permission. It is certainly the duty of the Executive Officer to satisfy himself on these points, and if he finds that the place is not safe and suitable, permission must be refused but it does not follow that if the place is found to be safe and suitable, permission will automatically be granted. It will be the duty

U. P. MUNICIPALITIES ACT (II OF 1916)

of the Executive Officer thereafter to use his judgment and discretion and then decide whether permission should be granted or refused. The impropriety or illegality of the grounds of refusal is not a good defence in a prosecution under S. 299 of the Act. *Emperor v. F. G. Kalkhowan*.

38 Cr. L. J. 797 (b) :
169 I. C. 629 : 1937 A. L. J. 388 :
1937 A. W. R. 349 : 10 R. A. 44 (2) :
I. L. R. 1937 All. 602 :
A. I. R. 1937 All. 418.

-----S. 298 (a)—*Levy of fees.*

Rule regarding levy of fees—Bye-law is itself unlawful if fee levied is exorbitant and excessive—Whether it is exorbitant and excessive, is a mixed question of law and fact and cannot be raised in revision for first time. *Ajmeri v. Emperor*.

35 Cr. L. J. 704 :
148 I. C. 603 : 1934 A. L. J. 80 :
3 A. W. R. 181 : 56 All. 241 : 6 R. A. 727 :
A. I. R. 1934 All. 39.

-----S. 299—*Licence for weighman.*

Bye-law of Notified Area Committee, that no person can ply trade of weighman without licence—Person purchasing without employing weighmen is not guilty. *Durjan v. Emperor*.

36 Cr. L. J. 1292 :
157 I. C. 1091 (a) : 1935 A. W. R. 702 :
1935 A. L. J. 660 : 8 R. A. 262 (1) :
A. I. R. 1935 All. 655.

-----S. 307—*Daily fine.*

Fine under—Further daily fine as long as breach is continued, is not legal. *Munshi Lal v. Emperor*.

34 Cr. L. J. 1217 :
146 I. C. 254 : 1933 A. L. J. 1190 :
55 All. 603 : 6 R. A. 278 :
A. I. R. 1933 All. 657.

-----S. 307—*Daily fine.*

On a conviction under S. 307, a recurring fine could not be imposed at the time of the first conviction itself. *Hurmat v. Emperor*.

33 Cr. L. J. 473 :
137 I. C. 513 (2) : 1932 A. L. J. 154 :
I. R. 1932 All. 331 :
A. I. R. 1932 All. 109.

-----S. 307—*Daily fine—When to be imposed.*

The liability to a daily fine in the event of a continuing breach, has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced as often as the Municipal Board may consider necessary, by institution of a second prosecution in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and secondly, the appropriate amount of the daily fine to be imposed under

U. P. MUNICIPALITIES ACT (II OF 1916)

the circumstances of the case subject to the prescribed maximum of Rs. 5 per diem. *Amir Hasan Khan v. Emperor.*

19 Cr. L. J. 694 :
46 I. C. 150 : 16 A. L. J. 527 :
40 All. 569 : A. I. R. 1918 All. 266.

S. 307—Offence—Notice, validity of, proof of.

For a conviction under S. 307, it is necessary to prove that the notice disobeyed by the accused was issued under the provisions of the Act or under a rule or a bye-law. If a notice is not so issued, a person to whom it is issued, can disobey it. *Ram Charan v. Emperor.*

26 Cr. L. J. 499 :
85 I. C. 243 : 1 O. W. N. 611 :
A. I. R. 1925 Oudh 546.

S. 307—Offence under—What is.

Non-compliance with the notice under S. 186 is an offence under S. 307 even if no orders had been passed upon an application by the person for the sanction after service of notice upon him under S. 178. *Kausila v. Emperor.*

39 Cr. L. J. 862 :
177 I. C. 90 : 1938 O. W. N. 833 :
11 R. O. 24 : 1938 O. L. R. 373 :
A. I. R. 1938 Oudh 199.

S. 307—Power of Magistrate—Limitation on.

The Magistrate, in a prosecution under S. 307 for non-compliance with a notice to close a latrine issued under S. 267 has to consider only whether the accused has failed to comply with a notice, and has no jurisdiction to enter into the merits of the Board's decision to issue the notice. *Municipal Board, Bahraich v. Jwala Prasad.*

36 Cr. L. J. 471 :
154 I. C. 45 : 11 O. W. N. 1622 :
7 R. O. 452 :
A. I. R. 1935 Oudh 197.

S. 307—Prosecution under—Illegality of notice under S. 186 is good defence.

Constructive sanction under S. 180 (3)—Notice under S. 186 is unwarranted—Disobedience of such notice is not offence under S. 307—No appeal under S. 318 is immaterial—Plea of illegality of notice can be taken as defence to prosecution under S. 307. *Yusuf Husain v. Emperor.*

33 Cr. L. J. 933 :
140 I. C. 185 : 9 O. W. N. 870 :
I. R. 1932 Oudh 393 :
A. I. R. 1932 Oudh 306.

S. 307—Scope.

The language of S. 307 necessarily implies that the person who fails to comply and thus renders himself liable to the penalty provided by the law must have the power to comply. It would obviously be highly unreasonable to hold a person guilty of not complying with the notice, when under the law, he has not the power to do so. *Moti Lal v. Emperor.*

41 Cr. L. J. 5 :
184 I. C. 434 : 1939 A. L. J. 703 :
I. L. R. 1939 All. 875 : 12 R. A. 237 :
1939 A. W. R. 605 :
A. I. R. 1939 All. 701.

U. P. MUNICIPALITIES ACT (II OF 1916)**S. 307—Validity of notice.**

District Magistrate making appellate order under S. 318 upholding legality of notice issued by Board under S. 186—Criminal Court trying case under S. 30 for failure to comply with notice cannot go into the question of legality, validity or reasonableness of notice. *Emperor v. Mumtaz Husain (F. B.)*

36 Cr. L. J. 720 :
155 I. C. 344 : 1935 O. W. N. 509 :
7 R. O. 583 :
A. I. R. 1935 Oudh 337.

S. 307—Validity of notice under S. 186.

A Criminal Court can, in a prosecution under S. 307, for failure to obey a notice issued by a Municipal Board under S. 186 go into the question of the legality, validity and reasonableness of the notice. *Emperor v. Mumtaz Husain. (F. B.)*

36 Cr. L. J. 720 :
155 I. C. 344 : 1935 O. W. N. 509 :
7 R. O. 583 :
A. I. R. 1935 Oudh 337.

S. 307—Validity of notice under S. 186.

Notice under S. 186—Person served not appealing under S. 318—Prosecution under S. 307—Criminal Court cannot question the validity of notice. *Emperor v. Har Prasad.*

33 Cr. L. J. 692 :
138 I. C. 839 : 1932 A. L. J. 579 :
I. R. 1932 All. 497 :
A. I. R. 1932 All. 673.

Ss. 307, 318—Power of Criminal Court—Limitation on—Criminal Court trying person under S. 307, if can enter into question of validity of notice issued under provisions of Act.

There is a procedure provided by the Municipalities Act for challenging the validity of a notice issued under the Act, and it is only in the course of that procedure that the validity of the notice can be questioned and decided. The Criminal Court trying a person under S. 307, can never be concerned with the question as to whether a notice issued under the Municipalities Act was a valid notice or otherwise. *Bajinath Ram v. Emperor.* (1) relied on.

41 Cr. L. J. 5 :
184 I. C. 434 : 1939 A. L. J. 703 :
I. L. R. 1939 All. 875 : 12 R. A. 237 :
1939 A. W. R. 605 : A. I. R. 1939 All. 701.

S. 307 (b)—Applicability.

S. 307 (b) is applicable only to a case of a continuing breach, where the offender is proved to have persisted in the offence. For such an offence, therefore, a second prosecution would be necessary. *Emperor v. Parshotam Kandau.*

37 Cr. L. J. 110 :
159 I. C. 513 : 1935 A. L. J. 1101 :
1935 A. W. R. 1140 : 8 R. A. 456 :
A. I. R. 1935 All. 986.

S. 307 (b)—Failure to comply with notice Continuous offence—Daily fine.

The accused was convicted under S. 307 (b) for failure to comply with a notice issued by the Municipal Board requiring him to construct a drain on certain property and

U. P. MUNICIPALITIES ACT (II OF 1916)

was fined Rs. 5. By the same order the Magistrate directed him to pay a further fine of Re. 1 per diem from the date of the order until the notice issued by the Municipal Board was satisfactorily complied with: *Held*, that the latter part of the order was illegal. *Amir Hasan Khan v. Emperor*.

19 Cr. L. J. 694 :

46 I. C. 150 : 16 A. L. J. 527 :

40 All. 569 : A. I. R. 1918 All. 266.

———S. 307 (b)—Daily fine, legality of.

It is not legal for a Magistrate to sentence an accused to a further daily fine at the same time that he sentences him to a fine for disobedience of the notice under S. 307 (b). *Ram Lal v. Municipal Board, Badaun*.

26 Cr. L. J. 295 (a) :

84 I. C. 439 : A. I. R. 1925 All. 251.

———S. 307 (b)—Daily fine—When can be passed.

It is not legal for a Magistrate to pass an order of continuing fine in a trial for an unauthorised construction. Such an order can be passed only on a separate trial if the accused fails to remove the unauthorised construction after his original trial. *Mathura Prasad v. Municipal Board, Etawah*.

27 Cr. L. J. 568 :

94 I. C. 136.

———S. 314.

An irregularity in a sanction as required by S. 314, cannot be cured by the provisions of S. 537, Cr. P. C., which are not applicable to the sanction under S. 314. *Juggan v. Emperor*.

23 Cr. L. J. 95 (b) :

65 I. C. 447 : 19 A. L. J. 942.

———S. 414.

A prosecution under S. 414 can be started by a Magistrate upon receipt from the President of the Municipal Board of a copy of a resolution passed by the Board, that the accused should be prosecuted for disobedience of a notice. *Husain v. Notified Area, Mohoba*.

27 Cr. L. J. 1120 :

97 I. C. 432 : 25 A. L. J. 93 :

49 All. 245 : A. I. R. 1927 All. 131.

———S. 314.

An Inspector of Water Works has no authority to start a prosecution in respect of an offence punishable under the Act. *Parshotam Das v. Emperor*.

20 Cr. L. J. 318 :

50 I. C. 494 : 17 A. L. J. 354 :

1 U. P. L. R. All. 154 :

A. I. R. 1919 All. 125.

———S. 314—Resolution of Board authorising Police to prosecute.

Under S. 314, where the prosecution has been started on the report "or on the complaint of some person authorised by the Board by general or special order on this behalf" either with reference to all offences or particularly in regard only to specified offences or offences of a specified class, the complaint must be taken to have been properly instituted and the Court is bound to

U. P. MUNICIPALITIES ACT (II OF 1916)

take cognizance of it and to act upon it. *Mohammad Yusuf v. Emperor*.

31 Cr. L. J. 13 :

120 I. C. 207 : 1930 A. L. J. 202 :

A. I. R. 1929 All. 901.

———S. 318—Daily Fine.

The imposition of a daily fine upon a first conviction is illegal, such fine can only be imposed where it is proved that the offender has persisted in the offence after the date of first conviction. *Kashmiri Lal v. Emperor*.

22 Cr. L. J. 650 (b) :

63 I. C. 410 : 19 A. L. J. 541 :

43 All. 644 : 3 U. P. L. R. All. 175 :

A. I. R. 1921 All. 267.

———S. 318—Interpretation.

The expression "any order or direction made by a Board" in S. 318, does not refer to an order passed by the Board upon appeal from a notice issued by the Executive Officer. The Act does not provide for a second appeal to the District Magistrate from an order passed by the Board on Appeal. *Moti Lal v. Emperor*.

41 Cr. L. J. 5 :

184 I. C. 434 : 1939 A. L. J. 703 :

I. L. R. 1939 All. 875 : 12 R. A. 237 :

1939 A. W. R. 605 : A. I. R. 1939 All. 701.

———S. 318—Notice under S. 186—No appeal—Effect.

A person to whom a notice under S. 186 is issued, if he cannot comply with it, should appeal under S. 318. If he does not appeal, then it is not open to him to question the validity of the order upon the ground that he was not the proper person to whom it should have been issued or that he was no longer the proper person to carry out the order of the Board. *Emperor v. Ambika Prasad*.

37 Cr. L. J. 1114 :

165 I. C. 223 : 1936 A. L. J. 805 :

1936 A. W. R. 628 : 9 R. A. 251 :

A. I. R. 1936 All. 693.

———S. 318—Validity of notice under S. 186—Procedure.

The only method by which a person aggrieved can challenge the validity of notice is by way of an appeal to the District Magistrate or other special officer appointed, and if he fails to avail himself of that remedy, no other authority can question the validity of the notice. *Bajinath Ram v. Emperor*.

37 Cr. L. J. 348 :

160 I. C. 927 (b) : 1935 A. L. J. 1260 :

1935 A. W. R. 1253 : 8 R. A. 675 :

A. I. R. 1936 All. 56.

———S. 318—Validity of notice under S. 186.

Where a notice, which is the subject of the charge under S. 307, happens to fall within one of the exceptions provided in S. 318, the Criminal Court is prevented from entering into the question of its legality by virtue of the special provisions of the latter section. *Bajinath Ram v. Emperor*.

37 Cr. L. J. 348 :

160 I. C. 927 (b) : 1935 A. L. J. 1260 :

1935 A. W. R. 1253 : 8 R. A. 675 :

A. I. R. 1936 All. 56.

LEGAL PRACTITIONER

and not to secure a conviction. *Emperor v. Nagendra Nath Sen Gupta*. 16 Cr. L. J. 576 : 30 I. C. 128 : 21 C. L. J. 396 : 19 C. W. N. 923 : A. I. R. 1916 Cal. 524.

—Enrolment, application for—Requisites—Bar Councils Act, 1926, S. 9—Rules by Sind Court.

An application for admission as Advocate is required to be accompanied by a diploma or a certificate or other proof that the applicant has taken the degree. Certificate from the District Court that he has been allowed to practise there, is not sufficient. *In the matter of : Palamadal Muthusami Aiyar Gopala Aiyar*. 158 I. C. 707 : 8 R. S. 54 : A. I. R. 1935 Sind 196.

—Fees.

Clean written contract between client and advocate regarding fees, etc. is necessary—Duty of Advocates to keep complete and accurate accounts, pointed out. *In re : Banjit Singh*. (S. B.)

162 I. C. 622 : 1936 A. L. J. 300 : 1936 A. W. R. 339 : 8 R. A. 890 : A. I. R. 1936 All. 359.

—Fees—Lien for money due—Property recovered by his exertion—Whether lien exists—English Solicitors' Act, 1860.

Where an Advocate put in a claim to the Official Assignee for certain moneys due to him by an insolvent for work done for the insolvent in a probate litigation in respect of a will of which the insolvent was the executor and the legatee, and he claimed it from the estate of the testator : *Held*, (i) that the Insolvency Court was not competent to make an order against the estate of the testator inasmuch as the only estate which was vested in the Official Assignee was the estate of the insolvent ; (ii) that the Advocate was not entitled to a lien for costs like that which is sanctioned by the English Solicitors' Act, 1860, in favour of a Solicitor upon property recovered by his exertions for a client. The only possible ground for supporting a claim to such a lien in favour of an Advocate, is the express agreement to that effect. *Kishnamachariar v. The Official Assignee of Madras*.

137 I. C. 571 : 1932 M. W. N. 8 : 62 M. L. J. 185 : 35 L. W. 166 : I. R. 1932 Mad. 410 : 55 Mad. 455 : A. I. R. 1932 Mad. 256.

—Fees.

Retention by a Pleader of his client's moneys without the consent of the client is grossly improper and unprofessional. *Probat Chandra Gangooli v. Abinash Chandra Ghosh*.

29 Cr. L. J. 960 : 111 I. C. 880 : 50 O. W. N. 880 : A. I. R. 1928 Oudh 464.

—Fees.

When an Advocate enters into a contract with his client, it is appropriate that in order to avoid any future misunderstanding as to the amount of the fees to be charged for various works, there should be a clear written contract between the parties and the amount

LEGAL PRACTITIONER

charged should be clearly mentioned and agreed to by the client. Advocates keep clerks and maintain offices, and do the work of both Counsel and Solicitors. It is, therefore, their duty to keep complete and accurate accounts, which should be available to their clients who entrust them with money. *Ranjit Singh v. Mr. C.* (S. B.)

162 I. C. 622 : 1936 A. L. J. 300 : 1936 A. W. R. 339 : 8 R. A. 890 : A. I. R. 1936 All. 359.

—Fees.

Where a Pleader accepts a vakalatnamā in general and common terms, he is not justified to decline to attend the Court merely because no fee is tendered or paid to him. *Emperor v. Rajani Kanta Bose*. 24 Cr. L. J. 33 :

71 I. C. 81 : 35 C. L. J. 356 : 26 C. W. N. 589 : 49 Cal. 732 : A. I. R. 1922 Cal. 515.

—Improper conduct.

The members of the legal profession are responsible for the fair and honest conduct of a case and they cannot be allowed to make personal attacks or reckless and unfounded charges of impropriety or inattention against a Tribunal when the real ground is that the Advocate concerned has failed to make an impression by his arguments on the Court concerned and lost his case in spite of every effort. *In the matter of : Mr. W. S. Day*.

25 Cr. L. J. 1113 : 81 I. C. 937 : A. I. R. 1924 All. 565.

—Misconduct.

A Magistrate passed certain strictures against a defence witness in his judgment in a criminal case. Thereupon a Pleader acting under instructions from that witness sent a letter to the Magistrate which contained the following clause : "The tenor, tone and mould of your judgment clearly shows that you had a grudge and personal enmity against my client who is a Brahmin by caste, and you thought that as the best opportunity to attack the character of my client under the garb of a judicial officer. My client still sincerely and honestly believes that you had no material to make objectionable remarks against him in your judgment. Before proceeding to take any action against you, my client thinks it his humble duty to draw your attention to the judgment and objectionable remarks therein and to give you sufficient opportunity to withdraw them" : *Held*, that the fact that the letter was written under instructions from the client was no justification for it and that its writing amounted to misconduct. It is perfectly open to a Pleader, on instructions from his client, to send a Magistrate notice under S. 80, C. P. C., but whatever his instructions, it is his duty as a Pleader to send the notice strictly in accordance with the terms of that section. *Government Pleader v. G. K. Taike*. 24 Cr. L. J. 353 :

72 I. C. 353 : 25 Bom. L. R. 264 : A. I. R. 1923 Bom. 234.

U. P. MUNICIPALITIES ACT (II OF 1916).

———Ss. 318, 321—*Bye-laws relating to dangerous and offensive trades - Licence, whether can be refused arbitrarily—Remedy of person aggrieved—Injunction, suit for, whether maintainable—Jurisdiction of Civil Courts.*

A Municipal Board would not be justified in refusing to grant a licence properly applied for, under the bye-laws relating to dangerous and offensive trades, not on any grounds of public safety, health or public convenience, but merely in order to secure an advantage to itself in a dispute about a question of title with another person. Under the U. P. Municipalities Act, the jurisdiction of the Civil Courts is limited by Ss. 318 and 321. Under these sections, the only remedy of a person who considers himself aggrieved by a bye-law made under S. 298 (G) is by way of appeal to the higher authority referred to in S. 318 but it is by no means equally clear that a suit would not lie for an injunction to compel a Municipal Board to grant the plaintiff a licence for carrying on a particular trade upon a particular spot, provided always that the plaintiff was prepared to take out the licence subject to all the conditions prescribed by the bye-laws and could satisfy the Court that the Municipal Board had refused him the licence for reasons wholly unconnected with the public health, safety or convenience. *Mannua v. Emperor.*

20 Cr. L. J. 705 :
52 I. C. 785 : 17 A. L. J. 976 :
1 U. P. L. R. All. 126 : A. I. R. 1919 All. 155.

———S. 320—*Scope.*

S. 320 only provides for costs in appeals from orders of the Board made in accordance with S. 318 of the Act, and does not apply to the case of an illegal conviction under S. 307 (b). *Yusaf Husain v. Emperor.*

33 Cr. L. J. 933 :
140 I. C. 185 : 9 O. W. N. 870 :
I. R. 1932 Oudh 393 : A. I. R. 1932 Oudh 306.

———S. 321—*Interpretation.*

The word 'authority' in S. 321 is sufficiently wide to cover both Civil and Criminal Courts. *Emperor v. Mumtaz Husain. (F. B.)*

36 Cr. L. J. 720 :
155 I. C. 344 : 1935 O. W. N. 509 :
7 R. O. 583 : A. I. R. 1935 Oudh 337.

———S. 321.

The word "question" in S. 321 (1) means "called in question as regards its reasonableness or practicability" and does not mean "challenging its legality." *Kashmiri Lal v. Emperor.*

22 Cr. L. J. 650 (b) :
63 I. C. 410 : 19 A. L. J. 541 :
43 All. 644 : 3 U. P. L. R. All. 175 :
A. I. R. 1921 All. 267.

———S. 333.

A *Tahsildar* acting as officer in charge, Municipal work, under S. 333, cannot sanction a prosecution under S. 185, and a conviction based on such a sanction, is illegal. *Juggan v. Emperor.*

23 Cr. L. J. 95 (b) :
165 I. C. 447 : 19 A. L. J. 942.

U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912)

———S. 362 (1)—*Applicability of.*

S. 362 (1) has nothing to do with proceedings in a Criminal Court. It relates only to suits of a Civil nature in a Civil Court. It does not, therefore, apply to prosecutions under the Cattle Trespass Act. *Satola v. Emperor.*

19 Cr. L. J. 368 :
44 I. C. 592 : 16 A. L. J. 148 :
A. I. R. 1918 All. 267.

———S. 414.

The passing of a sentence of a daily fine so long as disobedience continues, is illegal. *Husain v. Notified Area, Mahoba.*

27 Cr. L. J. 1120 :
97 I. C. 432 : 25 A. L. J. 93 :
49 All. 245 : A. I. R. 1927 All. 131.

U. P. NAIK GIRLS' PROTECTION ACT (II OF 1929)

———S. 4—*Revision.*

Order under, passed by District Magistrate, without following procedure prescribed by Cr. P. C.—Order cannot be set aside under S. 439, Cr. P. C. *Hazari v. Emperor.*

40 Cr. L. J. 305 :
180 I. C. 37 : 1938 A. L. J. 1147 :
11 R. A. 407 : I. L. R. 1939 All. 178 :
1939 A. W. R. 64 : A. I. R. 1939 All. 124.

U. P. OPIUM SMOKING ACT (II OF 1925)

———Ss. 5, 9—*Magistrate issuing search warrant under S. 9—Trial by him—Trial, not illegal.*

A presumption arises under S. 5 quite irrespective of the issue of a warrant of search under S. 9 so that, when a man is being tried for an offence under the Act, the question whether a warrant of search was properly issued can never be relevant, and it follows that there is no reason why the Magistrate should ever be required to give evidence for the defence or for the prosecution. Consequently, where the Magistrate who had previously issued a warrant of search under S. 9 tries the case, the trial does not become illegal. *Emperor v. Badalwa.*

37 Cr. L. J. 1121 :
165 I. C. 259 : 1936 A. L. J. 1201 :
9 R. A. 256 : 1936 A. W. R. 733 :
A. I. R. 1936 All. 689.

U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912)

———S. 2—*Public Analyst—Who is.*

The definition of "Public Analyst" in S. 2 includes a person appointed to exercise the powers of a Public Analyst. *Rameshwar Das v. Emperor.*

37 Cr. L. J. 360 :
160 I. C. 1026 : 1936 A. W. R. 180 :
1936 A. L. J. 311 : 8 R. A. 695 :
A. I. R. 1936 All. 86.

———S. 4—*Duty of prosecution.*

In a case of prosecution under S. 4 (1), it is for the defence to establish that the case

U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912)

would come under proviso (c) of S. 4 (1).
Rameshwar Das v. Emperor.

37 Cr. L. J. 360 :
160 I. C. 1026 : 1936 A. W. R. 180 :
1936 A. L. J. 311 : 8 R. A. 695 :
A. I. R. 1936 All. 86.

—S. 4—Scope and application.

The expression "to the prejudice of the purchaser" in S. 4 (1), goes with the first portion of the section only and not with the second. The first portion of the section applies to a case where the article has actually been sold to a purchaser, while the second portion can apply even while the article is offered or exposed for sale or is manufactured for sale without there being a purchaser. In the latter case, there can be no prejudice to the purchaser in fact and for the second portion of the section to be applicable, all that is necessary is that an article of food not of the nature, substance or quality which it purports to be, should either have been sold or offered or exposed for sale or manufactured for sale. Where therefore a vendor who has a licence for sale of pure vegetable oil exposes for sale vegetable oil mixed with ghee, he is guilty of an offence under the second portion of S. 4. *Suraj Narain v. Municipal Board, Lucknow.* 40 Cr. L. J. 301 : 179 I. C. 993 : 1939 O. W. N. 179 : 11 R. O. 218 : 1939 O. L. R. 106 : A. I. R. 1939 Oudh 105.

—S. 4.

Abetment—Punishment for is same as for offence itself—*D* selling ghee at *P*'s shop—*R* to get commission—Ghee found to be adulterated—*R* also held liable. *Emperor v. Ram Gopal.* 38 Cr. L. J. 277 : 166 I. C. 763 : 9 R. A. 440 : 1936 A. L. J. 1037 : 1936 A. W. N. 875 : A. I. R. 1936 All. 865.

—S. 4—Offence under—What is.

Where a person gives out that "milk" was for sale at his shop, he should be taken to offer to sell pure milk, and not skimmed milk, and if while he is offering to sell "milk," he supplies skimmed milk, he is guilty under the second part of that section. *Dukhi v. Emperor.* 37 Cr. L. J. 453 : 161 I. C. 356 : 1936 A. W. R. 192 : 1936 A. L. J. 77 : 8 R. A. 735 : A. I. R. 1936 All. 148.

—S. 4—Offence under, what is—Seller supplying skimmed milk, when guilty under part 1 and part 2 of S. 4.

Where a customer asks for "milk," he should be understood to be desirous of purchasing pure milk: and if he is supplied skimmed milk by the seller, who does not make it clear that the milk he was supply-

U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912)

ing was skimmed milk, he is guilty under the first part of S. 4. *Dukhi v. Emperor.*

37 Cr. L. J. 453 :
161 I. C. 356 : 8 R. A. 735 :
1936 A. W. R. 192 :
1936 A. L. J. 77 :
A. I. R. 1936 All. 148.

—S. 4—Offence under—When constituted.

Article of food commonly assumed to contain foreign admixture not injurious to health—Offer for sale of the article—Article found to contain only such mixture—Implied warranty by seller is not broken and offence is not committed. *Mithan Lal v. Emperor.*

35 Cr. L. J. 913 :
149 I. C. 222 : 6 R. A. 869 :
A. I. R. 1934 All. 439.

—S. 4—Offence under—When is only technical.

Sale of wheat flour mixed with barley as pure wheat flour—Fact of amount of adulteration being negligible or universally tolerated, only technical offence held committed. *Budh Sen v. Emperor.*

35 Cr. L. J. 681 (1) :
148 I. C. 384 : 6 R. A. 694 :
A. I. R. 1934 All. 329.

—Ss. 4, 6 (a), 12—Complaint by Executive Officer duly authorised, legality of.

A complaint filed under S. 4, by an Executive Officer of a Municipal Board duly authorised under S. 12, to institute proceedings under the Act, is not illegal merely because on the date on which samples were taken the officer had not been so authorised. *Kedar Nath v. Emperor.*

19 Cr. L. J. 738 :
46 I. C. 514 : 40 All. 661 : 16 A. L. J. 681 :
A. I. R. 1918 All. 99.

—Ss. 4, 10—Summons for prosecution—contents of.

Under S. 15 (2), every summons issued in a prosecution under S. 4 or S. 10, must specify particulars of the offence charged and the name of the prosecutor besides other information. *Banarsi Das v. Emperor.*

31 Cr. L. J. 866 :
125 I. C. 503 : 1930 A. L. J. 911 :
A. I. R. 1930 All. 595.

—Ss. 4, 12, 15—Offence under S. 4—Summons issued after 30 days—Jurisdiction of Court to try accused.

S. 15 which provides that no summons shall issue for the attendance of any person accused of an offence under S. 4 unless the same is applied for within thirty days from the date upon which the order of consent referred to in S. 12 is made, does not affect the jurisdiction of the Court to try a person who appears and stands his trial on a summons issued after the expiry of the thirty days. It merely prohibits the issue of a summons after the prescribed period. *Ram Chand v. Emperor.*

30 Cr. L. J. 369 :
114 I. C. 870 : 50 All. 853 :
I. R. 1929 All. 294 : A. I. R. 1929 All. 157.

U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912)

—S. 5—'Adulteration,' meaning of.

The word 'adulterated' when used with reference to *ghi*, necessarily means that the *ghi* contains an article which was used to debase it and which, therefore, could not have been derived from milk at all. *Ram Dayal Gupta v. Emperor*. 28 Cr. L. J. 39 (a) : 99 I. C. 71 : A. I. R. 1927 All. 730 (a).

—S. 6—Applicability.

S. 6 (a) does not apply to a commission agent who has not purchased the adulterated article and who does not sell it but merely exposes it for sale. *Kedarnath v. Emperor*.

19 Cr. L. J. 738 : 46 I. C. 514 : 16 A. L. J. 681 : 40 All. 661 : A. I. R. 1918 All. 99.

—S. 6—Written warranty.

A bazar Chaudhri of the Agra Cantonment Board took a sample of *ghee* from the shop of the accused and the Analyst stated that it contained fat or oil foreign to pure *ghee*. All that had been produced by the accused as defence was a number of cash vouchers showing that a wholesale firm, supplied him *ghee* on various occasions. In the cash vouchers, there was a printed line which states that the *ghee* sold by the firm was actual village *ghee* and that the groceries were sold at the cheap rate: Held, that the line was not in any sense a written warranty and the mere fact that the signature of the vendor occurred at a totally different place in the bottom of the form did not imply that the signature was attached to that line. The line in question was a mere advertisement alleging that the *ghee* was good and the groceries were cheap. *Pancham Ram v. Emperor*.

39 Cr. L. J. 959 : 177 I. C. 704 : 1938 A. L. J. 780 : 11 R. A. 217 : 1938 A. W. R. 490 : I. L. R. 1938 All. 797 : A. I. R. 1938 All. 538.

—Ss. 15, 12—Failure to give particulars in summons required by S. 15, if justifies acquittal.

There is nothing in the Act which justifies the conclusion that it was the intention of the Legislature that a failure to give the particulars in the summons required by S. 15, would justify an acquittal even if it were perfectly clear that the person charged had been guilty of an offence and had had a full opportunity of defending his conduct. *Hira Lal v. Emperor*.

39 Cr. L. J. 738 : 176 I. C. 325 : 1938 A. L. J. 497 : 11 R. A. 80 : 1930 A. W. R. 335 : I. L. R. 1938 All. 646 : A. I. R. 1938 All. 395.

—S. 17—Master's liability for act of servant.

In view of the fact that there is no specific provision either in the U. P. Prevention of Adulteration Act or in the rules framed under S. 16 making a master liable for any act done

U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912)

by his servant or agent, a master cannot be held liable for an offence committed by his servant or agent under S. 17. *Murari Lal v. Emperor*.

41 Cr. L. J. 236 : 185 I. C. 799 : 12 R. A. 372 : 1939 A. L. J. 1037 : A. I. R. 1940 All. 3.

—Ss. 17, 16—Breach of—Servant or agent of licence-holder if can be charged for breach of r. 8.

It is only the licence-holder who can be penalized under S. 17 if he commits a breach of r. 8 framed under S. 16. Any other person, whatever his relation to the licence-holder may be, cannot be rightfully charged with an offence under S. 17 for committing a breach of r. 8 for that rule does not cast any duty upon him. *Murari Lal v. Emperor*.

41 Cr. L. J. 236 : 185 I. C. 799 : 12 R. A. 372 : 1939 A. L. J. 1037 : A. I. R. 1940 All. 3.

—S. 18—Expression "in which *ghee* is manufactured" applies to manufactory, shop or place.

The words "in which *ghee* is manufactured" in S. 18 apply to the three previous things mentioned that is "manufactory, shop or place." If this were not so, then it would be an offence to keep any substance to be used for the adulteration of such *ghee* in any kind of a factory or any kind of a shop. That cannot be what was intended by the Legislature, but the Legislature did intend that the manufactory or the shop were those in which *ghee* was manufactured. *Changa Mal v. Emperor*.

41 Cr. L. J. 522 : 187 I. C. 855 : 1940 A. L. J. 14 : 12 R. A. 580 : I. L. R. 1940 All. 125 : A. I. R. 1940 All. 174.

—S. 18—Point that *ghee* is not manufactured at shop cannot be taken for first time in revision.

In the case of a prosecution under S. 18, it is for the accused to take the plea that his shop is not such a manufactory, shop, or place in which *ghee* is manufactured, under S. 242, Cr. P. C., in the trial Court. If he fails to do this, he cannot raise it for the first time in revision. *Changa Mal v. Emperor*.

41 Cr. L. J. 522 : 187 I. C. 855 : 1940 A. L. J. 14 : 12 R. A. 580 : I. L. R. 1940 All. 125 : A. I. R. 1940 All. 174.

—S. 18.

In the case of a prosecution under S. 18, previous conviction for selling adulterated *ghee* would be relevant to show intention. *Rex v. Armstrong* (1), relied on. *Changa Mal v. Emperor*.

41 Cr. L. J. 522 : 187 I. C. 855 : 1940 A. L. J. 14 : 12 R. A. 580 : I. L. R. 1940 All. 125 : A. I. R. 1940 All. 174.

U. P. PUBLIC GAMBLING ACT (III OF 1867)

-----Ss. 1, 6—Common house gaming—*What is.*

It is not all gaming of digits which constitutes a common gaming house. If the winning number is to be ascertained, in some manner other than that mentioned in para. 1 of the definition, then the place where the gaming was taking place would not be a common gaming house unless the occupier was obtaining some profit from the use of the place. *Qabul Singh v. Emperor.*

41 Cr. L. J. 879 :
190 I. C. 252 : 13 R. A. 187 :
1940 A. L. J. 456 :
I. L. R. 1940 All. 559 :
A. I. R. 1940 All. 412.

-----S. 3—Duty of prosecution.

It is incumbent for the prosecution under the law to prove by definite evidence the commodity in respect of which the alleged *satta* gambling was going on. The vague and general statement by the prosecution witnesses that *satta* gambling was going on proves nothing in law. *Chiranjil Lal v. Emperor.*

41 Cr. L. J. 141 :
185 I. C. 256 (2) : 1939 A. L. J. 990 :
1939 A. W. R. 736 : 12 R. A. 312 (1) :
A. I. R. 1939 All. 734.

-----S. 6—Instruments of gaming—*What are.*

Slips of paper with numbers upon them are commonly used for the purpose of betting or wagering, and are instruments of gaming and their discovery is evidence which the Magistrate is entitled to consider as proving that the place where they were found was a common gaming house or in other words, that the other requisites of a common gaming house were established. *Qabul Singh v. Emperor.*

41 Cr. L. J. 879 :
190 I. C. 252 : 1940 A. L. J. 456 :
I. L. R. 1940 All. 559 : 13 R. A. 187 :
A. I. R. 1940 All. 412.

-----S. 6—Scope.

The very wording of the first part of S. 6 which speaks of any cards, dice, gaming-tables, cloths, boards or other instruments of gaming shows that it is not necessary to prove that the particular instrument was in fact used for gaming. *Qabul Singh v. Emperor.*

41 Cr. L. J. 879 :
190 I. C. 252 : 1940 A. L. J. 456 :
I. L. R. 1940 All. 559 : 13 R. A. 187 :
A. I. R. 1940 All. 412.

U. P. SUGARCANE RULES, 1934

-----rr. 9 (1), proviso 10, 12 (2), (a)—*Licensing purchasing agent, if can be convicted for offence punishable under r. 12 (2), (a).*

Under the U. P. Sugarcane Rules, 1934, a licensed purchasing agent should be convicted for the breach of a rule which he was himself bound to observe, for example, r. 10. He cannot be convicted for the breach of a rule, the observance of which was not imposed upon

U. P. VILLAGE PANCHAYATS ACT (VI OF 1920)

him by law. A licensed purchasing agent is a different person from an occupier or manager of a sugar factory. *Emperor v. Ram Lochan Singh.*

38 Cr. L. J. 532 :
168 I. C. 259 : 1937 O. W. N. 475 :
1937 O. L. R. 240 : 9 R. O. 455 :
A. I. R. 1937 Oudh 386.

U. P. TOWN IMPROVEMENT ACT (VIII OF 1919)

-----S. 49—*Object.*

The object of S. 49 is to invest the Improvement Trust with the powers passed by a Municipal Board with relation to the offences mentioned in the sections of the U. P. Municipalities Act referred to in S. 49 from the date of the Improvement Scheme coming into force in respect of the area in relation to which the offence was committed. It is immaterial whether the act which constitutes the offence was committed before the scheme came into force or after it. *Kundan Lal v. Lucknow Improvement Trust.*

25 Cr. L. J. 1007 :
81 I. C. 719 : 11 O. L. J. 201 :
A. I. R. 1924 Oudh 399.

-----Ss. 49, 79—*Sanctioning building.*

Land purchased from Improvement Trust—House built in contravention of agreement with Improvement Trust—Street in which house was situated transferred to Municipal Board—Permission obtained from Board does not absolve the applicant from getting permission from Improvement Trust—Liability for contravention of agreement remains with Improvement Trust. *Daulat Khan v. Emperor.*

38 Cr. L. J. 934 :
170 I. C. 496 : 10 R. A. 116 :
1937 A. L. J. 499 :
1937 A. W. R. 479 :
A. I. R. 1937 All. 496.

U. P. VILLAGE PANCHAYATS ACT (VI OF 1920)

-----Ss. 53, 71—*Panchayat, whether Court.*

A village *panchayat* constituted and held under the U. P. Panchayats Act of 1920 is a "Court" and when it is dealing with a case in regard to an "offence," it is a Criminal Court. *Kamlapati Punth v. Emperor.*

27 Cr. L. J. 19 :
91 I. C. 51 : 23 A. L. J. 897 :
48 All. 23 : A. I. R. 1926 All. 27.

-----Ss. 31, 32.

S. 32 applies only to suits; the corresponding provision applicable to criminal cases is contained in S. 31 of the Act. *Masala v. Emperor.*

27 Cr. L. J. 358 :
92 I. C. 870 : A. I. R. 1926 All. 368.

-----Ss. 49, 74—*Scope.*

Provisions of Ss. 49 and 74 are for revision—For the purposes of S. 195 (3), Cr. P. C., Panchayat Court is subordinate to District Judge. *Emperor v. Charjan.*

35 Cr. L. J. 1050 :
149 I. C. 1239 : 6 R. A. 1026 :
4 A. W. R. 519 : 1934 A. L. J. 339 :
A. I. R. 1934 All. 216.

UNLAWFUL ASSEMBLY

———S. 71—Collector dismissing under S. 71, application of accused found guilty by Village Panchayat—Revision to Chief Court, if lies.

A Village Panchayat constituted under U. P. Village Panchayat Act, is not a Court "constituted under any law other than this Code," as defined under S. 6, Cr. P. C., and is, therefore, not a body subject to the revisional jurisdiction of the Chief Court. No revision, therefore, lies to the Chief Court against an order of a Collector dismissing under S. 71 an application made to him by an accused who had been found guilty of an offence under Penal Code, by a village Panchayat. *Badri Nath v. Shcophal*.

40 Cr. L. J. 338 :
180 I. C. 142 : 11 R. O. 240 :
1939 O. W. N. 231 :
1939 O. L. R. 120 : 14 Luck. 592 :
A. I. R. 1939 Oudh 143.

———S. 71.

There is no provision in the U. P. Panchayats Act, declaring that the Collector's order made under S. 71 of the Act in criminal proceedings should be final. *Kamlapati Punth v. Emperor*.

27 Cr. L. J. 19 :
91 I. C. 51 : 23 A. L. J. 897 :
48 All. 23 : A. I. R. 1926 All. 27.

UNLAWFUL ASSEMBLY

———Common object—Death caused by some members—Liability of all members.

Where more than 25 persons went in a body to enforce the right or supposed right of one of them to an animal by removing it from the house of a third person, and after they had removed it and gone some distance, they were followed by that person, who was consequently attacked and beaten by some of them and died by a blow on the head: *Held*, that the assembly was an unlawful assembly within S. 141, Penal Code, and the force used by some of them in beating the deceased being in prosecution of their common object, all were guilty of rioting, but all could not be convicted of an offence under S. 304, Penal Code, as the offence could not be said to have been committed in prosecution of the common object, nor was it such as the members of the assembly knew to be likely to be committed in prosecution of that object. *Agra v. Emperor*.

16 Cr. L. J. 209 :
27 I. C. 833 : 219 P. L. R. 1915 :
37 P. R. 1914 Cr. :
A. I. R. 1914 Lah. 579.

———Finding of common object necessary.

Where an appellate judgment does not find the existence of an unlawful assembly or its common object, and convicts persons of being members of such an assembly the conviction must be set aside. *In re : Gorripati Chelamiah*.

12 Cr. L. J. 496 :
12 I. C. 216 : 10 M. L. T. 115 :
1911, 2 M. W. N. 97.

———Member of, lying unconscious from the outset, not charged with offence committed by others during his unconscious state.

UPPER BURMA CRIMINAL JUSTICE REGULATION SCH. SEC. XII

Where it was found that A, a member of an unlawful assembly, was felled to the ground at the outset and was left lying unconscious on the spot where the fight started, while the remaining members of A's party pursued the persons, one of whom had knocked A down, and having overtaken them, committed the offence of culpable homicide: *Held*, that A who was lying unconscious, could not be considered a member of the unlawful assembly at the time the offence of culpable homicide was committed and was, therefore, not liable to conviction on this charge. *Ragunandan v. Emperor*.

13 Cr. L. J. 556 :
15 I. C. 972 : 15 O. C. 183.

UNLAWFUL INSTIGATION ORDINANCE (VI OF 1930)

———S. 3—Duty of Court.

Prosecution must produce notification and Court should show in judgment that requirements of S. 8 are fulfilled. *Nanak Chand v. Emperor*.

32 Cr. L. J. 1227 :
134 I. C. 769 : I. R. 1931 Lah. 977 :
A. I. R. 1931 Lah. 273.

———S. 3—Regularity of official acts.

High Court can presume genuineness of notification produced before it and hold production sufficient under Evidence Act, S. 81. *Nanak Chand v. Emperor*.

32 Cr. L. J. 1227 :
134 I. C. 769 : I. R. 1931 Lah. 977 :
A. I. R. 1931 Lah. 273.

UPPER BURMA CRIMINAL JUSTICE REGULATION, SCH., SEC. XII

———District Magistrate's power of revision.

Under the provisions of S. XII of the Schedule to the Upper Burma Criminal Justice Regulation, a District Magistrate has extensive powers of revision allowing him to deal with the cases of Second and Third Class Magistrates as he thinks fit instead of reporting them to the High Court. *Nga Thet She v. Emperor*.

22 Cr. L. J. 313 :
60 I. C. 1001 : 3 U. B. R. (1920) 269 :
A. I. R. 1920 U. Bur. 45 (1).

———Interference by Judicial Commissioner, when permissible.

Under the provisions of S. XV of the Schedule to the Upper Burma Criminal Justice Regulation, the Judicial Commissioner will not interfere with an order of a District Magistrate, even where the procedure is irregular, unless that procedure has occasioned a failure of justice. *Nga San Dun v. Emperor*.

22 Cr. L. J. 309 :
60 I. C. 997 : 3 U. B. R. (1920) 270 :
A. I. R. 1920 U. Bur. 28 (2).

UPPER BURMA RUBY REGULATION (XII OF 1887)

—Rules under rr. 17, 18.

Person digging his mines and allowing debris to fall out—Inspector of Mines, cannot prohibit him from so doing under r. 17—Disobedience of the order so prohibiting—Conviction under S. 188, Penal Code (Act XLV of 1860) is bad; "Order" in r. 18 means decision and not command. *Ko Po v. The King*.

39 Cr. L. J. 701 :
176 I. C. 186 : 11 R. Rang. 37 :
A. I. R. 1938 Rang. 223.

—S. 8.

The High Court has power to revise an order made under S. 8 of the Upper Burma Ruby Regulation directing the confiscation of a stone or giving an option to the owner to pay for it. *Maung Po Lon v. Emperor*.

26 Cr. L. J. 289 :
84 I. C. 433 : 2 Rang. 321 :
3 Bur. L. J. 168 :
A. I. R. 1925 Rang. 12.

VACCINATION ACT (XIII OF 1880)

—Failure to comply with notice under S. 17 whether offence under S. 7, Burma vaccination Act.

Failure to comply with a notice for the vaccination of a child, issued by the Superintendent of Vaccination under S. 17, Vaccination Act, is not punishable under S. 7, Burma Vaccination Law Amendment Act, but should be dealt with under Ss. 18 and 22 of the Act of 1880. *Emperor v. On Me*.

1 Cr. L. J. 1003 :
2 L. B. R. 279.

—Ss. 9, 17, 18, 22—Burma Vaccination Law (Amendment) Act (I of 1909), S. 13 (1)—Failure to vaccinate child over six months old—Conviction of parent—Legality of.

S. 13 (1), Burma Vaccination Law (Amendment) Act of 1909, relates to the refusal of a person to be vaccinated himself and has nothing to do with the refusal of parents to allow their children to be vaccinated. There is nothing in Burma Act I of 1909, to authorise any officer to require the parent of a child over six months of age to have it vaccinated, and for such a case, provision is made only in S. 9 of the Vaccination Act of 1880. Under S. 17, Vaccination Act before enforcing the provisions of S. 9 of the said Act a notice must be served on the parent, requiring him to attend at a time and place to be specified in the notice to have the child vaccinated, and then under S. 18, if that notice is not complied with, the Superintendent of Vaccination must report the matter to a Magistrate duly appointed in that behalf, who shall summon the parent and demand his explanation, and if such explanation is not satisfactory, make an order directing the parent to comply with the notice before a date to be specified, and it is only on the failure of the parent to obey the order of the Magistrate that he can be convicted. *Emperor v. Aung Ba Win*.

30 Cr. L. J. 750 (b) :
117 I. C. 246 : 7 Rang. 14 :
I. R. 1929 Rang. 182 : A. I. R. 1929 Rang. 150.

VAKILS OF HIGH COURT

—Right of audience—Case under Criminal Law Amendment Act XIV of 1908.

The Vakils of the High Court have no right of audience in the High Court in case sent up for trial there under Act XIV of 1908. *In re : Barristers and Vakils*.

10 Cr. L. J. 553 :
4 I. C. 297 : 13 C. W. N. 605.

VILLAGE CHOWKIDARI ACT (VI B. C. OF 1870)

—S. 39, Cl. (2)—Daffadar's authority to arrest—Continuing offence—Theft—Offence, how long continues.

Under S. 39, Cl. (2) of Act VI (B. C.) of 1870, a daffadar, is only entitled to arrest a person for theft committed in his presence. One R after having cut down some plantain trees belonging to J with the intention of dishonestly taking them, loaded them in a cart and was driving away the cart, J, pursued the cart and on his crying out that R had cut and was taking away his plantain trees, a daffadar came up and arrested R : Held, that the offence of theft did not continue when the daffadar came up, and as the offence of theft was completed before the daffadar came up and arrested R, the arrest was illegal and therefore the rescue of R, from the daffadar's custody was not an offence. *Balai Dey v. Emperor*.

7 Cr. L. J. 188 :
12 C. W. N. 367 : 35 Cal. 361.

VILLAGE COURTS ACT (III OF 1892)

—S. 73—Review of decree.

Under the Village Courts Act, no appeal lies from the decree of a village Munsif, although under S. 73 the District Judge may, under certain circumstances, review the decree. *Sundar Lal v. Emperor*.

10 Cr. L. J. 437 :
3 I. C. 966 : 6 A. L. J. 796 :
6 M. L. T. 98.

VILLAGE POLICE OFFICERS

—Applicability of Cr. P. C.

All that is laid down by S. 1 (2), Cr. P. C., is that the procedure laid down by the Code is not to govern the actions of village Police Officers, but it does not mean that the provisions of the Code are not to apply in the case of a complaint against a village Police Officer. *Emperor v. Shankar Sayaji Dalvi*.

40 Cr. L. J. 116 :
178 I. C. 682 : 40 Bom. L. R. 1106 :
11 R. B. 183 : A. I. R. 1938 Bom. 489.

VILLAGE SANITATION REGULA- TION (I OF 1898)

—What constitutes rebuilding.

To constitute rebuilding of a house within the meaning of the above rule (Rule 8, S. 111), there must be actual rebuilding and not merely alterations and enlargements or repairs : Held also, that the breach of the rule is not a continuing breach giving rise to fresh

WARRANT

periods of limitation. *Subbiah Chetty v. Government of Mysore.* 7 Cr. L. J. 172 : 12 M. C. C. R. 43.

VILLAGE WATCHMEN RULES, Rr. 43, 44**—Ingredients of offence.**

To establish an offence under rr. 43 and 44 of the Rules for Village Watchmen against a village headman, it is necessary to show that when a cognizable offence had been committed, the village headman received information of its commission and that there were certain circumstances existing which rendered it incumbent on him to report to the Police personally and he omitted to do so. *Rahman v. Emperor.* 29 Cr. L. J. 749 :

110 I. C. 685 : 29 P. L. R. 537 : 10 Lah. 219 : A. I. R. 1929 Lah. 520.

W**WAGING WAR****—Meaning of—Penal Code, S. 121.**

The expression "wages war" in S. 121, Penal Code, must be considered in its ordinary sense, and overt acts such as collection of men, arms and ammunition for that purpose do not amount to waging war. *Barindra Kumar v. Emperor.* 11 Cr. L. J. 453 :

7 I. C. 359 : 37 Cal. 467.

WAJIB-UL-ARZ**—Admissibility—Formal proof, if necessary—Presumption of correctness.**

The *wajib-ul-arz* is a part of the Record of Rights. It is unnecessary to produce any witness to prove the *wajib-ul-arz*. It is a public document and is admissible in evidence without any formal proof. The entries in the *wajib-ul-arz* must be presumed to be correct, unless their correctness is rebutted by evidence to the contrary. *Fajju v. Emperor.* 38 Cr. L. J. 881 :

170 I. C. 392 : 39 P. L. R. 491 : 10 R. L. 107.

WARRANT**—Destruction by accused—Presumption of legality—Cr. P. C., Ss. 98, 100, 552.**

Where, upon an application under S. 552, Cr. P. C., a warrant under S. 100 was issued to compel restoration of an abducted female, but was drawn up on a form which was printed for use under S. 98 and the accused persons snatched away the warrant and destroyed it : *Held*, that it must be presumed that the warrant contained the substance of what is set out in S. 100 and that the portions which had to be altered were altered. *Gurameah v. Emperor.* 13 Cr. L. J. 186 :

13 I. C. 1002 : 16 C. W. N. 336 : 39 Cal. 403.

—Date fixed by Court for execution—Warrant endorsed to peon by Nazir fixing earlier date—Execution by peon between date fixed by Nazir and that fixed by Court, whether legal.

A warrant for the attachment of the movable

WATER WORKS ACT (I OF 1891)

properties of a judgment-debtor was issued by the Court and addressed to the bailiff to be executed within August 30th. The *Nazir* endorsed the warrant to a peon with a direction to execute it on or before August 25th. The peon executed the warrant between August 25th and August 30th : *Held*, that the execution was lawful, and in rescuing the property attached by the peon from him, the accused were guilty. *Sabed Ali v. Emperor.* 14 Cr. L. J. 274 :

19 I. C. 706 : 17 C. W. N. 941 : 40 Cal. 849.

—Warrant—Execution.

Where a warrant addressed to the bailiff of the Court was executed by a *Naib-Nazir* and process-servers without any endorsement by the bailiff : *Held*, that the service of the warrant was illegal. *Ghasita Mal v. Emperor.* 22 Cr. L. J. 145 :

59 I. C. 849 : 3 L. L. J. 346 : A. I. R. 1921 Lah. 236.

—Issued for arrest of absconders, subsequently recalled—District Magistrate, power of, to re-issue warrants—Further enquiry.

Warrants were issued for arrest of several accused in a case of rioting. Some of the accused were arrested and convicted, and the rest absconded. After the conviction had been upheld by the Sessions Judge, the trial Magistrate ordered the recall of the warrants issued for the arrest of the absconders. On the application of the complainant, the District Magistrate directed the re-issue of the warrants : *Held*, that the procedure adopted by the District Magistrate was wrong, that the course open to him was to order a further enquiry, and after he had made such an order he might have proceeded as the circumstances of the case justified. *Saharullah Chowdhury v. Kcondna Santhal.* 18 Cr. L. J. 1001 :

42 I. C. 729 : 26 C. L. J. 114 : A. I. R. 1917 Cal. 185.

WARRANT CASE**—Costs, failure to pay, effect of.**

The inability or even the refusal of an accused person to pay the costs of the witnesses would not, in a warrant case, be an adequate ground for refusing to summon the witnesses. *Debi Singh v. Emperor.* 24 Cr. L. J. 831 :

74 I. C. 863 : 5 P. L. T. 112 : 2 P. L. R. 73 Cr. : A. I. R. 1924 Pat. 142.

WATER WORKS ACT (I OF 1891)**—S. 41—Scope and object—Offence.**

When a person omits to give notice of re-occupation of a house previously reported to be vacant, but pays water-rate for the period during which the house remained un-occupied, he is not guilty of an offence under S. 41. S. 41 refers to a house which has been exempted from liability to payment of water-rate, and the penalty imposed by it is not incurred where the rate has been paid and there has been no evasion of payment. The object of the section is to ensure payment of water-rate, by

WHIPPING ACT (VI OF 1864)

reason of non-occupation for three months.
Sumer Chand v. Emperor.

5 Cr. L. J. 283 :
4 A. L. J. 235 : 27 A. W. N. 92 :
I. L. R. 29 All. 375.

WEAPON—ARMS ACT

—S. 19—*Recovery of arms not in presence of witnesses—Recovery list though signed by them is not of much weight.*

Where the head constable made a false report that a dacoity had been committed and that he had arrested some dacoits and after a delay of three days, as he said, recovered the arms from the petitioner not in the presence of witnesses, who signed the list but who distinctly recorded that the arms were produced before them by the constable : *Held*, the petitioner was not guilty. *Alif Din v. Emperor.*

A. I. R. 1923 Lah. 466.

—S. 20—*Scope.*

Where the arms were discovered on the information given by the accused, the concealment of the *chhavis* and other arms recovered from the possession of the accused is clearly with the intention referred to in S. 20 of the Indian Arms Act. *Ali Ahmad v. Emperor.*

A. I. R. 1923 Lah. 434.

WHIPPING

—Concurrent sentences of whipping, legality and meaning of.

A sentence of whipping in one case cannot be directed to run concurrently with a similar sentence in another, the word "concurrent" properly applies only to sentences of imprisonment and the literal meaning of "concurrent sentences of whipping" would be that the prisoner is to be flogged by two operators simultaneously, a monstrous result which could not have been intended. *Emperor v. Eng Gyaung.*

12 Cr. L. J. 465 :
11 I. C. 1001 : 4 Bur. L. T. 174 :
6 L. B. R. 22.

WHIPPING ACT (VI OF 1864)

—S. 2—*Whipping in addition to imprisonment—House-breaking—House-theft—Previous conviction.*

On a finding that the accused having been previously convicted of an offence under S. 380, I. P. C., committed "house-breaking by night and theft of property valued at Rs. 35, an offence punishable under S. 457, I. P. C., a sentence of imprisonment and whipping is illegal. *Emperor v. Nga To.* 4 Cr. L. J. 130 :
3 L. B. R. 161 : 12 Bur. L. R. 269.

—Ss. 2, 3—*Whipping in addition to imprisonment.*

A person convicted under S. 487, I. P. C., cannot be punished with whipping in addition to imprisonment, if he has not been previously convicted either of the same offence or of any offence falling under the same group of offences specified in S. 2. *Gajju v. Emperor.*

2 Cr. L. J. 105 :
2 A. L. J. 173.

WHIPPING ACT (IV OF 1864)

—S. 3.

"Previously convicted" means convicted before the commission of the second offence. *Emperor v. La Saing.* 7 Cr. L. J. 212 :
U. B. R. Cr. 1907-09 Whipping 1.

—S. 5—*Age of accused.*

The finding of a Magistrate as to the age of the accused is final under S. 5, Explanation of the Whipping Act. *Emperor v. Po Ba.*

15 Cr. L. J. 538 (b) :
24 I. C. 946 : 7 Bur. L. T. 292 :
A. I. R. 1914 L. Bur. 212.

—S. 5—*Juvenile offender—Duty of Judge to state it as his opinion that accused was under 16 years of age.*

S. 5 can apply only to persons who are juvenile offenders at the time of sentence and the Judge should state it as his opinion that the accused is under 16 years of age, if he really thinks so and the fact that the accused says he is under 16, is not sufficient unless the Judge believes him. *Nga Saw v. Emperor and Nga Po On v. Emperor.*

2 Cr. L. J. 133 :
11 Bur. L. R. 8.

—S. 5—*Whipping carried out—No other punishment can be given.*

Where the sentence of whipping has been carried out, no other punishment can be awarded, even if the sentence was inadequate. *Emperor v. Po Ba.*

15 Cr. L. J. 538 (b) :
24 I. C. 946 : 7 Bur. L. T. 292 :
A. I. R. 1914 L. Bur. 212.

—S. 5—*Whipping in lieu of other punishment—Sentence of fine in addition to whipping.*

The Whipping Act does not empower a Court, after passing a sentence of imprisonment, to commute it to a sentence of whipping. The sentence of whipping should be passed directly. S. 5 does not authorize the Court to pass sentence of whipping in lieu of transportation or imprisonment and at the same time to pass sentence of fine. *Emperor v. Tha Kin.*

10 Cr. L. J. 120 :
2 I. C. 620 : 5 L. B. R. 22.

WHIPPING ACT (IV OF 1909)

—Object.

The Whipping Act is not a special law. It creates not fresh offences but merely provides a supplementary or alternative punishment for offences already primarily punishable under the Penal Code, or, in the case of juvenile offenders, under other enactments. *Emperor v. Po Han.*

15 Cr. L. J. 3 :
22 I. C. 147 : 7 L. B. R. 63 :
7 Bur. L. T. 99 : A. I. R. 1914 L. Bur. 145.

—S. 3—*By others than juveniles—Abetment of offences in whipping if can be given.*

Persons, other than juvenile offenders, who are convicted of abetment of theft or abetment of any other offence mentioned in S. 3 are not liable to the punishment of whipping. *Emperor v. Po Han.*

15 Cr. L. J. 3 :
22 I. C. 147 : 7 L. B. R. 63 :
7 Bur. L. T. 99 : A. I. R. 1914 L. Bur. 145.

WHIPPING ACT (IV OF 1909)

———S. 3—*Double or concurrent sentences of whipping—Legality of.*

Double sentences of whipping are illegal and concurrent sentences are also illegal. The word "concurrent" properly applies only to sentences of imprisonment. S. 35, Cr. P. C., which authorizes the passing of concurrent sentences, says nothing of whipping but only imprisonment or transportation. When a person is convicted of two offences at one trial, the proper course is to sentence the accused to one of whipping in lieu of any other punishment. *Emperor v. Yenkalaswamy*. 38 Cr. L. J. 878 :

170 I. C. 254 : 1937 Rang. 366 :

10 R. Rang. 70 : A. I. R. 1937 Rang. 286.

———S. 3—*Offence under S. 380, Penal Code (Act XLV of 1860)—Whipping, if can be substituted for order of detention in Borstal School.*

In a case of an offence under S. 380, I. P. C., a Magistrate has two alternatives before him. He may send an offender to prison or, in lieu thereof, he may either cause him to be whipped or send him to Borstal; but the power to order a person to be whipped is only in lieu of another punishment under the Code, and once an order of detention in Borstal has been passed, there is no power to alter this order to a sentence of whipping. Where a Magistrate has ordered detention in Borstal School of an offender, the Sessions Judge has no power to substitute for it a sentence of whipping as that would be enhancing the sentence. *The King v. Kyaw Aye*. 41 Cr. L. J. 455 :

187 I. C. 405 : 1939 Rang. 744 :

12 R. Rang. 332 : A. I. R. 1940 Rang. 81.

———S. 3—"Punishment", meaning of—*Sentence of imprisonment or fine, if can be added to whipping.*

The word "punishment" in S. 3, means "the total of punishments awardable." In lieu of punishing an offender with imprisonment and fine, the Court may punish him with whipping but it cannot sentence him to whipping and also impose a fine. *Varadarajulu v. Emperor*. 25 Cr. L. J. 1185 :

82 I. C. 49 : 20 L. W. 881 :

A. I. R. 1925 Mad. 183.

———S. 3—*Whipping as additional punishment—Legality of.*

Under S. 3, a whipping can only be imposed in lieu of any other punishment and a man cannot be whipped after he has already served part of a sentence of imprisonment. *Emperor v. Po Wun*.

18 Cr. L. J. 773 :

41 I. C. 149 : 8 L. B. R. 366 :

10 Bur. L. T. 211 :

A. I. R. 1917 L. Bur. 76.

———S. 3—*Whipping in addition to imprisonment.*

An order under S. 565, Cr. P. C., in addition to sentence of whipping and in the absence of a sentence of imprisonment is

WHIPPING ACT (IV OF 1909)

illegal. Where a sentence of whipping is passed under S. 3, Whipping Act, a sentence of imprisonment in respect of the same offence is illegal. *Emperor v. Etwaru Dome*.

36 Cr. L. J. 1497 :

158 I. C. 991 : 16 P. L. T. 586 : 2 B. R. 38 :

15 Pat. 44 : 8 R. P. 232 :

A. I. R. 1935 Pat. 435.

———S. 3—*Whipping in addition to imprisonment, legality of.*

Under S. 3, a sentence of whipping may be passed in lieu of any punishment to which the offender may be liable under Penal Code, but it cannot be passed in addition to such imprisonment, and a man cannot be whipped after he has already served part of a sentence of imprisonment. *Nga Tun Sein v. Emperor*. 19 Cr. L. J. 207 :

43 I. C. 623 : 3 U. B. R. 1917, 32 :

A. I. R. 1918 U. Bur. 1.

———Ss. 3, 4—*Offender under S. 380, Penal Code, if can be sentenced to whipping in addition to punishment of imprisonment or fine.*

An offender under S. 380, Penal Code, can be sentenced to whipping but only in lieu of and not in addition to the punishment of imprisonment or fine to which he is liable under the Code. *Shiv Narain v. Emperor*. 40 Cr. L. J. 521 :

181 I. C. 79 (2) : 1939 O. W. N. 414 :

1939 O. L. R. 238 :

11 R. O. 279 : 14 Luck. 634 :

A. I. R. 1939 Oudh 222.

———S. 3 (d)—*Whipping, sentence of, legality of.*

S. 3 (d) does not make every house-trespass or house-breaking punishable with whipping, but only when the commission of the offence is "in order to the committing of any offence punishable with whipping" under that section. The offence of outraging a woman's modesty under S. 354, Penal Code, is not punishable with whipping under S. 3 (d), Whipping Act, and consequently the offence of house-breaking in order to outrage the modesty of a woman is not so punishable. *Darbari Lal v. Emperor*.

26 Cr. L. J. 1282 :

89 I. C. 140 : 23 A. L. J. 894 :

A. I. R. 1925 All. 591.

———S. 4—*Sentence of whipping, legality of.*

Before a sentence of whipping in addition to imprisonment can be passed on a person found guilty under S. 394, I. P. C., there must be also a finding that he himself caused hurt while committing the robbery. *Po Thaug v. Emperor*. 29 Cr. L. J. 618 :

109 I. C. 810 : 6 Rang. 48 :

I. L. T. 40 Rang. 50 :

A. I. R. 1928 Rang. 112.

———Ss. 4, 5—*Rape—Juvenile offender—Sentence of whipping alone—Power to enhance sentence to one of imprisonment.*

Under Ss. 4 and 5, a sentence of imprison-

WHIPPING ACT (IV OF 1909)

ment can be inflicted as well as whipping in the case of a juvenile. A sentence of whipping passed in the case of a juvenile in a rape case may, therefore, be enhanced on appeal by inflicting a sentence of imprisonment. A sentence of imprisonment may be inflicted in such a case even though the sentence of whipping passed by the trial Court has been carried out. *Emperor v. Motha*.

30 Cr. L. J. 1087 :
119 I. C. 572 : 1929 A. L. J. 224 :
I. R. 1929 All. 1068 :
A. I. R. 1929 All. 322.

S. 4 (b)—Application of.

The sentence of whipping cannot be inflicted in the case of an attempt to commit an offence. S. 4, cl. (b) does not apply to convictions under S. 377 read with S. 511, Penal Code. *Munshi Ram v. Emperor*.

39 Cr. L. J. 233 :
172 I. C. 905 : 10 R. A. 434 (2) :
1937 A. L. J. 944 :
1937 A. W. R. 902 :
A. I. R. 1938 All. 16.

S. 5—Court, meaning of.

The word 'Court' in the Explanation to S. 5 of the Whipping Act, includes the Appellate Court and a finding of the trial Court that an offender is under sixteen years is not, therefore, final binding on the Appellate Court. *Emperor v. Motha*.

30 Cr. L. J. 1087 :
119 I. C. 572 : 1929 A. L. J. 224 :
I. R. 1929 All. 1068 :
A. I. R. 1929 All. 322.

S. 5—Object.

S. 5 is meant to be applied in proper cases alternatively with Ss. 3 and 4 which apply to juvenile offenders as well as to offenders who are not within the definition of juvenile offenders. S. 5 does not supersede S. 4. *Tarini Mahlon v. Emperor*.

34 Cr. L. J. 10 :
140 I. C. 11 (1) : 13 P. L. T. 573 :
I. R. 1932 Pat. 288 :
A. I. R. 1932 Pat. 334.

S. 5—Sentence of whipping—Additional punishment.

Under S. 5, the sentence of whipping is passed either in lieu of a single punishment or a combined punishment, and no other punishment can be given in addition to it. *Kishun Singh v. Emperor*.

25 Cr. L. J. 772 :
81 I. C. 260 : 21 A. L. J. 916 :
46 All. 174 : A. I. R. 1924 All. 455.

S. 45—Whipping awarded to juvenile—No other sentence can be passed.

If the sentence of whipping is passed on a juvenile offender under the Whipping Act, no other sentence can be passed, for the whipping is considered to be in lieu of either a single punishment or a combined punishment. *Lurkhur v. Emperor*.

36 Cr. L. J. 368 :
153 I. C. 582 : 57 All. 395 :
4 A. W. R. 669 : 7 R. A. 521 :
A. I. R. 1934 All. 976.

WHIPPING (BURMA AMENDMENT) ACT OF 1927

S. 3—Whipping as alternative punishment—No other sentence can be given.

If whipping is inflicted as an alternative punishment in a case where the offence charged is punishable with imprisonment and fine, no other punishment is to be added. *Emperor v. Abdul Man*.

36 Cr. L. J. 1129 :
157 I. C. 244 : 13 Rang. 115 :
8 R. Rang. 90 : A. I. R. 1935 Rang. 219 (2).

WILD BIRDS PROTECTION ACT (X OF 1887)

Wild Birds and Animals Protection Act (VIII of 1912), S. 3—Interpretation of old rules.

Though the rules framed under the Wild Birds Protection Act have not been superseded by the rules framed under Act VIII of 1912, they are to be interpreted by the sections of the latter Act. *Mahomed Jamal v. Emperor*.

16 Cr. L. J. 550 :
29 I. C. 822 : 8 Bur. L. T. 20 :
A. I. R. 1915 U. Bur. 14.

WILD BIRDS AND ANIMALS PROTECTION ACT (VIII OF 1912)

S. 4—Offence under, what constitutes.

To convict a person under S. 4, it is necessary to prove that he has either killed or attempted to kill one of the animals or birds mentioned in the Schedule to the Act. Merely wandering about with a gun round a reserved nursery does not constitute an offence. *Batan Singh v. Emperor*.

29 Cr. L. J. 238 :
107 I. C. 288.

WIRELESS TELEGRAPHY ACT (XVII OF 1933)

Ss. 6, 2 (2)—Licence for wireless set.

Rules made under Act, r. 2 (c)—"Complete wireless set" includes incomplete set which becomes complete when articles mentioned in definition in r. 2 (c) are added to it—Wireless set with one valve broken and plug connections wanting and incapable of receiving sound falls under "complete wireless set"—Its possession without licence is punishable under S. 6. *Ramdayal v. Emperor*.

41 Cr. L. J. 580 :
188 I. C. 371 : 1940 N. L. J. 299 :
13 R. N. 1 : A. I. R. 1940 Nag. 263.

WITNESS

Accused, when competent witness.

Until the accused who pleads guilty is convicted or acquitted, he is still an accused person and is, therefore, not a competent witness. *Sukdev Tewari v. Emperor*.

10 Cr. L. J. 484 :
4 I. C. 57 : 9 C. L. J. 291 :
13 C. W. N. 552.

Appreciation of evidence.

It is entirely wrong to treat a witness as discredited merely because the cross-

LEGAL PRACTITIONER

———Misconduct.

A Pleader, a young man of thirty, was permitted to engage in business and to abandon for the time being his profession as a lower grade Pleader. While he was under this voluntary suspension, he started with other persons the idea of entering into a Syndicate and he embarked upon a scheme which the Courts decided was nothing more nor less than a common lottery. He was convicted of taking part in that lottery. On the question whether a person of good character who has suffered one such conviction should be necessarily debarred from practising as a lower grade Pleader should he see fit and choose to do so: *Held*, that the Pleader behaved not only wrongly but very foolishly in acting as he did, but considering his age, it was not necessary in connection with such an offence committed by a man of his age to take the step which might have serious consequences for him and his name should not be struck off the register. *In the matter of: M. and another, Lower Grade Pleader, Nyaunglebin.*

37 Cr. L. J. 1118 :
164 I. C. 350 : 9 R. Rang. 122 :
A. I. R. 1936 Rang. 382.

———Misconduct.

A professional gentleman should, as far as possible, stick to the side who first employed him. It might be a very good practice if, when gentlemen were offered instructions by the opposite side in any connected case, they should at least, in the first place, inform their first clients. *In the matter of: Amba Prasad.*

16 Cr. L. J. 420 :
28 I. C. 996 : A. I. R. 1915 All. 155.

———Misconduct.

Advocate certifying that he recovered his fees by means of pro-note in contravention of r. 1, Chap. 21, Allahabad High Court General Rules. Deliberately adopting such form constitutes professional misconduct. *In the matter of: Mr. Shiva Narain Jafa. (F. B.)*

35 Cr. L. J. 421 :
147 I. C. 608 : 1934 A. L. J. 333 :
6 R. A. 516 (2) : 3 A. W. R. 586 :
A. I. R. 1934 All. 109 (2).

———Misconduct—Advocate—Conviction for offence—Removal from Rolls, proceedings for—Propriety of conviction, whether can be gone into.

In a proceeding against an Advocate to show cause why he should not be suspended or struck off the Rolls on the ground of his having been convicted of a criminal offence, he cannot go behind the conviction and show that the conviction was, in the circumstances, improper. *In the matter of: Tasadduq Ahmad Khan Sharwani.*

23 Cr. L. J. 128 :
65 I. C. 560 : 4 U. P. L. R. All. 1 :
20 A. L. J. 200 : 44 All. 352 :
A. I. R. 1922 All. 140.

———Misconduct.

Advocate receiving money from client to

LEGAL PRACTITIONER

file appeal—Appeal not filed being barred by time—Application of money received not satisfactorily explained—Client withholding correct information: *Held*, Advocate should not be suspended or removed and Court cannot be uninfluenced by client's conduct. *In the matter of: Mr. Shah Muhammad.*

34 Cr. L. J. 954 :
145 I. C. 278 : 6 R. L. 91 (2) :
A. I. R. 1933 Lah. 575.

———Misconduct.

Agreement with client to take certain percentage of proceeds of suit as remuneration only if it is successful, amounts to professional misconduct. *In the matter of: R, an Advocate, Madras. (S. B.)*

41 Cr. L. J. 83 :
184 I. C. 606 : 1939 M. W. N. 766 :
1939, 2 M. L. J. 320 : 50 L. W. 234 :
I. L. R. 1940 Mad. 17 : 12 R. M. 472 :
A. I. R. 1939 Mad. 772.

———Misconduct—Appropriation of client's money by Advocate—Name struck off the roll—Reinstatement, when advisable.

Where an Advocate misappropriates a considerable sum of his clients, the act of professional misconduct committed by him is a very grave one, and it is not possible to allow him to continue practising in an honourable profession. But that does not mean that the Court is precluded from reinstating him when adequate punishment has been imposed and he has shown that he has rehabilitated himself in such a manner that he is fitted to be admitted into his profession again. *In the matter of: K. J., a Vakil, Madras. (S. B.)*

41 Cr. L. J. 163 :
185 I. C. 257 : 50 L. W. 548 :
1939 M. W. N. 1038 : 1939, 2 M. L. J. 632 :
I. L. R. 1940 Mad. 81 : 12 R. M. 527 :
A. I. R. 1939 Mad. 906.

———Misconduct.

As a general rule the only step which can be taken against an Advocate who abuses his privilege is for the Court to take disciplinary action. *Ramkrishna v. Davar.*

138 I. C. 543 : 34 Bom. L. R. 443 :
I. R. 1932 Bom. 401 : A. I. R. 1932 Bom. 199.

———Misconduct.

As regards a Pleader who holds a licence to practise as such, no order of suspension or dismissal can be made except by the Court itself and except as a result of a judicial proceeding contemplated and provided for by the Act itself. *In re: Ramesh Chandra Gupta, a Pleader, Patuakhali. (S. B.)*

37 Cr. L. J. 590 :
162 I. C. 517 : 40 C. W. N. 377 :
63 C. L. J. 127 : 63 Cal. 855 : 8 R. C. 605 :
A. I. R. 1936 Cal. 205.

———Misconduct—Bar Councils Act, 1926, S. 10 (1)—Conviction of Advocate for criminal offence, whether evidence of misconduct.

Held (1) that the fact that the Advocates concerned had been convicted of a criminal,

WITNESS

examining Counsel has asked some questions impeaching his character when the answers to those questions are quite satisfactory. *Ragho Prasad v. Emperor*. 30 Cr. L. J. 896 : 118 I. C. 333 : I. R. 1929 Pat. 525 : A. I. R. 1929 Pat. 180.

———*Calling on party's responsibility.*

Where an application for summoning witnesses has been put later, and the summonses are issued on the responsibility of the accused on the full understanding that the Court will not grant any adjournment if the witnesses do not appear, the accused cannot say that he had no opportunity of producing his evidence, if the witnesses do not turn up. *Puran v. Emperor*.

27 Cr. L. J. 383 :
92 I. C. 895 : A. I. R. 1926 All. 298.

———*Credibility.*

Statements of witnesses who do not say anything about the commission of an offence which they have witnessed to anybody till the time of their examination by the Police and who on being questioned previously stated that they knew nothing cannot be relied on. *Inder Sain v. Emperor*.

21 Cr. L. J. 418 :
56 I. C. 210 : A. I. R. 1920 Lah. 144.

———*Duty of Magistrate to enforce attendance.*

Where a Magistrate has once issued summonses for the attendance of witnesses, he is bound to have the processes enforced before disposing of the case. *Rahimuddi Howladar v. Emperor*.

9 Cr. L. J. 72 :
35 Cal. 1093.

———*False witness.*

A Public Prosecutor is not bound to call a witness who he has reason to believe would give false evidence. *Emperor v. Reed*.

23 Cr. L. J. 742 :
69 I. C. 630 : 49 Cal. 27 :
A. I. R. 1922 Cal. 461.

———*Examination-in-chief—Reply, admissibility of.*

The evidence elicited from a prosecution witness under examination-in-chief in answer to a question which could only be put in cross-examination is inadmissible unless before the question was put, the prosecution declared the witness to be hostile. *Jagdeo Singh v. Emperor*.

24 Cr. L. J. 69 :
71 I. C. 117 : 1 Pat. 758 : 4 P. L. T. 232 :
A. I. R. 1923 Pat. 62.

———*Deliberate false statement—Prosecution for perjury.*

A witness, who deliberately gives false evidence but who, when confronted with incontestable proof of his falsehood, admits it to be false, is guilty of perjury. *Public Prosecutor v. Arumugam Chetty*.

13 Cr. L. J. 752 :
17 I. C. 64.

WORDS AND PHRASES

———*Prosecution witnesses.*

It is competent to a Sessions Judge to suggest to the prosecutor that it would be convenient if a particular witness were called at an earlier or later stage of the trial; but it is not within his province to refuse to allow the prosecutor to call his witnesses in the order he chooses. *Emperor v. Ali Mohammad*.

2 Cr. L. J. 191 :
8 O. C. 55.

———*Giving evidence on dais.*

It is not desirable that witnesses, whether they are Government Officers or not, should give their evidence on the dais by the side of the Magistrate. All witnesses without distinction should give their evidence in the witness-box, or other place in the Court room that is set apart for this purpose. *Wadhawa Singh v. Emperor*.

22 Cr. L. J. 669 :
63 I. C. 461 : 3 U. P. L. R. Lah. 78.

———*Time for cross-examination.*

It is illegal to fix an arbitrary limit of time for the cross-examination of witnesses by the accused. *Emperor v. Asiruddin Sarkar*.

22 Cr. L. J. 524 :
62 I. C. 412 : 34 C. L. J. 172 :
A. I. R. 1921 Cal. 118.

WORDS AND PHRASES

Accident. See Motor Vehicles Act, 1914, S. 16.

Accused. See Calcutta Municipal Act, 1923, Ss. 3, 363, 488, 536.

Acquittal. See Cr. P. C., 1898, Ss. 100, 408, 439.

Acting or purporting to Act in the discharge of official duty. See Cr. P. C., 1898, Ss. 197, 476.

Actual possession. See Cr. P. C., 1898, S. 145.

Adulteration. See U. P. Prevention of Adulteration Act, 1912, S. 5.

Allow. See Motor Vehicles Act, 1914, Ss. 6, 16.

Annually. See Madras Motor Vehicles Rules, 1923, R. 30 (1).

Any direction. See Penal Code, 1860, S. 339.

Armed. See Arms Act, 1878, S. 19, Cl. (k).

Arms. See Arms Act, 1878, Ss. 4, 19 (f)

Assault. See Cr. P. C., 1898, Ss. 224, 231.

At large. See Cr. P. C., 1898, S. 110.

Attempt. See Penal Code, 1860, S. 420.

Belong. See Penal Code, 1860, S. 400.

Book debts. See Companies Act, 1913, Ss. 132, 282.

Breaking. See Forest Act, 1878, S. 32 (c).

Breaking the ground. See Forest Act, 1878, S. 32 (c)

WORDS AND PHRASES

- Building.** See (i) Bombay City Municipalities Act, 1925, S. 123.
(ii) Bombay District Municipal Act, 1901, S. 3.
(iii) Penal Code, 1860, Ss. 378, 380, 441, 442, 447, 452, 454.
- By habit.** See Cr. P. C., 1898, S. 110.
- By habit and habitually.** See Cr. P. C., 1898, S. 110.
- Carrier.** See Calcutta Municipal Act, 1923, S. 175, Sch. VI, Item No. 18.
- Carry on business.** See Calcutta Municipal Act, 1899, S. 198.
- Case.** See Cr. P. C., 1898, Ss. 4 (j), 14.
- Caste.** See Penal Code, 1860, S. 499, Expl. IV.
- Causing of a circumstance to exist.** See Penal Code, 1860, Ss. 192, 194.
- Charged.** See Penal Code, 1860, S. 224.
- Chosen.** See Cr. P. C., 1898, Ss. 279, 326.
- Classes.** See Penal Code, 1860, S. 153-A.
- Common gaming house.** See (i) Burma Gambling Act, 1899, S. 12.
(ii) Calcutta Police Act, 1866, Ss. 3, 44, 46, 47.
(iii) Public Gambling Act, 1867, Ss. 1, 3.
- Common object.** See Penal Code, 1860, Ss. 149, 302, 326.
- Community.** See Cr. P. C., 1898, S. 110.
- Compelled to answer.** See Evidence Act, 1872, S. 21.
- Complaint.** See (i) Cr. P. C., 1898, Ss. 4 (b), 74 (4), 107, 190, 250.
(ii) Penal Code, 1860, S. 18.
- 'Connivance'.** See Penal Code, 1860, S. 497.
- Control.** See Bombay District Police Act, 1890, S. 53 (1) (a) (b).
- 'Counterfeit'.** See Penal Code, 1860, S. 486.
- Court.** See Cr. P. C., 1898, Ss. 112, 195, 476.
- Cowardice.** See Police Act, 1861, S. 29.
- Crops.** See Cr. P. C., 1898, Ss. 145, 146, 148 (5).
- Dakhal sadharan.** See Penal Code, 1860, S. 143.
- Dealing with.** See Madras Local Boards Act, 1920, Ss. 193, 207.
- Death or transportation for life.** See Cr. P. C., 1898, S. 497.
- Delivery.** See Arms Act, 1878, S. 22.

WORDS AND PHRASES

- Desperate and dangerous.** See Cr. P. C., 1898, S. 110.
- Detained.** See Penal Code, 1860, S. 498.
- Dishonestly.** See Penal Code, 1860, S. 379.
- Distinct offences.** See Cr. P. C., 1898, Ss. 235, 403.
- Driver.** See Motor Vehicles Act, 1914.
- Employed.** See (i) Factories Act, 1911, S. 2, (2) (3).
(ii) Railways Act, 1890, Ss. 3, (7), 138.
- Employment.** See Factories Act, 1911, Ss. 2, (2) (3), 23, 41.
- Enquiry.** See Cr. P. C., 1898, S. 4 (k).
- Enticing.** See Penal Code, 1860, S. 366.
- Entrusted.** See Penal Code, 1860, S. 405.
- "European British Subject."** See Cr. P. C., 1898, S. 4 (g).
- "Evidence."** See Bankers Books Evidence Act, 1891, Ss. 5, 2.
- Examined.** See Cr. P. C., 1898, S. 342.
- Excise Officer.** See U. P. Excise Act, 1910, S. 3 (2).
- Fact.** See Evidence Act, 1872, S. 27.
- Factory.** See Factories Act, 1911, Ss. 2 (2), (3), 23, 41.
- False charge.** See Penal Code, 1860, S. 182.
- Forcible and wrongful dispossession.** See Cr. P. C., 1898, S. 145 (4).
- Forest produce.** See Forest Act, 1878, S. 2.
- Gang.** See Penal Code, 1860, S. 401.
- General reputation.** See Cr. P. C. 1898, S. 110.
- Give information.** See Penal Code, 1860, S. 182.
- Goods.** See Penal Code, 1860, S. 294-A.
- High Court.** See Sonthal Parganas Justice Regulation, 1893, S. 4, Cl. (1).
- Imported.** See Punjab Excise Act, 1914, S. 61 (1) (a).
- In the scope of employment.** See Explosives Act, 1884, O. V. rr. 32, 138.
- In view of.** See Cr. P. C., 1898, S. 59.
- Inquiry.** See Cr. P. C., 1898, Ss. 202, 346.
- Instigation.** See Penal Code, 1860, Ss. 114, 380.
- Institution of inquiry.** See Cr. P. C., 1898, S. 147.
- Institution of proceedings.** See Arms Act, 1878, S. 19 (f), 29.
- Instrument of gaming.** See Public Gambling Act, 1867, S. 3.
- Intention.** See Penal Code, 1860, S. 425.
- Intoxicated.** See Motor Vehicles Act, 1914, S. 5.

WORDS AND PHRASES

- Involve.** See Cr. P. C., 1898, S. 106.
- Labelled.** See Bihar and Orissa Food Adulteration Act, 1919, Ss. 8 (1), 14 (2).
- "Letting for hire".** See Motor Vehicles Rule (Bom.), 1915, r. 3 (1).
- Living in adultery.** See Cr. P. C., 1898, S. 488 (5).
- Machinery.** See Madras City Municipalities Act, 1919, S. 288.
- Makes.** See Penal Code, 1860, Ss. 464, 467.
- Maliciously.** See Explosive Substances Act, 1908, S. 4.
- May.** See Registration Act, 1908, Ss. 82, 83.
- Obstruction.** See Penal Code, 1860, S. 186.
- "Occupier".** See Explosives Act, 1884, S. 8.
- Offence.** See also (i) Calcutta Municipal Act, 1923, Ss. 3, 363, 488, 536.
(ii) Cr. P. C., 1898, Ss. 4 (o), 20.
(iii) Penal Code, 1860, Ss. 40, 441.
- Offender.** See Penal Code, 1860, S. 201.
- "Opium water".** See Opium Act, 1878, S. 4.
- Ordinarily used.** See Penal Code, 1860, S. 304.
- "Other sums".** See Madras Local Boards Act, 1920, S. 221.
- Owner.** See City of Bombay Municipal Act, 1888, S. 3 (m).
- Pleader.** See Cr. P. C., 1898, S. 4 (1) (r).
- Plying for hire.** See also (i) Madras Local Boards Act, 1920, S. 160.
(ii) Motor Vehicles Rules (Bom.), 1915, r. 3 (1).
- Police Officer.** See Evidence Act, 1872, Ss. 25, 125.
- Police report.** See Cr. P. C., 1898, Ss. 4 (h), 74 (4), 190, 250.
- Precincts.** See Factories Act, 1911, Ss. 2 (2), (3), 23, 41.
- Premises.** See Factories Act, 1911, Ss. 2 (2), (3), 23, 41.
- Preventing personal service.** See Penal Code, 1860, S. 178.
- Proceeding.** See Cr. P. C., 1898, Ss. 195 (1), (c), 476, 587.
- "Process".** See Cr. P. C., 1898, S. 340.
- Produced.** See Cr. P. C., 1898, Ss. 195 (1), (c), 476, 478.
- Production.** See Cr. P. C., 1898, Ss. 195 (1), (c), 476, 587.
- Public conveyance.** See Motor Vehicles Act, 1914, S. 16.
- Public function.** See Penal Code, 1860, S. 186.

WORDS AND PHRASES

- Public place.** See also (i) Penal Code, 1860, S. 159.
(ii) Public Gambling Act, 1867, S. 18.
- Public road.** See Madras Local Boards Act, 1920, S. 3 (18).
- "Pyaunchi".** See Opium Act, 1878, Ss. 3, 9 (a).
- Quashing of proceedings.** See Cr. P. C., 1898, S. 428.
- Record.** See Cr. P. C., 1898, S. 112.
- Reliable evidence.** See Cr. P. C., 1898, Ss. 133, 139-A.
- Report.** See Cr. P. C., 1898, S. 190 (1) (b).
- Required.** See Cr. P. C., 1898, Ss. 279, 326.
- Return.** See Penal Code, 1860, S. 4.
- Same transaction.** See also (i) Cattle Trespass Act, 1871, S. 20.
(ii) Cr. P. C., 1898, Ss. 285, 289, 403.
- Sealed.** See Bihar and Orissa Food Adulteration Act, 1919, Ss. 3 (1), 14 (2).
- Sell.** See Bombay Abkari Act, 1878, S. 45 (c).
- Statement.** See Cr. P. C., 1898, S. 162.
- Storing.** See Madras Local Boards Act, 1920, Ss. 193, 207.
- Street.** See also (i) Bombay District Municipal Act, 1901, S. 3 (12).
(ii) Madras City Municipal Act, 1919, S. 216.
- Sufficient ground for committing.** See Cr. P. C., 1898, S. 209.
- Taking.** See Penal Code, 1860, S. 366.
- Ta'zirat-i-hind.** See Penal Code, 1860, S. 124-A.
- Tender.** See Penal Code, 1860, S. 173.
- Timber.** See Forest Act, 1878, S. 2.
- To enforce any right.** See Penal Code, 1860, S. 141 (4).
- Tout.** See Legal Practitioners (Amendment) Act, 1926, Ss. 3, 36.
- Transferred malice.** See Penal Code, 1860, S. 302.
- Trespass.** See Penal Code, 1860, S. 297.
- Tried.** See Cr. P. C., 1860, Ss. 247, 403.
- Unlawfully.** See Explosive Substances Act, 1908, S. 4.
- Used for the profit or gain of the owner.** See Bombay Prevention of Gambling Act, 1887, S. 3.
- Violation of duty.** See Police Act, 1861, S. 29.
- Wrongful restraint.** See Penal Code, 1860, S. 390.
- Zaildars.** See Cr. P. C., 1898, S. 110.

WORDS AND PHRASES

———"Carriage"—Meaning of.

The term 'carriage' is wide enough to include a motor car. *Hira Chand v. Emperor*.

32 Cr. L. J. 946 :
132 I. C. 694 : 32 P. L. R. 639 :
I. R. 1931 Lah. 662.

———"Commissioner of Sind."

The Commissioner of Sind is not a Local Government. *Sugan Chand v. Seth Narain Das*.

34 Cr. L. J. 171 :
141 I. C. 530 : I. R. 1933 Sind 60 :
A. I. R. 1932 Sind 177.

———"Domicile"—Meaning of.

Domicile connotes the place in which a man has voluntarily fixed the habitation of himself and his family, and not for a special or temporary purpose. *Emperor v. Man Mohan*.

34 Cr. L. J. 1184 :
146 I. C. 193 : 6 R. Rang. 77 :
A. I. R. 1933 Rang. 193.

———"Enquiry" and "trial," meaning of—
Trial when commences.

A trial is a judicial proceeding which ends in conviction or acquittal. All other proceedings are mere enquiries. Therefore, if a Magistrate on receipt of a complaint issues process against the accused and ultimately concludes that an offence triable at Sessions has been committed and commits the accused, the trial does not begin until the accused appears at the Sessions and the proceedings before the Magistrate constitute an enquiry only. *Hema Singh v. Emperor*.

31 Cr. L. J. 961 :
126 I. C. 146 : 9 Pat. 155 :
A. I. R. 1929 Pat. 644.

———"Knowledge"—What is.

Knowledge means the state of mind entertained by a person with regard to existing facts which he has himself observed, or the existence of which has been communicated to him by persons whose veracity he has no reason to doubt. *Emperor v. Zamin*.

33 Cr. L. J. 275 :
136 I. C. 243 : 8 O. W. N. 1325 :
I. R. 1932 Oudh 99 : A. I. R. 1932 Oudh 28.

———"May"—Meaning of.

Though the word "may" is sometimes construed as "shall", obviously its *prima facie* effect is merely permissive and not obligatory. *Natvarlal Nagindas v. Emperor*.

32 Cr. L. J. 722 :
131 I. C. 476 : 33 Bom. 312 :
I. R. 1931 Bom. 300 : A. I. R. 1931 Bom. 198.

———"Persona designata"—Meaning of.

The expressions, 'persona designata' and 'Court' are not mutually exclusive. *Mahabaleswarappa v. Gopalaswami Mudaliar*.

36 Cr. L. J. 895 :
156 I. C. 311 : 1935 M. W. N. 152 (2) :
41 L. W. 503 : 69 M. L. J. 589 :
58 Mad. 954 : 7 R. M. 679 :
A. I. R. 1935 Mad. 673.

———"Prima facie"—Meaning of.

Prima facie means that there is ground for

WORKMAN'S BREACH OF CONTRACT
ACT (XIII OF 1859)

proceedings and does not mean "proof." *Sher Singh v. Jitendranath Sen*.

33 Cr. L. J. 3 :
134 I. C. 1045 : 54 C. L. J. 253 :
36 C. W. N. 16 : 59 Cal. 275 :
I. R. 1932 Cal. 5 : A. I. R. 1931 Cal. 607.

———"Respectable witness,"—Meaning of.

Respectability does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability provided he is not disreputable in any way, that is, if he is not a thief or a criminal of some kind or a person perhaps of grossly immoral habits. Being a prosecution witness is not sufficient to deprive one of one's title to respectability. *Ashfaq v. Emperor*.

37 Cr. L. J. 1108 :
165 I. C. 25 : 1936 A. L. J. 958 :
9 R. A. 247 (1) : 1936 A. W. R. 731 :
A. I. R. 1936 All. 707.

———"Swaraj"—Meaning of.

In its liberal meaning "Swaraj" means "Self-Government" and its ordinary acceptance is "Home Rule" under the Government. *Veni Bhusan Roy v. Emperor*.

6 Cr. L. J. 297 :
11 C. W. N. 1050 : 6 C. L. J. 699 :
I. L. R. 34 Cal. 991 : 24 Cal. 991.

WORKMAN'S BREACH OF CONTRACT
ACT (XIII OF 1859)

———"Applicability of."

The Workman's Breach of Contract Act does not apply where an advance is literally or practically in the nature of a debt and where, even assuming that the advance is not in the nature of a debt, the conditions are inequitable. Nor does the Act apply where the advance is not to be paid off by the work done but out of the wages which the workman is to receive. *In re : Abdul Rasul Ismailji*.

12 Cr. L. J. 402 :
11 I. C. 586 : 13 Bom. L. T. 548.

———"Applicability of."

The Workman's Breach of Contract Act was not intended to apply to a contract to perform agricultural service. *Emperor v. Khuda Bakhsh*.

16 Cr. L. J. 229 :
27 I. C. 901 : 38 P. R. 1914 Cr. :
207 P. L. R. 1915 : A. I. R. 1914 Lah. 561.

———"Applicability of"—Loan advanced to
workman not for doing any specific work.

The loans that can be recovered under the Act are the loans which are advanced by employers to their workmen for doing specific work. Where a loan was advanced to a workman not for doing any particular work, and the work which he was doing at the time that he took the loan had been finished and nothing of it remained to be done : *Held*, the Act did not apply. *Giga v. Muhammad Amin*.

13 Cr. L. J. 863 :
17 I. C. 799 : 10 A. L. J. 468 :
35 All. 61.

———"Applicability."

The Act is intended to apply only to cases of advance ; it does not apply to cases where the

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

consideration is so grossly inadequate as to suggest that the so-called advance was merely a device to bring the contract within the Act, nor to cases where the contract provides for payment of wages according to custom or the advance is in reality a debt. *Emperor v. Namdeo Sakharam*. 11 Cr. L. J. 273 : 5 I. C. 863 : 12 Bom. L. R. 135.

Applicability.

The Workman's Breach of Contract Act, applies only where there has been a contract for work with money given as wages in advance. It does not apply where money has been given as a loan, with a condition attached that the borrower is to work for the lender. *Emperor v. Gooroomoondian*. 4 Cr. L. J. 200 : 3 L. B. R. 187 : 12 Bur. L. R. 272.

Applicability.

Where a contract prescribes a penalty for its breach, the remedy prescribed by the Act cannot be availed of. *Emperor v. Khuda Bakhsh*. 16 Cr. L. J. 229 : 27 I. C. 901 : 38 P. R. 1914 Cr. : 207 P. L. R. 1915 : A. I. R. 1914 Lah. 561.

Applicability.

Where an advance made to a workman is merely a loan, Act XIII of 1859 does not apply. *In re : Ambu*. 15 Cr. L. J. 384 : 23 I. C. 752 : A. L. R. 1914 Mad. 473.

Bandsman, if workman.

A musician in a band is not an artificer or labourer and is, therefore, not a workman within the meaning of the Act. *Re : Rosario Quadros*. 16 Cr. L. J. 629 (a) : 30 I. C. 453 : 38 Mad. 551 : A. I. R. 1916 Mad. 660 (a).

Construction.

The Act being of a penal nature must be construed strictly. *Ganesh Lal v. Shugan Chand*. 11 Cr. L. J. 329 : 5 I. C. 914 : 9 P. R. 1910 Cr. : 12 P. W. R. 1910 Cr.

Contract entered into where Act not in force, effect of—Minor, contract with, or for more than one year, validity of.

A contract entered into under the Workman's Breach of Contract Act at a place where that Act is not in force cannot be enforced, and the contracting workman is not liable for any breach of the contract. *Mozhar Husain v. Emperor*. 22 Cr. L. J. 50 : 59 I. C. 194 : A. I. R. 1920 All. 288.

S. 1—Contract not within scope.

A contract to be performed outside British India does not come within the purview of the Workman's Breach of Contract Act: *Po Thil S. v. Ma Saw Shin*. 20 Cr. L. J. 576 : 52 I. C. 64 : 19 Bur. L. T. 223 : 10 L. B. R. 53 : A. I. R. 1919 L. B. 55.

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

Contract not within scope.

A contract to cart logs of wood from a forest to a forest depot is not a contract of an artificer, workman or labourer within the meaning of the Workman's Breach of Contract Act. *Devappa Ramappa Naik v. Emperor*. 20 Cr. L. J. 316 (b) : 50 I. C. 492 : 21 Bom. L. R. 277 : 43 Bom. 607 : A. I. R. 1919 Bom. 158.

Contract not within scope.

A contract, the performance of which is to take place in a foreign territory, cannot be enforced under the Workman's Breach of Contract Act. *In re : Sinna Karbuppan*. 16 Cr. L. J. 61 (a) : 26 I. C. 653 : 16 M. L. T. 303 : A. I. R. 1915 Mad. 581.

Contract not within scope.

The Act does not apply to a contract which is made by a person who is not himself an artificer, workman or labourer. *Maung Thein Win v. Messrs. Steel Brothers and Co*. 18 Cr. L. J. 984 : 42 I. C. 600 : A. I. R. 1918 L. B. 109.

Contract to work for twelve years.

A contract to work 8 hours a day for 12 years, for wages not shown to be above the market-rate, and to live in any house that may be provided, being otherwise a form of slavery, is illegal. *In re : Ambu*. 15 Cr. L. J. 384 : 23 I. C. 752 : A. I. R. 1914 Mad. 473.

Contract within scope—What is.

A case in which the contract is that the workman shall work for wages, deducting from his wages a certain sum periodically to make good an advance, is within Act XIII of 1859. *Jelagan Subramania Naidu v. K. Singara Mudali*. 16 Cr. L. J. 112 : 27 I. C. 160 : 27 M. L. J. 616 : A. I. R. 1915 Mad. 602 (a).

Duty of complainant to prove accused is workman within the Act.

The status of the accused person against whom the Act is sought to be enforced, whether he is, 'an artificer, workman or labourer', is an integral part of the case which the complainant has to establish, and if no evidence is let in on the point, the complaint should be dismissed, whether the accused does or does not raise the point. *Natulhodi Kunhi Moidin v. Chamu Nair*. 19 Cr. L. J. 211 : 43 I. C. 787 : 33 M. L. J. 607 : 22 M. L. T. 435 : 6 L. W. 745 : 1917 M. W. N. 825 : 41 Mad. 182 : A. I. R. 1918 Mad. 281.

Interpretation.

The Workman's Breach of Contract Act, is a statute which calls for strict interpretation. *Emperor v. Naga Tima*. 13 Cr. L. J. 853 : 17 I. C. 789 : 14 Bom. L. R. 956.

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

—Preamble—Construction of.

The preamble of the Act cannot be construed as limiting the operation of the Act to private manufacturers, carrying on business for their private gain. *Emperor vt Naga Tun Zan.*

11 Cr. L. J. 58 :
4 I. C. 827 : U. B. R. 1907—09 :
11, Workman's Breach of Contract, p. 1.

—Refusal to work, if punishable.

In a prosecution under the Act, if it is proved that the workman has refused to work and that there is a finding that he is physically fit for the same, he must be held to have refused "wilfully and without lawful or reasonable excuse." *Heeth Lal Kodria v. Maksud Ali.*

A. I. R. 1923 L. Bur. 79.

—Remedy under—Applicability.

Where a contract by a workman provides a definite penalty for breach, the employer cannot, under any circumstances, adopt the remedy by proceeding in terms of the Act. *Emperor v. Muhammad Din.*

15 Cr. L. J. 166 :
22 I. C. 742 : 23 P. R. 1913 Cr. :
96 P. L. R. 1914 :
A. I. R. 1914 Lah. 465.

—Scope.

A contract of service entered into for more than three years cannot be enforced even for a limited period under the Act. The general provision of law is that a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by a civil process. Where the accused in proceedings under the Act entered into a contract whereby he agreed to repay the initial loan or advance out of wages earned : Held, that the agreement was quite different from a contract contemplated by the Act. *Emperor v. Muhammad Din.*

15 Cr. L. J. 166 :
22 I. C. 742 : 23 P. R. 1913 Cr. :
96 P. L. R. 1914 :
A. I. R. 1914 Lah. 465.

—Scope.

An agreement to render services far higher than those of manual labour is not a contract within the meaning of Workman's Breach of Contract Act. *Ramzan v. Noor Muhammad Yacub.*

15 Cr. L. J. 383 :
23 I. C. 751 : 7 S. L. R. 100 :
A. I. R. 1914 Sind 17.

—Scope.

The Workman's Breach of Contract Act relates to contracts in which workmen have received advances of money on account of the work which they have contracted to perform, and has no application to a contract of service for a term of years accompanied with an advance of money which may be paid off from the wages the workman is to earn, as such a contract is not one made on account of

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

the work which he has contracted to perform. *Ramkrishna Haribhau Vadke v. Emperor.*

20 Cr. L. J. 701 :
52 I. C. 669 : 21 Bom. L. R. 753 :
A. I. R. 1919 Bom. 96.

—Scope and applicability.

The provisions of the Act can only apply to the case of a workman, who has received from his employer an advance of money on account of any work which he has contracted to perform; they do not apply to a case in which the workman concerned has only received a loan from his master or employer without any reference to his wages for the work which he has agreed to do, and which loan has to be repaid by monthly instalments extending over a certain period without any deductions being made from the wages in respect of these instalments. *Ganeshi Lal v. Shugan Chand.*

11 Cr. L. J. 329 :
5 I. C. 914 : 9 P. R. 1910 Cr. :
12 P. W. R. 1910 Cr.

—Scope—Terms of contract to be accurately ascertained.

In a proceeding under the Workman's Breach of Contract Act, the first thing to be ascertained is whether the artificer, workman or labourer entered into a valid contract and, if so, has wilfully and without lawful or reasonable excuse neglected or refused to perform work according to the terms of the contract. In order to do this, the terms and circumstances of the contract must be accurately ascertained. *Emperor v. Namdeo Sakharam.*

11 Cr. L. J. 273 :
5 I. C. 863 : 12 Bom. L. R. 135.

—'Void contract'—What is.

A contract under the Act for a period exceeding one year, or by a person under the age of 18 years, is void. *Mazhar Husain v. Emperor.*

22 Cr. L. J. 50 :
59 I. C. 194 : A. I. R. 1920 All. 288.

—Whether applicable to contracts with Government.

The Workman's Breach of Contract Act, is applicable to a contract made with Government, and a Government Officer carrying on business on behalf of Government can avail himself of the Act. *Emperor v. Nga Tun Zan.*

11 Cr. L. J. 58 :
4 I. C. 827 : U. B. R. 1907—09, 11 :
Workman's Breach of Contract, p. 1.

—Who can move.

Act XIII of 1859 can be put in motion only by the employer. A Magistrate has no power to pass an order under that Act when the case before him is one under the Penal Code. *Ohhedi v. Mohammad Ali.*

14 Cr. L. J. 133.
18 I. C. 885 : 11 A. L. J. 117 :
34 All. 143.

—Who can set in motion.

A person who is not an employer of labour or a master but is a mere broker or middle-

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

man for the purpose of supplying labour to the employer or master, is not entitled to take proceedings as an employer against a workman under the Act. *Emperor v. Nga Tima*.

13 Cr. L. J. 853 :
17 I. C. 789 : 14 Bom. L. R. 956.

—————*Work performed through the agency of others—Jurisdiction of Magistrate.*

In order to give jurisdiction to a Magistrate, there are only two conditions, namely, an advance of money and wilful failure to perform the work. If these conditions are fulfilled, the Magistrate is bound either to order the repayment of the advance or so much of it as remains due or to order the work to be performed. The fact that the work has been completed by the complainant through the agency of others does not deprive the Court of its jurisdiction. The only effect of the work having been performed by the agency of others is to leave open only the one alternative of recovering the advance or so much as is still due, because the work cannot be ordered to be done over again and the law will not compel the performance of the impossible. *Habibullah v. Sumar*.

11 Cr. L. J. 414 :
6 I. C. 879 : 3 S. L. R. 223.

—————*S. 1—Applicability.*

The Secretary of State for India in Council, or the Government of India, or the Local Government of any Province of India is not a master or employer resident or carrying on business in any place to which the Workman's Breach of Contract Act applies. *Emperor v. Ramiah*.

2 Cr. L. J. 725 :
3 L. B. R. 33 : 12 Bur. L. R. 7.

—————*S. 1—Complaint withdrawn, whether "criminal proceeding."*

The mere initiation of a proceeding under the preliminary portion of S. 1, Workman's Breach of Contract Act, for execution of the work or for repayment of the advance which is withdrawn before any order is made therein, is not a "criminal proceeding" within the meaning of S. 211, Penal Code. *Hussain Beari v. Emperor*.

22 Cr. L. J. 13 :
59 I. C. 45 : 43 Mad. 443 :
A. I. R. 1920 Mad. 553.

—————*S. 1—'Compositor', whether workman.*

A compositor in a Printing Press is an 'artificer' for the purposes of S. 1. *Bhogtravathu Somanna v. Kandivada Ohelapathi*.

22 Cr. L. J. 196 :
60 I. C. 52 : 12 L. W. 631 :
39 M. L. J. 710 :
29 M. L. T. 48 : 44 Mad. 53 :
A. I. R. 1921 Mad. 618.

—————*S. 1—Application.*

A person was employed by a Company to

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

do certain work on a monthly salary. There was an agreement between the parties by which the person was entitled to get the work done by contract and also to a statement of accounts annually and to receive a certain percentage on the profits and was entitled to a percentage of the reserve fund in the event of that Company being wound up. The person left his employment on the allegation that his employers failed to perform their part of the agreement: *Held*, that the Workman's Breach of Contract Act had no application. *Purna Chandra v. Tarak Nath*.

10 Cr. L. J. 577 :
4 I. C. 413 : 36 Cal. 917.

—————*S. 1—Scope.*

An agreement between an employer and a workman whereby the latter agrees to repay the advance received by him by periodical deductions from the amount of his wages and by working out the amount is an agreement which falls under S. 1. *Bhogirathu Somanna v. Kandivada Chelapathi*.

22 Cr. L. J. 196 :
60 I. C. 52 : 12 L. W. 631 :
39 M. L. J. 710 : 29 M. L. T. 48 :
44 Mad. 53 : A. I. R. 1921 Mad. 618.

—————*S. 1—'Artificer, workman or labourer'—'Work'.*

Where, for a daily wage of twelve annas, *M* agreed to convey clay from a certain riverside to the factory of the complainant in the latter's boat by means of his own labour and that of another person to be employed and paid for by him and received a sum of money as advance therefor, but afterwards neglected to do the work: *Held*, that he came within the purview of the terms 'workman, artificer, or labourer' in S. 1. *In re: Mamu Behari*.

15 Cr. L. J. 651 :
25 I. C. 979 : 1 L. W. 657 :
16 M. L. T. 235 : A. I. R. 1915 Mad. 88.

—————*S. 1—Agreement to do service for a term of three years—Breach.*

The accused took from the applicant Rs. 170 in advance under a written agreement whereby he agreed in consideration of the loan to work at the latter's factory as a shoemaker for three years. The Magistrate discharged the accused on the ground that the contract was not for work to be done, but was in order to bind the accused down to work for a period of three years: *Held*, that the terms of the contract were within the provisions of the Act. *In re: Sehambur*.

5 Cr. L. J. 337 :
9 Bom. L. R. 362.

—————*S. 1—Dismissal for default of application—Effect of—Cr. P. C. Ss. 247, 403.*

An application under S. 1 was dismissed for

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

default before any order had been passed by the Magistrate under S. 2. Three years later, when the offender was found by the applicant, the application was renewed but dismissed by the Magistrate, who held that there were no sufficient grounds for going on with a case determined so long ago: *Held*, (1) that no "offence" against the Act having yet been committed, there was no "acquittal" and S. 408, Cr. P. C., did not bar the re-opening of the proceedings: (2) that as the delay was due to the applicant's inability to find the offender, there was no ground for refusing to continue the inquiry. *Krishna Perdan v. Pasand*. 14 Cr. L. J. 404 : 20 I. C. 228 : 6 Bur. L. T. 108 : 7 L. B. R. 35.

S. 1—Applicability.

An advance of money paid to a workman on condition of its being reimbursed by monthly deductions from his wages is 'an advance of money on account of any work which he shall have contracted to perform, etc.' within the meaning of Act XIII of 1859. *Govinda Chetty v. Munngany Naik*. 14 Cr. L. J. 400 (a) : 20 I. C. 224.

S. 1—"Artificer," meaning of.

It is not necessary for a prosecution that an artificer should work with his own hands. S. 1 covers the case of a head-artificer or workman who undertakes to get certain work done by other artificers, workmen or labourers under his own supervision and direction. *Sein Yin v. Ah Moon Shoke*. 15 Cr. L. J. 235 : 23 I. C. 187 : 7 L. B. R. 82 : A. I. R. 1914 L. Bur. 163.

S. 1—Dealer in stones, whether artificer, workman or labourer.

Accused who dealt in stones took an advance from the complainant under an agreement to supply the latter with stones from time to time according to the terms of an agreement entered into between the parties. Accused failed to supply the stones and complainant made an application under the Workman's Breach of Contract Act: *Held*, that the contract was not a contract by an artificer, workman or labourer nor was the money advanced on account of work to be performed by an artificer, workman or labourer, and therefore, the Act had no application. *Bhagwan Din v. Mahmud Ali*. 19 Cr. L. J. 598 : 45 I. C. 502 : 16 A. L. J. 407 : A. I. R. 1918 All. 381.

S. 1—Elephant driver.

An elephant driver is a workman or labourer within the meaning of S. 1. *Kutta Bella Ravat v. Emperor*. 27 Cr. L. J. 160 : 91 I. C. 896 : 27 Bom. L. R. 1415 : [A. I. R. 1926 Bom. 80.]

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)**S. 1—Magistrate of Police, meaning of.**

The term "a Magistrate of Police" in S. 1 must be limited to a Magistrate in the territorial limits of whose jurisdiction the employer resides or carries on business. *Sobhraj Dwarakadas v. Emperor*. 19 Cr. L. J. 591 : 45 I. C. 399 : 11 S. L. R. 128 : A. I. R. 1918 Sind 22.

S. 1—Shall wilfully, etc., meaning of.

The words "shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform such work according to the terms of his contract" in S. 1 are equivalent to the expression "fraudulent breach of contract" mentioned in the preamble. *Purna Chandra v. Tarak Nath*. 10 Cr. L. J. 577 : 4 I. C. 413 : 36 Cal. 917.

S. 1—Jurisdiction.

There is nothing in S. 1 which gives special jurisdiction to a Magistrate, within whose jurisdiction the contract was made or the advance received, to try an offence under the Act, committed beyond his jurisdiction. *Sobhraj Dwarakadas v. Emperor*. 19 Cr. L. J. 591 : 45 I. C. 399 : 11 S. L. R. 128 : A. I. R. 1918 Sind 22.

S. 1—Proceedings under—Nature of.

An inquiry under S. 1 cannot be held to be governed by Chap. XX, Cr. P. C., and an order of acquittal of an accused person on account of the non-appearance of the complainant on the day of hearing even though purported to be made under S. 247 of the Code, cannot be considered to have been passed under that section. Such an order is merely one of dismissal of the complaint which the Magistrate can review if he sees cause to do so. *Ramamma v. Gurunatham*. 24 Cr. L. J. 465 : 72 I. C. 881 : 32 M. L. T. 347 : 1923 M. W. N. 402 : 45 M. L. J. 336 : 18 L. W. 111 : 46 Mad. 723 : A. I. R. 1923 Mad. 719.

S. 1—Proceedings—Nature of.

Cases under the Workman's Breach of Contract Act, are judicial proceedings and the workman is in the position of an accused. He cannot, therefore, be compelled to make a thumb-impression in Court, for the purpose of identifying his thumb-impression on the agreement. *Ramanath Pandaram v. Karupana Thevar*. 19 Cr. L. J. 175 : 43 I. C. 591 : 11 Bur. L. T. 207 : A. I. R. 1918 L. Bur. 36.

S. 1—"Workman," meaning of—Super-viser of coolies.

The word "workman" in S. 1 must be understood as connoting manual labour of

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

some kind, whether skilled or unskilled. A man who does work of an intellectual nature in connection with a contract involving manual labour cannot, simply for that reason, be viewed as a manual labourer. A supervisor of coolies, therefore, who has also contracted to get work performed by them is not a "workman". *Naluthodi Kunhi Moidin v. Ohamu Nair*.

19 Cr. L. J. 211 :
43 I. C. 787 : 33 M. L. J. 607 :
22 M. L. T. 435 : 6 L. W. 745 :
1917 M. W. N. 825 : 41 Mad. 182 :
A. I. R. 1918 Mad. 281.

—Ss. 1—Workman, who is.

A person who undertakes to supply coolies and to work along with them is a "workman" within the meaning of S. 1 and the fact that he is under similar contracts with other people during the same period, does not take him out of the definition of "workman". *Ramanath Pandaram v. Karupana Thevar*.

19 Cr. L. J. 175 :
43 I. C. 591 : 11 Bur. L. T. 207 :
A. I. R. 1918 L. Bur. 36.

—Ss. 1, 2—Complainant's remedy—Nature of.

It is in the option of the complainant to claim repayment of money or performance of work, and a Magistrate cannot give this option to the debtor by passing an alternative order. *Emperor v. Amir Baksh*.

15 Cr. L. J. 423 :
24 I. C. 159 : 61 P. L. R. 1914 :
22 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 421.

—Ss. 1, 2—Contract not within scope.

A contract which binds the debtor to work for the creditor for more than three years and for no other person; cannot be enforced under the Act. *Emperor v. Amir Baksh*.

15 Cr. L. J. 423 :
24 I. C. 159 : 61 P. L. R. 1914 :
22 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 421.

—Ss. 1, 2—Scope of.

A workman, who pays in full the penalty which his master or employer has agreed beforehand to accept as compensation for any breach of the contract of service on the part of the workman, has a lawful and reasonable excuse for refusing to continue to perform his work according to the terms of his contract. An employer of labour is not precluded from availing himself of the provisions of the Workman's Breach of Contract Act, merely because in the contract of service between himself and his workman, there is a stipulated penalty capable of enforcement by a civil suit in the event of breach of the contract on the part of the workman, which penalty has admittedly not been enforced, nor payment of the same tendered on the part of the workman. *Ram Lal v. Emperor*.

20 Cr. L. J. 429 :
51 I. C. 205 : 17 A. L. J. 386 : 41 All. 390 :
A. I. R. 1919 All. 164.

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

—Ss. 1, 2—Scope—Jurisdiction after the expiration of term of contract or completion of work—Preamble.

In a case under the Workman's Breach of Contract Act, where either the work has been completed or the term of the contract has expired, a Magistrate has jurisdiction to entertain a complaint under S. 1 and to order repayment of advance under S. 2. *Gurudeen Taily v. Muttu Servat*.

13 Cr. L. J. 580 :
15 I. C. 996 : 5 Bur. L. T. 133 :
6 L. B. R. 89.

—Ss. 1, 2—Sanction to prosecute for false charge.

Proceedings under the first paragraph of S. 2 are criminal proceedings; and a prosecution under S. 211, Penal Code, for instituting proceedings without just cause under S. 1 will lie. *Karupana v. Mada Nedan*.

1 Cr. L. J. 1018 :
2 L. B. R. 300.

—Ss. 1, 2—Summary trial.

An offence under the Workman's Breach of Contract Act, cannot be punished summarily. *Emperor v. Balu Sayaji*.

8 Cr. L. J. 409 :
1 I. C. 387 : 10 Bom. L. R. 1126 :
33 Bom. 25.

—Ss. 1, 2—Summary trial.

A case under the Workman's Breach of Contract Act, cannot be enquired into or tried summarily, nor can in such a case, the expenses of the prosecution be awarded or the repayment of the Court fee directed. *Emperor v. Dhondu Krishna Kamblia*.

1 Cr. L. J. 263 :
6 Bom. L. R. 255.

—Ss. 1, 2—Summary trial under—Legality of.

An application to a Magistrate asking him to enforce Ss. 1 and 2 should not be summarily disposed of but the matter should be enquired into and evidence fully taken. *Azizur Rahman v. Hansa*.

19 Cr. L. J. 925 :
47 I. C. 441 : 16 A. L. J. 715 :
40 All. 670 : A. I. R. 1918 All. 417.

—Ss. 1, 2, 3—Scope.

An agreement to pay off an advance of money by delivering ballast to the lender does not create the relationship of labourer and employer between the parties, and a failure to perform such agreement does not bring the case within the purview of Act XIII of 1859. *Fazal Illahi v. Emperor*.

17 Cr. L. J. 86 :
32 I. C. 678 : 2 P. R. 1916 Cr. :
3 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 293.

—Ss. 1, 2, 3—Workman—Who is.

A person who contracts to perform a work by employing others without binding himself to

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

render personal service is not a workman or labourer. *Peer Bakhsh v. Imam Din.*

9 Cr. L. J. 107 :
28 P. R. Cr. 1908.

—Ss. 1, 2, 4—Scope.

Where the accused, in consideration of an advance received from the complainant, bound himself to work for the complainant until the repayment of the amount advanced: *Held*, that the advance was made not on account of any work contracted to be performed, but as a loan, and that the accused could not be proceeded against. *Gobinda Rajwar v. Apkar.*

11 Cr. L. J. 564 :
8 I. C. 123 : 15 C. W. N. 15.

—Ss. 1, 5—Jurisdiction of Court.

The jurisdiction of the Court is determined by the place of residence or of business of the employer, irrespective of the place of residence of the workman, or of the place where the advance was made, or the work was to be performed or the breach was committed. *Ali Mohammed v. Emperor.*

17 Cr. L. J. 308 :
[35 I. C. 484 : 10 S. L. R. 56 :
A. I. R. 1916 Sind 86.

—Ss. 1 and 7—Jurisdiction.

Proceedings under the Act can be instituted either in the Court of the Magistrate within the limits of whose local jurisdiction the defendant resides or in a Court within whose local limits the refusal to perform the contract has taken place and not where the contract has been actually made and money received. *Ganesha Singh v. Karam Din.*

11 Cr. L. J. 380 :
6 I. C. 618 : 12 P. R. 1910 Cr. :
13 P. W. R. 1910 Cr.

—S. 2—Advance—What is.

The "advance" mentioned in S. 2 may be an advance made at the time of entering into the contract or at some time earlier. *Abdul Rashid Khan v. Haji Nisar Muhammad Khan.*

25 Cr. L. J. 400 :
77 I. C. 448 : 45 All. 691 :
21 A. L. J. 622 : A. I. R. 1924 All. 143.

—S. 2—Advocate's fees, whether recoverable.

A complainant who avails himself of the simple and summary manner of recovering his money is not entitled to recover large fees for an Advocate. *Maung Thein Win v. Messrs. Steel Brothers and Co.*

18 Cr. L. J. 984 :
42 I. C. 600 : A. I. R. 1918 L. B. 109.

—S. 2—Applicability.

S. 2 is inapplicable to a case where the advances are made in stores and not in money. *Emperor v. Chiragh.*

15 Cr. L. J. 603 (a) :
25 I. C. 515 : 23 P. R. 1914 Cr. :
278 P. L. R. 1914 : A. I. R. 1914 Lah. 353.

—S. 2—Applicability.

The provisions of the Act [do not apply to a

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

case in which the work stipulated to be done has been completed. *Emperor v. Amar Singh.*

18 Cr. L. J. 488 (b) :
39 I. C. 328 : 8 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 13.

—S. 2—Applicability.

To make the Act applicable, the relation between the parties to the contract must be that of labourer and employer of labour. A contractor is not ordinarily an artificer, labourer or workman, and the Act does not apply to a contractor of labour or an agent for the supply of goods, unless such person has contracted to supply his personal labour. *Baba Khan v. Maung Ba Naing.*

17 Cr. L. J. 398 :
35 I. C. 830 : 9 Bur. L. T. 108 :
A. I. R. 1917 L. B. 157.

—S. 2—Application under the Act—Limitation.

The accused contracted to work for the complainant for twelve months from day to day. More than three months after the expiry of the year, the complainant applied to have an action taken against the accused on the ground that he had failed to work for 305 days; *Held*, (1) that under the agreement the maximum period during which the accused was bound to work for the complainant was one year, and that he was not bound to work for him for 305 days at odd intervals: (2) that the complainant could make an application against the accused under the Act within three months of any day during the year on which the accused had failed to work. *Asghar Ali v. Emperor.*

25 Cr. L. J. 320 :
76 I. C. 1040 : A. I. R. 1923 All. 609.

—S. 2—Complaint, when must be made.

A complaint with regard to a workman's default must be brought within three months of the neglect to perform the contract. *Khalbal v. Mohammad Yusaf.*

25 Cr. L. J. 1294 :
82 I. C. 366 : A. I. R. 1924 All. 616.

—S. 2—Carrier, whether workman.

A contract to carry stones cannot be described as a contract of an artificer, workman or labourer, within the meaning of S. 2. *Jafar v. Emperor.*

25 Cr. L. J. 345 :
77 I. C. 233 : 3 Lah. 371 :
A. I. R. 1922 Lah. 443.

—S. 2—Cartman, whether labourer.

A cartman is not a labourer to whom the provisions of the Act apply. *Gurditta v. Emperor.*

18 Cr. L. J. 891 :
41 I. C. 1003 : 33 P. R. 1917 Cr. :
139 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 253.

—S. 2—Scope.

Where the period stipulated in a contract has expired, but a portion of an advance made thereunder to the workman remains due, a Court has no power to enforce the contract for a period beyond that stipulated for in order

LEGAL PRACTITIONER

offence was evidence of their misconduct within the meaning of S. 10 (1) of the Bar Councils Act and this misconduct, though not committed in their professional capacity, entitled the Court to take disciplinary action against them: (2) that it was not incumbent on the Advocate-General to adduce evidence of the grounds on which the convictions were based. It was for the Court to decide whether conviction of having been a member and having assisted and managed the operations of an unlawful association having for its object interference with the administration of the law or with the maintenance of law and order and constituting a danger to the public peace, was evidence of such misconduct on the part of an advocate as to render him unfit for the exercise of his profession, or to call for the Court's censure. It was for the impugned Advocate to adduce any consideration which might induce the Court to refrain from taking disciplinary action. *Advocate-General of Bombay v. Phiroz Rustomji Bharucha*.

157 I. C. 428 P. C. : 8 R. P. C. 33 :
1935 O. L. R. 517 : 1935 O. W. N. 964 :
1 B. R. 828 : 1935 M. W. N. 913 :
42 L. W. 480 : 69 M. L. J. 431 :
37 Bom. L. R. 722 : 39 C. W. N. 1281 :
1935 A. L. J. 1092 : 59 Bom. 676 :
62 I. A. 235 : A. I. R. 1935 P. C. 168.

—————*Misconduct—Cancellation of sanad—Appeal to Privy Council—Considerations.*

When an order striking off the name of a Pleader from the roll of Pleaders, on the ground of misconduct has been made, the practice of the Allahabad High Court has been to treat the order as falling under S. 109 (c), C. P. C., although the Calcutta and Patna High Courts have taken a different view. The certificate of leave to appeal is not to be given, as a matter of course, but can be granted where the case is otherwise a fit one for appeal to His Majesty in Council. Where in an appeal from an order striking off the name of a Pleader from the roll of Pleaders, the point in dispute was naturally not measurable by money and it was of great private importance to the applicant and there were some points of law raised in the case: *Held*, that the case could be certified under S. 109 (c) as a fit one for appeal to the Privy Council. *P. A., Pleader, Bansi v. Judges of the High Court at Allahabad*.

38 Cr. L. J. 410 :
167 I. C. 666 : 1936 A. L. J. 1272 :
1936 A. W. R. 1007 : 9 R. A. 561 :
A. I. R. 1937 All. 167.

—————*Misconduct—Cancellation of sanad—Reinstatement.*

Before the Court can re-admit an Advocate who has been struck off the rolls for misappropriation, the Court must be fully satisfied that he has fully re-gained his character and is fitted for re-admission into the ranks of an honourable profession. Mere opinion is not sufficient. The Court requires solid facts and cogent reasons, not merely the opinions expressed by gentlemen

LEGAL PRACTITIONER

who had given him certificates. Re-admission does not depend on the fact that he has been suspended or struck off the rolls for several years. He can only be re-admitted if he can show that he has become worthy to act as an Advocate. In deciding such matters, the Court has a duty to the public, and where an Advocate has been guilty of misappropriation, it must be shown that there is no likelihood of such an offence being committed again. *In re: S., an Advocate*. (S. B.)

41 Cr. L. J. 185 :
185 I. C. 417 : 50 L. W. 566 :
1939 M. W. N. 1037 : 1939, 2 M. L. J. 630 :
I. L. R. 1940 Mad. 84 : 12 R. M. 564 :
A. I. R. 1939 Mad. 917.

—————*Misconduct—Cancellation of sanad—Reinstatement.*

If a legal practitioner, whose certificate is cancelled for a serious offence in the course of his professional duties, realising the gravity of his offence, makes up his mind for the future to live a straightforward and honest life and the High Court is satisfied that since the cancellation of his certificate, 7 years back, he has honestly endeavoured to reinstate his character, it is the manifest duty of the High Court to give him another chance by cancelling the order debarring him from further practice. *Mathura Prasad Singh v. Emperor*.

25 Cr. L. J. 1274 :
82 I. C. 282 : A. I. R. 1925 Pat. 250.

—————*Misconduct—Carelessness—Affidavit for withdrawal of money—Pleader swearing he had made enquiries—Money found to have been withdrawn—Duties of Pleaders in such cases—Held, that conduct did not justify proceedings under Legal Practitioners' Act—Pleader warned.*

A Pleader of about 25 years' standing and commanding considerable practice applied for withdrawal of a certain sum of money in Court deposit and swore in his affidavit that he made such enquiry as was open to him to make and had consulted the accounts of his client. It was found that the money had already been drawn: *Held*, although it is expected that when the Court requires the assistance of the Pleader for the purpose of enabling it to satisfy itself that the money is due and had not been withdrawn, the Court certainly expects a greater degree of care on the part of the Pleader, it could not be held that the conduct on the part of the Pleader amounted to such misconduct as would justify the Court in proceeding to take action under the Legal Practitioners' Act against him, and that the proceedings taken against him should serve as a warning to him. *Emperor v. J., a Pleader*.

38 Cr. L. J. 197 :
166 I. C. 371 : 9 R. C. 505 :
A. I. R. 1936 Cal. 658.

—————*Misconduct—Conviction under Criminal Law Amendment Act—Disciplinary action, when taken.*

Every conviction of a legal practitioner under S. 17 (1) of the Criminal Law Amendment Act, does not necessarily attract the dis-

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

to work out the balance due. *Chinniah Ghetti v. Abdul Kareem*. 21 Cr. L. J. 827 :

58 I. C. 827 : 12 L. W. 43 :
A. I. R. 1920 Mad. 471.

—S. 2—Scope—Debt bond by father and son—Agreement to work for one year—Slavery bond.

A father and son agreed in payment of a loan of Rs. 160, due by them to the complainant, to work in latter's coconut *tope* for the period of one year. They were to be paid Rs. 6 per month out of which Rs. 2 a month were to be taken towards this debt, Rs. 4 being paid in cash. This working in the *tope* was to continue only for a year and there was no obligation under the agreement to work in the *tope* thereafter, the accused father and son having agreed to repay any money that might be found due at the end of the year. The accused having left work after six months, on proceedings being instituted by the complainant, the Magistrate directed the accused to work for the balance of the year agreed to : *Held*, that S. 2 was inapplicable and the agreement could not be treated as a slavery bond and was enforceable. *Ellan v. Emperor*.

25 Cr. L. J. 209 (a) :
76 I. C. 641 : 45 M. L. J. 842 :
1924 M. W. N. 41 :
A. I. R. 1924 Mad. 351.

—S. 2—Workman.

A coolie sirdar or recruiter is not an artificer, workman or labourer within the meaning of S. 2. *Khetu v. Frederick*. 6 Cr. L. J. 191 :
6 C. L. J. 180.

—S. 2—Discretion of Magistrate.

Under S. 2 as amended by Act XII of 1920, a Magistrate has complete discretion to order either the repayment of the advance or the performance of the work. *Nga Tha Giyan v. Nga Ba E*. 23 Cr. L. J. 2 :

64 I. C. 370 : 4 U. B. R. 1921, 7 :
A. I. R. 1922 U. Bur. 9.

—S. 2—Employer's right to repayment of advance.

A obtained an advance from B and signed an agreement to work for him for one year. He absconded, however, after working for 15 days only. B applied for a warrant under S. 2 within a month of the expiry of the term of the contract. At the instance of the respondent's Pleader, the case was adjourned to the last day of the period of contract, and was then dismissed on the ground that no order could be made after the expiry of the contract : *Held*, that the delay in the disposal of the case did not defeat B's right to compel the refund of the money advanced. *V. N. Ramaswamy Pillay v. A. Amandar*.

8 Cr. L. J. 470 :
4 L. B. R. 270.

—S. 2, enquiry under, if can be transferred.

An enquiry by a Magistrate against a labourer is an enquiry by a Magistrate or a Criminal Court within the meaning of S. 6, Cr. P. C.,

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

and as such, is subject to the operation of S. 526 of that Code. *Bansi v. Lakshmi Das*.

25 Cr. L. J. 72 :
75 I. C. 984 : 21 A. L. J. 619 :
45 All. 700 : A. I. R. 1924 All. 76.

—S. 2—Honorary Magistrate's jurisdiction.

An Honorary Magistrate of the Second Class has jurisdiction to try a case under the Workman's Breach of Contract Act. *Khalbal v. Muhammad Yusuf*. 25 Cr. L. J. 1294 :
82 I. C. 366 : A. I. R. 1924 All. 616.

—S. 2—Imprisonment under—When can be awarded.

An order of imprisonment cannot be passed under S. 2 unless there is a non-compliance with the order of repayment or carrying out the contract. *Anukul Chandra Roy v. Kamarati Sardar*. 15 Cr. L. J. 697 :

26 I. C. 145 : 18 C. W. N. 1271.

—S. 2—Imprisonment under—When can be passed.

An order directing the labourer to repay the money within a certain time, or in default, to undergo imprisonment is bad in law. An order for imprisonment in default can only be made after the labourer has failed to comply with the order calling on him to refund the money or get the work performed as the case may be. *Emperor v. Har Lal*.

13 Cr. L. J. 194 :
14 I. C. 194 : 5 P. R. 1912 Cr. :
27 P. W. R. 1912 Cr.

—S. 2—Interpretation.

A person who plays a musical instrument in a band is not an artificer, workman or labourer. *Nga Tha Gyan v. Nga Ba E*.

23 Cr. L. J. 2 :
64 I. C. 370 : 4 U. B. R. 1921, 7 :
A. I. R. 1922 U. Bur. 9.

—S. 2—Jurisdiction of Magistrate to order delivery.

Under S. 2 of the Act, a Magistrate has no power to order delivery of a jewel contracted to be made. *Munuswami Buthar v. Streenivasulu Chetty*. 7 Cr. L. J. 359 :

3 M. L. T. 292.

—S. 2—Scope.

A Magistrate cannot, under S. 2, order work to be performed after the expiry of the term fixed in the contract of parties. *Balla v. District Magistrate of South Canara*.

11 Cr. L. J. 515 :
8 I. C. 163 : 9 M. L. T. 81 :
1910, 1 M. W. N. 854.

—S. 2—Proper order.

An order of imprisonment in default, passed simultaneously with an order to perform the work contracted for under the Act, is illegal. *Narwanji Prasad [Singh v. Lachman Hajam]*.

9 Cr. L. J. 187 :
35 Cal. 1035.

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

S. 2—Order, form of.

Under the first part of S. 2 the Magistrate should order the accused to repay the advance within a time to be fixed by the order. His power to pass a sentence under the 2nd paragraph only arises when the accused has failed to comply with the order passed under the first paragraph. *Chintapili v. Emperor*.

18 Cr. L. J. 281 :
38 I. C. 313 : 10 Bur. L. T. 251 :
A. I. R. 1917 L. Bur. 82.

S. 2—Appeal.

As an order passed by a Magistrate under S. 2 does not come under the provisions of S. 408, Cr. P. C., no appeal lies to a Sessions Judge from such an order. *Anukul Chandra Roy v. Kamarali Sardar*. 15 Cr. L. J. 697 :
26 I. C. 145 : 18 C. W. N. 1271.

S. 2—Order under—Propriety of.

Some period of grace should be allowed to the accused for making the repayment before sending him to jail. It is within the discretion of the Magistrate to fix the length of the period. *Khalbal v. Mohammad Yusuf*.

25 Cr. L. J. 1294 :
82 I. C. 366 : A. I. R. 1924 All. 616.

S. 2—Order under—Revision.

The High Court has power to revise an order made by a Magistrate under the first part of S. 2 directing either return of the advance or specific performance of the contract. *Devappa Ramappa v. Emperor*. 20 Cr. L. J. 316 (b) :

50 I. C. 492 : 21 Bom. L. R. 277 :
43 Bom. 607 : A. I. R. 1919 Bom. 158.

S. 2—Proceedings, order under—Nature of.

The proceedings of a Magistrate under the Workman's Breach of Contract Act, up to the stage of the passage of an order by the Magistrate for repayment or performance under S. 2, are not criminal proceedings at all. *Ramamma v. Gurunatham*.

24 Cr. L. J. 465 :
72 I. C. 881 : 32 M. L. T. 347 :
1923 M. W. N. 402 : 45 M. L. J. 36 :
18 L. W. 111 : 46 Mad. 723 :
A. I. R. 1923 Mad. 719.

S. 2—Proceedings under—Nature of.

Proceedings under the 1st clause of S. 2, are not in the nature of a regular suit but are miscellaneous proceedings in which the appropriate order would be one dismissing the complaint and not an order of 'discharge'. *Emperor v. Nga Tun Zan*.

11 Cr. L. J. 58 :
4 I. C. 827 : U. B. R. 1907-09 :
11, Workman's Breach of Contract, P. 1.

S. 2—Reasonable excuse—What is.

The smallness of the advance is not a reasonable excuse for refusing to perform the contract within S. 2. One of the terms of the very same contract can hardly be

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

afterwards held up as a reasonable excuse for non-performance. *Bakhtawar v. Emperor*.

19 Cr. L. J. 240 :
43 I. C. 832 : 16 A. L. J. 164 : 40 All. 282 :
A. I. R. 1918 All. 211.

S. 2—Proper order—Refund of advance and work for contract period.

Where on a complaint, a Magistrate orders the workman to work for the period of contract and does not order him to repay the advance, on the workman's failure to comply with the order, the Magistrate can do no more than sentence the workman to imprisonment. He cannot add to the sentence of imprisonment an order that the workman should work for a further period and also repay the advance. *Tirkha v. Itwari*.

15 Cr. L. J. 592 (b) :
25 I. C. 344 : 12 A. L. J. 678 :
A. I. R. 1914 All. 417.

S. 2—Scope.

It is only where a contract between an employer and a workman is broken by the latter without lawful or reasonable excuse, as provided by S. 2, that the employer has the right to have recourse to the Criminal Courts for the enforcement of the contract. A contract which is liable to be avoided or broken, as having been obtained by undue influence under Ss. 16 and 10-A, Contract Act, cannot be so enforced. *Kondia Gopal Katkari v. Emperor*.

20 Cr. L. J. 673 :
52 I. C. 593 : 21 Bom. L. R. 1090 :
A. I. R. 1919 Bom. 138.

S. 2—Sentence, no appeal—Revision.

Where a person is sentenced to imprisonment for failing to comply with the order of repayment of advance, he has no right to appeal, his remedy is by way of an application in revision. *Thairio v. Emperor*.

15 Cr. L. J. 372 :
23 I. C. 740 : 7 S. L. R. 80 :
A. I. R. 1914 Sind 79.

S. 2—Summary trial, legality of.

Inasmuch as the Legislature has described the order which a Magistrate is authorised to make against a workman in a case proved as "punishment," the act, if proved, amounts to an "offence" punishable by law within S. 4 (o), Cr. P. C. Consequently a Magistrate of the First Class has jurisdiction under S. 260 to deal with the case summarily. *Abdus Samad v. Yusuf*.

22 Cr. L. J. 165 :
59 I. C. 917 : 19 A. L. J. 22 :
2 U. P. L. R. All. 389 : 43 All. 281 :
A. I. R. 1921 All. 285.

S. 2—Summary trial.

The proceedings of a Magistrate up to the order under S. 2, do not constitute a trial for any offence and, therefore, the procedure under S. 260, Cr. P. C., does not apply. *Emperor v. Sohrab*.

14 Cr. L. J. 256 :
19 I. C. 512 : 6 S. L. R. 165.

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

—S. 2—*Workman or labourer.*

A cooly gaung may be a workman or labourer even though he does none of the work with his own hands. *Maung Tun v. Fazil Kadre.* 1 Cr. L. J. 551:

U. B. R. 1904 Workman's Breach of Contract 1.

—S. 2—*Proceedings, nature of—Perjury—Whether proceedings under the Artificers Act are criminal.*

Proceedings under the first paragraph of S. 2, are criminal proceedings and a prosecution under S. 211, Penal Code, in respect of a complaint will lie. *V. Karapana v. Madanadan.* 2 Cr. L. J. 314 : 11 Bur. L. R. 99.

—S. 2—*Work completed by employer prior to complaint—Right of employer to proceed under S. 2.*

S. 2 only applies when the work is uncompleted when the complaint is made. An employer, by doing the work himself or employing a third party to do it for him, loses his right to proceed under the section. The offence created by the Act is not the neglect or refusal of the workman to perform his contract, but the failure of the workman to comply with an order made by the Magistrate that the workman shall repay the money advanced or perform the contract. *In the matter of: Anusoori Sanyasi.* 2 Cr. L. J. 149 :

I. L. R. 28 Mad. 37 : 1 Weir 671.

—S. 2—*Workman told not to do any more work—Settlement to repay balance advanced—Failure to pay—Workman, liability of.*

If an employer tells his workman not to do any more work and arrives at a settlement with him for the repayment of the balance due, the case is taken out of the Act, the liability of the workman becomes purely a civil liability, and his failure to act on the settlement, cannot bring the case back under the Act. *Jugaram v. Nga Tun Baw.* 15 Cr. L. J. 662 (b) :

25 I. C. 990 : U. B. R. 1914 II, 18 : A. I. R. 1914 U. Bur. 5.

—S. 2—*Proviso (a) to clause (1), scope.*

Proviso (a) to clause (1) of S. 2 merely provides that an order directing repayment of the advance or performance of the contract shall not be made unless the employer moves the Court within three months of the breach of the contract. The proviso has no application to a case where a complainant has already obtained an order under S. 2 (1), and is applying for an order of imprisonment under Cl. (2) for failure to obey the order under Cl. (1). *Jesmuddin v. Isadally.* 22 Cr. L. J. 149 :

59 I. C. 853 : 10 L. B. R. 240 : A. I. R. 1920 L. Bur. 61,

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

—Ss. 2, 3—*Advance for marriage expenses, whether advance for work to be done.*

An advance for a workman's marriage expenses is a loan and not an advance within the Workman's Breach of Contract Act. A payment, if it is to be regarded as an advance within the meaning of the Act, must be made in some way on account of work which the workman has contracted to perform, *Bhola Nath v. Munshi.* 22 Cr. L. J. 288 :

60 I. C. 688 : 3 U. P. L. R. Lah. 28.

—Ss. 2, 3—*Loan disguised as advance—Breach of contract—Workman, whether liable.*

S received Rs. 30 from the firm of K in advance and agreed to work in their factory. Rs. 2 were to be deducted from his monthly wages to make up the money received in advance. Not having fulfilled the terms of the agreement, he was prosecuted under Act XIII of 1859 : *Held*, that the advance was really a loan and the Act did not apply. *Sande v. Khem Chand.* 21 Cr. L. J. 546 :

56 I. C. 850 : A. I. R. 1920 Lah. 380.

—Ss. 2, 3—*Scope.*

A workman, agreeing to work in a factory for a period of 50 months, took an advance from his employer : *Held*, that the contract fell under the Act and the workman was bound to work till the expiration of the period fixed in the contract, after which he could repay the balance of the advance money and get himself free. *Lucas, G. J. v. Ramai Singh.* 15 Cr. L. J. 233 :

23 I. C. 185 : 12 A. L. J. 152 : A. I. R. 1914 All. 108.

—Ss. 2, 3—*Expiry of term of contract—Enforcement of contract—Legality of.*

When the term of contract expires, the contract cannot be specifically enforced, nor can the money advanced be recovered, under the Act. *Khoda Buksh v. Moti Lal Johri.* 5 Cr. L. J. 66 :

11 C. W. N. 247.

—Ss. 2, 3—*Proper orders.*

A Magistrate cannot order a workman to be imprisoned by the same order by which he directs him to make a payment. An order for imprisonment should be a separate order passed after the workman has failed to comply with the order about repayment. Nor where the sum is ordered to be paid by instalments, can a Magistrate by a single order award a separate term of imprisonment for default of each instalment. *Rur Singh v. Emperor.* 28 Cr. L. J. 23 :

99 I. C. 55 : A. I. R. 1927 Lah. 62.

—Ss. 2, 3—*Summary trial—Order for imprisonment, when to be made.*

A case under the Workman's Breach of Contract Act, is not triable summarily. *Emperor v. Har Lal.* 13 Cr. L. J. 194 :

14 I. C. 194 : 5 B. R. 1912 Cr. : 27 P. W. R. 1912 Cr.

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)

———Ss. 2, 5—*Master's right to repayment of advance.*

When the Act is extended to a certain place under the provisions of S. 5, a master or employer residing or carrying on business in the place has the same rights as are conferred by the Act on masters or employers resident or carrying on business in any Presidency town. *Narsing Prosad Singh v. Emperor.*

8 Cr. L. J. 134 :
8 C. L. J. 312 : 35 Cal. 108 :
12 C. W. N. 869.

———Ss. 2, 5—*Order for refund after lapse of time fixed for performance of contract, whether valid.*

A workman earning his living by laying and burning bricks is a labourer. The mere fact that the period of time within which the contract was to be performed has elapsed cannot prevent a Magistrate from passing an order for refund of the money advanced. *Bharosa v. Emperor.*

15 Cr. L. J. 599 (a) :
25 I. C. 351 : 12 A. L. J. 490 :
A. I. R. 1914 All. 194.

———S. 2 (1)—*Order of Magistrate directing accused to work for more than one year, whether legal.*

Under S. 2 (1), a Magistrate cannot order an accused person to work for more than one year. An order directing the accused to serve for a period of over 2 years is illegal and he cannot be prosecuted for disobedience of such an order. The remedy of the party aggrieved in such a case is to apply and get a fresh order passed in place of the illegal order. The High Court in revision against an order refusing to punish the accused for such alleged disobedience will not be justified in passing after a considerable lapse of time from the date of the breach of the contract, the order which the Magistrate should have originally passed. *Parayya v. Venkatagadu.*

28 Ar. L. J. 561 :
102 I. C. 497 : 52 M. L. J. 563 :
38 M. L. T. 321 : 26 L. W. 137 :
A. I. R. 1927 Mad. 603.

———S. 2-B—*Granting compensation—F frivolous or vexatious complaint—Compensation—Notice to show cause.*

An order under S. 2-B, directing compensation to be paid in respect of a frivolous or vexatious complaint cannot be legally made without calling on the complainant to show cause against the order. *Emperor v. Abdus Samad Khan.*

25 Cr. L. J. 1206 :
82 I. C. 134 : 45 All. 616 :
A. I. R. 1923 All. 599.

———S. 3—*Recognizance.*

Imprisonment in the event of failing to furnish security under S. 3, can only be ordered when default is actually committed and not merely anticipated. If the accused offers security, the Magistrate should

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

take the bonds in his presence. *In the matter of : Ramasami.*

9 Cr. L. J. 322 :
12 M. C. C. R. 89

———S. 4—*Contract within scope.*

Accused on being arrested and being charged with a breach of contract executed another agreement in lieu of the former advance to work for another period of one year for the complainant. He failed to carry out the agreement, and proceedings under the Act were taken against him: *Held*, that the fresh agreement executed by the accused in lieu of the former advance was perfectly valid and was recognised by S. 4. *Abdul Rashid Khan v. Haji Nisar Muhammad Khan.*

25 Cr. L. J. 400 :
77 I. C. 448 : 45 All. 691 : 28 A. L. J. 622 :
A. I. R. 1924 All. 143.

———S. 5—*Jurisdiction.*

A firm having its head office at Karachi made a complaint to the City Magistrate at Karachi against workmen who had received an advance for work to be done at Hala in the Hyderabad District. The City Magistrate returned the complaint for presentation to the proper Court. In an application for revision to the Judicial Commissioner, it was contended that the Magistrate was wrong in returning the complaint: *Held*, that the City Magistrate was right in refusing to entertain the complaint, that the complaint should have been presented to the nearest Magistrate empowered, in the local area in which the alleged offence occurred, to entertain the complaint and that that Magistrate was the First Class Magistrate at Hala and not the City Magistrate at Karachi. *Ram Ratanchand v. Piru Khan Mahomed.*

20 Cr. L. J. 731 :
52 I. C. 891 : 13 S. L. R. 93 :
A. I. R. 1919 Sind 86.

WORKMEN'S COMPENSATION

———*Accident—Proof of.*

Accident by natural forces—Association with employment should be proved. *Margaret Brooker v. Thomas Borthwick & Sons, Ltd.*

146 I. C. 973 : 1933 A. L. J. 1308 :
38 L. W. 805 : 35 P. L. R. 102 :
66 M. L. J. 225 : 6 R. P. C. 38 :
A. I. R. 1933 P. C. 225.

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

———*Accident arising out of employment—Tests for determining.*

The question as to whether an accident arose out of the employment cannot be determined on any general view of facts. It is dependent on the facts of each particular case. One test which can be applied is whether it was part of the injured person's employment to hazard, to suffer, or to do that which caused his injury. If it was, the

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

accident arose out of his employment, if not, it did not, because what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. Where there was no justification for a workman to interfere with a moving machine for the purpose of finding out a screw-driver which he required for the purpose of his work: *Held*, that in doing so, he was not within the sphere of his employment. *Sh. Nawab Ali v. Sree Hanuman-Jule Mill*.

144 I. C. 701 (2) : 6 R. C. 10 :
37 C. W. N. 186 :
A. I. R. 1933 Cal. 513.

Construction.

In a quasi-penal Statute such as the Workmen's Compensation Act, the provisions of the Act ought not to receive a benevolent or a strained interpretation in the interest of those who are made beneficiaries thereunder. In the matter of: *Maung Kyan*. (S. B.)

131 I. C. 734 : 9 Rang. 46 :
I. R. 1931 Rang. 158 :
A. I. R. 1931 Rang. 173.

Granting Compensation to Workman.

A workman employed as a bricklayer by a maistry who was himself employed by the defendant, sustained fatal injuries while engaged upon a scaffolding. The defendant was a hotel-keeper but the evidence showed that out of the profits of the hotel and his other income, he used to purchase buildings and to reconstruct and repair them for the purpose of letting them out. In a suit by the widow of the deceased for compensation: *Held*, that though the hotel-keeping was the defendant's main business, purchase, reconstruction and repair of buildings was also a business conducted by the defendant; and as the plaintiff sustained the accident while he was engaged in the business of the defendant, the defendant was liable to pay compensation to the plaintiff. *Jutha Lal Manekji Sharma v. Saradambal Ammal*.

166 I. C. 208 : 44 L. W. 526 :
1936 M. W. N. 1101 :
71 M. L. J. 617 : 9 R. M. 344 :
A. I. R. 1936 Mad. 941.

S. 2—Granting Compensation — Who is liable.

Where the employers who are cooly contractors, engage a sub-contractor for the execution of work which is ordinarily part of their own trade or business, the employers are liable and not the sub-contractor. *A. A. Thaver Bros. v. Muthu-Mariammal*.

146 I. C. 1027 : 6 R. Rang. 136 :
A. I. R. 1933 Rang. 208.

S. 2 (1) (a)—Employment of a casual nature—Liability of employer.

Where a man is employed for the purposes of a trade or business, the employer is liable even if the employment is of a

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

casual nature. *Abdul Hussain v. Secretary of State*.

146 I. C. 729 :
6 Rang. 122 : 11 Rang. 433 :
A. I. R. 1933 Rang. 244.

S. 2 (1) (d)—Interpretation.

The expression 'unmarried daughter' in S. 2 (1) (d), includes a widowed daughter. *Suleman Bibi v. East Indian Railway*.

143 I. C. 154 : 60 Cal. 820 :
37 C. W. N. 183 :
I. R. 1933 Cal. 351 :
A. I. R. 1933 Cal. 358 (2).

S. 2 (1) (d)—Interpretation.

The terms "minor brother" and "unmarried sister", which occur in the definition of the expression "dependent" in Cl. (d), Sub-s. (1) of S. (2), include a minor brother and unmarried sister of the half blood. In the matter of: *Kartar Singh*.

133 I. C. 554 :
I. R. 1931 Lah. 794 :
A. I. R. 1931 Lah. 752 (2).

S. 2 (1) (d)—Interpretation.

The term 'minor brother' in S. 2 (1) (d), does not include a minor half-brother. In the matter of: *Maung Kyan*. (S. B.)

131 I. C. 734 : 9 Rang. 46 :
I. R. 1931 Rang. 158 :
A. I. R. 1931 Rang. 173.

S. 2 (1) (d).

The words "unmarried sister," in S. 2 (1) (d), include a widowed sister. *Shamo Bai v. Daya Ram*.

153 I. C. 458 (1) :
7 R. L. 442 (2) :
A. I. R. 1934 Lah. 115 (1).

S. 2 (1) (n)—Workman, who is.

If a man is employed for the purpose of the trade or business of the employer, even though the employment is of a casual nature, he is a workman within S. 2 (1) (n). A cooly who is employed for manual labour is also a workman. *K. A. K. Master v. Ramdhari*.

165 I. C. 760 : 9 R. Rang. 221 :
A. I. R. 1936 Rang. 493.

As amended by Act (XV of 1923), S. 2 (1) (n), Sch. II, cls. (10), (16)—*Workman, who is.*

A person employed for purposes of employer's business, in the construction, working or repairs of a pipe-line, otherwise than in clerical capacity, is a workman and the mere fact that he was officiating in a leave vacancy would not take him out of the definition of a workman. *Alam Singh Re: Workmen's Compensation Act*.

165 I. C. 189 :
9 R. A. 238 (1) : 1936 A. W. R. 770 :
I. L. R. 1937 All. 15 :
A. I. R. 1936 All. 690.

Ss. 2, 3, 12 — Granting Compensation to workman—Accident occurring while returning from work by recognized conveyance—Whether in course of employment.

A cooly who was working at unloading coal from a steamer, at the end of his work got

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

into a sampan to go ashore with other coolies. When in the sampan owing to the falling on them of some hot cinders thrown overboard and leaning on one side to avoid them, the sampan capsized and all were thrown into the river and the deceased was drowned: *Held*, that the accident arose in the course of the deceased's employment, as he was on his way back to the wharf where his employment for the day would end and as going to and fro in the sampan was a recognized way for coolies to travel, it could not be said that travelling in a sampan was an act in itself of such an inherently dangerous nature that a man who adopted it was obviously taking a risk for which he must be held to be responsible. *A. A. Thaver Brothers v. Muthu Mariammal*. 146 I. C. 1027 : 6 R. Rang. 136 : A. I. R. 1933 Rang. 208.

—Ss. 2 (n), 12 (1)—Granting compensation to workman.

A person to be excluded from the definition of 'workman' in S. 2, Cl. (n), must not only be one "whose employment is of a casual nature" but also one 'who is employed otherwise than for the purposes of the employer's trade or business'. Both these qualifications must be present together. The mere fact that the injured man had been employed only for a few days at a time, will not of itself remove him from the category of "workman." A coolie working under a contractor employed by a Railway Company in the construction of a bridge, sustained a fatal injury while attending to work done to the bridge. The work was for maintenance of the upkeep of the line. It was found that the Company maintained a permanent staff of Engineers, whose most indispensable duty it is to preserve the line and the rolling-stock in serviceable condition and who carry out, where necessary, with the help of contractors, all operations necessary to that end: *Held*, that the workman sustained the injury in the course of work which was ordinarily part of the principal business of the Company within S. 12 (1), and the Company was liable to pay compensation. *Pertiyakkal v. The Agent, South Indian Ry Co., Ltd., Trichinopoly*. 159 I. C. 873 : 41 L. W. 805 : 1935 M. W. N. 674 : 69 M. L. J. 93 : 58 Mad. 804 : 8 R. M. 578 : A. I. R. 1935 Mad. 721.

—S. 3—Accident within scope—What is.

Where a servant who could come to his work by three different routes leading to his place of duty, chose for his own convenience one way, starting for his place of duty much before the usual time and on the way was bitten by a snake and died: *Held*, that the accident did not occur either in the course of or out of his employment and he was not entitled to any compensation. *The Burma Oil Co., Ltd. v. Ma Hmwe Yin*. 159 I. C. 1095 : 13 Rang. 553 : 8 R. Rang. 328 : A. I. R. 1935 Rang. 428.

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

—S. 3—Accident within scope—What is.

Accident occurring while returning from work by recognized conveyance: *Held*, was in course of employment. *A. A. Thaver Bros. v. Muthu Mariammal*. 146 I. C. 1027 : 6 R. Rang. 136 : A. I. R. 1933 Rang. 208.

—S. 3—Granting compensation—Mode of.

When the disability is estimated medically at 20 per cent, compensation also should be awarded at 20 per cent of the total earning capacity. *Dhanpal Madras v. Superintendent of Collieries*. 152 I. C. 1024 : 16 P. L. T. 32 : 7 R. P. 294 : A. I. R. 1934 Pat. 639.

—S. 3—Granting compensation.

When a workman claims compensation on the ground of permanent partial disablement due to fracture caused by the falling of roof, negligence either on the part of the employer or the employed is not the criterion to be employed. The question is, firstly, whether the workman at the time of the injury was working within the scope of his employment and, secondly, if so, whether the employer has proved that he is exempted from paying compensation because of the provisos to S. 3. The employer will only escape liability if he can satisfy the provisos in S. 3. *Dhanpal Madras v. Superintendent of Collieries*. 152 I. C. 1024 : 7 R. P. 294 : 1 B. R. 190 : 16 P. L. T. 32 : A. I. R. 1934 Pat. 630.

—S. 3 (1)—Granting compensation.

Neither deceased workman nor his dependents having any claim on employer—Commissioner cannot order employer to pay small compensation *ex gratia*. *Consolidated Tin Mines of Burma v. Santaraj*. 158 I. C. 44 : 8 R. Rang. 142 : A. I. R. 1935 Rang. 303.

—S. 5—Duty of Commissioner.

Under the Workman's Compensation Act, the Commissioner has a duty to see that the injured party gets fair play. *Bengal, Burma Steam Navigation Co., Ltd. v. Ramana*. 140 I. C. 46 : I. R. 1932 Rang. 206 : A. I. R. 1932 Rang. 141.

—S. 10—Delay to make claim, how determined.

Although the facts must be found by the first Tribunal, the question of whether such facts do or do not constitute a reasonable cause for making the delay, is a matter of law. *Forsyth v. B. N. Railway Co.* 162 I. C. 817 : 17 P. L. T. 33 : 2 B. R. 505 : 8 R. P. 577 : A. I. R. 1936 Pat. 307.

—S. 10.

Injury to workman—Reasonable cause established for failure to make claim for compensation within six months of occurrence—Bar to

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

maintainability of proceedings, is removed. *Hogan v. Gafur Ramzan*.

149 I. C. 247 : 35 Bom. L. R. 1142 :
58 Bom. 128 : 6 R. B. 350 :
A. I. R. 1934 Bom. 28.

S. 10—Granting compensation to workman.

Injury to workman—Reasonable cause established for failure to make claim for compensation within six months of occurrence—Bar to maintainability of proceedings is removed—Limitation Act (IX of 1908), Sch. I, Art. 22 does not govern proceedings. *J. Hogan v. Gafur Ramzan*.

149 I. C. 247 : 35 Bom. L. R. 1142 :
58 Bom. 128 : 6 R. B. 350 :
A. I. R. 1934 Bom. 28.

S. 10—If excludes operation of Limitation Act.

Proceedings under the Act were governed by S. 10 and not by the general provisions of the Limitation Act, and hence Art. 22, Limitation Act, which applies to a suit for damages for personal injury did not apply to proceedings under the Workmen's Compensation Act. *Hogan v. Gafur Ramzan*.

149 I. C. 247 : 35 Bom. L. R. 1142 :
58 Bom. 128 : 6 B. R. 350 :
A. I. R. 1934 Bom. 28.

S. 10—Notice of injury.

Injured workman not realising permanent loss of sight, is sufficient cause for not giving notice earlier—Omission to state cause of injury in notice is immaterial when manager is aware of it. *Abbu Bakar Abdul Rahman v. Narayan*.

145 I. C. 402 :
16 N. L. J. 63 : 6 R. N. 47.

S. 10—Notice of injury.

Notice under S. 10 is not necessary where the workman does not voluntarily leave the service of the employer and the want of a written notice can also be excused if there was sufficient cause for failure to give notice or to institute the claim. *Jai Chand Somchand v. Vilhal Bajrao*.

142 I. C. 630 :
35 Bom. L. R. 83 : I. R. 1933 Bom. 250 :
57 Bom. 150 : A. I. R. 1933 Bom. 109.

S. 10—Scope.

The period of six months to which S. 10 refers, relates to the claim for compensation made by the workman against his employer and has no reference to the period within which an application for the settlement of the matter by the Commissioner can be made. *Abdul Karim v. Eastern Bengal Railway*. (F. B.).

149 I. C. 169 : 38 C. W. N. 613 :
61 Cal. 508 : 6 R. C. 522 :
A. I. R. 1934 Cal. 460.

S. 10—Period of six months provided in S. 10—Whether relates to claim for compensation made by workman against his employer.

The period of six months to which S. 10 refers, relates to the claim for compensation made by the workman against his employer and has no reference to the period within which an application for the settlement of the matter

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

by the Commissioner can be made. *Abdul Karim v. Eastern Bengal Railway*. (F. B.).

149 I. C. 169 : 6 R. C. 522 :
38 C. W. N. 613 : 61 Cal. 508 :
A. I. R. 1934 Cal. 460.

S. 10.

The fact that the plaintiff did not know the rules about the Workmen's Compensation Act, is not sufficient cause, even in the case of ignorant and illiterate persons, for admitting a claim for compensation made after the expiry of the 6 months prescribed by S. 10. The question of sufficiency of cause under S. 10 is a question of law. *Consolidated Mines of Burma, Ltd. v. Maung Tun E.* 131 I. C. 60 :
9 Rang. 118 : I. R. 1931 Rang. 124 :
A. I. R. 1931 Rang. 175.

Ss. 10-A, 12 (2)—Compensation to workman.

Contractor liable to indemnify Railway Company—principal—Notice under S. 10-A must be served on contractor—Dependents claiming compensation from contractor : *Held*, Commissioner ought to have served notice on contractor and not on Railway Company. *Bisweswar Ray Ch. v. Khoiendra Kaibaria*. 159 I. C. 423 :
8 R. C. 311 : 40 C. W. N. 254 :
63 Cal. 547 : A. I. R. 1935 Cal. 683.

Ss. 10, 13 (Proviso)—Granting compensation to workman—Delay in making claim—Effect of.

Accident to workman—Dismissal due to unfitness—Long correspondence ending in final order—Claim for compensation after delay of two years : *Held*, claim barred. *R. B. Forsyth v. B. N. Ry. Co.* 162 I. C. 817 :
17 P. L. T. 33 : 2 B. R. 505 :
8 R. P. 577 : A. I. R. 1936 Pat. 307.

S. 12—Granting compensation.

The fact that a workman had been employed only for two days for the employer's trade or business when the accident occurred, does not disentitle him to compensation. *A. A. Thayer Bros. v. Mulhu Mariammal*. 146 I. C. 1027 :
6 Rang. 136 : A. I. R. 1933 Rang. 208.

S. 12—Contractor, who is.

The contractor referred to in S. 12 (2), is the contractor who contracts directly with the principal as defined in S. 12 (1). Consequently, if there is any further sub-letting of the contract, an indemnity cannot be obtained under the Act and must be sought by recourse to the Civil Court. The words 'any such indemnity' in S. 12 (2) relates only to the indemnity between the principal and the original contractor. *Sir Dhunjabhoy Bomanji, Kl. v. Gunpa Khandu Koli*. 146 I. C. 616 :
35 Bom. L. R. 694 : 6 R. B. 166 :
57 Bom. 699 : A. I. R. 1933 Bom. 338.

S. 13—Accident to workman—Liability of mucedam and contractor.

The plaintiff was the sole contractor for the coaling of steamers in Bombay. He gave a sub-contract of coaling to the defendants who are mucedams, who engaged several workmen. One of the workman fell down by reason of one of the ropes breaking and died. His widow

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

applied for compensation and the plaintiff was ordered to pay her. He then sought to recover the amount from the defendants: *Held*, that even if the defendants were in the position of sub-contractors, the deceased workman was engaged in a work in the performance of which the plaintiff was interested, and the plaintiff was under an obligation to take reasonable care that at the time he supplied the staging and the ropes, they were in a state of reasonable fitness and safety for the work for which they were used. *Sir Dhunjibhoy Bomanji, Kt. v. Gunpa Khandu Koli.* 146 I. C. 616 :

35 Bom. L. R. 694 : 6 R. B. 166 :

57 Bom. 699 : A. I. R. 1933 Bom. 338.

———S. 19—Appendix 2, r. 24—*Granting compensation to workman—Duty of Commissioner of Workmen's Compensation Act—Claim for compensation.*

In a proceeding under the Workmen's Compensation Act, the Commissioner cannot dismiss a claim for compensation summarily on the basis of a letter written by the Surgeon to the effect that the claimant was not entitled to compensation. Whether the claimant is entitled to compensation is a matter to be decided by the Commissioner after a proper appreciation of legal evidence. *Appalswamy, East Point Mechanical Dept. v. The Tata Iron & Steel Co., Ltd.*

148 I. C. 210 : 14 P. L. T. 625 :

6 R. P. 433 :

A. I. R. 1933 Pat. 532.

———S. 19—Appendix 2, r. 24—*Procedure—Claim for Compensation—Commissioner's duty to decide on evidence—Summary dismissal on basis of medical report, legality of—Surgeon's report, admissibility of.*

In a proceeding under the Act, the Commissioner cannot dismiss a claim for compensation summarily on the basis of a letter written by the Surgeon. Whether the claimant is entitled to compensation is a matter to be decided by the Commissioner after a proper appreciation of legal evidence. The Surgeon's report is not admissible in such cases unless the Surgeon himself comes to prove it. *Appalswamy v. Tata Iron & Steel Co., Ltd.*

148 I. C. 210 :

14 P. L. T. 625 : 6 R. P. 433 :

A. I. R. 1933 Pat. 532.

———Ss. 26, 30 (a), Sch. I—*Failure to comply with rules in S. 26—Whether sufficient ground for retrial.*

Where the Commissioner fails to comply with the rules mentioned in S. 26, that by itself is not a sufficient ground for ordering a retrial. Before ordering such retrial, the Court has to be satisfied that in consequence of such non-compliance there has been a failure of justice. *Pestaji Bhicaji v. Farid Khan Pir Mohammad.*

146 I. C. 696 :

6 R. S. 72 : 27 S. L. R. 377 :

A. I. R. 1933 Sind 273.

———S. 30—*Decision of Commissioner—Appeal therein if lies under.*

Under S. 30 no appeal lies from the decision of the Commissioner unless a substantial

WRITTEN STATEMENT

question of law is involved. *Abbu Bakar Abdul Rahman v. Narayan.* 145 I. C. 402 : 16 N. L. J. 63 : 6 R. N. 47.

———S. 30—*Interference with finding of Commissioner.*

Finding of fact by Commissioner cannot be challenged except on ground that there is no evidence to support. *Abbu Bakar Abdul Rahman v. Narayan.* 145 I. C. 402 :

16 N. L. J. 63 : 6 R. N. 47.

———Sch. II, Cl. 12—*Workman employed in a hand-dug well—Whether comes within the ambit of Cl. 12.*

A workman employed in a hand-dug well may fall within the ambit of Cl. 12 of Sch. II, Workmen's Compensation Act, but whether he is employed in connection with the operations therein referred to or any of them is a question of fact which has to be determined by the proper authority and not by the High Court. *In the matter of: Maung Ya, B.A.* 146 I. C. 1009 (1) :

11 Rang. 404 : 6 R. Rang. 135 :

A. I. R. 1933 Rang. 418 (1).

WORKS OF DEFENCE ACT (VII OF 1903)

———*Platform in existence in Cantonment area for 30 years—Demolition—Acquiescence.*

A Cantonment authority which has acquiesced in the existence of a platform for over 30 years in the Cantonment area, cannot be permitted to demolish it. The Works of Defence Act, 1903, does not authorise the demolition of a platform only three feet high. *Ram Ratan v. Emperor.* 23 Cr. L. J. 199 :

65 I. C. 855 : 20 A. L. J. 169 :

A. I. R. 1922 All. 86.

WRIT OF POSSESSION

———*Execution of.*

Under the provisions of either the English Common Law or C. P. C., a reasonable degree of force may be used in the execution of a writ of possession in order to the removal of persons bound by the decree and refusing to vacate. In a writ of possession the order to "give possession" authorises and requires the removal by bailiff of all persons from the premises by force, if need be. *H. Meredith v. Sanjibani Dassi.*

16 Cr. L. J. 424 :

28 I. C. 1000 : 19 C. W. N. 273 :

A. I. R. 1915 Cal. 558.

WRITING

See also Evidence Act, 1872, S. 62.

WRITTEN STATEMENT

———*By accused, whether to be allowed—Practice.*

The Cr. P. C., does not provide for filing written statements by the accused. Such statements are entirely irresponsible and should not be allowed to be filed. *Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari Singh.*

17 Cr. L. J. 9 :

32 I. C. 137 : 20 C. W. N. 128 :

A. I. R. 1917 Cal. 687.

(THE END)

LEGAL PRACTITIONER

disciplinary jurisdiction of the High Court. This must depend on the nature of the acts for which the practitioner was convicted. In such proceedings, the Court should not go behind the conviction, *i. e.*, to examine the legality of the conviction, but it is open to the Court, and indeed the Court is bound to ascertain from the criminal proceedings the facts on which the conviction is based in order to decide whether by virtue of his conduct complained against, the legal practitioner concerned is or is not a proper person to be retained as a member of the legal profession. *Emperor v. Faridul Haq Ansari.* (S. B.)

143 I. C. 737 : 14 Lah. 532 :
I. R. 1933 Lah. 384 :
A. I. R. 1933 Lah. 577.

———Misconduct.

Court having reason to believe that practitioner may have been guilty of professional misconduct cannot allow proceedings to be dropped on agreement between complainant and practitioner or on wish of the complainant. *In the matter of : K. Srinivasa Rao.* (S. B.)

41 Cr. L. J. 419 :
187 I. C. 144 : 51 L. W. 197 :
1940, 1 M. L. J. 259 :
1940 M. W. N. 161 : 12 R. M. 713 :
I. L. R. 1940 Mad. 433 :
A. I. R. 1940 Mad. 370.

———Misconduct.

Court misled by petition to grant larger costs — Advocate found entitled to draw all but insignificant sum — Explanation given only in enquiry by Bar Council : *Held*, conduct was not scrupulously honest. *In the matter of : A. J. Robertson.* 38 Cr. L. J. 952 :

170 I. C. 689 : 10 R. Rang. 103 :
A. I. R. 1937 Rang. 263.

———Misconduct — Duty of Bar Council to inquire into.

Where a legal practitioner has been convicted of a criminal offence and his case is sent for an enquiry by a Tribunal of the Bar Council into his conduct with a view to seeing whether he has done anything which seems to indicate the necessity of taking disciplinary action against him, the Tribunal should merely record the fact that he had been convicted of an offence and ask him to show cause why no disciplinary action should be taken against him. The Tribunal cannot go further and justify the action of the legal practitioner. No man can ever be justified in disseminating defamatory matter unless he can bring himself within one of the exceptions to S. 499, Penal Code, or unless his action is privileged in other respects. *In the matter of : an Advocate.*

178 I. C. 592 : 11 R. Rang. 250 :
1938 Rang. 125 : A. I. R. 1938 Rang. 394.

———Misconduct.

Enquiry should not be started without grave consideration. *In the matter of : Shankar Lal.* (S. B.)

33 Cr. L. J. 260 :
136 I. C. 287 : 1931 A. L. J. 678 :
I. R. 1932 All. 175 :
A. I. R. 1931 All. 580.

LEGAL PRACTITIONER

———Misconduct—Exclusion from practice—Reinstating of.

The High Court has the power to reinstate a Pleader even though the Court, for professional misconduct, had struck him off the roll. The guiding principle in reinstating is that the Court has to see whether the applicant has, since he was expelled, honestly endeavoured to rehabilitate his character, so that if restored to the bar, he will be upright and honest in his dealings. *In re : an Advocate.*

166 I. C. 628 : 38 Bom. L. R. 1161 :
9 R. B. 245 : I. L. R. 1937 Bom. 99 :
A. I. R. 1937 Bom. 48.

———Misconduct — Findings on questions of fact recorded by Bar Tribunal—When accepted by High Court.

The question whether a particular Advocate has violated the recognized canons of professional etiquette is primarily a matter that concerns the Bar Council and consequently the High Court ordinarily accepts findings on questions of fact recorded by the Bar Tribunal provided the findings are not perverse. *In the matter of : Bhairu Dutt Bhandari, an Advocate.* (S. B.)

41 Cr. L. J. 211 :
185 I. C. 611 : 1939 A. L. J. 957 :
I. L. R. 1940 All. 60 : 12 R. A. 367 :
A. I. R. 1940 All. 1.

———Misconduct—Inquiry into—Court, duty of.

Where a Court has reason to think that there has been any breach of professional etiquette or any matter calling for the exercise of disciplinary powers in the conduct of a Pleader or Advocate in a case, the proper course is to decide the merits and reserve any such question for further consideration after the disposal of the suit. *Bisheshar Nath v. Emperor.*

19 Cr. L. J. 865 :
44 I. C. 28 : 16 A. L. J. 64 :
40 All. 147 : A. I. R. 1918 All. 275.

———Misconduct—Inquiry into—Nature of.

Where proceedings are taken against a legal practitioner as to why his name should not be struck off from the roll of Advocates, the proceedings are not in the nature of a second trial or a new punishment. *In the matter of : B, a Barrister-at-Law.*

37 Cr. L. J. 200 :
159 I. C. 1036 : 8 R. Rang. 308 :
A. I. R. 1935 Rang. 458.

———Misconduct—Investments of his savings by Advocate, when constitute engagement in money-lending business.

What does or does not constitute money-lending business must depend on the facts and circumstances of each case and is not capable of an exact definition. The question is a mixed question of fact and law and the answer to the question must depend on the facts found in each particular case; an element of continuity and habit is essential to constitute the exercise of a profession or business. Investments of his savings by an Advocate do not necessarily amount to engagement in money-lending business, the more so

LEGAL PRACTITIONER

when such investments are few and far between, and are mostly made to relations and friends. Nevertheless, if investments by way of loan are made as a matter of regular business and for gain, there can be no escape from the conclusion that such investments constitute engagement in money-lending business. *In the matter of: Bhairo Dutt Bhandari, an Advocate.* (S. B.) 41 Cr. L. J. 211 :

185 I. C. 611 : 12 R. A. 367 :
1939 A. L. J. 957 :
I. L. R. 1940 All. 60 :
A. I. R. 1940 All. 1.

-----Misconduct.

It by no means follows that a man, who has committed an insulated act which assists the operations of an unlawful association, is necessarily such an improper person. Much would depend upon the nature of the act done and the particular operation assisted. *Emperor v. Farid ul-Haq Ansari.* (S. B.)

143 I. C. 737 : 14 Lah. 532 :
I. R. 1933 Lah. 384.

-----Misconduct.

It cannot be too strongly impressed on persons practising in any Court of Justice that lapses in conduct are looked upon in their case as more serious than lapses in the case of ordinary citizens. The standard which must be set and reached is a high one. *In the matter of: M, and another Lower Grade Pleaders, Nyaunglebin.*

37 Cr. L. J. 1118 :
164 I. C. 350 : 9 R. Rang. 122 :
A. I. R. 1936 Rang. 382.

-----Misconduct.

It is not open to a legal practitioner, who has appeared for a party in a case, to act for the opposite party in a later stage of the same proceedings or in subsequent litigation, unless he has been discharged without misconduct, or he has completed the business he was engaged to perform, and has no secrets to carry with him that can be used to his former client's prejudice. *Mr.-----v. Tin Byu U.*

12 Cr. L. J. 57 :
8 I. C. 1174 : U. B. R. 1910 I. P. 50.

-----Misconduct.

Judgment of trial Court retained by Advocate with intention of being retained for appeal—Advocate is guilty of professional misconduct. *In the matter of: Biseswar Nath Sahu.* (S. B.)

34 Cr. L. J. 1131 :
145 I. C. 1017 : 14 P. L. T. 709 :
12 Pat. 843 : 6 R. P. 217 :
A. I. R. 1933 Pat. 571.

-----Misconduct.

Legal practitioner's dealings with client nature of—Member of Pleader's family mixing up in affair adverse to claim of client—Duty of Pleader in such cases : *Held*, though Pleader did not act to the standard of propriety expected, yet no disciplinary action was justified. *In re: Qurban Ali Khan v. G, a Pleader, Gaya.* (S. B.) 39 Cr. L. J. 222 :
172 I. C. 849 : 4 B. R. 192 : 10 R. P. 357 (2) :
A. I. R. 1938 Pat. 28.

LEGAL PRACTITIONER

-----Misconduct.

Legal practitioner using client's money for his own purposes—Fraud, if should be proved—Intention, if material—Subsequent agreement to restore money does not affect charge of misconduct. *In the matter of: L. J., a First Grade Pleader, Vizagapatam.* (F. B.)

38 Cr. L. J. 1000 :
171 I. C. 93 : 46 L. W. 48 :
1937 M. W. N. 721 : 1937, 2 M. L. J. 160 :
10 R. M. 260 : A. I. R. 1937 Mad. 696.

-----Misconduct—Meaning of.

A Vakil of the High Court is not permitted by the rules to take part in business or enter into partnership. *In the matter of: B. an Advocate, Ghazipur.*

37 Cr. L. J. 117 :
159 I. C. 561 : 1936 A. L. J. 379 :
8 R. A. 467 : 1935 A. W. R. 1229 :
A. I. R. 1935 All. 1023.

-----Misconduct—Meaning of.

Advocate convicted for offences of criminal breach of trust and attempt to cheat : *Held*, his name should be struck off. *In the matter of: B, a Barrister-at-Law.*

37 Cr. L. J. 200 :
159 I. C. 1036 : 8 R. Rang. 308 :
A. I. R. 1935 Rang. 458.

-----Misconduct—Meaning of.

Advocate joining as partner in firm amounts to professional misconduct—Advocate undertaking to suspend practice while engaged in business : *Held*, penalty need not be imposed on him. *Asghar Husain v. Her Prasad Sand.*

158 I. C. 278 : 1935 O. W. N. 1029 :
1935 O. L. R. 566 : 8 R. O. 82 :
A. I. R. 1936 Oudh 18.

-----Misconduct—Meaning of.

Making reckless charges of fraud in a written statement against plaintiff, without any evidence and without satisfying himself that there are reasonable grounds for making them, amounts to misconduct on the part of the Advocate. *N. Thangavelu Mudaliar v. Changalvaraya Gurukul.*

158 I. C. 302 : 1935 M. W. N. 340 :
69 M. L. J. 250 : 42 L. W. 412 :
8 R. M. 254 : A. I. R. 1935 Mad. 578.

-----Misconduct—Meaning of.

Misconduct—Mere negligence does not amount to misconduct—Negligence accompanied by suppression of truth or deliberate misrepresentation, is misconduct. *In the matter of: an Advocate.*

36 Cr. L. J. 1130 :
157 I. C. 374 : 62 Cal. 158 :
8 R. C. 98 : A. I. R. 1935 Cal. 484.

-----Misconduct—Meaning of.

Mortgage at excessive rate at monthly rests for securing fees—Advocate is guilty of professional misconduct. *In the matter of: Biseswar Nath.* (S. B.) 34 Cr. L. J. 1131 :

145 I. C. 1017 : 14 P. L. T. 709 :
12 Pat. 843 : 6 R. P. 217 :
A. I. R. 1933 Pat. 571.

LEGAL PRACTITIONER

———*Misconduct, meaning of.*

'Professional misconduct,' means conduct which would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency. Mere negligence, even of a serious character, will not suffice: *Held*, on facts that the Counsel though undoubtedly guilty of negligence had not been guilty of conduct which would be regarded as 'disgraceful or dishonourable' by solicitors of good repute and competency. *In re: Prem Narain, Advocate, Agra.* (S. B.)

41 Cr. L. J. 620 :
188 I. C. 527 : 1940 A. L. J. 306 :
I. L. R. 1940 All. 386 : 13 R. A. 45 :
A. I. R. 1940 All. 289.

———*Misconduct.*

Misconduct in connection with instructions of client—Court before whom such misconduct takes place, can take action—Trust imposed by illiterate client—Breach of—Client deprived of valuable rights—Conduct must be severely dealt with. *In the matter of A., a Mukhtar.* (S. B.)

39 Cr. L. J. 203 :
172 I. C. 877 : 18 P. L. T. 961 :
10 R. P. 363 : 4 B. R. 184 :
17 Pat. 96 : A. I. R. 1938 Pat. 17.

———*Misconduct.*

Misconduct is not necessarily the same thing as moral turpitude and when disciplinary action is taken, the motive of the informer is immaterial. *In the matter of: Barrister-at Law and Advocate.* (S. B.)

35 Cr. L. J. 1010 :
149 I. C. 764 : 15 Lah. 354 :
6 R. L. 741 : A. I. R. 1934 Lah. 251.

———*Misconduct—Nature of.*

In a proceeding for an assault upon the servant of a *zemindar*, a *Mukhtar* appeared for some of the accused to argue an appeal. Later on, the *zemindar* brought proceedings under S. 145, Cr. P. C., against the accused for the same property, a dispute about which led to the assault. The *Mukhtar* appeared for the *zemindar*. The *Mukhtar's* first client did not offer to employ him nor took any exception to his appearing in the case until the case was actually at hearing: *Held*, that under the circumstances, the *Mukhtar* was not guilty of professional misconduct. *In the matter of: Mukhtar.*

16 Cr. L. J. 593 :
30 I. C. 145 : 13 A. L. J. 475 :
A. I. R. 1915 All. 375.

———*Misconduct—Nature of.*

It is the obvious duty of the members of the Bar to help the Court in administering justice, and a legal practitioner would be guilty of a serious dereliction of duty, if he did anything calculated to obstruct or impede the course of justice. *Emperor v. Sukh Dev.*

31 Cr. L. J. 977 :
126 I. C. 72 : 11 Lah. 220 :
A. I. R. 1929 Lah. 705.

———*Misconduct—Nature of.*

The refusal of a lawyer to take up a brief for a member of the public, simply and solely on the ground that he would be appear-

LEGAL PRACTITIONER

ing against a brother practitioner who was the litigating party on the other side, is professional misconduct, it is a breach of the duty which the acceptance of the status of an Advocate demands from every man who becomes an Advocate. A lawyer must take up a case for any member of the public if a fair and proper fee is tendered to him, adequate instructions are given and the case is of a class which the lawyer is accustomed to do. *Mohammad Inayat Ali Khan v. Emperor.*

31 Cr. L. J. 463 :
122 I. C. 891 : 51 All. 892 :
A. I. R. 1929 All. 367.

———*Misconduct—Nature of.*

When a Barrister hands over his brief to another Barrister at a fixed fee, the former does not thereby entirely go out of the case. The handing over of the brief is not tantamount to a transfer of the case to the second Barrister, so as to make it exclusively his own case. He merely holds the brief for the first Barrister at the fee agreed upon between them, and he would be guilty of most unprofessional conduct if he were to take the opportunity, whilst "acting" for another, of going behind that Barrister's back and extorting a higher fee from the lay client. *William Edward Akaje v. Judges, Supreme Court.*

29 Cr. L. J. 689 :
110 I. C. 321 : 55 M. L. J. 296 :
5 O. W. N. 805 : 29 P. L. R. 422 :
1928 M. W. N. 831 : 28 L. W. 958 :
A. I. R. 1928 P. C. 264.

———*Misconduct—Pleader appearing in Court in state of drunkenness—Name of pleader, if should be struck off from the rolls.*

Where in a criminal case a lower grade Pleader for the accused appeared in a drunken condition and was unable to conduct the case, on another occasion in spite of warning, he appeared in a similar condition in the Court of the District Judge and insulted the Court, on a third occasion being in the similar condition, he assaulted a Bench Clerk; and it appeared that he had taken to drink after his wife went mad and died: *Held*, that the Pleader was no longer fit to be allowed to hold himself out as a person who could be entrusted with the responsible duties that must needs be performed by a member of the legal profession and that his name may be struck off the list of lower grade Pleaders. *In the matter of: a lower grade Pleader.*

150 I. C. 236 : 12 Rang. 180 :
6 R. Rang. 377 : A. I. R. 1934 Rang. 156.

———*Misconduct—Pleader attempting to influence Judge before whom he is arguing through relative of Judge—Act held reprehensible.*

Where a Pleader tried to influence the Judge before whom he was arguing his case, through a relative of the Judge: *Held*, that the act was highly reprehensible and that it was in the interest of the legal profession, that serious notice should be taken of it: *Held*, however, that in view of his youth, the vitiated atmosphere prevailing and the

LEGAL PRACTITIONER

wrong angle of vision taken with respect to this sort of thing, along with the circumstance that he expressed his penitence at once and made no attempt to deny what he had done, he should be treated more leniently than his act merited. *Emperor v. G, a Pleader, Gujrat.* 164 I. C. 384 : 9 R. L. 117 (1) : A. I. R. 1936 Lah. 732.

———Misconduct.

Pleader decree-holder—Mistakes in execution papers—Attachment in spite of mistakes—Mistakes corrected in record by Pleader after attachment—No *mala fide*—Pleader young and inexperienced—Tampering with record, held, most reprehensible—Pleader suspended for one year. *In the matter of, a Pleader of Gaya (F. B.)* 37 Cr. L. J. 560 : 162 I. C. 13 : 17 P. L. T. 266 : 2 B. R. 400 : 8 R. P. 500 : A. I. R. 1936 Pat. 418.

———Misconduct.

Principles to be applied in deciding whether conduct amounts to misconduct laid down. *In the matter of: Bar-at-Law and Advocate. (S. B.)* 35 Cr. L. J. 1010 : 149 I. C. 764 : 15 Lah. 354 : 6 R. L. 741 : A. I. R. 1934 Lah. 251.

———Misconduct.

Professional misconduct—Relation of Pleader implicated in criminal proceedings—Pleader seeing Government Handwriting Expert, connected with investigation—Pleader proved not influencing officer—Conduct, held unprofessional. *In the matter of: Babu Damodar Mishra (S. B.)* 37 Cr. L. J. 625 : 162 I. C. 216 : 2 B. R. 418 : 17 P. L. T. 348 : 8 R. P. 520 : A. I. R. 1936 Pat. 423.

———Misconduct, proof of.

Before a Vakil can be found guilty of professional misconduct in sending a notice, alleged to be prejudicial to the interests of the client on whose behalf it was sent, it must be shown, first, that he knew the rights of parties and that his client did not know them or did not intelligently or deliberately realize them and secondly, that the notice was in fact prejudicial to the interests of his client. *Anandalwan v. Judges of the Madras High Court.* 31 Cr. L. J. 489 : 123 I. C. 184 : 1930 A. L. J. 539 : 7 O. W. N. 517 : 51 C. L. J. 418 : 58 M. L. J. 635 : 34 C. W. N. 534 : 1936 M. W. N. 300 : 32 Bom. L. R. 876 : 31 L. W. 627 : A. I. R. 1930 P. C. 144.

———Misconduct—Proof of.

The test that the Court has to apply in considering whether an Advocate should be struck off the roll of Advocates is whether the proved misconduct of the Advocate is such that he must be regarded as unworthy to remain a member of the honourable profession to which he has been admitted, and unfit to be entrusted with the responsible

LEGAL PRACTITIONER

duties that an Advocate is called upon to perform. *In the matter of: B, a Barrister-at-Law.*

37 Cr. L. J. 200 :
159 I. C. 1036 : 8 R. Rang. 308 :
A. I. R. 1935 Rang. 458.

———Misconduct—Proof of.

The charges of professional misconduct against an Advocate must be proved by clear and convincing evidence and should not be inferred from mere grounds for suspicion, however reasonable those grounds may appear to be. *In the matter of: B, an Advocate, Ghazipur.* 37 Cr. L. J. 117 :

159 I. C. 561 : 1936 A. L. J. 379 :
8 R. A. 467 : 1935 A. W. R. 1229 :
A. I. R. 1935 All. 1023.

———Misconduct—Reinstatement — Advocate offending against Criminal Law struck off the rolls—Whether can be reinstated.

Where an Advocate is struck off the rolls of Advocates for having offended against Criminal Law, he cannot be reinstated as an Advocate except in very exceptional circumstances. *In the matter of: T. an Advocate. (S. B.)*

37 Cr. L. J. 905 :
164 I. C. 236 (1) : 14 Rang. 390 :
9 R. Rang. 70 : A. I. R. 1936 Rang. 368.

———Misconduct—Reinstatement — Propriety of.

An Advocate found guilty of an offence like bribery or attempted bribery is guilty of grossest professional misconduct and can, in no circumstances, suffer so slight a penalty as suspension for four years. It is an offence which can necessarily only be purged after strenuous efforts and after a long period during which he has tried his best to reinstate himself in society. The door is not, however, inevitably and permanently shut to persons who are disbarred; they may, after the lapse of a suitable period of time, provided their conduct has been uniformly satisfactory, ultimately reach reinstatement. *In the matter of: U, an Advocate.* 180 I. C. 902 (2) :

11 R. Rang. 442 : 1939 Rang. 213 :
A. I. R. 1939 Rang. 142.

———Misconduct—Removal from the rolls—Re-admission.

An order of disbarment of a legal practitioner is not necessarily final or conclusive for all time. Though the name of a legal practitioner may have been removed from the rolls by the High Court by reason of professional misconduct or criminal conviction, the Court may, in its discretion, re-admit him, if satisfied that during the interval which has elapsed since the order of removal was made, he has borne an unimpeachable character and may, with propriety, be allowed to return to the practice of an honourable profession. *In re: Abir-ud-Din Ahmad.* 12 Cr L. J. 22 :

8 I. C. 1108 : 12 C. L. J. 625 :
15 C. W. N. 357 : 38 Cal. 309.

———Misconduct.

Rule of Court demanding filing of *vakalat-nama* in criminal proceedings is an arbitrary

LEGAL PRACTITIONER

rule—Non-filing, *held*, not to amount to professional misconduct. *In the matter of : Biseswar Nath. (S. B.)* 34 Cr. R. J. 1131 :

145 I. C. 1017 : 14 P. L. T. 709 :

12 Pat. 843 : 6 R. P. 217 :

A. I. R. 1933 Pat. 571.

———Misconduct.

Subornation of witnesses is as serious an offence as could well be committed, because it fouls the course of justice, and makes the due administration of law impossible. *In the matter of : M. K. Roy.* 36 Cr. L. J. 1099 :

157 I. C. 48 : 13 Rang. 506 :

8 R. Rang. 72.

———Misconduct.

The disciplinary jurisdiction vested in Courts should not be employed merely in aid of the Criminal Law of the land and merely to supplement, as it were, by way of a further punishment, a punishment which the Advocate has received under that law for the misconduct of which he is guilty. *In the matter of : N, an Advocate.* 37 Cr. L. J. 534 :

162 I. C. 170 : 40 C. W. N. 366 :

63 Cal. 867 : 8 R. C. 575 :

A. I. R. 1936 Cal. 158.

———Misconduct—Tests of.

The fact that a legal practitioner, who is appointed as the managing trustee of an estate, in using the funds of the estate, was in fact lending Trust money to himself and thereby committed a serious breach of trust, in itself is not necessarily sufficient to constitute professional misconduct. But, *held*, that in the circumstances in the case, when the legal practitioner as managing trustee altered the terms of a mortgage, agreeing that the beneficiaries should be paid only 5½ per cent interest, when the mortgagor was liable under the mortgage which was transferred to pay 6½ per cent., and another alteration in the terms of the mortgage by which the mortgagor was given the right to pay off at any time without any prior notice to the mortgagee the whole of the principal sum or any part thereof not being less than £100 was effected in order to facilitate dubious transactions, led to the conclusion that he was considering the interests of himself in preference to and to the detriment of the interests of the beneficiaries of the estate for whom he was trustee. *George Frier Grahame v. The Attorney-General of Fiji.*

163 I. C. 434 P. C. :

9 R. P. C. 19 : 44 L. W. 315 :

A. I. R. 1936 P. C. 224.

———Misconduct.

The practice of filing of the memorandum of the appeal on the last day of limitation knowing full well that it was understamped and hoping that the Court would be persuaded to accept the deficiency later, is certainly not in accordance with the high traditions of the legal profession. The High Court will not tolerate practices of this

LEGAL PRACTITIONER

nature. *In the matter of : Sir C. Padmanabha Ayyangar, Advocate, Madras. (F. B.)*

179 I. C. 204 :

48 L. W. 702 : 1938 M. W. N. 1169 :

11 R. M. 549 : 1939, 1 M. L. J. 564 :

I. L. R. 1939 Mad. 1 :

A. I. R. 1939 Mad. 1.

———Misconduct.

The test that the Court has to apply in considering whether an Advocate should be struck off the roll of Advocates is whether the proved misconduct of the Advocate is such that he must be regarded as unworthy to remain a member of the honourable profession. *In the matter of : N, an Advocate.*

37 Cr. L. J. 534 :

162 I. C. 170 : 40 C. W. N. 366 :

63 Cal. 867 : 8 R. C. 575 :

A. I. R. 1936 Cal. 158.

———Misconduct.

The test that the Court has to apply in considering whether an Advocate should be struck off the roll of Advocates is whether the proved misconduct of the Advocate is such that he must be regarded as unworthy to remain a member of the honourable profession to which he has been admitted, and unfit to be entrusted with the responsible duties that an Advocate is called upon to perform. The public are entitled to receive disinterested, sincere and honest treatment and advice from the Advocates to whom they repair for counsel and succour in their time of need; and the Court has always insisted that members of the legal profession "should stand free from all suspicion." *In the matter of : an Advocate.*

149 I. C. 856 : 12 Rang. 110 :

6 R. Rang. 331 :

A. I. R. 1934 Rang. 33.

———Misconduct.

Unauthorised retention of client's money—Payment on pressure by cheque—Cheque dishonoured—Previous instance of malversation of client's money—Cancelled Licence to practise *In re , B., a Barrister.* 142 I. C. 593 :

I. R. 1933 Sind 113 (2) :

A. I. R. 1933 Sind 45.

———Misconduct—What is.

The fact that a legal practitioner had made a speech at a meeting organized by an unlawful association condemning the action of the Government in arresting a popular leader is not in itself sufficient to show that he is an improper person to be a legal practitioner. *Emperor v. Farid-ul-Haq Ansari. (F. B.)*

143 I. C. 737 : 14 Lah. 532 :

I. R. 1933 Lah. 384 : A. I. R. 1933 Lah. 577.

———Misconduct.

X, a Senior Advocate not used to withdrawing money of client in deposit in Court—Fact known to G, a Junior Advocate—Clerk of X approaching G with *vakalatnama* on behalf of client of X, to withdraw money—G accepting *vakalatnama* without consulting X, believing in clerk—Action held done in good faith and not

LEGAL PRACTITIONER

amounting to misconduct. *In the matter of : G., an Advocate.* (S. B.) 38 Cr. L. J. 926 : 170 I. C. 339 : 18 P. L. T. 407 : 10 R. P. 135 : 3 B. R. 745 : 16 Pat. 488 : A. I. R. 1937 Pat. 433.

-----*Misconduct and suspension—Reinstatement.*

The High Court has power to reinstate a legal practitioner dismissed for misconduct. But he will not be reinstated as a matter of course after a certain length of time if his conduct during that time is not called in question. The nature of the offence or misconduct for which he was debarred, the length of time which has elapsed since his dismissal, the extent to which he has been tried in other walks of life, the opportunities he had of acting honestly in the face of temptations and the opinions of respectable persons who have had personal experience of his honesty are the important determining factors. *In the matter of: R., a Mukhtar, Budaun.* (F. B.) 38 Cr. L. J. 296 :

166 I. C. 818 : 1936 A. L. J. 1396 : 1936 A. W. R. 1160 : 9 R. A. 451 : I. L. R. 1937 All. 411 : A. I. R. 1937 All. 50.

-----*Political opinions.*

A legal practitioner has the right to entertain political opinions, but that should be in conformity with the position he has obtained by virtue of the licence granted to him. *In re : Harbuxrai.*

131 I. C. 187 : I. R. 1931 Sind 59 : 25 S. L. R. 131 : A. I. R. 1931 Sind 33.

-----*Privilege — Advocate — Disciplinary action.*

There is always a limit beyond which Counsel should not go in attacking the opposite party or his witnesses. A Counsel has a very valuable privilege in that he is not liable in other than exceptional circumstances, to civil or criminal proceedings on account of anything which he may say in Court on behalf of his clients. But that privilege imposes a corresponding responsibility and a Counsel has to be very careful not to make any attack upon parties or witnesses engaged in the case, which goes beyond what is fairly necessary for the presentation of his own client's case. As a general rule, the only step which can be taken against an Advocate who abuses his privilege is for the Court to take disciplinary action. *Ramkrishna Bhai Thakur v. J. D. Davar.*

138 I. C. 543 : 34 Bom. L. R. 443 : I. R. 1932 Bom. 401 : A. I. R. 1932 Bom. 199.

-----*Reference to Tribunal—Procedure.*

Under the Bar Councils Act, the Court, when a complaint is made, can only dismiss it summarily or refer it to a Tribunal of the Bar Council to inquire into, and the Court would not generally be justified in dismissing a petition summarily unless it is satisfied that, even if the allegations in the petition be proved, there would be no case for taking

LEGAL PRACTITIONER

action. *Ramkrishna Bhai Thakur v. J. D. Davar.* 138 I. C. 543 : 34 Bom. L. R. 443 : I. R. 1932 Bom. 401 : A. I. R. 1932 Bom. 199.

-----*Relation with client.*

It is no part of the etiquette of members of the legal profession to tell lies in Court or to give perjured evidence on behalf of their clients. *Emperor v. Guru Prasad.* (F. B.)

35 Cr. L. J. 453 : 147 I. C. 687 : 15 P. L. T. 63 : A. I. R. 1934 Pat. 142.

-----*Rights and duties.*

A counsel, like a Judge, should not be subject to fear for the consequences of anything which he might say in the course of his duty. Where no malice is imputed and a pleader speaks under instructions from his client, no Criminal or Civil Proceeding would lie against him for defamatory statement. A pleader is not only justified to state what the accused's defence really is but is bound to do so. He is not limited to the record in his attempt to furnish an explanation of the evidence which is consistent with his client's innocence. Instructed or not, it is the duty of a pleader to make a suggestion, if he thinks it might advance the interests of his client. *In re : Achalsing.* (F. B.) 10 Cr. L. J. 514 : 4 I. C. 176 : 3 S. L. R. 177.

-----*Rights and duties.*

A distinction must be drawn between the complainant and his Advocate for it may well be that the complainant had knowledge which his Advocate did not possess. Moreover, it is obvious, an Advocate cannot be expected to constitute himself a Judge either of the law or facts of his client's case. He is his client's adviser and must act according to his instructions, provided always those instructions do not require that he should be guilty of an offence or of misconduct or that he should institute in a Court criminal proceedings which, to his own certain knowledge, are false. Moreover, it is his bounden duty to put into the complaint the material facts upon which the complaint is based and not wilfully by acts of omission to deceive the Court. *Emperor v. Ivor Henry Budgnell.*

38 Cr. L. J. 1002 : 170 I. C. 891 : 10 R. S. 81 : A. I. R. 1937 Sind 193.

-----*Rights and duties.*

A lawyer has no right to reject a brief when offered to him on payment of a fee agreed upon between the parties, on the ground of partisanship for a party to the litigation. *Lalla v. Zahoor Ahmad.*

26 Cr. L. J. 1272 : 88 I. C. 1048 : 2 O. W. N. 682 : A. I. R. 1925 Oudh 672.

-----*Rights and duties.*

A legal practitioner should not draft and sign a petition of compromise in a case in which he was not previously engaged for any of the parties without consulting the lawyers who were engaged in the case and without a *vakalat-*

LEGAL PRACTITIONER

nama from the party concerned. *Ganpat Lal v. Emperor*. 28 Cr. L. J. 529 :

102 I. C. 337 : 6 Pat. 217 :

8 P. L. T. 470 : A. I. R. 1927 Pat. 199.

———*Rights and duties.*

A Pleader defending a person has to do more than go through the record. He has to go through all the prosecution evidence, find out what defence may best be set up and what means there exist for putting up that defence. *U Po Mya v. The King*. 39 Cr. L. J. 576 :

175 I. C. 350 : 10 R. Rang. 483 :

A. I. R. 1938 Rang. 198.

———*Rights and duties.*

A Pleader has a duty not only towards his client but also towards the Court, and it is his duty to co-operate with the Court in the orderly and pure administration of justice. *Emperor v. Rajani Kanta Bose*.

24 Cr. L. J. 33 :

71 I. C. 81 : 35 C. L. J. 356 :

26 C. W. N. 589 : 49 Cal. 732 :

A. I. R. 1922 Cal. 515.

———*Rights and duties.*

Counsel may say in Court anything on behalf of his client without being liable to civil or criminal action. But he should not attack opposite party or his witness beyond what is necessary. *Ramkrishna Bhai Thakur v. J. D. Davar*. 138 I. C. 543 :

34 Bom. L. R. 443 : I. R. 1932 Bom. 401.

A. I. R. 1932 Bom. 199.

———*Rights and duties.*

Grounds of appeal should be carefully drawn up and with a due sense of responsibility. *Tafiz Pramanik v. Emperor*. 31 Cr. L. J. 916 :

125 I. C. 743 : 50 C. L. J. 584 :

A. I. R. 1930 Cal. 228.

———*Rights and duties.*

High Court is jealous to protect Courts from harassing tactics on Counsel's part—Remarks made as to conduct of Counsel by lower Court will not be expunged unless satisfied that those remarks are not deserved. *Tara Chand v. Emperor*. 35 Cr. L. J. 548 :

147 I. C. 1164 : 6 R. A. 619 :

A. I. R. 1933 All. 949.

———*Rights and duties.*

In miscellaneous proceedings arising out of a suit, a Pleader is entitled to act on the authority of a *vakalatnama* obtained by him in the principal suit. A Pleader ought to endorse his acceptance on the *vakalatnama* under which he acts as required by the rules of the High Court, and if he does not accept the authority in writing, he should not be allowed by the Judge to be heard or to act in any manner on behalf of the party. *In the matter of : Two Pleaders*.

18 Cr. L. J. 808 :

41 I. C. 328 : 1 P. L. W. 483 :

2 P. L. J. 259 : 1917 Pat. 217 :

[A. I. R. 1917 Pat. 211.

———*Rights and duties.*

It is the duty of a Pleader to assist the Court

LEGAL PRACTITIONER

in the attainment of justice. It is his duty, whether he is briefed for the accused or for the Crown, as an officer of Court, when he sees an error being committed, to draw the Magistrate's or the Judge's attention to it. *Faqir Bux v. Emperor*. 27 Cr. L. J. 833 :

95 I. C. 753 : A. I. R. 1926 Sind 244.

———*Rights and duties.*

Per Sanderson, C. J.—The acceptance of a *vakalatnama* in a suit by a Pleader entails a duty upon the Pleader to attend the Court on the day fixed for the hearing of the suit, unless it is proved that his obligations towards his client entailed by the acceptance of the *vakalatnama* were limited by a special arrangement, accompanying the acceptance of the *vakalatnama*. The onus of proving such special arrangement lies on the Pleader concerned. In the absence of proof of any special agreement to that effect, the mere fact that no fee is tendered or paid is no justification for the Pleader's refusal to attend to the client's interests. A Pleader, who does not intend to appear for his client, is bound to give the latter reasonable notice so as to afford him an opportunity of obtaining other legal assistance. *Emperor v. Rajani Kanta Bose*.

24 Cr. L. J. 33 :

71 I. C. 81 : 35 C. L. J. 356 :

26 C. W. N. 589 : 49 Cal. 732 :

A. I. R. 1922 Cal. 515.

———*Rights and duties.*

Pleaders have duties and obligations to their clients in respect of the suits and matters entrusted to them which are pending in different Courts, in addition to their duties to co-operate with the Court in the orderly and pure administration of justice. *In the matter of : a Pleader*.

25 Cr. L. J. 1352 :

82 I. C. 712 : 2 Rang. 265 :

A. I. R. 1924 Rang. 320.

———*Rights and duties.*

The duty of a member of the legal profession is to realize his responsibilities not merely to his clients but to the Court before whom he practises. *In the matter of : R. S. Pleader, Samastipur*. (S. B.) 36 Cr. L. J. 1023 :

156 I. C. 889 : 16 P. L. T. 231 :

8 R. P. 363 : A. I. R. 1935 Pat. 249.

———*Rights and duties.*

The duty of an Advocate is to assist in the administration of justice and not to obstruct or to impede it, and in the performance of his professional duties, he is expected not to be influenced by personal motives, desire of revenge or by resentment. It is improper for him to adopt an insulting attitude towards the presiding officer of the Court or to impute motives to him. It is illegal for him to ask irrelevant and scandalous questions and he incurs grave personal responsibility if he does so. *Emperor v. M., Bar-at-Law, Lyallpur*.

38 Cr. L. J. 611 :

168 I. C. 773 : 9 R. L. 673 :

A. I. R. 1937 Lah. 300.

LEGAL PRACTITIONER

———Rights and duties.

There is always a limit beyond which Counsel should not go in attacking the opposite party or his witnesses. *Ramkrishna v. Davar*.

138 I. C. 543 : 34 Bom. L. R. 443 :
I. R. 1932 Bom. 401 :
A. I. R. 1932 Bom. 199.

———Rights and duties.

Where an Advocate receives instructions from his lay client or his friends, it is incumbent on him to see that the terms of his engagement are clear and are understood by his client, and in the absence of a special contract to the contrary, the fee should be presumed to have been taken for the whole case. It is desirable that an Advocate should take a note in writing from the person paying the fee of the terms of the engagement and should make a similar note on the receipt for fee given by him. *In the matter of : A First Grade Pleader*.

16 Cr. L. J. 707 :
30 I. C. 995 : A. I. R. 1915 L. Bur. 29.

———Rights and duties.

Where the Counsel resorts to attempting to provoke the Magistrate trying the case into some unguarded expression and then applying for a transfer, the method adopted will be neither in the interest of his client nor in the interest of justice. *Tara Chand v. Emperor*.

35 Cr. L. J. 548 :
147 I. C. 1164 : 6 R. A. 619 :
A. I. R. 1933 All. 949.

———Rights and duties of Counsel.

No Counsel is entitled to frame a serious charge against a party to a litigation unless he is in possession of admissible and relevant evidence upon which, if accepted, Counsel could reasonably ask the Court to hold the allegations as true. It may well be that the evidence in support of the allegations is untrue and it is certainly not the duty of a Counsel in the ordinary course to test the truth of the witnesses whom he intends to put into the witness-box but at the conclusion of the evidence which he has led, he should be in a position to submit as a reasonable proposition to the Court that the evidence which he has led, if accepted, establishes the allegations for which he had made himself responsible. *In the matter of : An Advocate of Cawnpore*.

155 I. C. 1043 :
7 R. A. 1007 : 1935 A. L. J. 759 :
A. I. R. 1935 All. 425.

———Rights of.

It is a fundamental right possessed by every legal practitioner that he may be allowed freely to exercise his profession and to appear in any case in which he may choose to appear without interference of any kind except where such interference is based upon some valid and legal grounds. *In the matter of : Shyamapada Bhattacharji*.

33 Cr. L. J. 466 :
137 I. C. 434 : 54 C. L. J. 530 :
36 C. W. N. 294 : 59 Cal. 709 :
I. R. 1932 Cal. 311 : A. I. R. 1932 Cal. 370.

LEGAL PRACTITIONER

———Rights of.

The Legal Practitioners' (Fees) Act, XXI of 1926, not only allows a legal practitioner to settle, by a private agreement with his client, the terms of his engagement and the fee to be paid to him for his professional services, but also authorises him to enforce that agreement by legal proceedings taken for the recovery of the fee due to him. There can, therefore, be no doubt that the Indian Law does not now require a legal practitioner to receive the whole of his fee before the hearing of the case, but permits him to make an agreement for the payment in future of the whole or part of his fee. The Statute while conferring upon a legal practitioner the right to recover the fee promised by his client, does not authorize the latter to realise it from his defeated adversary. The right of a successful party to recover the fee from the opposite party depends upon the rule framed by the High Court which contemplates that only the fee actually paid before the hearing can be allowed as costs on taxation. *Shiva Narain Jafa v. The Judges of the High Court of Judicature at Allahabad*.

162 I. C. 445 : 1936 O. L. R. 298 :
8 R. P. C. 271 : 2 B. R. 582 :
40 C. W. N. 933 : 17 P. L. T. 429 :
38 P. L. R. 684 : 38 Bom. L. R. 731 :
1936 M. W. N. 725 : 19 N. L. J. 163 :
1936 O. W. N. 577 : 58 All. 307 :
63 C. L. J. 521 : 71 M. L. J. 631 P. C. :
A. I. R. 1936 P. C. 176.

———Right of appearance of, before Bench of Judges to deal with cases from Presidency Small Cause Courts in Calcutta.

A Bench constituted by the Chief Justice to deal with orders and judgments of the Presidency Small Cause Court forms a principal Court of Original Jurisdiction situate in Calcutta, and, therefore, a Vakil enrolled and ordinarily practising in the High Court has no right of audience before such a Bench. *Budhu Lall v. Chotu Gope*.

18 Cr. L. J. 793 :
41 I. C. 313 : 25 C. L. J. 401 :
21 C. W. N. 654 :
A. I. R. 1917 Cal. 527.

———Rival claims of sections of—Who can inquire into.

A question relating to the rival claims of different sections of Legal Practitioners of the High Court cannot be settled by the opinion of a single Judge or of a Division Bench of the Court. *Budhu Lall v. Chotu Gope*. (S. B.)

18 Cr. L. J. 793 :
41 I. C. 313 : 25 C. L. J. 401 :
21 C. W. N. 654 :
A. I. R. 1917 Cal. 527.

———Status.

The position of an Advocate is a privileged and responsible one and the public have a right to look upon the Bar as consisting of persons in whom they may have the utmost confidence. *In the matter of : Biseswar Nath Sahu*. (S. B.)

34 Cr. L. J. 1131 :
145 I. C. 1017 : 14 P. L. T. 709 :
12 Pat. 843 : 6 R. P. 217 :
A. I. R. 1933 Pat. 571.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

-----Withdrawal from case.

An accused person is entitled to select the Advocate whom he desires to appear for him, and the prosecution cannot fetter that choice merely by serving a subpoena on the Advocate to appear as a witness. On the other hand, the Court is bound to see that the due administration of justice is not in any way embarrassed. If therefore a Court comes to the conclusion that a trial will be embarrassed by the appearance of an Advocate, who has been called as a witness by the other side, and if notwithstanding the Court's expression of its opinion, the Advocate refuses to withdraw, in such a case, the Court has inherent jurisdiction to require the Advocate to withdraw. *Emperor v. Dadu Rama Surde*.

41 Cr. L. J. 568 (a) :
181 I. C. 769 : 11 R. B. 381 (1) :
41 Bom. L. R. 282 :
A. I. R. 1939 Bom. 150.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

-----Declaration of touts.

Bar Association's resolution declaring certain persons as touts—Defaulting member can vote—Persons affected, if entitled to show cause why resolution should not be passed—Enquiry by District Judge—Association called to assist—Persons not found to be touts—Costs should not be borne by Association—Members giving evidence in inquiry, stating their inability to say whether they adhered to resolution even after consideration before them as witnesses—Statement does not amount to repudiation of resolution—Government of India Act, 1915 (5 & 6 Geo., V, c. 51), S. 107—High Court, whether can take cognizance of proceedings—Association can be allowed to supply materials to assist High Court to do justice. *District Bar Association, Hoshiarpur v. Ram Singh*.

38 Cr. L. J. 19 :
165 I. C. 963 : 39 P. L. R. 62 :
9 R. L. 323 : A. I. R. 1936 Lah. 382.

-----Enquiry—Court, duty of.

In holding an enquiry under the Legal Practitioners Act, the presiding officer should be careful not to allow irrelevant matter to be introduced or to admit evidence which ought to be rejected. *Emperor v. Surjya Narayan Singh*.

21 Cr. L. J. 636 :
57 I. C. 470 : 1 P. L. T. 372 :
2 U. P. L. R. Pat. 168 :
A. I. R. 1920 Pat. 84.

-----Rules made under Act—R. 14—Interpretation.

The words 'pending a final decision on a charge of professional misconduct' in r. 14 are not wide enough to cover a case in which the enquiry has not yet begun. It must refer only to a final decision by the High Court upon materials already enquired into and adjudicated upon by some subordinate judicial authority, and it must apply only to a case in which *prima facie* there is reason to

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

believe the Pleader concerned to be guilty of professional misconduct. *In re : L, a First Grade Pleader, Rajam*.

39 Cr. L. J. 83 :
172 I. C. 136 : 1937 M. W. N. 460 :
46 L. W. 599 : 10 R. M. 434 :
A. I. R. 1937 Mad. 672.

-----Misconduct—Advocate and Pleader—Professional misconduct—Champerty, agreement by way of—Relation of pleader and client.

It is highly improper and grossly unprofessional conduct, on the part of an Advocate or of a Vakil, to enter into an agreement with a client, to furnish him with funds for a litigation, in consideration of his assigning over a part of the property in litigation, if recovered to such Advocate or Vakil. When a Vakil takes an active interest in a case during its pendency in the lower Court and there is an understanding that he will be engaged as Vakil when the case comes up to the High Court, it cannot be said, that no relationship of pleader and client existed between him and the client, before the actual execution and acceptance of the *vakalat-nama*. *In re : an Advocate*.

4 Cr. L. J. 241 :
4 C. L. J. 262.

-----Misconduct—Charges of.

Charges of professional misconduct must be clearly established and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. *Dogarmal Amir Chand v. P., a Pleader*.

32 Cr. L. J. 303 :
129 I. C. 301 : 31 P. L. R. 913 :
I. R. 1931 Lah. 189 :
A. I. R. 1930 Lah. 947.

-----Misconduct.

Comments made by a Pleader in the columns of a newspaper as its correspondent on the administration of justice generally in a particular district or in a particular Court do not amount to misconduct within the meaning of S. 18, Legal Practitioners Act, as the Pleader cannot be said to have acted professionally even though the comments may exceed the limits of fair criticism or may not be wholly justified. *Subramania Iyer v. District Magistrate, Salem*.

21 Cr. L. J. 246 :
55 I. R. 198 : 11 L. W. 192 :
1920 M. W. N. 105 : 38 M. L. J. 230 :
A. I. R. 1920 Mad. 442.

-----Misconduct—Misconduct as a suitor does not amount to professional misconduct.

Proceedings under the Legal Practitioners Act, should not be taken against a Pleader for what is done by him in the capacity of a suitor in respect of his supposed rights as a suitor, where his conduct has no connection whatever with his professional character or anything done by him professionally. *Narendra Nath Das v. Siva Kumar Jha*.

21 Cr. L. J. 726 :
58 I. C. 150 : 1 P. L. T. 571 : 5 P. L. J. 601 :
A. I. R. 1920 Pat. 712.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—————*Misconduct — Suspicion — Mukhtear Renewal of licence.*

The renewal of the licence of a legal practitioner cannot be refused on the mere suspicion that he was implicated in and privy to the sending of anonymous petitions making serious allegations against a Sub-Divisional Officer and other Government officers. *In re : Babu Niranjan Prosad Mohanty.*

8 Cr. L. J. 158 :
12 C. W. N. 919 : 4 M. L. T. 155.

—————*Renewal of sanad.*

Suspension of practice on entering Government service—Application for permission to resume practice after discharge from service—Complete disclosure of facts leading to discharge from service must be given. *In the matter of : Mukunda Lal Dhar.*

22 Cr. L. J. 591 :
62 I. C. 831.

—————*Ss. 2-A, 36—Declaration of tout—Revision.*

The High Court can interfere with an order of a District Magistrate under S. 36, Legal Practitioners' Act, in the exercise of the general powers of superintendence conferred upon the High Court by S. 15 of the High Courts Act, 1861, and S. 107, Government of India Act. *Kapoor Chand Jain v. Emperor.*

32 Cr. L. J. 140 :
128 I. C. 387 : 1930 A. L. J. 961 :
I. R. 1931 All. 35 :
A. I. R. 1930 All. 641.

—————*Ss. 3, 36—Declaration of tous.*

Before a person can be declared to be a tout, it must be found for a fact that he has acted in a manner which will bring him within the definition as laid down in S. 8, Legal Practitioners' Act. *In re : Adiraju Somanna.*

177 I. C. 456 :
47 L. W. 578 : 11 R. M. 334 :
1938 M. W. N. 426 :
1938, 2 M. L. J. 100 :
I. L. R. 1938 Mad. 988 :
A. I. R. 1938 Mad. 634.

—————*Ss. 3, 36—Tout, who is.*

Looking after people's cases and writing petitions for them do not make a person a tout within the meaning of S. 8, Legal Practitioners Act. In order that a person may be declared a tout, it must be proved that he procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner. *Keramal Ali v. Emperor.*

22 Cr. L. J. 589 :
62 I. C. 829.

—————*Ss. 3, 36, Expl. (1)—Declaration of tout—Tout—Evidence of general repute—Report of Sub-Committee appointed by Bar Association, how far evidence, 'Tout' defined.*

A resolution passed by a Sub-Committee of only seven members constituted by a Bar Association consisting of 22 members cannot be said to be one by a majority of the

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

members of the Bar Association under the provisions of Expl. 1 to S. 36, Legal Practitioners Act, and consequently, the report or resolution of such a Sub-Committee cannot be used as evidence of general repute. *Scgam Prasad Pandey v. Emperor.*

28 Cr. L. J. 532 :
102 I. C. 340 : 8 P. L. T. 587 :
6 Pat. 567 : A. I. R. 1927 Pat. 282.

—————*S. 6—Applicability.*

The rules framed under S. 6 can apply only to Pleaders and *Mukhtears*. R. 287 of the Oudh Civil Rules does not apply to an Advocate who is subject to the provisions of the Bar Councils Act. *Asghar Husain v. Har Prasad Sand.*

158 I. C. 278 :
1935 O. L. R. 566 : 8 R. O. 82 :
1935 O. W. N. 1029 :
A. I. R. 1936 Oudh 18.

—————*S. 6—Interpretation.*

The word 'proper' in S. 6, Cl. (a) implies that apart from educational and other qualifications that may be insisted on, there may be other conditions laid down in order to entitle a person to be admitted as a Pleader, and the word 'to be' denotes that his continuance as a Pleader may be made dependent on such conditions. *In re : Ramesh Chandra Sen Gupta, a Pleader, Patnakhali (S. B.)*

37 Cr. L. J. 590 :
162 I. C. 517 : 63 C. L. J. 127 :
40 C. W. N. 377 :
63 Cal. 855 : 8 R. C. 605 :
A. I. R. 1936 Cal. 205.

—————*S. 7—Renewal of sanads—Rules under the Act, R. 13.*

District Judges have no power to forbid legal practitioners to practice pending the receipt from the High Court of their renewed certificates. Any orders in regard to non-renewal or suspension pending refusal to renew must proceed from the High Court. *In re : U. Gopala Menon.*

133 I. C. 522 (a) :
1931 M. W. N. 392 : 60 M. L. J. 588 :
33 L. W. 561 : 54 Mad. 574 :
I. R. 1931 Mad. 762 :
A. I. R. 1931 Mad. 688.

—————*Ss. 7, 13—Legal Practitioner — Civil disobedience—Sanad, renewal of.*

While the High Court will not interfere with or have regard to any man's political opinions or opinions on public questions, it is impossible to allow a person, who proclaims, or practices what is called the doctrine of "civil disobedience"; to be a part of the machinery of the Courts which exists for the very purpose of the thwarting of civil disobedience and the enforcement of civil obedience. He may be perfectly honourable man; may act from conscientious motives; he may, in conceivable circumstances, be a patriot. It may be imagined that he should not be punished or even prosecuted for

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

holding or expressing these opinions but, however admirable a person he may be, he cannot consistently with his professions, and to be considered and to be adopted as a legal practitioner, that is, as part of the machinery of the High Court for enforcement of law and order. *In the matter of: K. M., First Grade Pleader.* 27 Cr. L. J. 230 : 92 I. C. 214 : 1924 M. W. N. 5 : A. I. R. 1924 Mad. 479.

S. 12.

Conviction for criminal offence, is not a permanent bar to re-admission to profession. *In re: U, ex-Lower Grade Pleader, Kama.* 41 Cr. L. J. 272 : 186 I. C. 268 : 12 R. Rang. 259 : A. I. R. 1940 Rang. 32.

S. 12—Conviction for criminal offence—What is.

Conviction under S. 3, Police Incitement to Disaffection Act, or S. 17, Cr. Law (Amend.) Act, is conviction for criminal offence : *In the matter of: Ram Gobind Sinha Verma.* (F. B.) 32 Cr. L. J. 1256 : 134 I. C. 945 : 12 P. L. T. 773 : 11 Pat. 365 : I. R. 1931 Pat. 497 : A. I. R. 1931 Pat. 369.

S. 12—Conviction—Pleader cannot challenge correctness of.

In proceedings against a Pleader under S. 12 in respect of a conviction, he is not entitled to question the correctness of his conviction. *In the matter of: M. P. N., a Second Grade Pleader.* (S. B.) 37 Cr. L. J. 571 : 162 I. C. 414 : 43 L. W. 426 : 1936 M. W. N. 238 : 70 M. L. J. 498 : 59 Mad. 732 : 8 R. M. 989 : A. I. R. 1936 Mad. 318.

S. 12—Criminal offence—Meaning of.

'Criminal offence' means offence under Penal Code or any act or omission punishable by law for the time being in force. *In the matter of: Ram Gobind Sinha Verma.* (F. B.) 32 Cr. L. J. 1256 : 134 I. C. 945 : 12 P. L. T. 773 : 11 Pat. 365 : I. R. 1931 Pat. 497 : A. I. R. 1931 Pat. 369.

S. 12—Criminal offence—Nature of.

Conviction for criminal offence is not an offence—Offence must be of such a nature as to imply defect of character. *In the matter of: Ram Gobind Sinha Verma.* (F. B.) 32 Cr. L. J. 1256 : 134 I. C. 945 : 12 P. L. T. 773 : 11 Pat. 365 : I. R. 1931 Pat. 497 : A. I. R. 1931 Pat. 369.

S. 12—'Defect of character,' significance of.

The expression 'defect of character' in S. 12, includes not only moral turpitude but also such defect in the character of the Pleader which renders him unfit to be a member of

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

the honourable profession to which he belongs. *In the matter of: Babu Sashi Bhusan Roy.*

145 I. C. 316 : 60 Cal. 1453 : 38 C. W. N. 278 : 6 R. C. 92 : A. I. R. 1933 Cal. 731.

S. 12—Disciplinary action.

The High Court has jurisdiction to take disciplinary action against a Pleader though the criminal offence was not one committed in his professional capacity. *In the matter of: M. P. N., a Second Grade Pleader.* (S. B.)

37 Cr. L. J. 571 : 162 I. C. 414 : 43 L. W. 426 : 1936 M. W. N. 238 : 70 M. L. J. 498 : 59 Mad. 732 : 8 R. M. 989 : A. I. R. 1936 Mad. 318.

S. 12—Interpretation.

The expression 'defect of character' as used in S. 12, Legal Practitioners Act, includes not only moral turpitude but also such defect in the character of the Pleader which renders him unfit to be a member of the honourable profession to which he belongs. *In the matter of: Babu Sashi Bhusan Roy and Babu Gopesh Chandra Pal—Pleaders.*

145 I. C. 316 : 6 R. C. 92 : 60 Cal. 1453 : 38 C. W. N. 278 : A. I. R. 1933 Cal. 731.

S. 12—Miscellaneous.

There is no question of fresh indictment or trial for same offence under any other law. *In the matter of: Ram Gobind Sinha Verma.* (F. B.) 32 Cr. L. J. 1256 : 134 I. C. 945 : 12 P. L. T. 773 : 11 Pat. 365 : I. R. 1931 Pat. 497 : A. I. R. 1931 Pat. 369.

S. 12—Misconduct.

A Pleader who has been convicted under S. 121, Penal Code, of waging war against the King has a defect of character and this unfits him to be in the role of Pleaders. *In the matter of: M. P. N., a Second Grade Pleader.* (S. B.)

37 Cr. L. J. 571 : 162 I. C. 414 : 43 L. W. 426 : 1936 M. W. N. 238 : 70 M. L. J. 498 : 59 Mad. 732 : 8 R. M. 989 : A. I. R. 1936 Mad. 318.

S. 12—Misconduct.

Conviction for offences under Ss. 145 and 151, Penal Code, and S. 3, Ordinance VI of 1980—No expression of regret—They should be dealt with under S. 12. *In the matter of: Sashi Bhusan Roy.*

145 I. C. 316 : 60 Cal. 1453 : 38 C. W. N. 278 : 6 R. C. 92 : A. I. R. 1933 Cal. 731.

S. 12—Misconduct—Meaning of.

Pleader sent to jail for refusing to give security under S. 107, Cr. P. C., cannot be said to have been convicted for criminal offence. *In the matter of: Ram Gobind Sinha Verma.* (F. B.) 32 Cr. L. J. 1256 :

134 I. C. 945 : 12 P. L. T. 773 : 11 Pat. 365 : I. R. 1931 Pat. 497 : A. I. R. 1931 Pat. 369.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

———S. 12—*Misconduct.*

No distinction between various kinds of law-breaking—Habitual and wilful breaking of law implies defect of character justifying dismissal from practice—But for isolated breaking of law on one or two occasions, action should not be taken—For acts falling midway between these two, warning with suspension will do. *In the matter of : Abu Hosain Sarkar, Pleader.*

35 Cr. L. J. 592 :
148 I. C. 57 : 38 C. W. N. 276 :
6 R. C. 419 : A. I. R. 1934 Cal. 242 (2).

———S. 12—*Misconduct—Penalty for—Propriety of—Mukhtear found guilty of serious offence of rioting, whether fit to continue to be mukhtear—Offence not committed in relation to profession—True test—Going behind conviction, whether allowable.*

The Court will not hesitate to strike off the roll a practitioner who has been found guilty of a serious offence, even though such offence has not been committed in relation to his profession. Where two mukhtears were convicted under S. 150 read with S. 144, Penal Code, and sentenced to a fine to Rs. 1,000 each, and proceedings were taken against them under S. 12, Legal Practitioners' Act: *Held*, that it is not open to them to go behind the conviction and to invite the High Court to examine the facts with a view to arrive at the conclusion that the conviction was in substance erroneous. *Held also*, that, under the circumstances, the mukhtears have been convicted of a criminal offence which implies a defect of character so as to unfit them to be mukhtears. The High Court took a merciful view of the case and suspended them from practice for three months. *In re : Kali Prasanno Bose.*

11 Cr. L. J. 503 :
7 I. C. 622 : 14 C. W. N. 1073 : 12 C. L. J. 553.

———S. 12—*Misconduct.*

Pleader convicted under S. 17 (1), Criminal Law Amendment Act and under Ss. 124-A, 153-A and 178, Penal Code—In proceedings under S. 12, Legal Practitioners' Act, showing that he had no faith in Courts of Justice: *Held*, facts implied defect of character and that case must be dealt with severely. *In the matter of : N, a Pleader, Sylhet.*

37 Cr. L. J. 153 ;
159 I. C. 664 : 8 R. C. 344 :
A. I. R. 1935 Cal. 742.

———S. 12—*Misconduct.*

Pleader 60 years old having unblemished character convicted for embezzlement of money—His name held should be struck off the rolls. *In the matter of : U, a Higher Grade Pleader, Ngazun.*

176 I. C. 752 : 11 R. Rang. 79 :
A. I. R. 1938 Rang. 288.

———S. 12—*Misconduct.*

Repetition of improper conduct must be

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

dealt with severely. *In the matter of : Ram Govind Sinha Verma. (F. B.)*

32 Cr. L. J. 1256 :
134 I. C. 945 : 12 P. L. T. 773 :
11 Pat. 365 : I. R. 1931 Pat. 497 :
A. I. R. 1931 Pat. 369.

———S. 12—*Misconduct—Temporary aberration, whether defect of character—Misappropriation.*

A Pleader was convicted of criminal breach of trust which was found to have been only intended to be temporary and not an attempt at permanent misappropriation: *Held*, that the offence was a temporary aberration on the part of the Pleader and the conviction did not imply a defect of character which would unfit him permanently to be a Pleader. *Emperor v. Brahmannada.*

25 Cr. L. J. 1125 :
81 I. C. 949 : A. I. R. 1925 Cal. 238.

———S. 12—*Misconduct.*

Two Pleaders were convicted of offences under Ss. 145 and 151, Penal Code, as also under S. 8 of Ordinance (VI of 1930): *Held*, that regard being had to the nature of the offences for which they were convicted, which involved serious defect of character and to the fact that there was no expression of regret for their past behaviour, they should be dealt with under S. 12, Legal Practitioners Act. *In the matter of : Babu Sashi Bhushan and Babu Gopesh Chandra Pal, Pleaders.*

145 I. C. 316 : 6 R. C. 92 : 60 Cal. 1453 :
38 C. W. N. 278 : A. I. R. 1933 Cal. 731.

———S. 12—*Misconduct by Vakil—If within scope.*

The mere fact of a conviction for any criminal offence implying moral turpitude can be a sufficient basis in law for an order of suspension or dismissal of a Pleader or a mukhtear only, but not of a Vakil whose cases of misconduct are not provided for by the Legal Practitioners Act but by para. 8 of the Letters Patent. *In the matter of : Ganpat Sahai.*

32 Cr. L. J. 625 :
131 I. C. 67 : 8 O. W. N. 267 :
I. R. 1931 Oudh 179 : A. I. R. 1931 Oudh 161.

———S. 12—*Proceedings against mukhtear—Jurisdiction of subordinate Court—High Court, should initiate proceedings.*

Where a mukhtear is convicted under Ss. 144 and 150, Penal Code, and if on this ground any action has to be taken against him, proceedings must be initiated by the High Court under S. 12, Legal Practitioners Act. *In re : Kali Prasanna.*

11 Cr. L. J. 214 :
5 I. C. 727 : 11 C. L. J. 164.

———S. 12—*Scope.*

Pleader committing offence under Salt Act by way of political demonstration—Conviction: *Held*, he could be dealt with under Legal Practitioners Act. (Pleader was suspended

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

from practice for six months). *In the matter of Golakh Nath De, a Pleader.*

132 I. C. 359 (2) : 12 P. L. T. 61 : I. R. 1931 Pat. 279 : A. I. R. 1931 Pat. 208.

—S. 12.

Pleader promoting meeting of unlawful association—Conviction under S. 17 (2), Criminal Law Amendment Act (XIV of 1908)—*Held*, sufficient for action against him under S. 12, Legal Practitioners Act. *In the matter of: Chandra Benode Das, a Pleader.*

152 I. C. 943 : 7 R. C. 337 : 59 C. L. J. 410 : A. I. R. 1934 Cal. 808.

—Ss. 12, 13—Disciplinary action—Propriety of—Conviction of Pleader for gambling and assaulting woman, whether ground for suspension or disciplinary action.

A conviction under the Gambling Act is not, by itself, a sufficient ground for disciplinary action against a Pleader. From the conviction of a Pleader for intimidating and assaulting a woman, by itself, a defect in character which unfits him to be a Pleader within the meaning of S. 12, Legal Practitioners' Act, cannot be inferred. But such conduct is covered by the expression "any other reasonable cause," in S. 13 of the said Act and is a sufficient ground for taking disciplinary action against him. *In the matter of G., a Pleader.* 31 Cr. L. J. 658 : 124 I. C. 264 : A. I. R. 1929 Rang. 352.

—Ss. 12, 13—Misconduct—Conviction of Pleader for breach of Salt Law—Misconduct—Suspension from practice.

Where a Pleader was convicted with a number of other people for an offence under the Salt Act which he committed by way of political demonstration and was sentenced to rigorous imprisonment, their Lordships held that offences of this nature could be dealt with under the Legal Practitioners Act, and suspended the Pleader from practice for a period of six months. *In the matter of: Golakh Nath De, a Pleader.* (F. B.) 132 I. C. 359 : 12 P. L. T. 61 : I. R. 1931 Pat. 279 (2) : A. I. R. 1931 Pat. 208.

—Ss. 12, 13—Suspension or dismissal—Considerations for.

Where a legal practitioner is convicted of a crime involving moral depravity which makes him permanently unfit for association with the members of the honourable profession, so that his present continuance in, or any future re-admission to the profession could only be allowed at the expense of degradation of the profession itself, perpetual and final dismissal is the only proper course. Where a legal practitioner has been convicted by a Criminal Court of competent jurisdiction whose decision has become final, such conviction must be taken to have made *res judicata* the fact that the practitioner concerned has been guilty of the offence whereof he was convicted. Nevertheless, a discretion remains, under S. 12, Legal Practitioners Act, in the High Court to decide whether or not the convicted practi-

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

tioner should be suspended or dismissed. *Emperor v. Kolhatkar.* 11 Cr. L. J. 615 : 8 I. C. 282 : 6 N. L. R. 129.

—Ss. 12, 13, 14—Criminal prosecution—Legal practitioner committing criminal offence—Procedure.

Where a legal practitioner is suspected of having committed a criminal offence, proceedings under the Legal Practitioners Act should not be taken, but if it is thought necessary, action should be taken by way of a criminal prosecution. *Emperor v. Ranjendra Kumar Dutta.* 27 Cr. L. J. 701 : 94 I. C. 893 : 30 C. W. N. 186 : A. I. R. 1926 Cal. 502.

—Ss. 12, 13, 14—Misconduct—Pleader, conviction of, for keeping common gaming house—Misconduct—Procedure, applicable.

The conviction of a Pleader for keeping a common gaming house amounts to misconduct implying a defect of character and unfitting him to be a member of the profession. In the case of a Pleader's conviction for a criminal offence, the procedure prescribed in Ss. 13 and 14 of the Legal Practitioners Act need not be followed, and the case re-tried under the Act. The only question for the High Court to determine is, whether the offence implies a defect of character unfitting the person to be a Pleader. *In the matter of: Sectoramiah.*

19 Cr. L. J. 1001 : 48 I. C. 341 : 35 M. L. J. 650 : 1918 M. W. N. 847 :

8 L. W. 621 : 42 Mad. 111 : 25 M. L. T. 71 : A. I. R. 1919 Mad. 777.

—Ss. 12, 14, 40—Misconduct—Legal practitioner charged with commission of offence—Disciplinary action—Procedure—Suspension, order of, when to be passed.

Where a legal practitioner is charged with having committed a criminal offence, the proper Tribunal to decide whether he had been guilty of what is alleged against him is a Court exercising criminal jurisdiction, and a decision should not be sought in a proceeding under the Legal Practitioners Act. If he is found guilty by the Criminal Court, the proper course is to report the matter to the High Court in order that it might consider it with reference to S. 13 of the Act. *In the matter of professional misconduct of: Maung Kin So.*

25 Cr. L. J. 265 : 76 I. C. 825 : 2 Bur. L. J. 213.

—Ss. 12, 13—Power of High Court.

High Court can take action *suo motu*. *In the matter of: Ram Gobind Sinha Verma.* (F. B.)

32 Cr. L. J. 1256 : 134 I. C. 945 : 11 Pat. 365 : 12 P. L. T. 773 : I. R. 1931 Pat. 497 : A. I. R. 1931 Pat. 369.

—S. 13.

—Appearance for other party.

—Appointment of Tribunal.

—Conviction.

—Constitution of Tribunal.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

- Inquiry under.
- Interpretation.
- Jurisdiction of Court.
- Legality under.
- Misconduct.
- Mukhtear.
- Order made under.
- Proceedings.
- Proceedings under.
- Rights and duties.

-----S. 13—Appearance for other party.

In order to prevent Counsel appearing for the other party, he must have a definite retainer with a fee paid or he must have had such confidential information from one of the parties as would make it improper for him to appear for the other party. *Edna May Olivia v. Harold Richard Hardless.* 33 Cr. L. J. 867 :

140 I. C. 62 : 1932 A. L. J. 755 :
I. R. 1932 All. 622 (1) :
A. I. R. 1932 All. 536.

-----S. 13—Appointment of Tribunal.

The Legal Practitioners Act in S. 13 contemplates the High Court directing an inquiry before action is taken. The Court has duties to perform under the Act and the first duty is to nominate a person or persons to hold the inquiry into the alleged misconduct. Unless the Tribunal is constituted beforehand, the inquiry cannot be lawful. The suggestion that approval of a Tribunal may be given *ex post facto* is repugnant to the spirit of the Act and the wording of S. 13. *In the matter of : K. Srinivasa Rao.* (S. B.)

41 Cr. L. J. 419 :
187 I. C. 144 : 51 L. W. 197 :
1940, 1 M. L. J. 259 : 12 R. M. 713 :
1940 M. W. N. 161 :
I. L. R. 1940 Mad. 433 :
A. I. R. 1940 Mad. 370.

-----S. 13—Conviction—Pleader cannot challenge correctness of.

Conviction of legal practitioner—In showing cause why disciplinary proceedings should not be taken, he cannot go behind his conviction. If judgment does not show for what conduct he was convicted, he is entitled to benefit of doubt. *In re : Mr. N. H. Lokre, Pleader.*

34 Cr. L. J. 224 (1) :
141 I. C. 570 (1) : 15 N. L. J. 90 :
I. R. 1933 Nag. 77 (1).

-----S. 13—Constitution of Tribunal—Tribunal not validly constituted—Acquiescence whether makes it lawful.

If the Tribunal which conducted the inquiry under S. 13 was not validly constituted, acquiescence in the proceedings would not turn it into a lawful Tribunal. If illegal in its inception, illegal it would remain. *In the matter of : K. Srinivasa Rao.* (S. B.)

41 Cr. L. J. 419 :
187 I. C. 144 : 51 L. W. 197 :
1940, 1 M. L. J. 259 : 1940 M. W. N. 161 :
I. L. R. 1940 Mad. 433 : 12 R. M. 713 :
A. I. R. 1940 Mad. 370.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

-----S. 13—Inquiry under L. P. Act, High Court will not go into merits of conviction.

In proceedings under the Legal Practitioners Act, the High Court will not go into the merits of the conviction but will ordinarily accept the findings of Criminal Courts as final. *In the matter of : M. M. J.*

13 Cr. L. J. 875 :
17 I. C. 811 : 5 Bur. L. T. 191.

-----S. 13—Inquiry under Legal Practitioners' Act—Judgment in civil suit relating to some subject-matter—Admissibility.

The judgment in a civil suit between the Pleader and his client, relating to the subject-matter of the inquiry against the Pleader under the Legal Practitioners Act, is admissible in the latter inquiry to establish at least a *prima facie* case against the Pleader but such judgment will not be conclusive proof and the Pleader is entitled to adduce additional evidence in such proceedings in rebuttal of the charge against him. The judgment in the civil suit will be relevant under S. 11 of the Evidence Act. The judgment will not be admissible where the conduct of the Pleader was not the direct issue in the Court which found him guilty of misconduct, but only arose incidentally in a litigation between other parties. *Munireddi v. Venkata Rao.* 13 Cr. L. J. 800 :

17 I. C. 544 : 23 M. L. J. 447 :
1912 M. W. N. 1029 : 12 M. L. T. 615.

-----S. 13—Interpretation.

'Any other reasonable cause' must be given a wide meaning and must not be construed in a limited way on the principle of *cjusdem generis*. Dishonourable or dishonest conduct not in the discharge of professional duty would fall within the purview of 'reasonable cause' in S. 13. (The application of the doctrine of *cjusdem generis* considered). When a Vakil does that which involves dishonesty, it is for the interest of suitors that the Court should interpose and prevent a man guilty of such misconduct from acting as a Vakil of the Court. *In the matter of : Two Second Grade Pleaders.*

11 Cr. L. J. 310 :
6 I. C. 313 : 1 M. W. N. 163.

-----S. 13—Interpretation.

That the words 'other reasonable cause' mentioned in Cl. (f) to S. 13, Legal Practitioners Act (XVIII of 1879), are not restricted to matters *cjusdem generis* with the matters mentioned in Cls. (a) to (e) of the section. *In re : Ganapathy Sastry.* (F. B.)

11 Cr. L. J. 274 :
3 I. C. 344 : 19 M. L. J. 504 :
6 M. L. T. 253.

-----S. 13—Interpretation.

Though Cl. (f), S. 13, of the Act need not be read *cjusdem generis* with the other clauses of the section and cases of moral turpitude unconnected with the discharge by a legal practitioner of his professional duty may come within the expression 'any other reasonable cause,' yet in the absence of definite rules to that effect, engagement in trade or business or other occupation, however derogatory to

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

the dignity of the profession or detrimental to the discharge of the duties of a legal practitioner, would hardly come within the expression. *In re: Ramesh Chandra Sen Gupta, a Pleader, Patuakhali.* (S. B.) 37 Cr. L. J. 590 : 162 I. C. 517 : 40 C. W. N. 377 : 63 C. L. J. 127 : 63 Cal. 855 : 8 R. C. 605 : A. I. R. 1936 Cal. 205.

—S. 13—Jurisdiction of Court.

There is ample jurisdiction in a Court to investigate cases of moral turpitude unconnected with the discharge by a practitioner of his professional duty. The Court has complete jurisdiction to remove and suspend pleaders and *Mukhtears* for causes rendering them unfit for the continued exercise of their profession. But the case of a suitor stands on a different footing, though the suitor be a Pleader or a *Mukhtear*. *Narendra Nath Das v. Siva Kumar Jha.* 21 Cr. L. J. 726 : 58 I. C. 150 : 1 P. L. T. 571 : 5 P. L. J. 601 : A. I. R. 1920 Pat. 712.

—S. 13—Liability under.

Notice served on Subordinate Judge, signed by Pleader—Notice containing malicious and defamatory matter—Pleader is liable under S. 13. *In re: H, a Pleader.* 152 I. C. 58 : 61 Cal. 522 : 7 R. C. 234 : A. I. R. 1934 Cal. 723.

—S. 13—Misconduct.

A Pleader is amenable to the disciplinary jurisdiction of the High Court for failure to appear for his client at the trial of the case after receiving the fees thereof or, in the event of unavoidable circumstances precluding his appearance, for failure to make the necessary arrangement for his client. *Munireddi v. Venkata Rao.* 13 Cr. L. J. 800 : 17 I. C. 544 : 23 M. L. J. 447 : 1912 M. W. N. 1029 : 12 M. L. T. 615.

—S. 13—Misconduct.

A Pleader, who receives instructions, without making proper enquiry, from an unauthorized person, who is neither the recognized agent of the party for whom he is retained, nor the guardian, servant, relative or friend of such party authorized to give instructions on his behalf, is guilty of misconduct under S. 13, Legal Practitioners' Act. *In the matter of: Jugal Chandra.* 17 Cr. L. J. 229 : 34 I. C. 645 : 20 C. W. N. 1016 : A. I. R. 1916 Pat. 391.

—S. 13—Misconduct.

A Vakil is bound to appear in Court and conduct his client's case even if the fee or any portion thereof remains unpaid, in the absence of any agreement to the contrary or at least notice to that effect to the client in sufficient time to enable him to make other arrangements. *Munireddi v. Venkata Rao.* 13 Cr. L. J. 800 : 17 I. C. 544 : 23 M. L. J. 447 : 1912 M. W. N. 1029 : 12 M. L. T. 615.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13—Misconduct.

Advocate misappropriating client's money held guilty of misconduct and the Advocate was suspended from practice for a period of eighteen months. *Emperor v. Mr. O, an Advocate.* 38 Cr. L. J. 54 : 165 I. C. 601 : 9 R. L. 266. A. I. R. 1936 Lah. 717.

—S. 13—Misconduct.

Asking client to give gratification to Court even after conclusion of the case is misconduct. *In the matter of: Babu Awadh Behari Lal, Mukhtear.* (S. B.) 33 Cr. L. J. 871 : 140 I. C. 10 : 13 P. L. T. 574 : I. R. 1932 Pat. 285 : A. I. R. 1932 Pat. 356.

—S. 13—Misconduct—Attesting Will after testator's death—Misconduct—Extenuating circumstances—Lenient punishment.

Immediately after the death of a person, a *mukhtear* was pressed by persons interested in establishing a Will, to sign it as an attesting witness. He took time to consider the matter. Subsequently in a moment of weakness, he signed as an attesting witness; Will bore what purported to be the signature of the deceased and which was like his genuine signature with which the *mukhtear* was familiar as his officer and which signature was subsequently found to be genuine by the Court. The *mukhtear* was examined by the Probate Court, but he made no attempt to perjure himself and freely disclosed what he had done. He had been a member of the profession for over 25 years and had borne a good character and was sincerely repentant: *Held*, that although, his conduct was wholly unworthy of the profession, yet under the circumstances, he should be dealt with mercifully. *In re: Rudra Prasad.* 13 Cr. L. J. 61 : 13 I. C. 397 : 14 C. L. J. 606.

—S. 13—Misconduct.

Conviction under Burma Village Act for not removing stack of hay does not disclose defect in character—Conviction under S. 228, Penal Code—Improper behaviour before Magistrate—Action sought to be taken under S. 13—Court should consider the setting in which Pleader acted. *In the matter of: H, a Lower Grade Pleader, Mindon.* 37 Cr. L. J. 623 : 162 I. C. 534 : 8 R. Rang. 571 : A. I. R. 1936 Rang. 175.

—S. 12—Misconduct.

Decree for accounts obtained by son against mother—Decree obtained by mother against son for maintenance—Pleader *L* acting for mother in her suit—*L* then acting for son in execution of his decree against mother—*L* held not guilty of professional misconduct. *In the matter of: L, a Pleader, Rajam.* (S. B.) 174 I. C. 44 : 47 L. W. 192 : 1938 M. W. N. 220 : 10 R. M. 641 : I. L. R. 1938 Mad. 399 : A. I. R. 1938 Mad. 276.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13—*Misconduct—Document signed by legal practitioner—False statements—Responsibility of legal practitioner—Misconduct.*

Legal practitioners must realise that if they make, or associate themselves with statements which they know are dishonest and untruthful for the purpose of misleading the Court, they must, on proof of misconduct, bear their personal responsibility for such statements and it will be no defence for them to say that it was done in the interests of the client or at his instigation or at the instigation of a colleague at the Bar, or that they were so negligent in the matter that they did not read the matter or consider it at all. *In the matter of: Ahmad Ashraf.*

27 Cr. L. J. 1373 :
98 I. C. 493 : 48 All. 542 :
A. I. R. 1927 All. 45.

—S. 13—*Misconduct—Duty of Counsel in drafting pleadings and in cross-examination.*

Counsel has to depend upon the statement that the client makes, the penalty being that if the client is not telling the truth, he may probably lose the case. In such circumstances, the rule is that the client is entitled to have the particular document drafted according to the instructions given. Counsel must not, however, import personal ill-will into pleadings and must refrain from making charges against witnesses in examination or cross-examination for which there is no conceivable ground. It may become the positive duty of Counsel to tear a man's character into pieces if his character is in issue but only when the fullest material exists. No questions attacking a witness's honour should be put unless and until Counsel by inquiry has satisfied himself that the damaging fact is well-founded, and this he ought to do before he comes into Court. *In the matter of: Raj Bahadur.*

26 Cr. L. J. 1091 :
88 I. C. 179 : 23 A. L. J. 460 :
47 All. 729 : A. I. R. 1925 All. 641.

—S. 13—*Misconduct.*

Duties of legal practitioner—*Mukhtear* making representations to Court knowing them to be false, is guilty of professional misconduct. *Emperor v. Guru Prasad.* (F. B.)

35 Cr. L. J. 453 :
147 I. C. 687 : 15 P. L. T. 63 :
A. I. R. 1934 Pat. 142.

—S. 13—*Misconduct.*

Duty of *mukhtear* to make inquiries to see that *mukhtarnama* authorising to withdraw money of client is in order and is genuine. Failure to make enquiries will amount to negligence. *In the matter of: D, a Mukhtear of Gaya.* (S. B.)

38 Cr. L. J. 441 :
167 I. C. 656 : 17 P. L. T. 948 :
9 R. P. 416 : 3 B. R. 309 : 16 Pat. 123 :
A. I. R. 1937 Pat. 137

—S. 13—*Misconduct.*

Every practitioner is bound to see before he accepts a *vakalatnama* that he has not been already engaged on the other side. To reck-

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

lessly sign *vakalatnamas*, without making proper note, thereof, is very nearly approaching misconduct on the part of a Pleader. *Inamul Haq v. Faizul Hasan.* 14 Cr. L. J. 44 : 18 I. C. 268.

—S. 13—*Misconduct.*

False statements—Pleader giving false information to client is guilty of fraudulent and grossly improper conduct. *Emperor v. K. C. B., a Pleader.* 36 Cr. L. J. 1271 : 157 I. C. 998 : 39 C. W. N. 283 : 8 R. C. 144 : A. I. R. 1935 Cal. 547.

—S. 13—*Misconduct.*

In the absence of an agreement that the fee promised should be previously paid, it is doubtful whether a plea of non-payment of a part of the fee would be of any avail in an action against the Pleader under the Legal Practitioners Act. Mere negligence, as the omission by a Pleader to do his duty, may not amount to misconduct. But where the negligence is gross or where the Pleader falsely repudiates an agreement that he had entered into with his client, he is amenable to the disciplinary jurisdiction of the High Court. *Munireddi v. Venkata Rao.* 13 Cr. L. J. 800 : 17 I. C. 544 : 23 M. L. J. 447 : 1912 1 M. W. N. 1029 : 12 M. L. T. 615.

—S. 13—*Misconduct—Inquiry into.*

High Court directing District Judge to enquire into charge of professional misconduct—District Judge has no power under S. 3-A, Madras Civil Courts Act, (III of 1878), to direct Additional District Judge to make enquiry without reference to High Court. *In the matter of: K. Srinivasa Rao.* (S. B.) 41 Cr. L. J. 419 :

187 I. C. 144 : 51 L. W. 197 :
1940, M. L. J. 259 : 1940 M. W. N. 161 :
I. L. R. 1940 Mad. 433 : 12 R. M. 713 :
A. I. R. 1940 Mad. 370.

—S. 13—*Misconduct—Inquiry under Legal Practitioners' Act—Evidence—Admissibility.*

The judgment and evidence given in a civil suit filed by a party against the Pleader is admissible as evidence in an enquiry against the Pleader under the Legal Practitioners' Act, but the judgment and evidence are not conclusive proof in the enquiry. *In the matter of: B, an Advocate, Ghazipur.* 37 Cr. L. J. 117 :

159 I. C. 561 : 1935 A. W. R. 1229 :
1936 A. L. J. 379 : 8 R. A. 467 :
A. I. R. 1935 All. 1023.

—S. 13—*Misconduct—Legal Practitioner—Professional misconduct—Leaving client undefended—Pleaders, duties of.*

When in pursuance of a resolution of the Bar Association to boycott a Magistrate's Court, a Pleader throws out his client's brief and leaves him in the lurch without first obtaining his consent, he is guilty of professional misconduct and an arrangement made with his client subsequent to his fail-

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

ure to appear would not absolve him from the liability. *In the matter of : a Pleader.*

25 Cr. L. J. 1352 :
82 I. C. 712 : 2 Rang. 265 :
A I. R. 1924 Rang. 320.

—S. 13—*Misconduct—Members of legal profession, duties of—Personal responsibility.*

Members of the legal profession are agents not of the man who pays them, but are acting in the administration of justice, and in matters of this kind, they are bound to exercise an independent judgment, and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution, they are unfit to enjoy the privileges conferred upon them by law, and serious breaches must be visited with punishment. *In the matter of : Dwarka Prasad.*

25 Cr. L. J. 689 :
81 I. C. 177 : 21 A. L. J. 893 :
46 All. 121 : A. I. R. 1924 All. 253.

—S. 13—*Misconduct.*

Mere negligence does not found a petition for professional misconduct—There is nothing unprofessional in Pleader employing unregistered clerk. *In re : Gondikota Satyanarayanamurthy Pantulu Garu, Pleader, Chicacole.* (S. B.)

40 Cr. L. J. 160 (a) :
178 I. C. 917 : 1938 M. W. N. 961 :
48 L. W. 653 : 1938, 2 M. L. J. 661 :
11 R. M. 509 : A. I. R. 1938 Mad. 965.

—S. 13—*Misconduct—Misappropriation of client's money.*

A practitioner who retains his client's money in his own hands and uses it for himself for his own private purposes without the consent of his client, is guilty of serious misconduct which cannot be lightly dealt with by any Court. *In the matter of : R. Vararaghawehari.*

32 Cr. L. J. 266 :
129 I. C. 233 : 32 L. W. 435 :
I. R. 1931 Mad. 233 :
A. I. R. 1930 Mad. 927.

—S. 13—*Misconduct—Misappropriation of client's money—Punishment.*

A Vakil was retained by two persons, one of whom was a *gosha* lady and the other an old man. They were the plaintiffs in a suit in which there stood a certain sum to their credit in Court. The Vakil drew the money out of Court, but failed to pay the amount to the clients on the ostensible ground that he could not interview the lady and that the old man could not give a valid discharge. The same Vakil was handed a certain sum of money by another client, a defendant with instructions to admit the plaintiff's claim to that extent and to deposit the amount in Court. The Vakil misappropriated the amount and without the client's knowledge, obtained adjournment after adjournment of the case and ultimately confessed judgment for the whole amount of the plaintiff's claim: *Held*, that a man guilty of such grossly dishonest and improper actions could not safely be allowed to be entrusted with the interests and moneys of

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

future clients. *In the matter of : Narsimha-chariar.*

26 Cr. L. J. 1128 :
88 I. C. 360 : 1925 M. W. N. 321 :
22 L. W. 152 : A. I. R. 1925 Mad. 797.

—S. 13—*Misconduct.*

Mukhtear practising professional business of identification should be removed from the roll of *mukhtears*. *In re : R, a Mukhtear of Chapra.* (S. B.)

38 Cr. L. J. 411 :
167 I. C. 668 : 17 P. L. T. 951 :
9 R. P. 410 : 3 B. R. 310 : 16 Pat. 121 :
A. I. R. 1937 Pat. 138.

—S. 13—*Misconduct.*

Notice served on Subordinate Judge signed by Pleader—Notice containing malicious and defamatory matter—Pleader held liable under S. 13. *In re : H, a Pleader.*

152 I. C. 58 :
61 Cal. 522 : 7 R. C. 234 :
A. I. R. 1934 Cal. 723.

—S. 13—*Misconduct.*

Pleader holding out promise to party that if he be appointed arbitrator, he would not decide dispute unacceptable to him—Pleader acting contrary: *Held*, guilty of gross dishonesty and liable to be dismissed. *In the matter of : K, a Pleader, D. I. Khan.*

37 Cr. L. J. 741 :
162 I. C. 576 : 8 R. Pesh. 200 :
A. I. R. 1936 Pesh. 113.

—S. 13—*Misconduct—Pleader instigating people not to pay taxes and avoid Courts—Misconduct.*

A legal practitioner who instigates people not to pay taxes to the Government and to eschew the established Courts of the land is not, so long as he continues to profess and preach those views, a fit person to be entrusted with a part of the administration of justice in the Courts and his conduct is such as calls upon the High Court in the exercise of its disciplinary powers to take action against him under S. 13, Legal Practitioners Act. *In the matter of : Josyula Ram-chandra Rao.*

25 Cr. L. J. 65 :
75 I. C. 977 : 18 L. W. 689 :
1923 M. W. N. 768 :
45 M. L. J. 684 : 33 M. L. T. 98 :
A. I. R. 1924 Mad. 129.

—S. 13—*Misconduct—Pleader intimidating witness to prevent him from giving evidence.*

A Pleader who intimidates a witness in order to prevent him from giving evidence in Court, is guilty of professional misconduct. *In re : Har Prasad Singh.*

19 Cr. L. J. 803 :
46 I. C. 819 : A. I. R. 1918 All. 136.

—S. 13—*Misconduct.*

Pleader, one of trustees of Pagoda—He finding co-trustee depriving Trust of money—Not reporting to Police but undertaking responsibility for defalcations by co-trustee: *Held*, does not incur any criminal responsibility—

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

No disciplinary action held could be taken. *In the matter of : U Po Aung.*

39 Cr. L. J. 543 :
175 I. C. 156 : 10 R. Rang. 466 :
A. I. R. 1938 Rang. 158.

S. 13—Misconduct.

Pleader paying client's money to his relation—Neglect of duty but held not guilty of grossly improper conduct. *Emperor v. Bhuraneswar Nag.*

25 Cr. L. J. 325 :
77 I. C. 181 : A. I. R. 1925 Cal. 146.

S. 13—Misconduct—Pleader standing surety for accused and taking charge of property—Misconduct—Acquittal by Criminal Court, effect of.

A Pleader, who stands surety for a man arrested on a charge under S. 420, Penal Code, and takes charge of certain property on his behalf which subsequently turns out to have been stolen property, is not guilty of unprofessional conduct inasmuch as he does not act as a Pleader in the matter. Proceedings under the Legal Practitioners Act are quasi-criminal and where the facts have already formed the subject of criminal trial which has resulted in an acquittal, the principle of *autrefois acquit* must apply. *In the matter of : Maung Po Tok.*

26 Cr. L. J. 1111 :
88 I. C. 279 : 2 Rang. 491 :
A. I. R. 1925 Rang. 110.

S. 13—Misconduct—Purchase benami by Pleader—Appearance as Pleader in case—Taxing of costs—Misconduct.

A legal practitioner who purchases property benami in the name of another person, appears as a Pleader in the litigation relating to that property, in which he is the *de facto* plaintiff, and takes his fee as pleader in the costs is guilty of grossly improper conduct as a legal practitioner. *Sheo Narain Lal v. Mir Amjad Ali.*

25 Cr. L. J. 1151 :
81 I. C. 975 : 1 O. W. N. 264 :
A. I. R. 1925 Oudh 130.

S. 13—Misconduct.

Purchase of decree from client in contravention of R. 16 framed by Madras High Court and executing it for larger amount than due amounts to grave misconduct. *In the matter of : L. A. Pleader, Rajam. (S. B.)*

174 I. C. 44 :
47 L. W. 192 : 10 R. M. 641 :
1938 M. W. N. 220 :
I. L. R. 1938 Mad. 399 :
A. I. R. 1938 Mad. 276.

S. 13—Misconduct.

Reckless allegations in pleadings or questions—Pleaders are responsible if they do not satisfy themselves as to their basis—It amounts to professional misconduct. *In the matter of : Kedar Nath Lal. (S. B.)*

36 Cr. L. J. 1 :
152 I. C. 313 : 15 P. L. T. 560 :
11 Pat. 10 : 7 R. P. 170 :
A. I. R. 1934 Pat. 598.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

S. 13—Misconduct—Removal from rolls—Reinstatement.

A legal practitioner, found guilty of a serious offence committed several years ago, was removed from the rolls. He now applied for reinstatement: *Held*, that the test to be applied to cases of this description was whether the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, and whether in the interval his conduct has been so irreproachable that notwithstanding the delinquency in early life, he may be safely entrusted with the affairs of clients and admitted to an honourable profession without the profession suffering degradation. *In re : Hara Kumar Chatterjee.*

12 Cr. L. J. 461 :
11 I. C. 997 : 14 C. L. J. 113 :
15 C. W. N. 237.

S. 13—Misconduct.

Suggestion by Pleader to bribe official, amounts to grave misconduct—Fact that proceedings were instituted as result of grudge makes no difference in gravity of offence and is no excuse. *In the matter of : G, a Pleader, Mannargudi. (F. B.)*

39 Cr. L. J. 398 :
173 I. C. 1008 : 47 L. W. 156 :
1938 M. W. N. 219 : 1938, 1 M. L. J. 410 :
I. L. R. 1938 Mad. 457 : 10 R. M. 665 (1) :
A. I. R. 1938 Mad. 264.

S. 13—Misconduct.

The purchase of an actionable claim by a Pleader amounts to professional misconduct, the more so when the claim has been put in Court and is ripe for judgment. *Munireddi v. Venkata Rao.*

13 Cr. L. J. 800 :
17 I. C. 544 : 23 M. L. J. 447 :
1912 M. W. N. 1029 : 12 M. L. T. 615.

S. 13—Misconduct—What is.

Accepting brief and acting for party while exclusive retainer in favour of opposite party is still running amounts to grossly improper conduct. *Ashrafi Lal v. Judges of the High Court of Judicature at Allahabad.*

31 Cr. L. J. 337 :
122 I. C. 4 : 1930 A. L. J. 134 :
31 L. W. 298 : 34 C. W. N. 432 :
32 Bom. L. R. 556 : 7 O. W. N. 264 :
51 C. L. J. 447 : 58 M. L. J. 483 :
A. I. R. 1930 P. C. 60.

S. 13—Misconduct—What is.

Counsel failing to appear in murder appeal but engaging another Counsel on small fee is guilty of professional misconduct. *In the matter of : Mr. B.*

29 Cr. L. J. 362 :
108 I. C. 257 : A. I. R. 1928 Lah. 448.

S. 13—Misconduct—What is.

Counselling public not to attend Court on political grounds amounts to misconduct. *Emperor v. Kisori Mohan Chaudhuri.*

30 Cr. L. J. 232 :
114 I. C. 96 : I. R. 1929 Cal. 192 :
A. I. R. 1928 Cal. 853.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13—*Misconduct—What is.*

In order to secure his own fee, a Pleader was an active party to placing his client in the hands of a money-lender who made a wholly unscrupulous and extortionate bargain with the Pleader's client. The Pleader knew the terms of that bargain; yet he did not advise or warn his client but permitted him to enter into the bargain: *Held*, that it was a professional misconduct of a grave kind, of a kind, which if permitted, would tend to corrupt and demoralise the legal profession. *Government Pleader v. Raghunath S. Sule.*

10 Cr. L. J. 526 :
4 I. C. 266 : 14 Bom. L. R. 1150.

—S. 13—*Misconduct—What is.*

Making false statement before Police or Court is professional misconduct. *In the matter of : S, a Pleader.*

31 Cr. L. J. 242 :
121 I. C. 297 : 31 P. L. R. 224 :
A. I. R. 1929 Lah. 803.

—S. 13—*Misconduct—What is.*

Mukhtear—False identification relying on statement of friend but without dishonest intention amounts to misconduct. *In the matter of : District Judge, Gaya v. D. A. Mukhtear.*

31 Cr. L. J. 1130 :
126 I. C. 909 : A. I. R. 1930 Pat. 495.

—S. 13—*Misconduct—What is—Pleader—Misconduct.*

It is misconduct on the part of a legal practitioner to stipulate with his client to share in the results of litigation. *In the matter of : A Pleader.*

1 Cr. L. J. 1071 :
5 P. L. R. 494.

—S. 13—*Misconduct—What is.*

Pleaders simply organising a political meeting—Conviction of a speaker at the meeting for sedition—Signing a leaflet to honour B. C. Pal does not amount to misconduct. *In re : Ganapathy Sastry. (F. B.)*

11 Cr. L. J. 274 :
3 I. C. 344 : 19 M. L. J. 504 :
6 M. L. T. 253.

—S. 13—*Misconduct—What is.*

Pleader under pecuniary liability to a client attempting to make a composition with the client favourable to himself is not guilty of misconduct. *In re : Hasan Ali.*

7 Cr. L. J. 300 :
28 A. W. N. 70 : 5 A. L. J. 26.

—S. 13—*Misconduct—What is—Professional misconduct.*

A legal practitioner's services were retained on behalf of a private complainant, but the accused was discharged. When, however, the order of discharge was set aside and a re-trial ordered, the legal practitioner changed sides and appeared for the defence. Before doing so he did not give any notice to his client for a fresh retainer, but he had no secrets to carry with him which might have prejudiced his former client: *Held*, that the business for which the Legal Practitioner had been retained by his former client not having closed, he

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

was not at liberty to take sides against him. On the facts of the case the legal practitioner's conduct was grossly improper in the discharge of his professional duty. *All Muhammad v. Sham Lal.* 1 Cr. L. J. 181 : 2 P. R. Cr. of 1904 : 5 P. L. R. 180.

—S. 13—*Misconduct—What is—Professional misconduct—Advocate—Grave moral turpitude—Instituting false case and supporting it by gross perjury—Evidence—Conviction.*

Where an Advocate was found guilty of having committed gross perjury and where the course of his conduct displayed great moral turpitude in having instituted a false case and having supported it by false statement: *Held*, that he was unfit to remain an Advocate any longer and should be ordered to be struck off the rolls. *In the matter of : M. M. J.*

13 Cr. L. J. 875 :
17 I. C. 811 : 5 Bur. L. T. 191.

—S. 13—*Misconduct—What is—Professional misconduct—High Court Rules, Chapter, XV, rule 25—General Civil Courts Rules, 1911, Chapter XXI, rule 37—Civil Procedure Code (Act V of 1808), O. XXI, r. 73.*

If a Pleader, acting for a decree-holder, purchases the property sold in execution of his client's decree, he is guilty of professional misconduct. The evil is equally great if he purchases the property for other persons. Therefore, where in execution of his client's decree, a Pleader made a purchase on behalf of his father, the Court *held* him guilty of misconduct. Rule 37, Chap. XXI, General Rules, Civil, 1911, applies even to a Pleader of the High Court, when he is practising in the Subordinate Courts. *In the matter of : Har Prasad Singh.*

13 Cr. L. J. 794 :
17 I. C. 539.

—S. 13—*Misconduct—What is.*

Professional misconduct—Pleader suggesting a theory not supported by the record—Defamatory statement—Privilege—Pleader is not guilty of misconduct. *In re : Achalsing. (F. B.)*

10 Cr. L. J. 514 :
4 I. C. 176 : 3 S. L. R. 177.

—S. 13—*Misconduct—What is.*

Refusal to accept brief against another practitioner amounts to misconduct. *Gokul Prasad v. Emperor.*

30 Cr. L. J. 522 :
115 I. C. 641 : I. R. 1929 All. 417 :
1929 A. L. J. 616 : A. I. R. 1930 All. 262.

—S. 13—*Misconduct—What is.*

Where a Vakil acted as an agent for the sale of a house, and as such, received some money, which he used for his own purposes, without the consent of his principals: *Held*, that he abused his position and was guilty of unprofessional conduct. *In the matter of : a High Court Vakil.*

11 Cr. L. J. 307 :
6 I. C. 310 : 1 M. W. N. 159.

—S. 13—*Misconduct.*

Where a legal practitioner who had obtained permission to carry on a newspaper, bought a

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

press without further permission and when he was called upon by the District Judge to show cause why his conduct should not be reported to the High Court, he equivocated and stated that the press was not his and gave shuffling and evasive answers in a discreditable manner, their Lordships held that the conduct of the practitioner was very reprehensible and suspended the Pleader for two years. *In the matter of: The District Judge, Manbhurn v. B, a Pleader.* (S. B.) 32 Cr. L. J. 1 : 127 I. C. 561 : 11 P. L. T. 665 :

I. R. 1930 Pat. 705 : A. I. R. 1930 Pat. 493.

S. 13—Misconduct.

Where a Pleader, after accepting a *vakalat-nama* fails, without justifying necessity, to appear on behalf of his client on the date fixed for the hearing of the case, he is guilty of unprofessional conduct within the meaning of S. 13, Legal Practitioners Act, and proceedings can be drawn up against him accordingly. A Pleader is not justified to abstain from the Court under threat of social boycott and in pursuance of a resolution passed at a public meeting to boycott the Courts to express dissatisfaction with Public Administration. *Emperor v. Rajani Kanta Bose.*

24 Cr. L. J. 33 :
71 I. C. 81 : 35 C. L. J. 356 :
26 C. W. N. 589 : 49 Cal. 732 :
A. I. R. 1922 Cal. 515.

S. 13—Mukhtear—Misconduct of.

Standard of honour of *mukhtear* is same as that of *Vakil* or Barrister—Person breaking rules, fabricating documents, giving untrue defences and implicating falsely other persons is not fit to be a *mukhtear*. *In re : Silendra Nath Banerjee and Abdul Subhan.* (F. B.) 33 Cr. L. J. 874 : 140 I. C. 107 : 13 P. L. T. 552 :

I. R. 1932 Pat. 275 :
A. I. R. 1932 Pat. 289.

S. 13—Order made under—Appeal to His Majesty in Council, whether permissible.

The Legal Practitioners Act contains no provision conferring a right of appeal to the Privy Council from an order passed by a High Court under S. 13 of the Act. Cls. 31 to 34, Letters Patent, dealing with the right to appeal to His Majesty in Council do not apply to orders passed in exercise of the administrative or disciplinary powers conferred upon the High Court by Letters Patent or by Statute. *Bir Kishore Roy v. Emperor.* 20 Cr. L. J. 679 :

52 I. C. 599 : 4 P. L. J. 423 :
A. I. R. 1919 Pat. 279.

S. 13—Proceedings—Nature of.

Proceedings under S. 13 are of a quasi-criminal nature and it is the duty of a person who makes a complaint against a legal practitioner to go into the witness-box and substantiate his allegations before producing other witnesses and to submit himself to cross-examination. It is reprehensible to cite the

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

legal practitioner as a witness in such a case. *Dogarmal Amirchand v. P, a Pleader.*

32 Cr. L. J. 303 :
129 I. C. 301 : 31 P. L. R. 913 :
I. R. 1931 Lah. 189 : A. I. R. 1930 Lah. 947.

S. 13—Proceedings under—Nature of.

Proceedings under the Legal Practitioners Act are summary proceedings and they are not proper proceedings to try a Pleader for what are in reality grave criminal charges. *Narendra Nath Das v. Siva Kumar Jha.*

21 Cr. L. J. 726 :
58 I. C. 150 : 1 P. L. T. 571 :
5 P. L. J. 601 : A. I. R. 1920 Pat. 712.

S. 13—Rights and duties.

A legal practitioner assumes a serious responsibility in invoking the criminal law on behalf of a client. His function is not merely that of a machine and he must not transmit to the Court any half truths and insinuations which his clients desire him to record. He is bound before presenting a complaint to make due inquiries of his clients and to act with such care and prudence that his good faith cannot successfully be questioned. *In the matter of : Kishori Lal.*

26 Cr. L. J. 776 :
86 I. C. 408 : 23 A. L. J. 125 :
47 All. 377 : A. I. R. 1925 All. 247.

S. 13—Rights and duties.

Responsibility of Pleader and client—Distinction between, explained. *In the matter of : Kidar Nath Lal.* (S. B.) 36 Cr. L. J. 1 : 152 I. C. 313 : 15 P. L. T. 560 : 11 Pat. 10 : 7 R. P. 170 : A. I. R. 1934 Pat. 598.

Ss. 13, 14—Jurisdiction—Inquiry by Court subordinate to the High Court into conduct of Pleader practising before it.

The words "any such misconduct as aforesaid" as used in S. 14, Legal Practitioners Act, 1879, relate to all the cases set out in S. 13 of the Act. The authority therefore to inquire into a matter falling within the purview of S. 13, Cl. (f), of the Act is not confined to the High Court, but may be exercised by a Subordinate Court before which the Pleader or *mukhtear* whose conduct is called in question may be practising. *In re : Muhammad Abdul Hai.*

4 Cr. L. J. 401 :
3 A. L. J. 811 : 29 All. 61 :
26 A. W. N. 268.

Ss. 13, 14—Jurisdiction—Subordinate Courts—Enquiry—'Such Court'—Court having seisin of the case—Jurisdiction.

A Subordinate Court is authorized to frame a charge and hold an enquiry under S. 14, Legal Practitioners Act, only where a Pleader or *mukhtear* is charged in such Court with respect to matters coming within Cls. (a) and (b) of S. 13. In all other cases the authority to frame a charge and hold an enquiry is vested exclusively in the High Court. Where the alleged misconduct against certain *mukhtears* in connection with some civil cases was properly under enquiry before the Munsiff, who had

345
19A

LEGAL PRACTITIONERS ACT (1879)

seisin of the cases, the Deputy Magistrate before whom the *mukhtears* ordinarily practised, had no concurrent jurisdiction and had no proper authority to hold an independent enquiry in the matter. *In re: Radha Charan Chakravarti.* 4 Cr. L. J. 169 : 4 C. L. J. 229 : 10 C. W. N. 1059.

—Ss. 13, 14—Misconduct.

District Judge hearing that Pleader was using his private car as a public conveyance proceeding to hold inquiry under S. 14—Proper procedure to be followed stated—Act of Pleader is not in conformity with rules—Pleader relinquishing interest in car; *Held*, disciplinary action not necessary. *In the matter of: S, a Lower Grade Pleader, Pyapon.* 37 Cr. L. J. 617 : 162 I. C. 485 : 8 R. Rang. 568 : A. I. R. 1936 Rang. 189.

—Ss. 13, 14—Misconduct—Inquiry into Jurisdiction.

Proceedings can be taken by a subordinate Court against a legal practitioner practising in the Court in respect of an act which is found to come under Cl. (f) of S. 13, Legal Practitioners Act. Where a charge against a *Mukhtear* is under S. 13, Cl. (b) of the Legal Practitioners Act but as the result of an enquiry held by a subordinate Court it is found that the act of the *Mukhtear* comes under S. 3, Cl. (f) of the Act, it is open to the High Court to avail itself of the enquiry already made by the subordinate Court and proceed to deal with the case itself, even if the subordinate Court had no jurisdiction to make the enquiry. *In the matter of: Hari Prosunno Mookerjee.* 18 Cr. L. J. 465 : 39 I. C. 305 : 21 C. W. N. 516 : A. I. R. 1918 Cal. 196.

—Ss. 13, 14—Misconduct—Jurisdiction to inquire into—Jurisdiction—Competency of District Judge to enquire into a charge of misconduct—Touism—Chief Court's power of revision.

S. 14 of Act XVIII of 1879 applied to all clauses of S. 13 as amended by Act XI of 1896. Where any of the charges mentioned in S. 13 of the said Act is brought to the notice of any Court within whose local limits a Pleader is ordinarily practising, the presiding officer has jurisdiction to proceed against the Pleader under S. 14 and can report, in the manner prescribed thereunder, to the High Court for suspending or dismissing such Pleader in case the charge is made out. In acting under S. 14, the Court is bound to hold preliminary inquiry in order to find out distinctly what is the charge, and after satisfying itself that it is *prima facie* a true one, but not before, the Court can proceed to issue notice required in paras. 1 and 2 of the same section. Such a notice, if issued on a vague report, is liable to be set aside on revision by the High Court. In order to sustain a charge under Cl. (c) of S. 13, the gratification paid to the tout must be "out of any fee paid or payable to a Pleader" but does not include a payment made out of the

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

munshiana of a Pleader's *munshi.* *Amolak Ram v. Emperor.* 11 Cr. L. J. 148 : 4 I. C. 1022 : 31 P. W. R. 1909 Cr.

—Ss. 13, 14—Misconduct.

Mukhtear adding his own name to list of *Mukhtears* in *vakalatnama* at request of person representing executant of *vakalatnama*—Absence of improper motive—Apology by *Mukhtear*, held not guilty of grossly improper conduct. *In the matter of: Purna Chandru Chatterjee.* 13 Cr. L. J. 846 : 17 I. C. 718 : 17 C. W. N. 328.

—Ss. 13, 14—Misconduct—Proof, standard of.

There is no reason why the standard of proof of guilt in a case under the Legal Practitioners Act should differ from that which is necessary in any other legal proceedings. The proof which is required in order to convict on a criminal charge, is that which leaves no reasonable doubt in the mind of the Court that the offence has been committed, and the same standard ought to be applied to cases arising under the Legal Practitioners Act. *Emperor v. Surjya Narayan Singh.* 21 Cr. L. J. 636 : 57 I. C. 470 : 1 P. L. T. 372 : 2 U. P. L. R. Pat. 168 : A. I. R. 1920 Pat. 84.

—Ss. 13, 14—Suspension of Pleader—High Court, power of, to order action.

Under S. 13, Legal Practitioners Act, the High Court has absolute power, after such inquiry as it thinks fit, to suspend or dismiss a Pleader or *Mukhtear* from practice, even though the matter is referred to it under S. 14 by a Court having no jurisdiction to refer it under that section. *In the matter of: Banamali Das.* 24 Cr. L. J. 81 : 71 I. C. 209 : 1 Pat. 689 : 4 P. L. T. 235 : 1 P. L. R. 57 Cr. : A. I. R. 1922 Pat. 608.

—Ss. 13, 14—Misconduct—Unprofessional conduct—Entering deliberately into false defences in suits with intention to defraud.

Entering deliberately into false defences with the intention to defraud others of their just claims is a ground for action under Ss. 13 and 14, Legal Practitioners Act. Therefore, where a *Mukhtear* made defences which were deliberately false, and colluded with third parties with a view to injure and defraud his opponents who were other members of the same family; *Held*, that this was a reasonable cause for taking action against the *Mukhtear.* *In re: Akhoy Narain.* 12 Cr. L. J. 67 : 9 I. C. 362.

—Ss. 13, 14—Misconduct—What is—Contempt of Court—Disciplinary powers of Court.

The expression "such misconduct as aforesaid" in S. 14, Legal Practitioners Act, as amended by Act XI of 1896 is not restricted to "fraudulent or grossly improper conduct in the discharge of his professional duty," but is comprehensive enough to cover all cases of

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

misconduct, whether they be included in Cl. (b) or in one or more of the other clauses of S. 13. Consequently a subordinate Court is competent to inquire into a matter falling within the purview of any of the clauses of S. 13, when the Pleader or *mukhtar* whose conduct is called in question practises in such Court. Ss. 13 and 14 are intended to cover the same ground in so far as the character of the misconduct is concerned, these two sections supplement each other, but whether action is taken against a legal practitioner under the one or the other of the sections, the final order can be passed only by the High Court. Under S. 13, Legal Practitioners Act, it is not essential that the enquiry should be conducted directly by the High Court but the enquiry may well be made by a Subordinate Court under the direction of the High Court. The only essential is that notice must be given to the legal practitioner concerned to show cause against suspension or dismissal and the notice must formulate the charges with great particularity and precision, so as to enable the practitioner to know the charges he is called upon to meet. *In the matter of : Rasik Lal Nag.*

18 Cr. L. J. 420 :
38 I. C. 980 : 24 C. L. J. 190 :
20 C. W. N. 1284 : 44 Cal. 639 :
A. I. R. 1917 Cal. 428.

———Ss. 13, 14—Misconduct—What is.

After the sale of a holding in execution of a rent decree, certain alterations intended to bring the description of the holding into conformity with the decree and to reconcile the decree and the sale notifications were made in the application for execution, in the warrant of attachment and in the office copies of sale proclamations, by a Pleader's clerk, and initialled by the Pleader *bona fide* in the belief that these alterations were in the documents when presented to and issued from the Court: *Held*, that in appending his initials, and in thereby giving the weight of his authority, to the assertion that the papers were in the condition in which they were presented to the Court, the Pleader was guilty of grave impropriety in the performance of his duties, for which he should be suspended from the practice of his profession for a period of three months. *In the matter of : Asutosh Mukherjee.*

18 Cr. L. J. 42 :
36 I. C. 874 : 20 C. W. N. 1069 :
A. I. R. 1917 Cal. 609.

———Ss. 13, 14—Misconduct—What is.

Madras High Court Rules, R. 27—Pleader entering into trade without notice to High Court—A series of money-lending transactions on usurious terms held guilty of misconduct. *Kunmetta Chinnarappa v. Kona Timma Reddi.* (F. B.)

11 Cr. L. J. 697 :
8 I. C. 677.

———Ss. 13, 14—Misconduct—What is—
Pleader—Unprofessional conduct—Refusal of brief for political reasons—Right to refuse—Reasons for refusal must be stated—Right to move High Court to quash proceedings when called upon to show cause.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

A Pleader having refused a brief offered to him was subjected to stringent examination to disclose his reasons, and on its appearing that his reasons were political, proceedings were started against him under the Legal Practitioners Act, and he was called upon to show cause why he should not be reported to the High Court for unprofessional conduct. Without waiting to show cause the Pleader at once moved the High Court to quash the proceedings: *Held*, that he was entitled to do so. *In re : Nabin Chandra Das Gupta.*

7 Cr. L. J. 252 :
12 C. W. N. 381 : 35 Cal. 317.

———Ss. 13, 14—Misconduct, what is.

Receipt of money from accused for bribing Police, amounts to professional misconduct. *In the matter of : Hari Prosunno Mookerjee.*

18 Cr. L. J. 465 :
39 I. C. 305 : 21 C. W. N. 516 :
A. I. R. 1918 Cal. 196.

———Ss. 13, 14—Misconduct—What is.

Receiving *mukhtarnama* without enquiry and from unauthorised persons—Gross negligence—*Mukhtar* held guilty of misconduct. *In the matter of : Emperor v. Leakul Husain.*

18 Cr. L. J. 140 :
37 I. C. 492 : 2 P. L. J. 36 :
A. I. R. 1917 Pat. 691.

———Ss. 13, 14—Misconduct—What is.

Where two Pleaders became directors of a Provident Society, which was in no sense an undertaking for the purposes of life insurance in the ordinary acceptance of the term, but was a means of furnishing profit to the directors by enabling those who so desired to gamble to become applicants of the Society: *Held*, that they were guilty of unprofessional conduct under S. 13, Cl. (f), Legal Practitioners Act. *In the matter of : Two Second Grade Pleaders.*

11 Cr. L. J. 310 :
6 I. C. 313 : 1 M. W. N. 163.

———Ss. 13, 14—Vakalatnama, acceptance of—R. 45, Cl. (e).

A Pleader filed a petition for the revival of a rent suit, which had been dismissed, without having any authority to do so, and he alleged that he had been instructed to appear by a clerk of the *mukhtar* of the plaintiff in the case and that he acted on the belief that the *vakalatnama* filed in the original suit contained his name, although as a matter of fact, it did not: *Held*, that the Pleader was guilty of unprofessional conduct as he acted in disregard of both S. 13, Cl. (a), of the Legal Practitioners Act and of Cl. (e), r. 45, of Chap. XI, of the Calcutta High Court Civil Rules and Orders. The rule in regard to the acceptance of *vakalatnamas* should be strictly and scrupulously observed in the Court below. In connection with the enforcement of the rule, it is always open to a Judge to refuse to hear a Pleader or to refuse to allow a Pleader to act, who has not accepted a *vakalatnama* in the prescribed manner, besides taking such action as may be appropriate in

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

regard to infractions of the rule which escape notice at the time and are brought to light subsequently. *In the matter of : Jogesh Chandra Gupta.*

17 Cr. L. J. 191 :
33 L. C. 831 : 20 C. W. N. 283 :
A. I. R. 1916 Cal. 411.

—Ss. 13, 14, 15—*Misconduct—Pleader—Professional misconduct—Agreement for payment of fee on event of success, illegality of.*

Two Pleaders entered into an agreement with a client whereby the client agreed to pay them Rs. 7,400 in the event of their successfully winning the case. The agreement was registered, but was never acted upon : *Held*, that the agreement, if not actually illegal, was highly objectionable ; but the Pleaders concerned under the circumstances of the case were not guilty of grossly improper conduct in the discharge of their professional duty and that the case was not a fit one for the High Court to interfere under the Legal Practitioners Act. *Afzal Beg v. Jyoti Swarup.* (F.B.)

12 Cr. L. J. 12 :
9 I. C. 130 : 8 A. L. J. 151.

—S. 13 (a)—*Misconduct—What is.*

Pleader drafting complaint for one party—Appearing for accused in different complaint, is not improper conduct. *In the matter of : Krishna Chandra.*

29 Cr. L. J. 500 :
109 I. C. 228 : 8 Lah. 671 :
29 P. L. R. 126 : A. I. R. 1928 Lah. 65.

—S. 13 (b)—*Misconduct.*

Absenting from Courts on a particular day in pursuance of a concerted movement on the part of the Pleaders to boycott the Courts, amounts to professional misconduct under S. 13 (b) and (f) and the consent of client does not make any difference. *Emperor v. Rajani Nath.*

32 Cr. L. J. 980 :
132 I. C. 900 : 35 C. W. N. 223 :
I. R. 1931 Cal. 612 :
A. I. R. 1931 Cal. 706.

—S. 13 (b)—*Misconduct.*

Bail application dismissed by Sessions Judge—Fresh application to District Magistrate without disclosing fact of previous application : *Held* amounted to misconduct. *Emperor v. Jodh Singh.*

23 Cr. L. J. 714 :
69 I. C. 442 : A. I. R. 1923 Lah. 211.

—S. 13 (b)—*Misconduct.*

Mukhtear exacting money to gratify Court Sub-Inspector to facilitate release of client whose release on bail had been ordered—Practice held illegal entailing suspension. [The *mukhtear* was suspended from practice for two years]. *In re : K., a Mukhtear of Aurangabad.* (S.B.)

38 Cr. L. J. 916 :
170 I. C. 458 : 17 P. L. T. 263 :
3 B. R. 731 : 10 R. P. 124 :
A. I. R. 1936 Pat. 337.

—S. 13 (b)—*Misconduct—Pleader—Professional misconduct—Acting for both parties in one suit.*

A Pleader, who acts for one party at one stage

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

of a suit or proceeding and then, without the leave of the Court, acts for the opposite party in the same suit or proceeding, although he may not act out of any improper motive, is guilty of gross carelessness and disregard of the rules of the profession, amounting to gross misconduct in the discharge of professional duties within the meaning of S. 13 (b) of the Legal Practitioners Act. *Emperor v. Bir Kishore Rai.*

19 Cr. L. J. 636 :
45 I. C. 684 : 3 P. L. J. 390 :
5 P. L. W. 229 : A. I. R. 1918 Pat. 235.

—S. 13 (b)—*Misconduct.*

Proceedings under the Legal Practitioners Act were taken against a *Mukhtear* on the ground that he, while acting on behalf of the prosecution in a criminal case, had drafted a written statement on behalf of two of the accused persons in that case. The *Mukhtear* pleaded that he had acted in good faith and that he had not realised that his conduct was improper : *Held*, that the *Mukhtear* was guilty of an offence against professional propriety and was liable to be punished. *Emperor v. Rajani Kanta Ghose.*

24 Cr. L. J. 294 :
72 I. C. 22 : 37 C. L. J. 48 :
A. I. R. 1923 Cal. 106.

—S. 13 (b)—*Misconduct.*

R (pleader) conducting defence of accused being himself interested in case—R obstructing course of justice and raising frivolous objections and open and covert attacks upon presiding Magistrate for alleged unfairness and partiality—On one occasion R invoking wrath of Gods and speaking to them loudly and defiantly about Court's injustice—R's conduct held so impertinent that serious notice of it must be taken. *In the matter of : U, a Higher Grade Pleader of Taoungoo.*

34 Cr. L. J. 466 :
142 I. C. 828 : I. R. 1933 Rang. 50 :
A. I. R. 1933 Rang. 34.

—S. 13 (b)—*Scope.*

S. 13 (b) is not intended to punish a Pleader who has been guilty merely of failure to make careful arrangements in any particular case—Conduct of Pleader held not fraudulent or grossly improper. *In re : U Sein Pe, a Lower Grade Pleader.*

183 I. C. 580 : 12 R. Rang. 84 :
A. I. R. 1939 Rang. 262.

—S. 13 (b)—*Misconduct—What is.*

If a *Vakil* is deceived by his clerk or if his clerk does acts in fraud of him, it would not be right to hold that the *Vakil* himself is guilty of professional misconduct. *In the matter of : a Vakil.*

30 Cr. L. J. 256 :
114 I. C. 137 : I. R. 1929 Cal. 201 :
A. I. R. 1928 Cal. 817.

—S. 13 (b)—*Misconduct—What is.*

Pleader misappropriating client's money is guilty of misconduct. *In the matter of : Asquith.*

18 Cr. L. J. 903 :
42 I. C. 135 : 30 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 114.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13 (b), 14—*Misconduct.*

Act done as suitor—Error of law, reference against pleader under S. 14, Legal Practitioners Act, held incompetent and pleader held not guilty of professional misconduct. *In re: Purna Chandra.* 17 Cr. L. J. 65 :

32 I. C. 657 : 20 C. W. N. 278 :

23 C. L. J. 237 : 43 Cal. 685 :

A. I. R. 1916 Cal. 329.

—Ss. 13 (b), 14—*Misconduct.*

Pleader retaining client's money as loan—Relationship of debtor and creditor must be proved—If proved, no question of misconduct would arise. *Kashi Nath Ratho v. U. C. Patnaik, Pleader.* (S. B.) 40 Cr. L. J. 687 : 182 I. C. 645 : 12 R. P. 40 : 5 B. R. 795 : 20 P. L. R. 607 : 18 Pat. 580 : A. I. R. 1939 Pat. 343.

—Ss. 13 (b), 14—*Misconduct—Proof of—Necessity of.*

Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. Proving facts and circumstances giving rise to grave suspicion is not sufficient to establish a charge of fraudulent or grossly improper conduct in the discharge of professional duty. *Kashi Nath Ratho v. U. C. Patnaik, Pleader.* (S. B.)

40 Cr. L. J. 687 :

182 I. C. 645 : 12 R. P. 40 : 5 B. R. 795 :

20 P. L. T. 607 : 18 Pat. 580 :

A. I. R. 1939 Pat. 343.

—S. 13, Cls. (b) and (f)—*Misconduct—Evidence Act (I of 1872), S. 126—Pleader refusing to disclose professional communication on being questioned by Court—Professional misconduct.*

A Pleader, during the course of the examination of a witness, asked the Court to make a note of what he represented the witness had stated and also his demeanour, but the Court observed that it did not hear what the witness had said. Thereupon the Pleader left the Court-room saying that he would withdraw from the case. Afterwards he returned with an application stating that the Court had not noted the statement and demeanour of the witness, and got it presented by his client. The Pleader, on being asked by the Court whether he was instructed by his client to write the application, declined to answer, relying on S. 126 of the Evidence Act: *Held*, (1) that an action against the Pleader under clauses (b) and (f) of S. 13 of the Legal Practitioners Act could not be sustained, as it was not necessary for him to consult his client before drafting the petition, if the facts took place within his own cognizance and were such as to endanger his client's interest; (2) that in relying upon S. 126 of the Evidence Act, the Pleader showed no disregard to the Court's authority. *Satgur Prasad v. Emperor.* 14 Cr. L. J. 438 : 20 I. C. 598.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13 (b), (f)—*Misconduct—Letter written by Legal Practitioner charging Judicial Officer with racial antipathy.*

A legal practitioner wrote a letter to a Judicial Officer imputing feelings of a racial antipathy to the latter and charging him with allowing such feelings to influence him in passing contrary orders against the Legal Practitioner in cases in which he appeared: *Held*, that the letter did not fall within the purview of clause (b) of S. 13, Legal Practitioners Act, inasmuch as it was not written by the legal practitioner in the discharge of his professional duty, but that it certainly fell within the purview of clause (f) of that section. *In the matter of: Fakhar-ud-Din, Pleader.* 23 Cr. L. J. 408 : 67 I. C. 504.

—S. 13 (b), (f)—*Misconduct—What is.*

Unproved charge by legal practitioner of bribery against Judicial Officer, amounts to misconduct. *In the matter of: N. D. (F. B.)*

29 Cr. L. J. 783 :

110 I. C. 815 : 1928 M. W. N. 317 :

55 M. L. J. 170 : 28 L. W. 202 : 51 Mad. 798 :

A. I. R. 1928 Mad. 918.

—Ss. 13 (b), (f), 14—*Jurisdiction—Jurisdiction of Subordinate Judge to order inquiry—Pleader asking Bench Clerk before judgment is pronounced as to what is the trend of judgment—Professional misconduct.*

A Subordinate Judge is quite competent under S. 14, Legal Practitioners Act, to order an inquiry into the facts and circumstances of a case whether it comes under cl. (b) or whether it comes under cl. (f) of S. 13. *In the matter of: Narendra Nath Roy.*

25 Cr. L. J. 40 :

75 I. C. 728 : 1923 Pat. 329 : 5 P. L. T. 350 :

A. I. R. 1924 Pat. 131.

—S. 13 (b), (g)—*Misconduct.*

Giving wrong information to client is professional misconduct. *In the matter of: A First Grade Pleader.* 24 Cr. L. J. 585 :

73 I. C. 329 : 17 L. W. 358 :

A. I. R. 1923 Mad. 485.

—S. 13 (c)—*Misconduct—What is.*

A Pleader who himself pays a sum of money to a procurer of clients or allows him to take his clerk's *munshi* in whole or in part as a gratification for having procured him a client, is liable to be dealt with under S. 13 (c). *In the matter of: Amolak Ram.* (F. B.)

11 Cr. L. J. 396 :

6 I. C. 736 : 22 P. W. R. 1910 Cr.

—S. 13 (f)—*Interpretation—“Any other reasonable cause” in S. 13 (f), whether should be one ejusdem generis as causes preceding.*

“Any other reasonable cause” in S. 13 (f), Legal Practitioners Act, need not necessarily be one *ejusdem generis* as the causes preceding. *A. v. Emperor.* 38 Cr. L. J. 1087 :

171 I. C. 503 : 10 R. Rang. 159 :

A. I. R. 1937 Rang. 345.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13 (f)—*Interpretation.*

The expression "any other reasonable cause" in S. 13 (f), Legal Practitioners Act, should not be understood in an *ejusdem generis* sense, it covers cases other than those of professional misconduct in the ordinary sense but which render a Pleader unfit for the practice of his profession. *Subramania Iyer v. District Magistrate, Salem.* 21 Cr. L. J. 246 :

55 I. C. 198 : 11 L. W. 192 :
1920 M. W. N. 105 : 38 M. L. J. 230 :
A. I. R. 1920 Mad. 442.

—S. 13 (f)—*Interpretation.*

The words "any other reasonable cause" in Sub-s. (f) to S. 13, are not confined to acts done in a professional capacity by a legal practitioner, and are not restricted to reasonable cause of the same class or description referred to in the preceding sub-sections. *In the matter of: Shyamapada Bhattacharji.* 33 Cr. L. J. 466 :

137 I. C. 434 : 54 C. L. J. 530 :
36 C. W. N. 294 : 59 Cal. 709 :
I. R. 1932 Cal. 311 : A. I. R. 1932 Cal. 370.

—S. 13 (f)—*Interference with rights of Pleaders.*

Reasonable cause — Resolution prohibiting one member of Bar against another is a flagrant and unwarranted interference with rights of legal practitioners. *In the matter of: Shyamapada Bhattacharjee.* 33 Cr. L. J. 466 :

137 I. C. 434 : 54 C. L. J. 530 :
36 C. W. N. 294 : 59 Cal. 709 :
I. R. 1932 Cal. 311 : A. I. R. 1932 Cal. 370.

—S. 13 (f)—*Misconduct.*

A Mukhtear practising in a Sub-Division addressed certain letters to the Sub-Divisional Officer in connection with a copy for which he had applied. The contents of the letters were grossly insulting, and the matter was reported to the High Court, where it was contended that, on the facts, there was nothing which would entitle the Court to take action under Ss. 13 and 14, Legal Practitioners Act: *Held*, that the Mukhtear could be proceeded against under S. 13 (f) of the Act. *In the matter of: Amrita Lal.* 20 Cr. L. J. 718 :

52 I. C. 798 : 17 A. L. J. 1050 :
1 U. P. L. R. All. 134 : 42 All. 86 :
A. I. R. 1919 All. 38.

—S. 13 (f)—*Misconduct.*

Although misconduct other than professional may fall under Cl. (f) of S. 13, Legal Practitioners Act, its impropriety has to be considered with reference to the Pleader's professional capacity and it is only if the misconduct can be reasonably held to affect it that it would fall within Cl. (f) as the Act deals with a Pleader only in his professional capacity and not in his private capacity. *Subramania Iyer v. District Magistrate, Salem.* 21 Cr. L. J. 246 :

55 I. C. 198 : 11 L. W. 192 :
1920 M. W. N. 105 : 38 M. L. J. 230 :
A. I. R. 1920 Mad. 442.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 13 (f)—*Misconduct.*

Conviction of legal practitioner for receiving stolen property—He is unfit to be a Pleader. *In the matter of: U, a Lower Grade Pleader.* 39 Cr. L. J. 541 (a) :

175 I. C. 126 : 10 R. Rang. 465 (1) :
A. I. R. 1938 Rang. 160.

—S. 13 (f)—*Misconduct—Guardian and Ward—Agreement to pay surety portion of income of minor's estate—Pleader advising guardian to enter into agreement—Bona fide belief of Pleader—Misconduct.*

A Pleader who advises his client, who has been appointed guardian for a minor, to enter into an agreement with the persons standing sureties for him to pay them a portion of the income from the minor's property in consideration of their executing the surety-bond, *bona fide* believing that it is for the minor's benefit, is not guilty of misconduct within the meaning of S. 13 (f), Legal Practitioners Act. *In the matter of: K. Venkata Roro.* 21 Cr. L. J. 19 :

54 I. C. 163 : 11 L. W. 38 :
38 M. L. J. 58 : 1920 M. W. N. 125 :
27 M. L. T. 127 : A. I. R. 1920 Mad. 110.

—S. 13 (f)—*Misconduct.*

Infraction by Pleader of Forest Law to protest against Government policy—Conviction—Conduct falls within S. 13 (f) and his conviction is no bar for proceeding under S. 13 (f). (Pleader was not allowed to practice till he changed his views). *Local Government v. N. B. Deshpande.* (S. B.) 32 Cr. L. J. 604 :

130 I. C. 826 : 27 N. L. R. 29 :
14 N. L. J. 1 : I. R. 1931 Nag. 74 :
A. I. R. 1931 Nag. 33.

—S. 13 (f)—*Misconduct.*

Pleader asking Judicial Officer to decide case in favour of the parties: *Held*, guilty of grossly improper conduct. *In the matter of: Narindra Singh.* 19 Cr. L. J. 267 :

44 I. C. 123 : 3 P. W. R. 1918 Cr. :
161 P. L. R. 1917 : A. I. R. 1918 Lah. 108.

—S. 13 (f)—*Misconduct.*

Pleaders not appearing in Court on day of *hartal*—No evidence to show intention to boycott Court—No individual Pleader could be held liable for misconduct. *Emperor v. Surendra Mohan Maitra.* 33 Cr. L. J. 2 :

134 I. C. 1044 : 35 C. W. N. 344 :
I. R. 1932 Cal. 4 : A. I. R. 1931 Cal. 616.

—S. 13 (f)—*Misconduct.*

Professional misconduct amounting to offence—Criminal prosecution is not *per se* prerequisite to adoption of disciplinary measures. *In the matter of: Chandi Charan Miller.* 21 Cr. L. J. 691 (b) :

57 I. C. 931 : 31 C. L. J. 471 :
24 C. W. N. 755 : 47 Cal. 1115 :
A. I. R. 1920 Cal. 565.

—S. 13 (f)—*Misconduct—What is.*

The fact that the Pleader was a litigant against the Deputy Commissioner, will not

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

enable him to escape liability in his capacity as Pleader and there is grave aggravation if a letter containing highly improper matter is sent to the presiding officer of the Court in which the suit by the Pleader against the Deputy Commissioner is pending. Where a Pleader who had been engaged for the defendant in a case, sent a letter to the local Commissioner appointed therein asking him to report in favour of the dismissal of the plaintiff's claim without fail, and making an alternative suggestion which could not be read as anything else than a direct offer of a bribe: *Held*, that the Pleader was guilty of gross misconduct. *In the matter of: Chanda Singh.*

16 Cr. L. J. 338 :
28 I. C. 722 : 18 P. R. 1915 Cr. :
12 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 425.

S. 13, Cl. (f)—Misconduct—What is.

Pleader retaining in his service suspected tout—Making false statement: *Held*, guilty of Professional misconduct. *In the matter of: Mr. M., First Grade Pleader.*

16 Cr. L. J. 108 :
27 I. C. 156 : 214 P. L. R. 1915 :
49 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 535.

S. 13 (f)—Renewal of sanad.

Application for renewal of certificate by Pleader convicted in Civil Disobedience Movement must be treated as application for admission. *In the matter of: Ram Gobind Sinha Verma. (F. B.)*

32 Cr. L. J. 1256 :
134 I. C. 945 : 12 P. L. T. 773 :
11 Pat. 365 : I. R. 1931 Pat. 497 :
A. I. R. 1931 Pat. 369.

S. 13 (f)—Renewal of sanad—Duty of Pleader to state all facts of past career.

Persons who apply for entrance into the ranks of the legal profession should fully and frankly disclose all the circumstances of their past career with the knowledge that the Court will take into consideration every matter which ought properly to be dealt with by it. *In the matter of: T. K., a Higher Grade Pleader.*

39 Cr. L. J. 540 :
175 I. C. 124 : 10 R. Rang. 465 (b) :
A. I. R. 1938 Rang. 159.

S. 13 (f)—Renewal of sanad.

Pleader inciting disobedience to law—Subsequent expression of regret—Intention to assist administration of law and order.—*Sanad* should be renewed. *In the matter of: a First Grade Pleader, Guntur.*

25 Cr. L. J. 569 :
81 I. C. 57 : 18 L. W. 717 :
45 M. L. J. 718 : 33 M. L. T. 100 :
A. I. R. 1924 Mad. 160.

S. 13 (f)—Scope.

S. 13 (f), Legal Practitioners Act, is not confined to acts done in a professional capacity. *Local Government v. N. B. Deshpande. (S. B.)*

32 Cr. L. J. 604 :
130 I. C. 826 : 27 N. L. R. 29 :
14 N. L. J. 1 : I. R. 1931 Nag. 74 :
A. I. R. 1931 Nag. 33.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

S. 13 (f).

Pleader committing offence under S. 377, Penal Code (Act XLV of 1860)—Such offence committed by person when only 17 years of age—Such person making honest attempt to reform—Offence should not debar him from seeking respectable society and re-entering profession of Pleader. *In the matter of: T. K., a Higher Grade Pleader.* 39 Cr. L. J. 540 :
175 I. C. 124 : 10 R. Rang. 465 (b) :
A. I. R. 1938 Rang. 159.

S. 13 (f), (b)—Misconduct.

A legal practitioner who asks for adjournments on different occasions merely to delay the course of justice with deliberate intention, is guilty of grossly improper conduct, and renders himself liable to punishment. Per *Beasley, C. J.*—It is not the duty of a legal practitioner to follow blindly every instruction his client gives him. *In the matter of: A, a First Grade Pleader, Vellore. (F. B.)*

32 Cr. L. J. 657 :
131 I. C. 145 : 60 M. L. J. 393 :
33 L. W. 425 : 1931 M. W. N. 321 :
54 Mad. 520 : I. R. 1931 Mad. 481 :
A. I. R. 1931 Mad. 422.

Ss. 13 (f), 6—Scope.

Certificate under R. 6, S. 6, given by legal practitioner containing false statement—Case falls under S. 13 (f). *In the matter of: P., a Pleader, Rangpur.* 38 Cr. L. J. 215 :
166 I. C. 426 : 9 R. C. 522 :
A. I. R. 1936 Cal. 372.

Ss. 13 (f), 14—"Other reasonable cause", meaning of.

S. 13, Cl. (f), Legal Practitioners Act, 1879, is not confined to cases of misconduct *ejusdem generis* as those referred to in the preceding clauses, but includes other cases of misconduct as well. S. 14, covers all clauses of S. 13 and a subordinate Court is not precluded from taking proceedings against a legal practitioner for conduct alleged to come within clause (f) of S. 13. *District Judge of Kistna v. Hanumanulu.*

17 Cr. L. J. 38 :
32 I. C. 326 : 18 M. L. T. 549 :
1915 M. W. N. 1050 :
A. I. R. 1916 Mad. 1144.

S. 13 (6)—Misconduct.

Pleader holding out promise to party that if he be appointed arbitrator, he would not decide dispute unacceptable to him—Pleader acting contrary: *Held*, guilty of gross dishonesty and liable to be dismissed.

37 Cr. L. J. 741 :
162 I. C. 576 : 8 R. Pesh. 200 :
A. I. R. 1936 Pesh. 113.

S. 14.

See also (i) Cr. P. C., 1898, S. 489.
(ii) Legal Practitioners Act, 1879, S. 18.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 14—Additional District Magistrate empowered as District Magistrate can report misconduct to High Court.

Where an Additional District Magistrate is invested with all the powers of a District Magistrate under the Criminal Procedure Code, he is competent to draw up a charge against a legal practitioner alleging misconduct within the terms of S. 13 (b) and 13 (f) of the Act, and to forward his report under S. 14 (c) to the High Court. It is not essential, however, that the report should be submitted to the High Court direct, it can be properly submitted through the Sessions Judge. *In the matter of Mohendra Lal Roy.*

24 Cr. L. J. 209 :
71 I. C. 673 : 27 C. W. N. 88 :
A. I. R. 1922 Cal. 550.

—S. 14—Additional District Magistrate is Subordinate Court to High Court.

The Court of an Additional District Magistrate is a Court subordinate to the High Court within the meaning of S. 14 of the Legal Practitioners Act. *In the matter of Mohendra Lal Roy.*

24 Cr. L. J. 209 :
71 I. C. 673 : 27 C. W. N. 88 :
A. I. R. 1922 Cal. 550.

—S. 14—Charge under S. 14 against Pleader—When can be taken.

Where the point for inquiry under S. 14 was whether a Pleader has signed and filed a petition of satisfaction in a mortgage execution case and he denied the same : *Held*, that no charge under S. 14 could be framed against him unless it was established beyond reasonable doubt that he had actually signed the petition. *Debi Pada Chatterjee v. Emperor.*

152 I. C. 43 (1) :
59 C. L. J. 419 : 7 R. G. 224 :
A. I. R. 1934 Cal. 794.

—S. 14 — 'Charged in such Court' in S. 14, meaning of.

It is only where in the course of proceedings before it a Subordinate Court has reason to suppose that a Pleader has been guilty of misconduct that the Subordinate Court is at liberty without reference to the High Court to inquire whether the Pleader has been guilty of misconduct or not. The words "charged in such Court" in S. 14 must refer to a charge of improper conduct in the course of proceedings in such Court. *A. v. Emperor.*

38 Cr. L. J. 1087 :
171 I. C. 503 : 10 R. Rang. 159 :
A. I. R. 1937 Rang. 345.

—Ss. 14 (5), 13, 40—Court which can suspend.

Professional misconduct before Honorary Magistrate—Report to District Magistrate through Sub-Divisional Magistrate—Sub-Divisional Magistrate passing orders of suspension under order of District Magistrate pending investigation : *Held*, order of Sub-Divisional Magistrate *ultra vires*. *U San Thein v. District Magistrate, Magwe.*

163 I. C. 586 : 9 R. Rang. 30 : 14 Rang. 735 :
A. I. R. 1936 Rang. 249.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 14—High Court, if can order, deferring renewal of sanad.

It is incompetent for the High Court, until a case is ready to be actually set down for hearing by a Bench, to pass any order deferring renewal of the *sanad* of the person against whom complaint is made. *In re : L, a First Grade Pleader, Rajam.*

39 Cr. L. J. 83 :
172 I. C. 136 : 1937 M. W. N. 460 :
46 L. W. 599 : 10 R. M. 434 :
A. I. R. 1937 Mad. 672.

—S. 14—Inquiry before which Court to be held.

S. 14, Legal Practitioners Act, contemplates that the inquiry referred to in the section shall take place before the presiding officer of the Court in which the misconduct or offence is alleged to have taken place. *Emperor v. Satyendra Nath Roy.*

21 Cr. L. J. 613 :
57 I. C. 277 : 1 P. L. T. 379 :
1920 Pat. 225 : A. I. R. 1920 Pat. 274.

—S. 14—Inquiry under—Court, jurisdiction of.

The inquiry contemplated by S. 14, Legal Practitioners Act, can only be made by the Court in which the misconduct is alleged. A Court superior to that Court has no jurisdiction to hold such an inquiry. *Manazir-ul-Hug v. Emperor.*

24 Cr. L. J. 239 :
71 I. C. 703 : 4 P. L. T. 97 :
1923 Pat. 45 : 1 P. L. R. 41 Cr. :
A. I. R. 1923 Pat. 185.

—S. 14—Interpretation.

"Investigation" in para. 5 of S. 14 means investigation in the High Court. *In re : Bajrangi Sahai.*

12 Cr. L. J. 33 :
9 I. C. 225 : 15 C. W. N. 269 :
13 C. L. J. 457.

—S. 14—Interpretation.

The word "charged" in S. 14 of the Act should be construed as meaning "is accused" or that an allegation is made to that effect. A District Judge is legally competent to take action under S. 14 of the Act in cases which come under Cl. (f) of S. 13. *In the matter of : Beli Ram.*

21 Cr. L. J. 198 :
54 I. C. 982 : 152 P. R. 1919 :
83 P. L. R. 1920 : A. I. R. 1920 Lah. 425.

—S. 14—Miscellaneous.

The Pleaders were justified in filing the plaint against the Sub-Divisional Officer and others and that the mere fact of the plaintiff's having allowed the case to be dismissed, did not make the filing of the plaint unprofessional. *In the matter of : Kedar Nath Lal. (S. B.)*

36 Cr. L. J. 1 :
152 I. C. 313 : 11 Pat. 10 :
15 P. L. T. 560 : 7 R. P. 170 :
A. I. R. 1934 Pat. 598.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 14—Misconduct — Acceptance of Mukhtarnama from unauthorized person.

The rules relating to the acceptance of *Vakalatnamas* and *Mukhtarnamas* must be scrupulously and punctiliously observed. In a suit in which one *J* was a *pro forma* defendant, a *Mukhtear* received a *Mukhtarnama* purporting to have been signed by *J* from an agent of the plaintiff who had no authority from *J* to deliver the *Mukhtarnama* to the *Mukhtear*, and endorsed upon it a statement that he had received it from another person. The *Mukhtear* was not influenced by any dishonest or corrupt motive, and after having accepted and filed the *Mukhtarnama* put himself in communication with *J*, and on being told by the latter that he had given no instructions to file a *Mukhtarnama* and that he knew nothing about the suit, placed the matter before the Court: *Held*, that the conduct of the *Mukhtear* called for something more than a censure, as gentlemen of his profession should set a high standard of honour and integrity to the people about them. The *Mukhtear* was suspended from practising for a period of three months. *In the matter of: Brindaban Chandra Das.*

19 Cr. L. J. 227 :

43 I. C. 819 : A. I. R. 1918 Cal. 119.

—S. 14—Misconduct — Cancellation of sanad.

Suspended Pleader again convicted—No appearance to notice under S. 14—Removal from rolls is justified. *In the matter of: D, a Pleader.* (S. B.)

34 Cr. L. J. 8 (2)

140 I. C. 295 : I. R. 1932 Pat. 317 :

A. I. R. 1932 Pat. 300.

—S. 14—Misconduct.

Court can take cognizance of Pleader's action only before it—Pleader getting nephew of client to sign as client had a swollen hand : *Held*, conduct amounted to breach of professional duty but disciplinary action was uncalled for. *In the matter of: S, a Lower Grade Pleader, Pa-an.*

37 Cr. L. J. 721 :

162 I. C. 887 : 14 Rang. 152 :

8 R. Rang. 600 : A. I. R. 1936 Rang. 177.

—S. 14—Misconduct — Identifying unknown person.

A legal practitioner who identifies a person whom he does not know, is guilty of professional misconduct. *In the matter of: Joshua Peters.*

21 Cr. L. J. 658 :

57 I. C. 818 : 2 U. P. L. R. All. 211 :

A. I. R. 1920 All. 212.

—S. 14—Misconduct—Enquiry into—Procedure.

Where an allegation against a legal practitioner amounts to a charge of aiding and abetting or conspiring to commit a criminal offence, the correct procedure to be followed is that proceedings under the Legal Practitioners Act should not be taken, but that, if it is thought necessary to take action, it should be by way of a criminal prosecution. In an enquiry against a legal practitioner

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

under S. 14, Legal Practitioners Act, the witnesses must be examined in the presence of the legal practitioner. *Emperor v. Satish Chandra Singha.*

29 Cr. L. J. 665 :

110 I. C. 217 : 54 Cal. 721 :

31 C. W. N. 554 : A. I. R. 1927 Cal. 536.

—S. 14—Misconduct—Inquiry—Jurisdiction—"Such Court", meaning of.

Under S. 14, Legal Practitioners Act, any Court in which a Pleader practises is competent to enquire into a charge of misconduct made against him. The expression "such Court" in that section means the Court in which the Pleader practises, and not necessarily the Court in which the Pleader commits the offence charged against him. *In the matter of: Maung Tun Gyaw Aung.*

24 Cr. L. J. 409 :

72 I. C. 521 : 11 L. B. R. 111.

—S. 14—Misconduct.

It is misconduct on the part of a legal practitioner to publicly declare that he owes no allegiance to British Courts and has no faith in British justice. That a legal practitioner should publicly seek to bring into contempt the administration of justice with which he is intimately connected cannot be tolerated. *Emperor v. Bimalananda Das Gupta.*

25 Cr. L. J. 522 :

77 I. C. 986 : 38 C. L. J. 353 :

A. I. R. 1924 Cal. 329.

—S. 14—Misconduct—Jurisdiction to inquire into, whether confined to Court in which misconduct committed.

S. 14, Legal Practitioners Act, does not limit the consideration of a charge of misconduct against a legal practitioner to the Court in which the misconduct is alleged to have been committed. Any Court in which the pleader practises is empowered to entertain a petition under the section. *In re: Venugopal Nayudu.*

27 Cr. L. J. 384 :

92 I. C. 896 : 1926 M. W. N. 466 :

A. I. R. 1926 Mad. 1044.

—S. 14—Misconduct.

Legal practitioner becoming surety for accused persons is not improper—Court refusing to accept a person as surety—*Mukhtear* standing surety and entering into contract of indemnity with that person—Forfeiture of bail bond—Attempt at concealment of true facts—Conduct of *Mukhtear* is unprofessional—Suspension from practice is proper. *In the matter of: Babu Surja Narain, a Mukhtear.* (S. B.)

36 Cr. L. J. 730 :

155 I. C. 430 : 16 P. L. T. 223 :

14 Pat. 442 : 7 R. P. 586 :

A. I. R. 1935 Pat. 195.

—S. 14—Misconduct.

Misconduct by Pleader taking place during Police inquiry and before institution of proceedings—Court held, cannot start proceedings without orders from High Court. *A. v. Emperor.*

38 Cr. L. J. 1087 :

171 I. C. 503 : 10 R. Rang. 159 :

A. I. R. 1937 Rang. 345.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 14—*Misconduct*—Mukhtear—Mukhtear having no licence to practise in Revenue Office—*Misconduct*—Commission of misconduct as private individual—Jurisdiction of Commissioner to report to High Court.

In the course of a Land Registration Appeal, the Commissioner found that the conduct of a Mukhtear, who had no licence to practise in a Revenue Office, had been grossly improper and fraudulent, because he had fraudulently transferred certain properties and made certain discrepant statements, one or other of which must have been false, he accordingly submitted a reference to the High Court recommending the Mukhtear's dismissal: *Held*, that as the misconduct according to the Commissioner's report was committed not in the capacity of a Mukhtear but as a private individual, and came to light only at the hearing of an appeal in a case to which he was not a party but only a witness, the matter did not fall within the purview of S. 14 of the Legal Practitioners Act and the Commissioner had no authority to report the Mukhtear to the High Court. *In re : Dinesh Chandra Bhattacharjee*.

15 Cr. L. J. 378 :
23 I. C. 746 : 19 C. L. J. 110 :
A. I. R. 1914 Cal. 477.

—S. 14—*Misconduct*.

Mukhtear removing from Magistrate's clerk petition of complaint and substituting another in its place without complainant's consent: *Held* guilty of misconduct. *Emperor v. Mathura Persad*.

19 Cr. L. J. 61 :
43 I. C. 93 : 1917 Pat. 265 :
A. I. R. 1918 Pat. 602.

—S. 14—*Misconduct of legal practitioner—Inquiry of—Nature of.*

An inquiry in the conduct of a legal practitioner is neither a civil nor a criminal proceeding, though being penal in its nature, it resembles in many respects a criminal case. *Lakshmi Narain v. Ratni*.

27 Cr. L. J. 476 :
93 I. C. 700 : 27 P. L. R. 225 :
A. I. R. 1926 Lah. 199.

—S. 14—*Misconduct of legal practitioner—Who can hold inquiry.*

When a misconduct of a legal practitioner is said to have taken place in or in relation to a proceeding in a Court, an inquiry into that misconduct should be conducted by the Presiding Officer of that Court. *Lakshmi Narain v. Ratni*.

27 Cr. L. J. 476 :
93 I. C. 700 : 27 P. L. R. 225 :
A. I. R. 1926 Lah. 199.

—S. 14—*Misconduct.*

Perjury by member of the legal profession—Severe punishment: *Held*, on circumstances that 6 months' suspension would be enough. *In the matter of : R. S., Pleader, Samastipur*. (S. B.)

36 Cr. L. J. 1023 :
156 I. C. 889 : 16 P. L. T. 231 :
8 R. P. 36 : A. I. R. 1935 Pat. 249.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 14—*Misconduct.*

Pleader inducing prosecution witnesses not to tell the truth—High Court need not hold inquiry itself. *A. v. Emperor*.

38 Cr. L. J. 1087 :
171 I. C. 503 : 10 R. Rang. 159 :
A. I. R. 1937 Rang. 345.

—S. 14—*Misconduct under.*

Pleader representing one party but later on accepting instructions of the other side—Conduct deserves censure. *In the matter of : S. P., a Pleader*. (S. B.)

150 I. C. 16 :
15 P. L. T. 305 : 6 R. P. 724 :
A. I. R. 1934 Pat. 352.

—S. 14—*Misconduct, what is.*

Where a Pleader, who had been engaged by the plaintiff, withdrew on behalf of the defendant money which he knew was rightly payable to the plaintiff, and took a conspicuous part as an arbitrator in a matter in which he was seriously and personally concerned : *Held*, that he was guilty of serious professional misconduct. *In the matter of : Two Pleaders*.

18 Cr. L. J. 808 :
41 I. C. 328 : 1 P. L. W. 483 :
2 P. L. J. 259 : 1917 Pat. 217 :
A. I. R. 1917 Pat. 211.

—S. 14—*Object.*

The provisions of S. 14 of the Legal Practitioners Act indicate that ordinarily an enquiry should be made into the suspected misconduct by the Presiding Officer of the Court where the misconduct has been committed. *In the matter of : Vakils, Jhansi*.

29 Cr. L. J. 750 :
110 I. C. 686 : 26 A. L. J. 1250 :
A. I. R. 1928 All. 396.

—S. 14—*Offence under S. 13 (b), Legal Practitioners Act—Failure to formulate charge—Pleader not prejudiced—Proceedings, if legal.*

Where a Pleader alleged to be guilty of professional misconduct was given full particulars of the complaint made against him and was given every opportunity to meet that complaint and at no stage in the proceedings did he complain that he had been taken by surprise but no precise charges had been formulated against him : *Held*, that it would have been better if precise charges had been formulated; but as the failure to formulate such charges had not prejudiced the Pleader, such failure to formulate charges was not fatal to the proceedings. *Kashi Nath Raiho v. U. C. Patnaik, Pleader*. (S. B.)

40 Cr. L. J. 687 :
182 I. C. 645 : 12 R. P. 40 :
5 B. R. 795 : 20 P. L. T. 607 :
18 Pat. 580 : A. I. R. 1939 Pat. 343.

—S. 14—*Pleader when can be suspended.*

Where at the time when the order of the District Magistrate was passed, no charge had been framed against the Pleader and no notice had been served upon him, as required by the first and second clauses of S. 14, the

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

order of the District Magistrate suspending him from practice pending investigation on the report of an Honorary Magistrate through the Sub-Divisional Magistrate is one made without jurisdiction. *U San Thein v. District Magistrate, Magwe.* 163 I. C. 586 :

9 R. Rang. 30 : 14 Rang. 735 :
A. I. R. 1936 Rang. 249.

S. 14—Proceedings under, nature of.

The enquiry contemplated under S. 14, Legal Practitioners Act, is of an administrative nature and is not a civil proceeding, the intention of the Act being to provide a procedure or remedy of a disciplinary character for practitioners practising in Subordinate Courts without giving the Courts the power to inflict a penalty for abuse of discipline but only to recommend to the High Court the course to be taken. It is neither civil nor criminal, but purely designed for the purpose of discipline. Proceedings under S. 14 cannot be transferred under S. 24, C. P. C. read with S. 141 of the Code or by virtue of the powers of superintendence vested in High Courts under S. 107 of the Government of India Act. Neither S. 24 nor S. 141, C. P. C., applies to the Legal Practitioners Act, because the proceedings under the latter Act are not civil proceedings in a Court of civil jurisdiction to which alone the C. P. C. is applicable. *In the matter of ; Janak Kishore.*

18 Cr. L. J. 132 :
37 I. C. 484 : 1 P. L. J. 576 :
1917 Pat. 60 : A. I. R. 1916 Pat. 115.

S. 14—Procedure—Proceeding to be separate and distinct—Report—Opinion.

The provisions of S. 14, Legal Practitioners Act, must be obeyed, and the procedure therein prescribed must be strictly followed from first to last. A proceeding against legal practitioner must be separate and distinct and cannot be made part of a criminal proceeding. The report to the High Court must be accompanied by the opinion of the officer making the report. *In re : Fazlar Rahman.*

12 Cr. L. J. 40 :
9 I. C. 247 : 15 C. W. N. 764.

S. 14—Professional misconduct.

Charge of, against Pleader by a Subordinate Magistrate *B* of *T* Division—Transfer of the Magistrate before the date of enquiry into the charge—District Magistrate, order of, transferring the charge to the Subordinate Magistrate *B* to *K* Division since transferred—Warrant, issue of, by the Subordinate Magistrate, against Pleader, Pleader accusing the Magistrate as acting "maliciously, vexatiously and with a vindictive spirit": *Held*, not guilty of improper conduct. *In re : K. R. Ramachandra.*

7 Cr. L. J. 333 :
3 M. L. T. 237 : 18 M. L. J. 333.

S. 14—Punishment of legal practitioner—High Court alone can inflict.

Infliction of punishment on the legal practitioner is within the exclusive jurisdiction of

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

the High Court, and it is not necessary for the recommending officer to suggest as to what punishment should be awarded. *In the matter of : Shyamapada Bhattacharji.*

33 Cr. L. J. 466 :
137 I. C. 434 : 54 C. L. J. 530 :
36 C. W. N. 294 : 59 Cal. 709 :
I. R. 1932 Cal. 311 : A. I. R. 1932 Cal. 370.

S. 14—Reference to High Court—Procedure.

Under S. 14, Legal Practitioners Act, where a report is made against a legal practitioner by a Magistrate subordinate to the District Magistrate, it must be made through the District Magistrate and the Sessions Judge. A report made through the District Magistrate alone and not also through the Sessions Judge cannot be acted upon. *In the matter of : Mukhtear of Benares. (F. B.)*

30 Cr. L. J. 966 :
118 I. C. 712 : I. R. 1929 All. 920 :
1929 A. L. J. 1042 : A. I. R. 1929 All. 655.

S. 14—Renewal of sanad.

Where a District Judge, exercising his powers under S. 476, Cr. P. C., directs the prosecution of a Pleader under S. 209, Penal Code, he should not refuse the renewal of the certificate to practise pending the decision of the criminal prosecution. *In the matter of : a Pleader.*

17 Cr. L. J. 152 :
33 I. C. 632 : 14 A. L. J. 82 : 38 All. 182 :
A. I. R. 1916 All. 312.

S. 14—Report to High Court—Procedure.

A District Magistrate has no power to report to the High Court direct against a Pleader with a view to disciplinary action being taken against him under the Legal Practitioners Act. Such a report can be made only through the Sessions Judge. *In the matter of : Vakils, Jhansi.*

29 Cr. L. J. 750 :
110 I. C. 686 : 26 A. L. J. 1250 :
A. I. R. 1928 All. 396.

S. 14—Scope.

It must be established that Pleader actually signed the petition; that no charge under S. 14 could be framed against Pleader unless it is established beyond reasonable doubt that he had actually signed the petition. *Emperor v. D, a Pleader.*

152 I. C. 43 (a) :
59 C. L. J. 419 : 7 R. C. 221 :
A. I. R. 1934 Cal. 791.

S. 14—Scope.

S. 14 is material even when any Pleader is acting in his professional capacity on behalf of his client in a proceeding in a Revenue Office. *In re : Mr. H., Pleader.*

143 I. C. 359 :
56 C. L. J. 595 : I. R. 1933 Cal. 407 :
A. I. R. 1933 Cal. 344.

S. 14—Scope.

The material construction of S. 14, Legal Practitioners Act, is that it includes Cl. (f)

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

just as much as any other clause of S. 13. *In the matter of: Beli Ram.*

21 Cr. L. J. 198 :
54 I. C. 982 : 152 P. R. 1919 :
83 P. L. R. 1920 :
A. I. R. 1920 Lah. 425.

—S. 14—Submission of case to High Court—*District Judge finding charge not established—Case should not be submitted to High Court.*

Where the District Judge does not find that the charge of professional misconduct has been established, the case should not be submitted to the High Court. *In re: S. K. Mitra.*

41 Cr. L. J. 899 :
190 I. C. 320 : 13 R. Rang. 81 :
A. I. R. 1940 Rang. 190.

—S. 14—Suspension of Pleader.

District Judge cannot suspend legal practitioner until he records a finding thereon. *In re: L., a First Grade Pleader, Rajam.*

39 Cr. L. J. 83 :
172 I. C. 136 : 1937 M. W. N. 460 :
46 L. W. 599 : 10 R. M. 434 :
A. I. R. 1937 Mad. 672.

—S. 14—Transfer of proceedings—Competency of.

A Magistrate who has been moved under S. 14, Legal Practitioners Act, to institute proceedings against a legal practitioner for misconduct, has no jurisdiction to transfer the proceedings to a Subordinate Magistrate for action or to direct him to hold a preliminary inquiry. *In re: Venugopal Nayudu.*

27 Cr. L. J. 384 :
92 I. C. 896 : 1926 M. W. N. 466 :
A. I. R. 1926 Mad. 1044.

—S. 14—Vakalatnama.

A Pleader was called upon by a Court to submit an explanation in the matter of his acceptance of a *vakalatnama*. The Pleader in his explanation submitted that he acted *bona fide* and also that he had received the *vakalatnama* duly authorised by the executant and that he was entitled to act upon it. The Court on the 18th November, 1920, accepted the explanation, excused the Pleader and warned him to be careful in future. Then on the 19th January, 1921, the Court took up the matter again and drew up proceedings under S. 14, Legal Practitioners Act, for dismissal or suspension of the Pleader: *Held*, that having regard to the fact that the Court had previously come to the conclusion that the Pleader had been acting *bona fide*, although he had made a serious mistake, there was no necessity for the Court to take up the matter again, especially after a lapse of a long time. *In the matter of: Jnanendra Kumar Choudhury.*

23 Cr. L. J. 65 :
65 I. C. 417 : A. I. R. 1922 Cal. 178.

—S. 14—Petition filed by legal practitioner, alteration of, without leave of Court—Unprofessional conduct—Punishment.

A legal practitioner instituted certain proceedings under S. 144 of the Cr. P. C., with

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

respect to a certain plot of land which belonged to him. In his petition the number of the plot was, owing to inadvertence, wrongly described. Instead of presenting to the Court a further petition for amendment of the first petition, he proceeded to effect an alteration in the petition which had been filed in Court and corrected the description of the number of the plot. On the alteration being discovered by the Court, he was prosecuted for an offence under S. 466, Penal Code, but was discharged. Thereafter proceedings were taken against him under S. 14, Legal Practitioners Act: *Held*, that his conduct fell within the purview of S. 14 but that inasmuch as there was no question of any dishonesty, the period of suspension already undergone by him was sufficient punishment for his conduct. *Secretary of State for India v. Jogendra Chandra Das.*

26 Cr. L. J. 1019 :
87 I. C. 843 : A. I. R. 1926 Cal. 223.

—S. 14.

Pleader representing one party but latter on accepting instructions of the other side—Conduct: *Held* unprofessional. *In the matter of: S. P., a Pleader.*

150 I. C. 16 :
15 P. L. T. 305 : 6 R. P. 724 :
A. I. R. 1934 Pat. 352.

—S. 15—Applicability.

S. 15, Legal Practitioners Act, applies in most cases to proceedings in which an adjudication has already been made by a subordinate judicial officer and the High Court is of opinion after calling for the record and studying the papers that that adjudication is *prima facie* wrong. *In re: L., a First Grade Pleader, Rajam.*

39 Cr. L. J. 83 :
172 I. C. 136 : 1937 M. W. N. 460 :
46 L. W. 599 : 10 R. M. 434 :
A. I. R. 1937 Mad. 672.

—S. 23.

See also Cr. P. C., S. 476.

—S. 27—Breach of.

Failure to obtain the sanction of High Court before a Pleader engages in trade, is in contravention of Rule 27 of the rules under the Act. *Munireddi v. Venkata Rao.* 13 Cr. L. J. 800 :
17 I. C. 544 : 23 M. L. J. 447 :
1912 M. W. N. 1029 : 12 M. L. T. 615.

—S. 27—Breach of.

The High Court has not declared, under S. 13 of the Legal Practitioners Act, that it is unprofessional for a Pleader to follow any trade or business, especially where Pleaders belong to a joint family which is carrying on a family trade, but the omission to report this circumstance under Rule 27 of the High Court Rules brings the defaulting Pleader under Cl. (b) or (f) of S. 13, Legal Practitioners Act, and renders him liable to punishment. *Munireddi v. Venkata Rao.*

13 Cr. L. J. 800 :
17 I. C. 544 : 23 M. L. J. 447 :
1912 M. W. N. 1029 : 12 M. L. T. 615.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 27—Fees.

Nagpur Judicial Commissioner's Circulars No. II-4, rr. 6 and 8—Decree assigned—Assignee engaging in execution, the same Pleader engaged in original suit—No fresh fee can be allowed. *Jainabai v. Ramchandra*. 144 I. C. 379 : I. R. 1933 Nag. 239 : A. I. R. 1933 Nag. 360.

—S. 32—Interpretation.

The expression "Practises in any Court," as used in S. 32, Legal Practitioners Act, does not mean "habitually acts as a Pleader or *Mukhtear*," but signifies the doing of acts, or, it may be a single act, in a professional capacity as of right, which could not be done as of right by a non-professional person. *Emperor v. Beni Bahadur*. 1 Cr. L. J. 208 : 24 A. W. N. 56 : I. L. R. 26 All. 380.

—S. 36.

- Action under.
- Declaration of touts.
- Miscellaneous.
- Notice to tout.
- Order under.
- Person declared tout.
- Power of High Court.
- Procedure.
- Resolution of Bar Council.
- Revision.
- Touts

—S. 36—Action under—Necessity for caution.

S. 36, Legal Practitioners Act, being drastic and somewhat exceptional, a great deal of care and caution is necessary before taking action under it and the person affected must be given full opportunity of producing defence evidence. *Diwan Chand v. Emperor*. 27 Cr. L. J. 333 : 92 I. C. 749 : A. I. R. 1926 Lah. 227.

—S. 36—Amendment Act (XV of 1926)—Declaration of touts.

After the amendment of the Legal Practitioners Act by Act XV of 1926, while a Court can still proceed under S. 36, Legal Practitioners Act, and examine witnesses as to the general repute of the suspected tout, it can also avoid the calling of witnesses and accept a resolution of the Bar Association satisfying the requirements of Act XV of 1926 as sufficient evidence to prove that he is a tout by general repute. *Kundal Lal v. Emperor*.

130 I. C. 629 : I. R. 1931 All. 293 : A. I. R. 1931 All. 315.

—S. 36—Declaration of Touts—District Magistrate ordering name of person to be included in list of touts—High Court's power of revising order—Punjab Courts Act (XVIII of 1884), S. 13—General power of superintendence and control.

Proceedings under S. 36, Legal Practitioners Act, are neither civil proceedings governed by the provisions of the Code of Civil Procedure, nor criminal proceedings governed by the Cr. P. C., and therefore, neither the civil nor the criminal jurisdiction of the High Court

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

or chief Court can be invoked for the purpose of revising orders passed under that section. The High Courts have, however, held that in the exercise of the general powers of superintendence and control vested in them under the provisions of S. 15 of the High Courts Act, they have jurisdiction to interfere with such orders, and in *Man Singh v. Emperor*, 3 I. C. 977 ; 11 P. R. 1909 Cr. ; 115 P. L. R. 1909 ; 10 Cr. L. J. 443 ; 28 P. W. R. 1909 Cr., a Division Bench of the Chief Court has also decided that it has similar jurisdiction under S. 18 of the Punjab Courts Act in cases where an order under S. 36 of the Legal Practitioners Act has been passed by a Civil Court. But S. 18 of the Punjab Courts Act gives the Chief Court a power of superintendence and control only over Civil Courts and the provisions of that section are not relevant to a case where the Chief Court is asked to revise the order of a District Magistrate. *Sardar-ud-Din v. Emperor*.

15 Cr. L. J. 601 : 25 I. C. 513 : 18 P. R. 1914 Cr. : 51 P. W. R. 1914 Cr. : 266 P. L. R. 1914 : A. I. R. 1914 Lah. 399.

—S. 36—Declaration of touts.

If a resolution of a Bar Association declaring a person to be a tout is based on general repute, the Court may attach less weight to it, but such a resolution is not legally inadmissible in evidence. *Ram Phal v. Emperor*.

33 Cr. L. J. 282 : 136 I. C. 374 : 1932 A. L. J. 176 : 54 All. 230 : I. R. 1932 All. 198 : A. I. R. 1931 All. 711.

—S. 36—Declaration of touts—Order declaring person to be a tout—Authority by whom such order to be made.

An order under S. 36, Legal Practitioners Act, declaring a person to be a tout, made by a District Magistrate upon evidence recorded by a Subordinate Magistrate is not a valid order. Such an order can only be made by the authority mentioned in the section upon evidence recorded by itself. *In the matter of : Nafar Chandra Dome*, 22 Cr. L. J. 209 : 60 I. C. 321 : 24 C. W. N. 1074.

—S. 36—Declaration of tout—Procedure.

A person filed a petition before a District Magistrate stating that one F, saying that he would engage a Pleader for the petitioner, took some money from the petitioner and ran away with the money. The District Magistrate endorsed this petition to a Magistrate, First Class, for enquiry and report. The Magistrate, after holding an enquiry reported that it was not proved that F was a tout, though he might have committed an act of cheating. The Magistrate, First Class, had asked the Secretary, Bar Association, to let him know about F's character and antecedents, and the Secretary wrote that the Executive Committee of the Bar Association had passed a resolution by a majority that F was an undesirable man and did not possess good antecedents. The District Magistrate, on receiving the report,

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

declared *F* to be a tout: *Held*, that the procedure adopted by the District Magistrate was entirely wrong; (i) because the petition against *F* did not contain any allegation that he was a tout and the District Magistrate had no power to ask for inquiry under S. 36 (a); (ii) because the District Magistrate acted illegally in relying upon the resolution of the Executive Committee of the Bar Association as it was not a resolution of the Bar Association itself at a specially convened meeting and further the resolution itself was only to the effect that the antecedents of *F* were bad. *Fakir Chand v. Emperor*, 31 Cr. L. J. 1219: 127 I. C. 362: 31 P. L. R. 212: A. I. R. 1930 Lah. 405.

—S. 36—Declaration of touts—Procedure in declaring person a tout—District Magistrate whether can delegate his powers to Subordinate Magistrate.

Before directing the inclusion of a person's name in the list of touts, it is necessary that proceedings should be taken in accordance with S. 36 of the Legal Practitioners Act, and the person be given an opportunity of showing cause against the inclusion. The duties to be undertaken under S. 36, Legal Practitioners Act, cannot be delegated by any of the officers mentioned therein to their subordinates. *Mohan Das Pujhari v. Emperor*. (S. B.) 22 Cr. L. J. 66: 59 I. C. 322: 1919 Pat. 273: A. I. R. 1919 Pat. 45.

—S. 36—Declaration of tout—Revision.

An order declaring a person to be a tout is one which very seriously affects the character and prospects of the person against whom it is passed. It is, therefore, competent to the Chief Court, in the exercise of its revisional jurisdiction, to scrutinize such orders with the object of satisfying itself that there has been a compliance with the provisions of law and that the person affected has been given full opportunity of meeting the charge brought against him. The District Judge is bound to examine witnesses named by him and to summon them for the purpose, after the evidence against the person has been produced. Where the District Judge declined to do so, the Chief Court on revision set aside the order and directed him to summon witnesses named by the person declared as a tout and record the evidence and pass orders on the whole evidence on the record. *Bule Khan v. Emperor*. 10 Cr. L. J. 447: 3 I. C. 982: 120 P. L. R. 1909.

—S. 36—Declaration of touts—Revision—Jurisdiction.

The District and Sessions Judge of Meerut held an inquiry under S. 36, Legal Practitioners Act, 1879, as the result of which he ordered certain persons to be proclaimed to be touts and excluded from the precincts of the Courts in the judicial division. The parties affected applied to the High Court against the Judge's order under S. 15 of

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

Statute 24 and 25 Vict. Chap. CIV. On this application being laid before a Division Bench for disposal, it was *held*, that the disciplinary powers of the High Court under S. 15 of the Statute being exercisable only by the Full Court, a Bench of two Judges had no jurisdiction to adjudicate upon the application, neither had a single Judge jurisdiction to admit it. *In re : Kedar Nath*. 9 Cr. L. J. 59: 1 I. C. 143: 28 A. W. N. 279: 6 A. L. J. 22: 31 All. 59.

—S. 36—Declaration of touts—Revision.

The High Court can revise an order passed by a Subordinate Officer if the order is against natural justice. *Ram Phal v. Emperor*. 33 Cr. L. J. 282: 136 I. C. 374: 1932 A. L. J. 176: 54 All. 230: I. R. 1932 All. 198: A. I. R. 1931 All. 711.

—S. 36—Declaration of tout—Revision.

Though by virtue of powers vested in the Chief Court, under S. 13, Punjab Courts Act, it is competent to the Court to revise an order passed by a Subordinate Court, under S. 36, Legal Practitioners Act, declaring a person to be a tout, yet as very considerable discretion in the matter of preparing and publishing its list of touts is afforded to the Subordinate Courts, the Chief Court will not interfere with any order passed under S. 36, unless it can be shown that the provisions of that section have not been duly complied with. Similarly, the Chief Court will, in a proper case, interfere if it finds that there is no evidence whatever to support the finding of the Subordinate Court or that the evidence, such as it is, cannot legally be accepted as proving that the petitioner is a tout. *Man Singh v. Emperor*. 10 Cr. L. J. 443: 3 I. C. 977: 115 P. L. R. 1909.

—S. 36—Declaration of tout.

S. 36, Legal Practitioners Act, requires proof by evidence of general repute or otherwise before a man can be declared a tout. Such evidence should be taken in the ordinary manner and brought on the record, and where this is not done, the order of declaration cannot be maintained. *Shankar Singh v. Emperor*. 13 Cr. L. J. 467: 15 I. C. 407: 112 P. L. R. 1912: 12 P. W. R. 1912 Cr.

—S. 36—Declaration of tout—Tout—Inquiry to be made by Magistrate himself—Power not to be delegated—Evidence to be recorded—Opportunity of cross-examination of witness to be given to alleged tout.

An inquiry, under S. 36, Legal Practitioners Act, must be made by the District Magistrate himself, and he cannot delegate his powers to any subordinate officer. The decision of a Court determining that a person is a tout must be based on substantial legal evidence. The person against whom the evidence is directed must have an opportunity of cross-

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

examining the witnesses. *In re : Hari Pada Mukherji.* 13 Cr. L. J. 510 : 15 I. C. 654.

———S. 36 — Declaration of touts — Tout, person proclaimed as — Evidence of general repute, admissibility of — "General repute or otherwise", meaning of — S. 36 (3), interpretation of.

The evidence which may legitimately be tendered in a case under S. 36 of the Legal Practitioners Act, is of general repute. The phrase 'general repute' in the section clearly includes hearsay evidence, which may be tested when admissible by cross-examination, just as any other evidence may be tested and challenged. The words 'or otherwise' are clearly intended to include all the ordinary modes of proof known to the law which might otherwise be said to have been impliedly excluded, such as personal observation, evidence of conduct, admissions in conversation and the like, proved by first hand testimony. The recognised principles applicable in cases under S. 110, Cr. P. C., apply to cases under S. 36, Legal Practitioners Act, Sub-s. (3), S. 30, Legal Practitioners Act, means that the exhibition of the copy list there referred to is necessary to constitute a man a proclaimed tout. A mere removal or failure, however, to keep the list exhibited in the Court of a District Judge has not the effect of cancelling the list altogether, inasmuch as it is to be exhibited in all Courts subordinate to the District Court and its mere removal in one Court out of many does not *per se* cancel the original order. *Kalka Prasad v. Emperor.*

19 Cr. L. J. 269 :
44 I. C. 125 : 16 A. L. J. 76 :
40 All. 153 : A. I. R. 1918 All. 271.

———S. 36 — Declaration of touts — Touts, publication of list of — Fourth Presidency Magistrate, jurisdiction of.

Inasmuch as the Court of a Fourth Presidency Magistrate is subordinate to that of the Presidency Magistrate, the presiding officer of that Court has no jurisdiction to publish a list of touts applicable to Courts other than his own, which are not subordinate to his Court. *Jagat Chandra Ghose v. Emperor.*

25 Cr. L. J. 34 :
75 I. C. 722 : A. I. R. 1923 Cal. 484.

———S. 36 — Declaration of touts.

Where a District Magistrate sends the names of persons suspected to be touts to a subordinate Court and that Court after holding an inquiry does not send up the name of a particular person, the District Magistrate who has made no enquiries himself cannot include the name of that person in the list of touts. *Kapoor Chand Jain v. Emperor.*

32 Cr. L. J. 140 :
128 I. C. 387 : 1930 A. L. J. 961 :
I. R. 1931 All. 35 :
A. I. R. 1930 All. 641.

———S. 36 — Declaration of touts.

Where an order under S. 36 is passed by

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

the District Magistrate without giving the applicant an opportunity of appearing before him and being heard, there is sufficient ground for revision. *Debidin Nai v. Emperor.*

33 Cr. L. J. 146 :
135 I. C. 411 : 14 N. L. J. 122 :
27 N. L. R. 398 :
I. R. 1932 Nag. 11 :
A. I. R. 1931 Nag. 187.

———S. 36 — Declaration of tout — Who can order — Punjab practice — Tout — Court competent to declare — Punjab Courts Act (XVIII of 1884), S. 23.

A District Judge in the Punjab is not competent to declare a person a law-tout under S. 36, Legal Practitioners Act, for under the Punjab Courts Act, S. 23, the Local Government has notified the Divisional Judge to be the District Court for purposes of the Legal Practitioners Act. *Bawa Lachhman Das v. The District Judge, Gurdaspur.*

1 Cr. L. J. 941 :
5 P. L. R. 395 : 22 P. R. Cr. of 1904.

———S. 36 — Miscellaneous.

Powers of High Court are not *parsona designata* — High Court has revisional jurisdiction under Government of India Act, S. 107. *Magan Nathabhai v. Dinkarrao N. Desai.*

34 Cr. L. J. 47.
140 I. C. 553 : 56 Bom. 577 :
34 Bom. L. R. 1281 :
56 Bom. 577 : I. R. 1933 Bom. 14 :
A. I. R. 1932 Bom. 596.

———S. 36 — Notice to tout.

Although a Court has no power under S. 36, Legal Practitioners Act, to proceed against a tout without giving the alleged tout notice of the intention of the Court to take proceedings against him and giving him an opportunity to show cause against the proposed action, the section does not authorize a Court to compel the attendance of the tout. The failure of an alleged tout to whom a notice under S. 36 of the Legal Practitioners Act is issued, to appear in Court to receive orders does not, therefore, amount to an offence under S. 174 of the Penal Code. *P. J. Money v. Emperor.*

29 Cr. L. J. 912 :
111 I. C. 672 : 6 Rang. 529 :
A. I. R. 1928 Rang. 296.

———S. 36 — Order under — Revision by High Court under what provision.

The High Court can under S. 115, C. P. C., revise an order passed by a District Judge under S. 36, Legal Practitioners Act, declaring a person to be a tout. S. 224 (2), Government of India Act, is not a bar to such a revision. To such a case S. 439, Cr. P. C., does not apply and there would be no revision under the Cr. P. C. The revisional jurisdiction under S. 115, C. P. C., is necessarily of an exceptional character and

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

cannot be invoked except in furtherance of justice. *In re : Adiraju Somanna.*

177 I. C. 456 :
47 L. W. 578 : 11 R. M. 334 :
1938 M. W. N. 426 :
1938, 2 M. L. J. 100 :
I. L. R. 1938 Mad. 988 :
A. I. R. 1938 Mad. 634.

————S. 36—Person declared tout—Procedure—Evidence, recording of.

Where a Court has information that a certain person is a tout, it should call upon that person to show cause why he should not be declared to be a tout and should, in his presence, take evidence showing that he is a tout. Where no such evidence is taken, the person called upon to show cause cannot be declared to be a tout. *Qazi Abu Mahammad v. Emperor.*

19 Cr. L. J. 36 :
42 I. C. 996 : 1917 Pat. 186 :
5 P. L. W. 229 : A. I. R. 1917 Pat. 72.

————S. 36—Power of High Court—Government of India Act, 1919 (9 & 10 Geo. V, C. 101), S. 107—Proceedings under S. 36—Revision, competency of.

The High Court has power to revise orders passed under S. 36 by reason of the power of superintendence vested in the Court by S. 107, Government of India Act, but this power is of a very exceptional nature and cannot be invoked except in the furtherance of justice. *Chatar Bhuj v. Emperor.*

32 Cr. L. J. 346 :
129 I. C. 487 :
I. R. 1931 Lah. 199 :
A. I. R. 1930 Lah. 889.

————S. 36—Tout—Procedure.

An inquiry under S. 36, Legal Practitioners Act, to include a person in the list of touts is not governed by the procedure prescribed by Order VII, r. 11 of the C. P. C., or by the procedure regulating the conduct of enquiries under Ss. 107-112, Cr. P. C., or even that for an inquiry under S. 14, legal practitioners Act, against a Legal Practitioner. A Court acting under S. 36, Legal Practitioners Act, would sufficiently comply with its provisions if it called upon the alleged tout to show cause why his name should not be included in the list, provided an opportunity was given to him to rebut the evidence tendered and otherwise to place his case before the Court. Where a Court is moved to take proceedings against a person under S. 36 on allegations neither clear nor definite but the petition contains a prayer to declare the respondent a tout, and proceedings are initiated, the alleged tout being asked to defend himself under the section, and there is legal evidence on the record on which a person could be declared a tout, the procedure adopted is neither irregular nor without jurisdiction and the High Court will not, before the termination of the inquiry in the lower Court, interfere in revision under S. 115,

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

C. P. C., to quash the pending proceedings. *Paradachariar v. Kalyanasundaram Iyer.*

23 Cr. L. J. 705 :
69 I. C. 433 : 16 L. W. 795 :
44 M. L. J. 437 : A. I. R. 1923 Mad. 188.

————S. 36—Resolution of Bar Council—When evidence of repute.

Resolution of Bar Association as evidence of general repute Resolution must be by majority of legal practitioners entitled to practice in meeting specially convened for that purpose. *Magan Nathabhai v. Dinkarrao N. Desai.*

34 Cr. L. J. 47 :
140 I. C. 553 : 56 Bom. 577 :
34 Bom. L. R. 1281 :
I. R. 1933 Bom. 14 :
A. I. R. 1932 Bom. 596.

————S. 36—Revision.

The Judicial Commissioner's Court of Nagpur has jurisdiction to revise an order of a Subordinate Court made in a proceeding under S. 36 under the general power of superintendence and control conferred on it by S. 21, C. P. Courts Act, and the exercise of this power is a judicial matter. *Yeshwant Rao v. Secretary, High Court Bar Association, Nagpur.*

33 Cr. L. J. 408 :
137 I. C. 66 : 28 N. L. R. 4 :
I. R. 1932 Nag. 57 :
A. I. R. 1932 Nag. 50.

————S. 36—Revision.

Under S. 36, Cl. 2, the District Judge has power to differ from or accept the report placed before him by the Subordinate Judge and the High Court will not interfere when the question is only one of weighing evidence. *Emperor v. Mehr Singh.*

32 Cr. L. J. 1129 :
134 I. C. 98 : 31 P. L. R. 1003 :
I. R. 1931 Lah. 866 :
A. I. R. 1931 Lah. 98 (2).

————S. 36—Touts—Enquiry—Scope.

An enquiry under S. 36, Legal Practitioners Act, need not be confined to the case of one person, and one person alone. The section creates a special jurisdiction, but does not define the details of the mode in which that jurisdiction is to be exercised. The course to be adopted should be such as would do substantial justice. It would be unreasonable to include in such an enquiry the cases of persons who frequent different Courts as touts; but the cases of persons who are alleged to work as touts in the same Court may be included in one enquiry. Where certain proceedings are open to objection on the ground of multifariousness, the objection will not be entertained for the first time by a Court of Appeal or of revision. *Hari Charan v. District Judge of Dacca.*

11 Cr. L. J. 320 :
6 I. C. 327.

————S. 36—Touts.

Notice to show cause served on a person on 18th December—Application by him on 2nd January to issue summons to seven Vakils—

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

Summons declined and person asked to file affidavits of Vakils—No affidavits filed and he was declared tout on 3rd January on resolution of Bar Association—Sufficient opportunity is not given to him to satisfy Court that he was not a tout. *Riyaz-ud-Din v. Bar Association, Agra.*

132 I. C. 41 :
I. R. 1931 All. 473 :
A. I. R. 1930 All. 796.

—S. 36—Touts.

Order by District Judge on appeal dismissing appellant's objection to report of Subordinate Judge cannot be regarded as taking the place of formal orders which he has to pass before a person can be rightly included in the list of touts. *Abdul Majid v. Emperor.*

32 Cr. L. J. 730 :
131 I. C. 370 : 32 P. L. R. 9 :
I. R. 1931 Lah. 466 :
A. I. R. 1931 Lah. 156.

—S. 36—Tout.

The resolution of the Bar Association referred to in Explanation to S. 36 if duly passed, is sufficient, in the absence of other cogent evidence, for the inclusion of a name in a list of touts framed under the section. *Yeshwant Rao Shantaram v. Secretary, High Court Bar Association, Nagpur.*

33 Cr. L. J. 940 (2) :
139 I. C. 900 : 28 N. L. R. 159 :
I. R. 1932 Nag. 129 :
A. I. R. 1932 Nag. 141.

—S. 36—Tout.

Where the meeting is convened for declaring certain persons as touts and a resolution is passed declaring another person to be a tout, the resolution is not valid evidence that that person was a tout. *Yeshwant Rao Shantaram v. Secretary, High Court Bar Association, Nagpur.*

33 Cr. L. J. 940 (2) :
139 I. C. 900 : 28 N. L. R. 159 :
I. R. 1932 Nag. 129.
A. I. R. 1932 Nag. 141.

—S. 36—Tout—Who is.

The mere fact that a person makes it his business to act as general agent and to find legal practitioners for those who want legal aid, without being bound as clerk or otherwise to any one legal practitioner, does not constitute such person a "tout" within the definition. To render him a "tout", it must be proved that he has taken remuneration from the legal practitioner whose employment he has secured, or that he has proposed to the legal practitioner or to some person interested in the legal business that he should be given remuneration by the legal practitioner or such interested person. *Ugam Prasad Pandey v. Emperor.*

28 Cr. L. J. 532 :
102 I. C. 340 : 8 P. L. T. 587 :
6 Pat. 567 : A. I. R. 1927 Pat. 282.

—S. 36, Expl.—Declaration of touts.

Meeting of Bar Association must be specially convened to declare a man as tout. *Achar Khuda Baksh v. Bar Association, Karachi.*

38 Cr. L. J. 316 :
166 I. C. 643 : 9 R. S. 153 :
30 S. L. R. 340 : A. I. R. 1937 Sind 4.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 36, Expl.—Declaration of tout—Resolution of Bar Association, admissibility of—Passed by a majority of persons present at the meeting, meaning of.

Under the Explanation to S. 36, Legal Practitioners Act, every resolution passed by the Association will not be legal evidence of general repute against an accused person. It becomes such evidence only if it has been passed by a majority of the members present at the meeting. *Badri Prasad v. Emperor.*

32 Cr. L. J. 159 :
128 I. C. 603 : 1930 A. L. J. 977 :
52 All. 939 : I. R. 1931 All. 75 :
A. I. R. 1930 All. 752.

—Ss. 36, 39—Proceedings under Legal Practitioners Act, nature of.

The enquiry under S. 39, Legal Practitioners Act, is of the nature of a departmental enquiry; and it is enough if it is conducted in such a way that the officer enquiring acts with substantial justice and gives the person against whom proceedings are being taken an opportunity to show cause. *In re : Mulchand.*

21 Cr. L. J. 449 :
56 I. C. 433 : 13 S. L. R. 212 :
A. I. R. 1920 Sind 70.

—S. 36 (1)—Notice.

A meeting of an Association, such as the Bar Association, to be valid must be legally and properly convened, that is to say, after proper notice to all its members who are able to attend and a notice to be proper must be given in a reasonable manner and at a reasonable time before the meeting takes place though it is not always legally necessary that there should be a personal service of notice on all the members. *Chatur Bhuj v. Emperor.*

32 Cr. L. J. 672 :
131 I. C. 238 : 32 P. L. R. 300 :
12 Lah. 385 : I. R. 1931 Lah. 398 :
A. I. R. 1931 Lah. 57.

—S. 36 (1)—Proceedings under—Nature of.

The proceedings under S. 36, Legal Practitioners Act, are of a quasi-criminal nature. *Chatur Bhuj v. Emperor.*

32 Cr. L. J. 672 :
131 I. C. 238 : 32 P. L. R. 300 :
12 Lah. 385 : I. R. 1931 Lah. 398 :
A. I. R. 1931 Lah. 57.

—S. 36 (1)—Resolution of Bar Association—Admissibility.

Under S. 36 (1), in order to enable a Court to admit in evidence the resolution of the Bar Association, it is necessary to establish that it was passed at a meeting specially convened for the purpose of passing the resolution in question; this implies that the meeting should have been properly convened and that the object of the proposed meeting should have been properly notified to all the members of the Association. *Chatur Bhuj v. Emperor.*

32 Cr. L. J. 672 :
131 I. C. 238 : 32 P. L. R. 300 :
12 Lah. 385 : I. R. 1931 Lah. 398 :
A. I. R. 1931 Lah. 57.

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

—S. 36 (2) (a)—Declaration of tous.

Tout—Submission of report to District Judge—Notice by District Judge to show cause is not necessary—It is the duty of tout to appear and intimate that he desires to be heard. *Sham Lal v. Emperor*.

32 Cr. L. J. 966 :
132 I. C. 846 : I. R. 1931 Lah. 686 :
A. I. R. 1931 Lah. 543 (2).

—S. 36 (2-A)—Proceedings under—Nature of.

Proceedings are quasi-criminal—Court must see that provisions of S. 36 are satisfied. *Magan Nathabhai v. Dinkarrao N. Desai*.

34 Cr. L. J. 47 :
140 I. C. 553 : 34 Bom. L. R. 1281 :
56 Bom. 577 : I. R. 1933 Bom. 14 :
A. I. R. 1932 Bom. 596.

—S. 39—Misconduct—Pleader guilty of improper conduct but not of dishonesty—Penalty.

Where a Pleader who was in possession of money belonging to his client did not pay the amount to his client notwithstanding many demands, and ultimately when a complaint was launched under the Legal Practitioners Act against the Pleader, he paid the money and put forward an explanation for non-payment which was not fully made out, but during the period when the proceedings under the Legal Practitioners Act were pending, he did not take out any *sanad* or practice: *Held*, that the practitioner was guilty of improper conduct deserving severe censure though the conduct was not necessarily dishonest. *In the matter of : Mr. S., Second Grade Pleader*.

28 Cr. L. J. 1009 :
106 I. C. 97 : 26 L. W. 652 :
53 M. L. J. 669 : 39 M. L. T. 483 :
A. I. R. 1928 Mad. 18.

—S. 40—Applicability.

S. 46, Legal Practitioners Act, applies to suspension by Subordinate Courts as well as to suspension and dismissal by a High Court, and, therefore, a legal practitioner should not be suspended by a Subordinate Court unless he has been allowed an opportunity of defending himself before such Court. *In the matter of : Professional misconduct of Maung Kin So*.

25 Cr. L. J. 265 :
76 I. C. 825 : 2 Bur. L. J. 213.

—S. 40—Applicability.

The provisions of S. 40, Legal Practitioners Act, apply to *interim* orders of suspension made under para. 5 of S. 14. *In re : Bajrangi Sahai*.

12 Cr. L. J. 33 :
9 I. C. 225 : 15 C. W. N. 269 :
13 C. L. J. 457.

—S. 40—Jurisdiction.

It is only after a report to the High Court under para. 4 of S. 14 that power is given to suspend under para. 5. A *Mukhtiar* was not called upon to show cause under S. 40, and there was no report submitted by the District Magistrate who suspended him under

LETTERS PATENT

para. 5 of S. 14 : *Held*, that the order of suspension was without jurisdiction and must be set aside. A proceeding under the Legal Practitioners Act, which is not properly initiated, is not a judicial proceeding in the course of which a prosecution may be directed by the Court under S. 476, Cr. P. C. *In re : Bajrangi Sahai*.

12 Cr. L. J. 33 :
9 I. C. 225 : 15 C. W. N. 269 :
13 C. L. J. 457.

—S. 41—Misconduct—Cancellation of sanad—Reinstatement.

Legal practitioner—Removal of name from roll of Advocates by Oudh Judicial Commissioner's Court—Oudh Chief Court can rescind the order—Advocate chastened by adversity—Unqualified apology tendered by Advocate—Rescinding of order is proper subject to the confirmation by Local Government. *In re : Muhammad Yusuf Husain Khan. (F. B.)*

35 Cr. L. J. 678 :
148 I. C. 299 : 11 O. W. N. 368 :
6 R. O. 401 : A. I. R. 1934 Oudh 140.

LEGAL PRACTITIONERS (FEES) ACT (XXI OF 1926)

—S. 3—Fees.

Several Pleaders retained in same *vakalatnama*—Each Pleader is entitled to claim from his client the full fee and not merely a share. *Babui Radhika Debi v. Ramasray Prasad Chowdhry*.

131 I. C. 542 :
I. R. 1931 Pat. 222 : A. I. R. 1931 Pat. 137.

—S. 4—Fees.

A Pleader is entitled to remuneration for work done, on principle *quantum meruit* even if *vakalatnama* is not signed by him. *Babui Radhika Debi v. Ramasray Prasad Chowdhry*.

131 I. C. 542 :
I. R. 1931 Pat. 222 : A. I. R. 1931 Pat. 137.

LEGAL PROCEEDINGS

See also Penal Code, 1860, S. 19.

LEGAL REMEMBRANCER

See also Cr. P. C., 1898, S. 417.

LEGITIMACY

See also Evidence Act, 1872, S. 112.

LETTERS PATENT

—S. 10—High Court's power to punish Pleaders.

The High Court has power by virtue of S. 10, Letters Patent, "to remove or to suspend from practice on reasonable cause" an Advocate, *Vakil* or Attorney-at-Law. *In the matter of : G. Krishnasawmi Aiyar*.

13 Cr. L. J. 680 P. C. :
16 I. C. 328 : 16 C. W. N. 1081 :
23 M. L. J. 114 : 12 M. L. T. 396 :
35 Mad. 543 : 14 Bom. L. R. 1079 :
16 C. L. J. 634 : 1912-M. W. N. 963.

LETTERS PATENT (ALL.)

———Cl. 8—*Misconduct of Pleader—What is.* Vakil preparing and presenting petition without authority from his clients is guilty of misconduct. *In the matter of : a Vakil.*

21 Cr. L. J. 469 :
56 I. C. 501 : 18 A. L. J. 419 :
2 U. P. L. R. (All.) 130 : 42 All. 450 :
A. I. R. 1920 All. 1.

———Cl. 8—*Order against Pleader—Appeal lies from, to P. C.*

Jurisdiction to deal with Advocates—Opinion of majority of Bench dealing with case should prevail—Aggrieved Advocate's remedy is to appeal to the Privy Council. *In the matter of B, an Advocate, Ghazipur.* 37 Cr. L. J. 139 (2) :
159 I. C. 653 : 1936 A. L. J. 383 :
1935 A. W. R. 1245 : 8 R. A. 493 :
A. I. R. 1935 All. 1037.

———Cl. 10—*Appeal—When does not lie.*

No Letters Patent Appeal lies from an order passed in the exercise of criminal jurisdiction of a Single Judge of the High Court. *Haidari Begum v. Jawad Ali.*

36 Cr. L. J. 554 ;
154 I. C. 638 : 1934 A. L. J. 946 :
7 R. A. 783 : A. I. R. 1935 All. 55.

———S. 10—*Order sanctioning prosecution—Whether judgment within meaning of S. 10.*

An order of a Judge sanctioning prosecution is not a judgment within the meaning of that expression in S. 10 of the Letters Patent. *Ramjas v. Mahadeo Pershad.*

17 Cr. L. J. 537 :
36 I. C. 585 : 14 A. L. J. 1230 :
A. I. R. 1917 All. 474.

———S. 16—*Two out of three accused convicted while third had absconded—Subsequent trial of absconder—Effect of previous trial and conviction on subsequent trial.*

The appointment of a sixth Judge to the High Court of Judicature for the North-Western Provinces is quite legal. Three brothers were charged with the offence of murder. One of them absconded, the other two, who were found, were tried and convicted : *Held*, that the case of the absconding accused, when found, should be tried and decided altogether irrespective of the fact that there had been a previous trial and conviction upheld by the High Court against the other accused. *Emperor v. Ghure.*

15 Cr. L. J. 200 :
22 I. C. 984 : 12 A. L. J. 231 :
36 All. 168 : A. I. R. 1914 All. 85.

———S. 22—*Village Panchayat—Transfer of case before.*

Per *Kanhaiya Lal, J.* (contra.)—A village panchayat must be deemed to be a Court for the purpose of S. 22, Letters Patent, and in the absence of any limitation imposed by any Act, the High Court has power under that section to transfer any criminal proceeding pending before a village panchayat to another

LETTERS PATENT (BOM.) 1865

village panchayat empowered to take cognizance thereof. *Sat Narain v. Sarju.*

25 Cr. L. J. 1390 :
83 I. C. 350 : 21 A. L. J. 925 :
46 All. 167 : A. I. R. 1924 All. 265.

———Art. 8—*Inquiry into misconduct of Pleaders—Forum of.*

It is undesirable that an investigation under Art. 8, Letters Patent, into the conduct of a legal practitioner should proceed before the same Judges as have heard the case out of which the charges arose. *A Pleader v. The Judge of High Court.*

132 I. C. 608 :
35 C. W. N. 640 : 1931 A. L. J. 450 :
53 C. L. J. 405 : 1931 M. W. N. 603 :
33 Bom. L. R. 945 : 53 All. 183 :
34 L. W. 59 : 61 M. L. J. 130 :
58 I. A. 152 : I. R. 1931 P. C. 192 :
A. I. R. 1931 P. C. 112.

———Art. 8—*Inquiry into misconduct of Pleaders—Procedure.*

Article 8, Letters Patent, prescribes no special procedure for dealing with complaints against the conduct of Vakils. The procedure to be followed in such cases is thus left to the discretion of the Court. *A Pleader v. The Judge of High Court.*

132 I. C. 608 :
35 C. W. N. 640 : 1931 A. L. J. 450 :
53 C. L. J. 405 : 1931 M. W. N. 603 :
33 Bom. L. R. 945 : 53 All. 183 :
34 L. W. 59 : 61 M. L. J. 130 :
58 I. A. 152 : I. R. 1931 P. C. 192 :
A. I. R. 1931 P. C. 112.

———Art. 8—*Miscellaneous.*

It is eminently fitting that the criminal prosecution should precede any disciplinary decision. *A Pleader v. The Judge of High Court.*

132 I. C. 608 : 35 C. W. N. 640 :
1931 A. L. J. 450 : 53 C. L. J. 405 :
1931 M. W. N. 603 : 33 Bom. L. R. 945 :
53 All. 183 : 34 L. W. 59 :
61 M. L. J. 130 : 58 I. A. 152 :
I. R. 1931 P. C. 192 :
A. I. R. 1931 P. C. 112.

LETTERS PATENT (BOM.) 1865

———Cl. 10—*Misconduct of Pleader—What is.*

Where certain legal practitioners signed the following pledge : " Being conscientiously of opinion that the Bills known as the Indian Criminal Law (Amendment) Bill I of 1919 and the Criminal Law (Emergency) Powers Bill II of 1919 are unjust, subversive of the principles of liberty and justice, and destructive of the elementary rights of individuals on which the safety of the community as a whole and the State itself is based, we solemnly affirm that in the event of those Bills becoming law and until they are withdrawn, we shall refuse civilly to obey these laws and such other laws as a committee to be hereafter appointed may think fit, and further affirm that in this struggle we will faithfully follow truth and refrain from violence to life, person or property : " *Held*, that those who had signed this pledge were

LETTERS PATENT (CALCUTTA)

not fit persons to be allowed to continue as members of the legal profession, *In re : Jivanlal v. Varajrai Desai*. 21 Cr. L. J. 151 : 54 I. C. 679 : 22 Bom. L. R. 13 : [44 Bom. 418 : A. I. R. 1920 Bom. 168.]

———Cl. 26—Power of High Court.

Cl. 26, Letters Patent (Bombay), does not entail that whenever any misdirection is found to exist, the Court has no option but to set aside the verdict. *S. 537, Cr. P. C.*, does not apply to a case dealt with under Cl. 26. But the High Court ought to apply to such a case the principle which underlies that section. *Puttan Hassan v. Emperor*. (F. B.)

37 Cr. L. J. 366 :
160 I. C. 1060 : 38 Bom. L. R. 19 :
8 R. B. 293 : A. I. R. 1936 Bom. 52.

———Cl. 26—Power of High Court.

It is open to the High Court, in a case under Cl. 26 to consider, not so much what effect the misdirection has upon the minds of this Court sitting in place of a Jury, but what the effect of the misdirection was or may have been upon the minds of the Jury which tried the case; and in so doing, the Court assume that the Jury was a reasonably competent jury. *Puttan Hassan v. Emperor*. (F. B.)

37 Cr. L. J. 366 :
160 I. C. 1060 : 38 Bom. L. R. 19 :
8 R. B. 293 : A. I. R. 1936 Bom. 52.

———Cl. 26—Scope.

Cl. 26 contemplates final disposal of case by High Court and there can be no new trial. *Puttan Hassan v. Emperor*. (F. B.)

37 Cr. L. J. 366 :
160 I. C. 1060 : 38 Bom. L. R. 19 :
8 R. B. 293 : A. I. R. 1936 Bom. 52.

———Cls. 26, 27—Power of superintendence over Police Patil—Power of superintendence over judicial functions of Police Patil.

The only right of superintendence over the judicial functions of the Police Patil created by the Village Police Act is vested in the High Court by Cls. 26 and 27, Letters Patent. *In re : Dayal Kanji*.

8 Cr. L. J. 141 :
10 Bur. L. R. 630.

LETTERS PATENT (CALCUTTA)

———Application of.

Obiter—Cl. 41 of the Letters Patent (Cal.) is not applicable to a case where any point or points of law have been reserved for the opinion of the High Court, by authority outside the High Court, viz., by the Advocate-General of Bengal. *Barendra Kumar Ghose v. Emperor*.

26 Cr. L. J. 431 :
85 I. C. 47 : 29 C. W. N. 181 :
1925 M. W. N. 26 : 26 P. L. R. 50 :
27 Bom. L. R. 148 : 6 P. L. T. 169 :
23 A. L. J. 314 : 41 C. L. J. 240 :
48 M. L. J. 543 : 1 O. W. N. 935 :
52 Cal. 197 : 52 I. A. 40 P. C. :
A. I. R. 1925 P. C. 1.

———Cl. 10—Misconduct of attorney—Attorney—Striking attorney's name off the rolls—Rule, service of—Practice.

LETTERS PATENT (CALCUTTA)

When the alleged misconduct of an attorney is the subject of consideration, it is expedient to initiate proceedings by rule, or motion or notice calling on the attorney to answer the matter in the affidavits of the applicant. Service should be personal, a copy of the affidavits should be served with the rule or notice of motion, and the returnable date should allow sufficient time for an answer to be put in. Ordinarily ten days should suffice. A verification is a matter of great importance as possessing the security of being made under the sanction of a solemn declaration for which the person making it would be liable to the penalties attaching to the crime of giving false evidence if the declaration were false to his knowledge. *In re : An Attorney*. (S. B.)

14 Cr. L. J. 325 :
19 I. C. 993 : 41 Cal. 113.

———Cl. 16—Debt Settlement Boards are not Civil Courts.

Debt Settlement Boards are certainly not Revenue or Criminal Courts. They are Tribunals which have been created by a Special Statute for a special purpose and are not Civil Courts within the meaning of Cl. 16, Letters Patent. Further, they do not try suits of a civil nature and are not governed either by the provisions of the C. P. C. or by the terms of the Bengal, Agra and Assam Civil Courts Act. They cannot, therefore, be described as Civil Courts. *Hari Charan Kundu v. Kaushi Charan Dey*.

41 Cr. L. J. 662 :
188 I. C. 686 : 44 C. W. N. 530 :
I. L. R. 1940, 2 Cal. 14 : 13 R. C. 44 :
A. I. R. 1940 Cal. 286.

———Cl. 24—Scope.

Applications under Chap. XXXVII, r. 2, Crown Side Rules, for the exercise of the extraordinary jurisdiction conferred by Cls. 24 and 29 of the Letters Patent cannot be entertained on the Original Side. *Sashadhar Acharjya v. Charles Tegart*. 137 I. C. 674 : 35 C. W. N. 1086 : I. R. 1932 Cal. 362 : A. I. R. 1932 Cal. 394.

———Cl. 24—Scope.

Cl. 24 of the Letters Patent is the only clause in it which gives extraordinary original criminal jurisdiction to the Calcutta High Court. *Sashadhar Acharjya v. Charles Tegart*.

33 Cr. L. J. 219 :
135 I. C. 880 : 35 C. W. N. 1088 :
I. R. 1932 Cal. 176 :
A. I. R. 1932 Cal. 123.

———Cls. 25, 26—High Court, Original Criminal Jurisdiction.

In respect of trials in the Original Criminal Jurisdiction of the High Court, the right of appeal or revision is limited by the Letters Patent, Cls. 25 and 26. Writs under S. 491, Cr. P. C., are not granted to persons convicted or in execution under legal process, including persons in execution of a legal sentence, after conviction or indictment in the usual course. They are not granted where their effect would be to review the judgment of one of the superior Courts, which might have been re-

LETTERS PATENT (CALCUTTA)

viewed on a writ of error or where they would falsify the record of a Court which shows jurisdiction on the face of it. *In the matter of : Bonomally Gupta.* 18 Cr. L. J. 311 :

38 I. C. 423 : 21 C. W. N. 167 :
44 Cal. 723 : A. I. R. 1917 Cal. 149.

———Cl. 25, 26—Power of High Court under.

When a point or points of law have been reserved or have been certified by the Advocate-General as erroneously decided or as worthy of further consideration under Cls. 25 and 26, Letters Patent, and the High Court on review holds on the point of law in favour of the accused, it is competent to it to consider the whole case on the evidence and to pass such sentence as shall seem right. *S. 537, Cr. P. C.*, has no application to a case reviewed under Cl. 26, Letters Patent. *Fateh Chand v. Emperor.*

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 : 44 Cal. 477 :
A. I. R. 1917 Cal. 123.

———Cl. 26—Interference by High Court—Joint trial—Offence committed in same transaction—Discretion of Court.

Where offences are committed by several persons in the course of the same transaction, it is a question for the Court in the exercise of its judicial discretion, to say whether the accused should be tried together or separately, and where the Court, in the exercise of such discretion, thinks that they should be tried jointly, and proceeds to try them, the High Court will not interfere with the exercise of that discretion on an application made under Cl. 26, Letters Patent, where there is nothing to show that the discretion exercised was not a proper judicial discretion. *Emperor v. Charu Chunder Mukherjee.* 25 Cr. L. J. 294 :

76 I. C. 966 : 38 C. L. J. 309.

———Cl. 26—Interpretation.

The phrase 'to review the case' as used in Cl. 26 of the Letters Patent of the Calcutta High Court, applies as much where a point of law is reserved by the trial Judge as where the Advocate-General has given a certificate and Art. 162 of Sch. I of the Limitation Act is not, therefore, applicable to proceedings under Cl. 26 of the Letters Patent. *Padam Prosad v. Emperor.*

30 Cr. L. J. 993 :
119 I. C. 193 : 30 C. L. J. 106 :
33 C. W. N. 1121 :
I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

———Cl. 26—Review—Trial Judge's statement unquestionable—Misdirection or other error not found to exist—Power of Court to alter sentence.

When the Court is called upon to review a case under Cl. 26, Letters Patent, it will accept as unquestionable the statement of the trial Judge as to what actually took place before him in Court. Where a misdirection or any other error, certified by the Advocate-General, is found not to exist, the Court has no power under Cl. 26, Letters Patent, to alter the sentence passed by the trial

LETTERS PATENT (CALCUTTA)

Court. *Emperor v. Barendra Kumar Ghose.* (F. B.) 25 Cr. L. J. 817 :

81 I. C. 353 : 38 C. L. J. 411 :
28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

———Cl. 26—Scope.

The Court has power under Cl. 26, Letters Patent, to examine the evidence and determine for itself whether, after the exclusion of the evidence or matter which may be considered inadmissible, the residue on the record is sufficient to justify the conviction. But the Court will not substitute its own finding for the verdict of the Jury and it must consider whether the evidence or matter improperly admitted was of such a nature that it possibly may have considerably influenced the minds of the Jury and whether it was reasonably certain that the Jury *would*, not *might*, have acted on the unobjectionable evidence if the wrongly admitted evidence or matter had not also been presented to them. *Padam Prosad v. Emperor.*

30 Cr. L. J. 993 :
119 I. C. 193 : 30 C. L. J. 106 :
33 C. W. N. 1121 :
I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

———Cl. 26—Scope—Power of High Court.

Under Cl. 26, Letters Patent, the High Court has power, on review to examine the evidence for itself and determine without reference to the probable verdict of the Jury whether, excluding the inadmissible evidence, the residue is sufficient to justify conviction and an accused should not be acquitted merely on account of a defective charge if the High Court is convinced on the evidence that he is guilty. *Padam Prosad v. Emperor.*

30 Cr. L. J. 993 :
119 I. C. 193 : 30 C. L. J. 106 :
33 C. W. N. 1121 :
I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

———Cl. 26—Scope—Verdict of Jury—Letters Patent (Cal.), Cl. 26—Review the case, meaning of—Application for review—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 162, applicability of.

The verdict of the Jury cannot be allowed to stand unless the High Court is of opinion that the same verdict would have been arrived at had they been correctly and sufficiently directed. *Padam Prosad v. Emperor.*

30 Cr. L. J. 993 :
119 I. C. 193 : 30 C. L. J. 106 :
33 C. W. N. 1121 :
I. R. 1929 Cal. 753 :
A. I. R. 1929 Cal. 617.

———Cl. 28—Revisional jurisdiction of High Court, extent of.

The powers of reference and revision of the Calcutta High Court under Cl. 28, Letters Patent of the Court are limited to cases before such officers and Courts as were subject to reference or revision by the High Court at the

LETTERS PATENT (CALCUTTA)

time of the grant of the Letters Patent.
Bhimraj Bania v. Emperor.

26 Cr. L. J. 20 :
83 I. C. 500 : 51 Cal. 460 :
A. I. R. 1924 Cal. 698.

———Cl. 29—Scope.

Application under Chap. 37, R. 2 of Original Side Rules for exercise of the High Court's jurisdiction under Cls. 24 and 29 should be heard and disposed of on appellate side.
Sashadhar Acharjya v. Charles Tegar.

33 Cr. L. J. 322 :
136 I. C. 598 : 35 C. W. N. 1082 :
I. R. 1932 Cal. 230 :
A. I. R. 1932 Cal. 229.

———Cl. 29—Scope.

Cl. 29 deals really with transfer of cases and an application upon a complaint to the High Court to take proceedings against certain persons, some of whom are not Indians and some are either Indians or else residing within the original jurisdiction of the High Court does not lie to the High Court under Cl. 29.
Sashadhar Acharjya v. Charles Tegar.

33 Cr. L. J. 219 :
135 I. C. 880 : 35 C. W. N. 1088 :
I. R. 1932 Cal. 176 :
A. I. R. 1932 Cal. 123.

———Cl. 39—Appeal — If lies to Privy Council.

High Court's judgment in appeal from trial by Court of Sessions—No appeal lies to Privy Council.
Hemayet-ud-Din Ahmed v. Emperor.

32 Cr. L. J. 1183 :
134 I. C. 544 : 58 Cal. 344 :
I. R. 1931 Cal. 848 :
A. I. R. 1931 Cal. 526.

———Cl. 39—Interpretation.

The words "in any matter not being of criminal jurisdiction" govern all the classes of judgment or decrees or orders which are mentioned in Cl. 39.
Hemayet-ud-Din Ahmed v. Emperor.

32 Cr. L. J. 1183 :
134 I. C. 544 : 58 Cal. 344 :
I. R. 1931 Cal. 848 :
A. I. R. 1931 Cal. 526.

———Cl. 41—Appeal under —If lies to Privy Council—Leave to appeal to His Majesty in Council—Judgment, order or sentence passed by High Court in criminal appeal—Limitation Act (IX of 1908), Sch. I, Art. 181.

The High Court has no power to grant leave to appeal to His Majesty in Council from its judgment, order or sentence pronounced in a criminal appeal; nor is a person aggrieved by such judgment, order or sentence entitled to invite the High Court to give him leave to appeal to His Majesty in Council, either under Cl. 41, Letters Patent, or under any other provision of the law.
Bilghurst v. Emperor.

25 Cr. L. J. 1371 :
82 I. C. 763 : 38 C. L. J. 406 :
A. I. R. 1924 Cal. 338.

———Cl. 41—Contempt of Court—Appeal, if lies to Privy Council.

LETTERS PATENT (CALCUTTA)

When the High Court, as a Court of record, thinks it fit to exercise summary jurisdiction and punishes for a contempt of Court, it is not open to the person concerned to ask for leave to appeal to His Majesty in Council. *In the matter of : Tushar Kanti Ghosh, Editor, Amrita Bazar Patrika.* (F. B.)

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

———Cl. 41—Interpretation.

Proceedings for contempt of Court do not come within the phrase "original criminal jurisdiction of the High Court" within the meaning of Cl. 41. *In the matter of : Tushar Kanti Ghosh, Editor, Amrita Bazar Patrika.* (F. B.)

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

———Cl. 41—Interpretation.

The words in Cl. 41 'by any Court which has exercised Original Jurisdiction' have reference only to the words in Cl. 25 'Courts constituted by one or more Judges of the Court.' *R. G. Curtis v. Emperor.*

36 Cr. L. J. 1211 :
157 I. C. 653 : 39 C. W. N. 235 :
62 Cal. 389 : A. I. R. 1935 Cal. 477.

———Cl. 41—Leave to appeal by accused in criminal cases.

Quære.—Whether an appeal lies to the Privy Council under Cl. 41 of the Letters Patent (Calcutta) where the decision appealed from is upon a question reserved for the opinion of the Court by a Court of Original Criminal Jurisdiction or where the High Court declares the case a fit one for appeal to Privy Council.
Cyril Bertram Plucknett v. Emperor.

41 Cr. L. J. 59 :
184 I. C. 614 : 12 R. C. 251 :
43 C. W. N. 133 :
I. L. R. 1939, 1 Cal. 187 :
A. I. R. 1939 Cal. 682.

———Cl. 41—Miscellaneous.

Conviction by Presidency Magistrate—Rule issued by High Court and conviction upheld—Petition for leave to appeal from the decision is not maintainable. *R. G. Curtis v. Emperor.*

36 Cr. L. J. 1211 :
157 I. C. 653 : 62 Cal. 389 :
39 C. W. N. 235 :
A. I. R. 1935 Cal. 477.

———Cl. 41—Privy Council criminal appeal—Principles applicable.

As His Majesty the King is supreme over all persons and Courts within his Dominions, a right of appeal in all cases, civil and criminal, to the King in Council, exists, from the highest Court of each separate Colony, Province, State or Possession, whether it be a Court of error or not, except so far as the prerogative in this behalf has been expressly surrendered. The Judicial Committee do not, as a rule, advise His Majesty to grant appeals in criminal cases, except where questions of great and general importance, likely to occur often,

LETTERS PATENT (LAHORE)

are raised. Such appeals lie either by the right of grant, in pursuance of leave obtained by the appellant from the Court appealed from, or by reason of special leave granted by the Judicial Committee. The latter appeals arise, either where the Court below does not possess power to grant leave to appeal, or where leave to appeal has been refused by the Court below, or where the leave to appeal was granted on some special point and the appellant wishes to raise points not included in the leave to appeal. But whether leave is granted by the Court appealed from or by the Judicial Committee, the answer to the question whether the case is a fit one for appeal, must depend on the same considerations; the grant of the leave to appeal is a step ancillary to the determination of the appeal and the principles which regulate the ultimate decision of the appeal cannot be ignored when an application for leave is examined. *Barendra Kumar Ghose v. Emperor*. 26 Cr. L. J. 52 :

83 I. C. 580 : 39 C. L. J. 1 :
28 C. W. N. 377 : A. I. R. 1924 Cal. 545.

LETTERS PATENT (LAHORE)

———Cl. 8—Discretion—Limitations on.

High Court's discretion to take action cannot be fettered by the Local Government. *In the matter of : Bar-at-Law and Advocate*. (S. B.) 35 Cr. L. J. 1010 :

149 I. C. 764 : 15 Lah. 354 :
6 R. L. 741 : A. I. R. 1934 Lah. 251.

———Cl. 8—Misconduct by Pleader—Inquiry into—Procedure—Legal practitioners—Disciplinary jurisdiction, nature of—Procedure.

Disciplinary proceedings taken against a legal practitioner under Cl. 8, Letters Patent, cannot be regarded as criminal in their character, they are sometimes described as *quasi-criminal*, but only for the reason that they may result in penalties. Strictly speaking, these proceedings are neither civil suits nor criminal prosecutions. The High Court exercises a special jurisdiction over legal practitioners in pursuance of the authority conferred upon it by the Letters Patent or an Act of the Legislature, and has inherent power to apply such rules of procedure as may ensure a fair trial of the matter requiring adjudication. What is essential is, that the parties concerned should have a proper notice and a reasonable opportunity to be heard. An Advocate or a Vakil may be struck off the rolls for an offence which has no relation whatsoever to his character as a legal practitioner, but the mere circumstance that he has been convicted of an offence does not make it imperative for the Court to remove or suspend him from practice. On the other hand, it is not necessary that the act of a legal practitioner, which is relied upon for striking his name off the rolls, should have subjected him to anything like, general infamy or imputation of bad character. If an Advocate or a Vakil deliberately joins, or continues to be a member of an Association which has been declared to be unlawful under the provisions of a Statute, he renders himself liable

LETTERS PATENT (MADRAS)

to be dealt with under Cl. 8, Letters Patent. *In re : Abdul Rashid*. 25 Cr. L. J. 161 :

76 I. C. 385 : 4 Lah. 271 :
6 L. L. J. 491 : A. I. R. 1924 Lah. 123.

———Cl. 8—Misconduct of Pleader—Inquiry into.

Where a legal practitioner has been convicted and he has neither moved the High Court nor appealed from the conviction, it is not open to him to ask the High Court to go into the merits of the conviction when called upon under Para. 8 of the Letters Patent to show cause. *Emperor v. Farid-ul-Haq Ansari*. (S. B.) 143 I. C. 737 : 14 Lah. 532 :
I. R. 1933 Lah. 384.

———Cl. 8—Misconduct by Pleader—Inquiry into—Procedure.

Though Court cannot go behind conviction, the Court is bound to ascertain the facts on which conviction is based to decide if legal practitioner concerned is fit to be retained in the profession. *Emperor v. Farid-ul-Haq Ansari*. (S. B.) 143 I. C. 737 : 14 Lah. 532 :
I. R. 1933 Lah. 384.

———Cl. 8—Misconduct by Pleader—What is.

The fact that a legal practitioner had made a speech at a meeting organized by an unlawful association condemning the action of the Government in arresting a popular leader is not in itself sufficient to show that he is an improper person to be a legal practitioner. *Emperor v. Farid-ul-Haq Ansari*. (S. B.) 143 I. C. 737 : 14 Lah. 532 :
I. R. 1933 Lah. 384.

———Cl. 8—Misconduct by Pleader—What is.

The mere fact that a lawyer assisted in the celebration of the Independence Day by a Congress Committee, in the absence of any evidence as to the nature of the acts done by him, is not a ground for punishing him under Cl. 8, Letters Patent (Lahore). *Emperor v. Farid-ul-Haq Ansari*. (S. B.) 143 I. C. 737 : I. R. 1933 Lah. 384 :
14 Lah. 532 : A. I. R. 1933 Lah. 577.

———Cl. 12.

See also Lunacy Act, 1912, S. 14.

LETTERS PATENT (MADRAS)

———Judgment of Special Criminal Bench of High Court—Review, if lies.

The judgment of a Special Criminal Bench of the High Court constituted under S. 6 (b), Criminal Law Amendment Act, 1908, is open to review on a certificate granted by the Advocate-General under Cl. 26, Letters Patent. The Court of Review cannot go into matters not covered by the Certificate of the Advocate-General as if it were a Court of Appeal. *Muthukumarasawmi Pillai v. Emperor*. 13 Cr. L. J. 352.

14 I. C. 896 : 12 M. L. T. 1 :
1912 M. W. N. 549.

LETTERS PATENT (MADRAS)

———CIs. 9, 10.

Barrister of English Inn enrolled as Advocate of High Court—Conviction for perjury in England Disbarment by Benchers—No action in India—Institution of proceedings under Letters Patent after several years—Jurisdiction of Court—Consideration—Subsequent honourable conduct—Testimony of brother practitioners—Barrister held not guilty of grossly improper conduct and suspended from practising for twelve months only. *In the matter of: an Advocate of the High Court.*

25 Cr. L. J. 281 :
76 I. C. 873 : 45 M. L. J. 639 :
18 L. W. 823 : 46 Mad. 903 :
33 M. L. T. 110 : A. I. R. 1924 Mad. 265.

———Cl. 10—*Misconduct by Vakil—What is—Vakil—Professional misconduct—Conveyance of property to Vakil benami—Absolute title set up by Vakil—Perjury.*

A Vakil, taking advantage of the ignorance and the needy position of his clients, obtained a conveyance from them of an equity of redemption for much less than its value, agreeing to redeem the property on their behalf, and subsequently set up an absolute title to the property, which he sought to support in Court by giving false evidence and securing the evidence of false witnesses: *Held*, that the Vakil was guilty of professional misconduct. *In the matter of: a Vakil.*

18 Cr. L. J. 449 :
39 I. C. 289 : 40 Mad. 69 :
A. I. R. 1918 Mad. 788.

———Cl. 10—*Misconduct of Advocate—Who can inquire into.*

Three Judges can inquire into misconduct of an Advocate. *In the matter of: Mr. S. Venkatachariar, an Advocate of the High Court.*

32 Cr. L. J. 1085 :
134 I. C. 33 : 34 L. W. 19 :
61 M. L. J. 148 : 54 Mad. 857 :
I. R. 1931 Mad. 785 :
A. I. R. 1932 Mad. 131.

———Cl. 15—*Criminal trial—Meaning of.*

The judgment of a single Judge of the High Court passed on revision in proceedings under S. 145, Cr. P. C., is not one made in a "criminal trial" within the meaning of S. 15 of the Letters Patent and consequently, appeals lie from such orders. *Raja of Kalahasti v. Narasimha.*

5 Cr. L. J. 343 :
17 M. L. J. 158.

———Cl. 15—*Criminal trial—Revision—Appeal, if competent.*

An order passed by a single Judge of the High Court in the exercise of its criminal revisional jurisdiction is one passed in a criminal trial if the proceedings which gave rise to the revision were a criminal trial, and no appeal lies under Cl. 15, Letters Patent, against such an order. *In re: Adapala Venkata Narasa.*

16 Cr. L. J. 464 :
29 I. C. 96 : 2 L. W. 363 :
A. I. R. 1916 Mad. 1223.

LETTERS PATENT (MADRAS)

———Cl. 15—*Judgment—Meaning of—Order refusing bail—Judgment—Appeal, whether lies from order of a single Judge of the High Court to a Division Bench.*

An order of a High Court Judge refusing to grant bail to an accused person is an order in a criminal trial. It is not a judgment within the meaning of Cl. 15, Letters Patent, and is not appealable to a Division Bench. *Subrahmanya Aiyar v. Emperor.* 11 Cr. L. J. 279 :
4 I. C. 871 : 19 M. L. J. 478.

———Cl. 15—*Order, sanctioning prosecution—Whether judgment within meaning of Cl. 15.*

An order granting sanction is made in the exercise of criminal jurisdiction and is not a judgment within the meaning of Cl. 15 of the Letters Patent. *Muniswami Mudaliar v. Raja Ratnam Pillai.*

24 Cr. L. J. 78 :
71 I. C. 126 : 16 L. W. 365 :
43 M. L. J. 375 : 1922 M. W. N. 594 :
31 M. L. T. 287.

———Cl. 15—*Letters Patent (Madras)—"Trial" includes appeal.*

The word "trial" in Cl. 15, Letters Patent of the High Court, includes an appeal. *Wallajaper Rajammal v. Emperor.*

12 Cr. L. J. 565 :
12 I. C. 653 : 1911, 2 M. W. N. 479 :
10 M. L. T. 502 : 22 M. L. J. 44.

———Cl. 25—*Miscellaneous.*

It is not necessary that the point referred to should have been taken at the trial and decided by the Judge. *Emperor v. John McIver.* (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (b) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 :
8 R. M. 1000 : A. I. R. 1936 Mad. 353.

———Cl. 25—*Scope and object.*

The words of Cl. 25 give a most important and unfettered right of reservation of points of law at Sessions. *Emperor v. John McIver.* (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (b) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 :
8 R. M. 1000 : A. I. R. 1936 Mad. 353.

———Cl. 26—*Interpretation.*

"Decision" in Cl. 26, Letters Patent (Mnd.), does not cover a case where the Judge has not applied his mind to the matter and has not pronounced an opinion on it. Consequently where the Judge has allowed certain alleged inadmissible evidence and no objection is taken to it either at the time when the evidence is given or when such evidence is referred to by the Judge in his summing-up to the Jury, there is no decision on a point of law regarding the admissibility of such evidence, and as such, the granting of certificate by Advocate-General is incompetent. *Emperor v. M. Ramanuj Ayyangar.* (F. B.)

36 Cr. L. J. 1398 :
158 I. C. 662 : 1934 M. W. N. 1410 :
42 L. W. 53 : 58 Mad. 523 :
8 R. M. 293 : A. I. R. 1935 Mad. 486.

———Cl. 26—*Power of High Court under.*

High Court in exercising its power of review under Cl. 26, Letters Patent, has full power to

LETTERS PATENT (MADRAS)

decide whether the evidence properly received at the trial is sufficient to sustain a conviction. *Ramanuja Ayyangar v. Emperor.* (S. B.)

37 Cr. L. J. 64 :
159 I. C. 240 : 1935 M. W. N. 5 :
68 M. L. J. 93 Sup. : 42 L. W. 140 :
8 R. M. 476 : A. I. R. 1935 Mad. 793.

———Cl. 41—*Application for leave to appeal to P. C.—When can be granted.*

The right of appeal given by Cl. 41 is subject to the proviso that the High Court shall declare that the case is a fit one for appeal. The High Court, therefore, has the duty of satisfying itself, before declaring a case fit for appeal, that the case falls within the limits prescribed by the Privy Council for the entertainment of appeals in criminal matters. *Ramanuja Ayyangar v. Emperor.* (S. B.) 37 Cr. L. J. 64 :
159 I. C. 240 : 1935 M. W. N. 5 :
68 M. L. J. 93 Sup. : 42 L. W. 140 :
8 R. M. 476 : A. I. R. 1935 Mad. 793.

———S. 10—*Misconduct by Vakil—What is—Vakil—Professional misconduct—Sending false notice for a client.*

Rp. contracted to sell an engine to *A* for Rs. 4,500. *A* arranged a sale with *Rv.* and *P* for Rs. 6,000. Then *Rp.* passed a receipt to *A*, as agent of *Rv.* for Rs. 500 mentioning the price at Rs. 6,000 which was attested by Vakil. The Vakil then sent a notice on behalf of *Rp.* to *Rv.* under instructions from the former, that *Rp.* has received Rs. 2,675 while he had actually received Rs. 1,175, towards the price of Rs. 6,000, which was false to the knowledge of the Vakil and which the Vakil knew was made in furtherance of a scheme for defrauding *Rv.* : *Held*, that the Vakil was guilty of unprofessional conduct in sending the notice and that he was not protected by the fact that it was 'under instructions' from the client. *In the matter of : a Vakil.* 11 Cr. L. J. 165 :
4 I. C. 1072 : 6 M. L. T. 329.

———S. 15—*Appeal—When lies.*

Proceedings taken for binding over persons to keep the peace under Chapter VIII, Cr. P. C., are criminal trials within the meaning of S. 15, Madras Letters Patent, and no appeal lies under the Letters Patent from an order of a single Judge dealing with a revision petition. Rights of appeal do not exist unless specially conferred by Statute. The portion of the Letters Patent commencing with S. 22, dealing with criminal jurisdiction gives no right of appeal against the order of a single Judge acting as a Court of Revision. *Adur Desikachari v. Emperor.* 16 Cr. L. J. 303 :
28 I. C. 527 : 28 M. L. J. 307 :
1915 M. W. N. 224 : A. I. R. 1915 Mad. 831.

———S. 39—*Applicability.*

Even if the matter is not one relating to criminal jurisdiction, S. 39, Letters Patent, would not apply in such a case. *In re : R. Nataraja Iyer.* 14 Cr. L. J. 656 :
21 I. C. 896 : 14 M. L. T. 421 :
25 M. L. J. 565.

———S. 39—*Privy Council appeal, if lies against order refusing writ of certiorari.*

LETTERS PATENT (PATNA)

No appeal lies to the Privy Council under S. 39, Letters Patent, against an order of a Division Bench of the High Court refusing to quash by a writ of certiorari the proceedings of a Deputy Collector who, as an Income-tax Officer, directed the prosecution of a person under S. 193, Penal Code; such an order is an order passed in a matter which appertains to criminal jurisdiction. *In re : Nataraja Iyer.* 14 Cr. L. J. 656 :
21 I. C. 896 : 14 M. L. T. 421 :
25 M. L. J. 565.

———Art. 15—*Appeal, if lies—Appeal from the High Court Judge's order rejecting application for revision against an order to furnish security for keeping the peace—Criminal trial—Judgment.*

The petitioner was ordered by a Magistrate to furnish security for keeping the peace under S. 107, Cr. P. C. On appeal to the District Magistrate, the order was confirmed. The application for revision to the High Court also was rejected. An appeal was filed against this order of rejection : *Held*, that an appeal did not lie. There is no "Judgment" in this case, and therefore there is no appeal under Art. 15 of the Letters Patent. *In the matter of : Ramasamy Chetty.* 1 Cr. L. J. 1087 :
I. L. R. 27 Mad. 510 : 1 Weir 787 :
14 M. L. J. 394.

LETTERS PATENT (PATNA)

———Cl. 10—*Order staying proceedings, whether judgment—Order of single Judge staying proceedings in criminal case—Appeal, whether lies.*

An order staying proceedings is not a "judgment" within the meaning of Cl. 10, Letters Patent, Patna High Court, inasmuch as such order contains no final adjudication of the rights of the parties. An order of a single Judge staying proceedings in a criminal case is an order made in the exercise of criminal jurisdiction, and therefore, no appeal lies against it under Cl. 10, Letters Patent. *Babujan Misir v. Shoo Sahay Chaudhury.* 19 Cr. L. J. 1008 :
48 I. C. 348 : 3 P. L. J. 509 : 5 P. L. W. 153 :
A. I. R. 1918 Pat. 138.

———Cl. 33—*Appeal to Privy Council—Leave of certificate of High Court—When is not necessary.*

Petitioners having no right of appeal under Cl. 33 or Privy Council Act—Can proceed direct to Privy Council for royal prerogative.—Leave or certificate of High Court is not necessary. *Rahman v. Emperor.* 36 Cr. L. J. 815 :
155 I. C. 577 : 15 P. L. T. 833 : 14 Pat. 318 :
7 R. P. 598 : A. I. R. 1935 Pat. 66.

———Cl. 33—*Confirmation of death sentence—Nature of order.*

The jurisdiction exercised by the High Court in a reference for confirmation of death sentence is of an appellate character and

LETTERS PATENT (RANGOON)

can in no sense be said to be of an original nature. *Rahman v. Emperor*.

36 Cr. L. J. 815 :
155 I. C. 577 : 15 P. L. T. 833 : 14 Pat. 318 :
7 R. P. 598 : A. I. R. 1935 Pat. 66.

———Cl. 33—Scope.

The wording of Cl. 33 is very precise and must be strictly construed. *Rahman v. Emperor*.

36 Cr. L. J. 815 :
155 I. C. 577 : 15 P. L. T. 833 : 14 Pat. 318 :
7 R. P. 598 : A. I. R. 1935 Pat. 66.

LETTERS PATENT (RANGOON)

———Cl. 8—Misconduct by pleader—Inquiry into—Procedure—Disciplinary powers against legal practitioners, extent of.

Although the High Court has a very wide discretion in the exercise of the disciplinary powers in respect of legal practitioners under Cl. 8, Letters Patent, in a case which the acts charged against a legal practitioner are not committed by him in a professional capacity and where they involve a criminal offence, it would not ordinarily be convenient for the High Court to exercise those powers, until the charges have been investigated in a Criminal Court. *In the matter of: Maung Ba Kyin*.

25 Cr. L. J. 267 :
76 I. C. 827 : 2 Bur. L. J. 210 :
A. I. R. 1924 Rang. 113.

———Cl. 39—Application for leave to appeal to P. C.—Inquiry into—Procedure.

In order to dispose of an application under Cl. 39, it is unnecessary to discuss in detail the facts disclosed by the evidence. It is sufficient that the Court should hold that there was ample evidence adduced at the trial to justify the finding of the Jury that the applicant was guilty of the crime. *H. W. Scott v. Emperor*.

36 Cr. L. J. 1232 :
157 I. C. 821 : 13 Rang. 141 : 8 R. Rang. 116 :
A. I. R. 1935 Rang. 214.

———Cl. 39—Application for leave to appeal to P. C.—When can be granted.

The mere fact that some evidence has been wrongly admitted is not a ground on which an application under Cl. 39 can be granted, when the course of the trial is in no way deflected. *H. W. Scott v. Emperor*.

36 Cr. L. J. 1232 :
157 I. C. 821 : 13 Rang. 141 : 8 R. Rang. 116 :
A. I. R. 1935 Rang. 214.

———Cl. 39—Leave to appeal to P. C.—When can be granted.

Leave to appeal is not granted except where some clear departure from the requirements of justice exists nor unless by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done. *H. W. Scott v. Emperor*.

36 Cr. L. J. 1232 :
157 I. C. 821 : 13 Rang. 141 : 8 R. Rang. 116 :
A. I. R. 1935 Rang. 214.

———Cl. 39—Leave to appeal to P. C.—When can be granted.

LICENSED WARE-HOUSE AND FIRE-BRIGADE ACT (I OF 1893)

Where the accused is convicted of murder and sentenced to death by the High Court Sessions, an application under Cl. 39 for a declaration that the case is a fit one for appeal to the Privy Council, is competent. *H. W. Scott v. Emperor*.

36 Cr. L. J. 1232 :
157 I. C. 821 : 13 Rang. 141 : 8 R. Rang. 116 :
A. I. R. 1935 Rang. 214.

LIBEL

See also Defamation.

LICENCE

———Breach of conditions of—Every breach, a distinct offence—Joinder of charges—Criminal Procedure Code (Act V of 1898), Ss. 234, 233, 239.

Every breach of the conditions of a licence or permit is a distinct offence and under S. 233, Cr. P. C., should be made the subject of a separate charge and tried separately. *In re: Gontla Krishnamma*.

16 Cr. L. J. 717 :
30 I. C. 1005 : A. I. R. 1916 Mad. 762.

———Licence, when necessary—Storage of oil—Place where daily consumption of oil kept—Licence necessary.

A place where a varying quantity of oil is kept for daily sale, is a place used for storing oil and, therefore, a licence must be taken. *Sheshachalam Chetty v. Emperor*.

14 Cr. L. J. 103 :
18 I. C. 663 : 13 M. L. T. 144 :
1913 M. W. N. 74.

LICENSED WARE-HOUSE AND FIRE-BRIGADE ACT (I OF 1893)

———S. 7—Application not disposed of within 30 days, effect of.

An application for licence under S. 7 of Licensed Ware-house and Fire-Brigade Act not disposed of within 30 days from the date of its being received by the Chairman, exempts the applicant from liability so long as the application is not finally refused. *Superintendent and Remembrancer of Legal Affairs, Bengal v. J. S. Mull.*

23 Cr. L. J. 284 :
66 I. C. 428 : 25 C. W. N. 960 :
34 C. L. J. 203.

———Ss. 7, 15—Chairman, power of, delegation of.

A Chairman may delegate, under S. 45, the Bengal Municipal Act, 1884, his duties or powers as defined by that Act to the Vice-Chairman but cannot, by virtue of that section, delegate to him his powers under the Licensed Ware-house and Fire-Brigade Act, inasmuch as by virtue of S. 9 of the latter Act, the power can be delegated only to a Special Committee: Therefore, an order passed by the Vice-Chairman refusing an application for licence to use a building or place as a ware-house is no refusal under S. 15, Licensed Ware-house and Fire-Brigade

LIMITATION ACT (IX OF 1908)

Act. *Superintendent and Remembrancer of Legal Affairs, Bengal v. J. S. Mull.*

23 Cr. L. J. 284 :
66 I. C. 428 : 25 C. W. N. 960 :
34 C. L. J. 203.

LIEN

See also Cr. P. C., 1898, S. 94.

LIFE INSURANCE COMPANY

Death of assured—Declining to pay amount of policy—Ground that age of assured was mis-stated—Criminal charge against officers of Company, *held*, not maintainable—Proper course for claimant—Suit for amount of policy—Cheating—Charge against person who communicated with Company as to age of assured—Insurance effected at Chittagong—Criminal case transferred to Chittagong and ordered to be stayed if civil suit filed within two months. *Hiran Kumar Chowdhury v. Mangal Sen.*

14 Cr. L. J. 398 :
20 I. C. 222 : 17 C. W. N. 761.

LIMITATION

See also (i) Cr. P. C., 1898, S. 470-B.
(ii) Sanction to prosecute.

———Jail appeal.

Where in an appeal filed through the jail authorities it appeared that the application for a copy of the judgment of the Magistrate was made within the period of limitation but was somehow mislaid and a second application had to be sent after the period presented for the appeal had expired: *Held*, that the appeal must be treated as filed within time. *Hidayata v. Emperor.*

16 Cr. L. J. 300 :
28 I. C. 524 : 3 P. R. 1914 Cr. :
991 P. L. R. 1915 : A. I. R. 1914 Lah. 545.

LIMITATION ACT (IX OF 1908)

———Construction—Provisions must be construed with reasonable strictness.

The provisions of the Statute of Limitation must be construed with reasonable strictness. *Mst. Maya Devi v. Diwan Chand.*

A. I. R. 1935 Lah. 115 (2).

———S. 3—Wrong dismissal under—Appeal—Presentation held valid and appeal within time.

The Sub-Magistrate delivered the judgment on August 25, 1938, two days were required for obtaining copy of the judgment and the appeal to the Sub-Divisional Magistrate was presented on September 26, 1938, to the Second Clerk of that Court as the Head Clerk was absent on leave. The Sub-Divisional Magistrate passed an order dismissing the appeal on the ground that it was not filed within time allowed before the authority competent to receive it, that no reason for condoning the delay was given, and that the appeal was time-barred: *Held*, that there was valid presentation of appeal. The appeal, therefore, was within time. *In re: Gonappala Basappa.*

40 Cr. L. J. 960 :
184 I. C. 353 : 49 L. W. 455 :
1939 M. W. N. 319 : 12 R. M. 439 (1) :
A. I. R. 1939 Mad. 669.

LIMITATION ACT (IX OF 1908)

———S. 5—Applicability.

An Appellate Court cannot excuse the delay in presenting an appeal, under S. 423 (1) (d), Cr. P. C., as an order excusing the delay is neither a consequential nor an incidental order. Any power conferred by S. 423 can be used only after the stage at which S. 423 becomes applicable to the proceedings has been reached. Therefore, the application of the section is legitimate only after the preliminary stage indicated in Ss. 421 and 422 has been passed; that is, after the appeal has been admitted and after the notice referred to in the latter section has been given. *In re: Mitlor Moideen Hajec.*

24 Cr. L. J. 89 :
71 I. C. 217 : 43 M. L. J. 561 :
16 L. W. 764 : A. I. R. 1923 Mad. 95.

———S. 5—Special period—S. 45 does not apply.

Where a person is convicted and sentenced by a Special Magistrate under S. 39 (1), Ordinance II of 1932, and he files an appeal after a period of seven days fixed for filing the appeal by S. 39, the Court is not competent to extend the period under S. 5. *Nil Ratan Ganguli v. Emperor.*

34 Cr. L. J. 633 :
143 I. C. 802 : 37 C. W. N. 195 :
60 Cal. 571 : I. R. 1933 Cal. 478 :
A. I. R. 1933 Cal. 124.

———S. 5—Special period—Applicability.

S. 5, Limitation Act, cannot be utilised by an Appellate Court in dealing with an appeal under a special enactment. *In re: Mitlor Moideen Hajec.*

24 Cr. L. J. 89 :
71 I. C. 217 : 43 M. L. J. 561 :
16 L. W. 764 : A. I. R. 1923 Mad. 95.

———S. 5—Sufficient cause—Absence of—Procedure.

A criminal appeal filed after the expiry of the prescribed period of limitation may be admitted if the Court is satisfied that the appellant had sufficient reason for not preferring the appeal within the period of limitation. Where the Appellate Court is not satisfied that there was sufficient reason to excuse the delay, it has no power to extend the period and admit the appeal. The proper procedure in such a case would be to move the High Court to exercise its powers of revision. Where, however, a criminal appeal was wrongly admitted out of time, an order of acquittal will not be interfered with in revision by the High Court, unless there has been any gross miscarriage of justice which ought to be remedied. *V. Janikaramayya v. Nimmagadda Brahmayya.*

26 Cr. L. J. 1110 :
88 I. C. 278 : 48 M. L. J. 457 :
A. I. R. 1925 Mad. 709.

———S. 5—Sufficient cause—What is—Criminal Appeal—Presentation to wrong Court—Subsequent presentation to proper Court beyond limitation—Extension of limitation.

Where a criminal appeal was erroneously filed in the High Court and on being return-

LIMITATION ACT (IX OF 1908)

ed for presentation to the proper Court was, on the same day filed in the Sessions Court, but by that time limitation for presentation of the appeal had expired: *Held*, that the delay should be excused under S. 5, Limitation Act, inasmuch as in the case of a criminal appeal it could not be said that there was a "successful litigant" who had secured a "valuable right." *Surla Singh v. Emperor*.
22 Cr. L. J. 124 :
59 I. C. 556 : 1 Lah. 508 :
A. I. R. 1920 Lah. 241.

———S. 5—*Sufficient cause—What is—Pleader's mistake, honest, though careless—Whether sufficient cause under S. 5.*

An honest mistake though due to carelessness on the part of the Pleader of a party is sufficient cause for the application of S. 5, Limitation Act. *Banau v. Emperor*.
27 Cr. L. J. 1001 :
96 I. C. 857 : 9 N. L. J. 180 :
A. I. R. 1926 Nag. 503.

———S. 5—*Sufficient cause, what is—Delay in filing appeal—Excuse of delay.*

S. 5, Limitation Act, gives the Courts a discretion which, in respect of jurisdiction, is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood, the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence, nor inaction nor want of *bona fides* is imputable to the appellant. *Emperor v. Shiva Adar*.
6 Cr. L. J. 221 :
9 Bom. L. R. 893.

———S. 12—*Exclusion of time for obtaining copy—S. 476—Application for order directing prosecution, dismissal of—Appal.*

Petitioner was plaintiff in a civil suit which was decreed. He subsequently made an application under S. 476, Cr. P. C., for an order to prosecute the defendants, the Trial Court rejected the application. Petitioner filed an appeal under S. 476-B, and attached a copy of the order of the Trial Court rejecting his application to the appeal. His appeal was dismissed on the ground that it was barred by time and that he was not entitled to deduct from the period of limitation prescribed, the time spent by him in obtaining a copy of the order appealed against: *Held*, that under the rules of the Court, the petitioner was bound to file along with his appeal a copy of the order appealed against and that, therefore, under S. 12, Limitation Act, he was entitled to deduct the period spent by him in obtaining a copy of that order from the period of limitation prescribed for the appeal and that consequently his appeal was within time and must be decided on the merits: *Daulat Ram v. Kanhaiya Lal*.
26 Cr. L. J. 961 :
87 I. C. 417 : 23 A. L. J. 297 :
47 All. 462 : A. I. R. 1925 All. 412.

———S. 14—*Applicability—Whether applies to complaint under S. 9, Child Marriage Restraint Act (XIX of 1929).*

LIMITATION ACT (IX OF 1908)

S. 14, Limitation Act, is in terms restricted to civil proceedings and cannot be taken advantage of by a person making a complaint under S. 9, Child Marriage Restraint Act. *Vellanchelly Venkata Narasimbam v. Pinapa Satyanarayana Rao*.
40 Cr. L. J. 816 (1) :
183 I. C. 595 : 49 L. W. 547 (1) :
1939 M. W. N. 415 : 1939, 1 M. L. J. 775 :
12 R. M. 317 : A. I. R. 1939 Mad. 512.

———S. 15—*Exclusion of period of notice. Claim against joint defendants—Notice under S. 80, C. P. C., necessary against only one defendant—Period of notice given is excluded in computing period of limitation for suit. Mohammad Sharif v. Nasir Ali*.
132 I. C. 17 :
132 I. C. 17 : 1930 A. L. J. 1443 :
53 All. 44 : I. R. 1931 All. 449 :
A. I. R. 1930 All. 742.

———S. 15—*Interpretation.*

Under S. 15, "expressly excluded" means excluded by express words. *Asandar Hashmatrai v. Khanchand*.
148 I. C. 178 :
6 R. S. 189 : A. I. R. 1933 Sind 240.

———S. 22—*Application to implead new defendant—Granting of application has retrospective effect from date of application.*

Where a new defendant is added on the application of the plaintiff after the institution of the suit, the suit must, as regards the new defendant, be regarded to have been instituted on the date on which the plaintiff applied to make him a party and not on the date on which he was actually made a party. *Hassanand v. Nandiram*.
32 Cr. L. J. 174 :
128 I. C. 675 : I. R. 1931 Sind 3 :
25 S. L. R. 107 : A. I. R. 1930 Sind 259.

———S. 28, Art. 27—*Suit to set aside order under S. 145, Cr. P. C., Limitation.*

A suit to set aside an order made under S. 145, Cr. P. C., is for purposes of limitation governed by S. 28 and Art. 27, Limitation Act. *Gangadharan Aiyar v. Sanakarappa Naidu*.
12 Cr. L. J. 47 :
9 I. C. 285 : 9 M. L. T. 91.

———S. 29—*Special Law under—What is.*

For the purposes of S. 20, Limitation Act, Ordinance II of 1932, is a Special Law. *Nil Ratan Ganguli v. Emperor*.
34 Cr. L. J. 633 :
143 I. C. 802 : 37 C. W. N. 195 :
60 Cal. 571 : I. R. 1933 Cal. 478 :
A. I. R. 1933 Cal. 124.

———S. 29—*Special period—Applicability.*

The provision as to limitation contained in Sub-s. 2, S. 30 of the Ordinance is a specific provision, the consequences of which are provided for as a matter of limitation by S. 20. *Nil Ratan Ganguli v. Emperor*.
34 Cr. L. J. 633 :
143 I. C. 802 : 37 C. W. N. 195 :
60 Cal. 571 : I. R. 1933 Cal. 478 :
A. I. R. 1933 Cal. 124.

———S. 29—*Special period—S. 5 does not apply.*

In view of the terms of S. 20, S. 5, can-

LIMITATION ACT (IX OF 1908)

not be applied to extend the time for appeal fixed by Bengal Emergency Powers Ordinance. *Manmatha Nath Biswas v. Emperor*.

34 Cr. L. J. 299 :
142 I. C. 280 : 37 C. W. N. 201 :
60 Cal. 618 : I. R. 1933 Cal. 246 :
A. I. R. 1933 Cal. 132.

———Sch. I, Art. 2—Interpretation.

The words 'in pursuance of an enactment' in Art. 2, mean acting in conformity with an enactment and not merely pretending to act or acting under colour of such an enactment. *Shiam Lal v. Abdul Raof*.

155 I. C. 131 : 1935 A. L. J. 459 :
1935 A. W. R. 547 : 7 R. A. 876 :
A. I. R. 1935 All. 538.

———Sch. I, Art. 2—Scope.

Where a defendant has done an act or omitted to do an act, knowing that he had no ground whatsoever for so acting or omitting to do an act, he does not come within the purview of Art. 2. *Shiam Lal v. Abdul Raof*.

155 I. C. 131 : 1935 A. L. J. 459 :
1935 A. W. R. 547 : 7 R. A. 876 :
A. I. R. 1935 All. 538.

———Sch. I, Art. 47—Suit for possession of lands declared in possession of defendant by order under Cr. P. C., S. 145—Limitation.

A proceeding under S. 145, Cr. P. C., having been initiated by the plaintiff, the Magistrate made a proper preliminary order under the section, upon which the parties came before the Magistrate and filed their written statements. After the plaintiff had examined three witnesses on his behalf, he filed a petition before the Magistrate praying that he might be allowed to withdraw the case, saying that he would not enter upon the land until the matter in dispute had been settled by a Civil Court. Thereupon the Magistrate recorded an order declaring the defendants to be in possession of the lands in dispute and directing the plaintiff "not to enter upon the lands and not to disturb the second party's possession thereof till the latter be evicted therefrom by due process of law." In a suit brought by the plaintiff more than three years after the Magistrate's order to recover possession of the land: *Held*, (1) that the suit was barred by Limitation under Article 47, Limitation Act, inasmuch as the Magistrate's order must be taken as deciding the question of possession in favour of the defendant. *Yar Mohammad Saha v. Hayat Mohammad Saha*.

18 Cr. L. J. 1024 :
42 I. C. 768 : 22 C. W. N. 342 :
A. I. R. 1918 Cal. 901.

———Sch. I, Art. 84—Scope.

Article is restricted to suits for costs. *Ghulam Moideen Sahib v. Mohammad Oomer Sahib*.

131 I. C. 158 : 60 M. L. J. 133 :
33 L. W. 430 : I. R. 1931 Mad. 494 :
A. I. R. 1931 Mad. 183.

———Sch. I, Art. 84—Termination of business—Meaning of.

Suit for costs—When client treats the engagement as subsisting and instructs attorney to

LIMITATION ACT (IX OF 1908)

tax his bill of costs, the business cannot be said to be terminated. *Ghulam Moideen Sahib v. Mohammad Oomer Sahib*.

131 I. C. 158 : 60 M. L. J. 133 :
33 L. W. 430 : I. R. 1931 Mad. 494 :
A. I. R. 1931 Mad. 183.

———Sch. I, Art. 146-A—Applicability—Article, if applies to application under S. 364 (1), Calcutta Municipal Act (III of 1923).

Article 146-A, Limitation Act, applies only to suits and an application under S. 364 (1), Calcutta Municipal Act, not being a suit, the article does not apply to it. *Corporation of Calcutta v. Dulal Chandra Pramanik*.

40 Cr. L. J. 870 :
184 I. C. 189 (1) : 12 R. C. 212 (1) :
A. I. R. 1939 Cal. 470.

———Sch. I, Art. 146-A—Applicability.

Where statutory powers are specifically conferred, it cannot be the intention of the Legislature that these powers should be nullified by the application of Art. 146-A, Limitation Act. *Durlabji Hansraj v. Municipal Corporation, Karachi*.

37 Cr. L. J. 82 :
159 I. C. 247 : 29 S. L. R. 315 :
8 R. S. 76 : A. I. R. 1935 Sind 222.

———Sch. I, Art. 154.

See also Cr. P. C., 1898, Ss. 476 (1), 476-A, 476-B.

———Sch. I, Art. 154—Appeal from order making complaint—Limitation—Starting point.

The period of limitation under Art. 154 of Sch. I, Limitation Act, for preferring an appeal from an order making a complaint begins to run only from the time that the complaint is actually made inasmuch as such an order is incomplete for the purposes of S. 476-B, Cr. P. C., until it has been supplemented by an actual complaint. The fact that an appellant may not know that a complaint has been filed till after thirty days prescribed by Art. 154 have expired, is immaterial, as the Appellate Court can excuse the delay under S. 5 of the Limitation Act. *Daga Devji Patil v. Emperor*.

29 Cr. L. J. 345 :
108 I. C. 26 : 30 Bom. L. R. 76 :
I. L. T. 40 Bom. 41 : 52 Bom. 164 :
A. I. R. 1928 Bom. 64.

———Sch. I, Art. 155.

See also Cr. P. C., 1898, Ss. 4 (1) (i), 342, 443, 415-A, 449 (1) (c).

———Art. 162.

See also Cr. P. C., 1898, S. 297.

———Sch. I, Art. 181.

See also (i) Cr. P. C., 1898, S. 435.
(ii) Letters Patent (Cal.), Cl. 41.

———Art. 181—Application for leave to appeal to P. C.—Limitation for.

Quaere.—Whether the period applicable to an application for leave to appeal to His Majesty in Council from the judgment, order or sentence passed by the High Court in a

LOCAL INSPECTION

criminal appeal is not three years under Art. 181, Sch. I, Limitation Act. *Billinghurst v. Emperor*. 25 Cr. L. J. 1371 : 82 I. C. 763 : 38 C. L. J. 406 : A. I. R. 1924 Cal. 338.

LIVING IN ADULTERY

See also Cr. P. C., 1898, S. 488 (4).

LOCAL INQUIRY

See also Jurisdiction.

LOCAL INSPECTION

See also Cr. P. C., 1898, Ss. 145, 550.

—Kinds of.

There are three kinds of local inspections: (1) those authorized or directed by the Cr. P. C. and which are governed by the rules and limitations imposed by that Code, (2) those which are in the nature of a view by the Jury laid down in S. 203 of the Code, and the Magistrate, having the functions of both Judge and Jury in cases decided by them, may view the place in any case, to follow or understand the evidence, and (3) those held by the Magistrates to satisfy themselves on certain disputed points. *Alia Rai v. Jhingur Tewari*. 13 Cr. L. J. 156 :

13 I. C. 844 : 16 C. W. N. 426 : 15 C. L. J. 403 : 39 Cal. 476.

—Magistrate, power of, to view the locus in quo for understanding evidence taken.

It is legitimate for a Magistrate trying a case to make a local inspection at the request of the parties and in the presence of their Pleaders for the purpose of enabling him to understand the evidence which had been taken in the case. *Aziz Mandal v. Girish Chandra Choudhury*. 23 Cr. L. J. 502 :

68 I. C. 38 : A. I. R. 1923 Cal. 320.

—Record of inspection—Failure to make—Effect of.

It cannot be said that in all cases, an omission to place on record the results of a local inspection is a fatal error of jurisdiction apart from any prejudice which it may cause to the accused. *Alia Rai v. Jhingur Tewari*. 13 Cr. L. J. 156 :

13 I. C. 844 : 16 C. W. N. 426 : 15 C. L. J. 403 : 39 Cal. 476.

—Record of inspection—Failure to make—Effect of.

Merely local observation cannot be allowed to override the necessity for evidence and a case cannot be decided merely on an observation made by the Court locally. It is not a positive rule of law that a note must be placed on the record on the spot at the time of the local inspection, and if the omission has not prejudiced any party, the irregularity cannot exclude the relevant and important matter—the Magistrate's local inspection. A Magistrate cannot import into his judgment matters of opinion and inference based on

LOCAL INVESTIGATION

circumstances not on the record. *Alia Rai v. Jhingur Tewari*. 13 Cr. L. J. 156 :

13 I. C. 844 : 16 C. W. N. 426 : 15 C. L. J. 403 : 39 Cal. 476.

—Record of inspection—Failure to make—Effect of.

Where a Magistrate made no note at the time of his local inspection, as he should have done, but embodied the result of his inspection in his judgment delivered four days later and when what he saw must have been fresh in his memory: Held, that his omission to make a note at the time, though irregular, could not be said to have caused any failure of justice. *Alia Rai v. Jhingur Tewari*. 13 Cr. L. J. 156 :

13 I. C. 844 : 16 C. W. N. 426 : 15 C. L. J. 403 : 39 Cal. 476.

LOCAL INSPECTION BY MAGISTRATE

See also Cr. P. C., 1898, S. 154.

—Magistrate's duty to put inspection note on record.

There is nothing in law to prevent a Magistrate from making local inspection, but in order to give an opportunity to the accused to remove any wrong impression created on the mind of the Magistrate, it is fair that a note of the inspection should be placed on the record, and the Magistrate commits a grave irregularity particularly when without placing a note of the inspection on the record, he uses the information gathered locally as substantive evidence in the case. *Parmeshwar Lal Mitter v. Emperor*. 23 Cr. L. J. 440 :

67 I. C. 616 : 3 P. L. T. 347 : A. I. R. 1922 Pat. 296.

—By Magistrate, when to be made.

A local inspection by a Magistrate must be held sparingly and only for the purpose of elucidating and understanding the evidence in the case and it should never be substituted for evidence in the case. The party against whom the result of the local inspection is used, is greatly prejudiced and is put to an irreparable disadvantage in not being able to remove the wrong impression from the mind of the Magistrate, by cross-examining him. The danger is intensified by the Magistrate holding the local enquiry *ex parte*. *Ram Sahai Singh v. Dwarka Singh*. 22 Cr. L. J. 424 :

61 I. C. 712 : 1 P. L. T. 569.

LOCAL INVESTIGATION

See also Cr. P. C., 1898, S. 145.

—Commitment after local investigation.

Magistrate after local investigation putting himself in position of witness—Commitment of case to Sessions will meet ends of justice. *Fazar Ali v. Mazharulla*. 13 Cr. L. J. 688 : 16 I. C. 336 : 16 C. L. J. 45.

LOCAL INVESTIGATION BY MAGISTRATE

—————*How to be held—Magistrate, duty of—Appeal—Appellate Court, whether influenced by trial Court's finding of fact.*

If in trying a case it is necessary to have a local investigation, great care ought to be taken by the Magistrate, who holds the local investigation to see that he is not approached by an outsider or allows his mind to be affected by outside matters. The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side and the other, and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case. *Chandra Kumar Ghose v. Mohendra Kumar Ghose.*

18 Cr. L. J. 477 :
39 I. C. 317 : 25 C. L. J. 66 :
21 C. W. N. 549 : 44 Cal. 711 :
A. I. R. 1917 Cal. 212.

LOCAL LAW

See also Penal Code, 1800, S. 40.

LOCAL SELF-GOVERNMENT ACT (III B. C. OF 1885)

—————*Ss. 78, 139, 140—Encroachment on road—District Board, power of, to frame Bye-laws—Bye-laws, whether ultra vires.*

A District Board is empowered under Ss. 139 and 140, Local Self-Government Act, to make a Bye-law for carrying out the purposes of the Act, and has impliedly, if not expressly, power to provide, by its Bye-laws, for the punishment of encroachment over its roads in order to carry out the provisions of S. 78, *i. e.*, to provide for the repairs and maintenance of its roads, etc., and such a Bye-law framed by the District Board is not *ultra vires*. *Mahesh Shah v. Darbari Hussain.*

23 Cr. L. J. 139 :
65 I. C. 571 : 3 P. L. T. 464 : 1 Pat. 251 :
A. I. R. 1922 Pat. 545.

LOCUS POENITENTIAE

—————*When can be allowed.*

A *locus poenitentiae* should not be allowed to an accused person who has made a false statement in Court and who, when subsequently tried for perjury, adheres to his former statement, admits it was correctly recorded and asserts that it is true. *Emperor v. Jagat Ram.*

19 Cr. L. J. 972 :
47 I. C. 872 : 28 P. R. 1918 Cr. :
39 P. W. R. 1918 Cr. :
A. I. R. 1919 Lah. 348.

LOTTERY

See also Penal Code, 1860, S. 420.

—————*Lottery.*

A wagering contract is not necessarily a lot-

LOWER BURMA COURTS ACT (VI OF 1900)

tery. Universal Mutual Aid & Poor Houses Association, Ltd., Madras v. A. D. Thappa Naidu.

33 Cr. L. J. 792 :
139 I. C. 644 : 1932 M. W. N. 904 :
63 M. L. J. 554 : 36 L. W. 610 :
56 Mad. 26 : I. R. 1932 Mad. 759 :
A. I. R. 1933 Mad. 16.

—————*Lottery.*

What amounts to lottery stated. *O. D. Harder v. Emperor.*

36 Cr. L. J. 219 :
152 I. C. 911 : 7 R. S. 108 :
A. I. R. 1934 Sind 149.

LOWER BURMA COURTS ACT (VI OF 1900)

—————*S. 11.*

See also Cr. P. C., 1898, Ss. 439, 476.

—————*Ss. 11, 12—Scope of.*

Under S. 12, Lower Burma Courts Act, the Government Advocate's certificate must be as to something decided by the Judge, and there is no power to certify as to anything decided by the Jury. The Court dealing with the case on the certificate cannot deal with any other part of the case until it has determined that there is an error on the part of the Judge on some point contained in the certificate. A Court dealing with a certificate is not a Court of Appeal and is subject to limitations even as a Court of Review. *S. P. Ghose v. Emperor.*

16 Cr. L. J. 676 :
30 I. C. 724 : 8 Bur. L. T. 247 :
A. I. R. 1915 L. Bur. 39.

—————*S. 12.*

See also Cr. P. C., 1898, Ss. 299 (a), 403.

—————*S. 12—Criminal trial by Judge of Chief Court—Misdirection to Jury—Chief Court, whether can order re-trial.*

Where, in a case referred to a Bench of the Chief Court under S. 12, Lower Burma Courts Act, the conviction and sentence are set aside on the ground of misdirection to the Jury, the Bench has the power to order a re-trial of the accused on the original commitment. *Thein Myin v. Emperor*

18 Cr. L. J. 929 :
42 I. C. 161 : 9 L. B. R. 60 :
10 Bur. L. T. 123 :
A. I. R. 1918 L. Bur. 104.

—————*S. 12—Powers under criminal case—Illegality—Section does not permit Bench to go into evidence.*

Per *Adamson, C. J.*, and *Fox, J.*—In a case in which there has been an illegal verdict and sentence, S. 12 of the Lower Burma Courts Act, 1900, does not empower the Bench to go into the facts and decide the case on the evidence. *Hla Gyi v. Emperor.*

3 Cr. L. J. 1 :
3 L. B. R. 75 : 11 Bur. L. R. 298.

—————*S. 13-A—Footrace—Pwe.*

In the absence of a Notification by the Local Government under Sub-s. (3) of S. 13-A of the Lower Burma Village Act, 1889, a foot-

LOWER BURMA LAND AND REVENUE ACT (II OF 1876)

race is not a *proe* for the purposes of that section. *Emperor v. Chan E.* 3 Cr. L. J. 18 : 3 L. B. R. 93 : 12 Bur. L. R. 51.

LOWER BURMA LAND AND REVENUE ACT (II OF 1876)

———Rules under, Rr. 51, 69—Possession of waste land—Consequences—Possession of waste land in anticipation of sanction—Liability for payment of revenue and ejectment—Trees planted by would-be grantee—Grant refused—Would-be grantee ordered to remove trees—Failure to remove trees—Occupation—Grazing ground.

A person who is given possession of some State waste land and brings it into cultivation, is liable under R. 51 of the Rules made under the Lower Burma Land and Revenue Act, to pay revenue and is also liable to ejectment, but he cannot be ordered by the Revenue Authorities to remove the trees planted by him on the land, and the mere fact that such trees remain on the land after it is constituted a grazing ground and he is ejected therefrom, does not constitute occupation of the grazing ground by him and, therefore, he is not punishable under R. 69 of the Rules. *Maung Pe v. Emperor.*

25 Cr. L. J. 1264 :
82 I. C. 272 : 3 Bur. L. J. 73 :
A. I. R. 1924 Rang 289.

———Rules under the Act, R. 69—Grazing ground—Unauthorised use—Prosecution under R. 19—Evidence of demarcation, duty of prosecution to adduce—Procedure—Maps, value of.

It is essential in all prosecutions under R. 69 of the Rules framed under the Lower Burma Land and Revenue Act that there should be evidence not only that the grazing ground has been allotted but also that it has been finally demarcated. The proper procedure in such cases is for the Land Records Officer to file in each case along with his complaint or report a map showing the relevant boundaries of the grazing ground with the demarcation marks and the area alleged to be occupied by the accused, and for the Court to take evidence that the grazing ground has been allotted and demarcated and that the alleged trespass has been committed. *Maung Tha E v. Emperor.*

28 Cr. L. J. 163 :
99 I. C. 595 : 5 Bur. L. J. 177 :
A. I. R. 1927 Rang. 59.

———R. 69—Scope.

Rule 69 deals with persons who encroach on grazing grounds. *Madar Sahib v. Emperor.*

13 Cr. L. J. 52 :
13 I. C. 388 : 4 Bur. L. T. 259.

———S. 8.

See also Lower Burma Land and Revenue Act, 1876, S. 7.

———Ss. 18, 19, Rules 51, 52, 68, 69—Failure to comply with notice of ejectment—Demarcated grazing of land—Admission of receipt and disobedience of notice—Prosecution bound to prove illegal encroachment—Application of Rules.

LOWER BURMA VILLAGE ACT, 1889

In a prosecution for failure to comply with a notice of ejectment from land said to form part of the demarcated grazing ground, an admission by the accused of the receipt of notice and of his failure to comply with it does not amount to an admission that he has committed an offence, as it does not imply that the accused admits his liability to ejectment. The prosecution must prove not only that the accused was served with a notice and disobeyed it but that he was actually occupying the land in contravention of rules under the Land and Revenue Act. Rules 51 and 52 only refer to land available for temporary occupation under S. 19 of the Act, and do not apply to demarcated grazing grounds. *Madar Sahib v. Emperor.*

13 Cr. L. J. 52 :
13 C. I. 388 : 4 Bur. L. T. 259.

———S. 19.

See also Lower Burma Land and Revenue Act, 1876, S. 7.

LOWER BURMA LAND REVENUE RULES

———R. 107-G—Digging of earth for bricks without licence—Contractor, whether liable.

A contractor who carries out the digging of clay for making bricks whether with his own hands or through labourers, without a licence, is equally guilty of an offence under R. 107-G, Lower Burma Land Revenue Rules along with the person responsible for the digging of clay. *Kabudin alias Shwe Po v. Emperor.*

26 Cr. L. J. 265 :
84 I. C. 329 : 3 Bur. L. J. 145.

LOWER BURMA TOWNS ACT (IX OF 1892)

See also Burma Gambling Act, 1890, S. 7.

LOWER BURMA VILLAGE ACT, 1889

———S. 9 (2)—Conviction under—Proof of.

A breach of rules made by the Commissioner under S. 6 (1) of the Lower Burma Village Act, 1889, does not justify a conviction under S. 9 (2) of the Act. To support such a conviction, it must be proved that the headman made a certain requisition to the accused, and that the accused refused or neglected to comply with it. *Emperor v. Pan Zi.*

3 Cr. L. J. 22 :
3 L. B. R. 96.

———S. 9 (2)—Offence under—Refusal or neglect to comply with requisition of headman—Order of headman—Failure to pay revenue demanded—Criminal offence—Burma Land and Revenue Act, 1876.

The accused were ordered by the headman of their village on the request of the circle thugyi, to pay their capitation-tax at a certain place. This they failed to do, and they were consequently convicted under S. 9 (2) of the Lower Burma Village Act of having neglected to comply with the headman's requisition: Held, that the provisions of this section do not apply to the failure of a vil-

LUNACY ACT (IV OF 1912)

lager to pay revenue demanded from him, the coercive procedure for enforcing payment being prescribed in the Land and Revenue Act. *Emperor v. Lu Pe.* 7 Cr. L. J. 450; 4 L. B. R. 150.

—S. 13-A—Pwe music and entertainment—Meaning of—Music and dancing—Anyein-pwe.

The accused held an entertainment described as an *anyein-pwe*, at which two of the village girls danced and music was played: *Held*, that in the absence of a special notification under Cl. (3), such an entertainment is not a *pwe* within the meaning of S. 13-A of the Lower Burma Village Act, 1889, as amended by Burma Act II of 1904. *Emperor v. Nga Pyu.* 6 Cr. L. J. 280; 4 L. B. R. 43.

LUNACY ACT (IV OF 1912)

—Scope.

The Lunacy Act deals specifically and under separate headings with the two branches of proceedings, executive and judicial. *In the matter of : Douglas Donald.* 24 Cr. L. J. 664; 73 I. C. 696; 4 Lah. 1; A. I. R. 1924 Lah. 55.

—S. 14—Order by District Magistrate under—Revision—Remedy.

An order passed by a District Magistrate under Part II, Lunacy Act, is a purely executive order and cannot form the subject-matter of a revision application to the High Court, nor has the High Court the power to interfere with such an order under Cl. 12, Letters Patent, or in the exercise of its powers of superintendence. A person considering himself aggrieved by an executive order passed by the District Magistrate under S. 14, Part II, Lunacy Act, may apply under Part III of the Act for a regular inquisition conducted by a judicial officer. The result of such inquisition is conclusive and overrides and overrules any order which may have been passed summarily by the executive authority. *In the matter of : Douglas Donald.* 24 Cr. R. J. 664; 73 I. C. 696; 4 Lah. 1; A. I. R. 1924 Lah. 55.

—S. 15—Interpretation.

The words, 'such relative or other person' relate to the words, 'or is cruelly treated or neglected by any relative or other person having charge of him'. Where the case alleged is not that the alleged lunatic is "cruelly treated or neglected" but that he is not "under proper care or control", there is no necessity of formally summoning his relatives with whom the lunatic is living. Interference by the High Court is not necessary on the ground that no summons was formally issued. *Hoshang P. Talati v. Emperor.* 37 Cr. L. J. 1082; 165 I. C. 119; 29 S. L. R. 431; 9 R. S. 80; A. I. R. 1936 Sind 156.

—S. 15 (1)—Scope.

The words in S. 15 (1), Lunacy Act, are wide in their scope and personal presentation of a

LUNACY ACT (IV OF 1912)

written complaint is not necessary to direct detention of a person as lunatic. *Hoshang P. Talati v. Emperor.* 37 Cr. L. J. 1082;

165 I. C. 119; 29 S. L. R. 431; 9 R. S. 80; A. I. R. 1936 Sind 156.

—S. 16—Applicability.

S. 16 relates only to the temporary detention of the alleged lunatic for a specific time for the purpose of observation by a Medical Officer and it will apply also to a case where the Magistrate acting under S. 14 thinks detention necessary for the purpose of observation. Again, where S. 14 applies to a case by reason of S. 15 (3), the two provisos of S. 14 will also apply if the facts are such as to attract their application. *Hoshang P. Talati v. Emperor.*

37 Cr. L. J. 1082; 165 I. C. 119; 29 S. L. R. 431; 9 R. S. 80; A. I. R. 1936 Sind 156.

—S. 16—Purpose.

The purpose of S. 16 is to limit the period of detention for the purpose of observation. The first period of detention is limited to ten days and the maximum period permitted under the section is 30 days. If, therefore, before the expiry of 10 days the Magistrate is satisfied with the Medical Officer's report and the Medical Officer himself does not require the full 10 days, there is nothing to prevent the Magistrate varying his order and shortening the period of detention as first ordered. *Hoshang P. Talati v. Emperor.* 37 Cr. L. J. 1082;

165 I. C. 119; 29 S. L. R. 431; 9 R. S. 80; A. I. R. 1936 Sind 156.

—S. 33—Application for habeas corpus to see at liberty a lunatic—Maintainability—Proper procedure.

An application for *habeas corpus* that the Court should order a person wrongly confined as a lunatic to be produced before the Court and set at liberty is misconceived. The proper procedure is by an application under S. 33, Lunacy Act. *Hoshang P. Talati v. Emperor.*

37 Cr. L. J. 1082; 165 I. C. 119; 29 S. L. R. 431; 9 R. S. 80; A. I. R. 1936 Sind 156.

—S. 62—Application for inquisition.

Lunatic received in Mental Hospital under order of one District Court, such hospital not being within jurisdiction of that Court—No evidence of jurisdiction being retained subsequently—Application for inquisition can be entertained by Court within whose jurisdiction alleged lunatic ordinarily resided and has his property. *Kamala Bala Debi v. Emperor.*

134 I. C. 1135; 35 C. W. N. 543; I. R. 1932 Cal. 47; A. I. R. 1931 Cal. 711.

—S. 71.

See also Cr. P. C., 1898, S. 489.

—S. 24—Act X of 1914—Court's power to direct reception of criminal lunatic into asylum.—Warrant of arrest—Order, if prejudicial.

Under Lunacy Act IV of 1912 and Act X of

MADRAS ABKARI ACT (I OF 1886)

1914 the Magistrates or Courts are no longer required to report cases under S. 471 (1), Cr. P. C., for the orders of the Local Government but are themselves competent to direct the reception of a criminal lunatic into asylum which is prescribed for the reception of criminal lunatics. A warrant of arrest is not an order to the prejudice of the accused within the meaning of S. 439 (2), Cr. P. C., and can, therefore, be issued without previous notice to him. An order under S. 471 (1), Cr. P. C., is clearly an order which the acquitting Court, whether Original or Appellate, not only has power to make but is bound to make under S. 423 (d). *Emperor v. Nga E. Moung*.

16 Cr. L. J. 670 :
30 I. C. 654 : 8 Bur. L. T. 286 :
A. I. R. 1915 L. Bur. 34.

LUNATIC ACCUSED

See also Cr. P. C., 1898, S. 471.

LURKING HOUSE TRESPASS

See also Penal Code, 1860, Ss. 450, 457.

M**MADRAS ABKARI ACT (I OF 1886)**

———Conviction, maintainability of—Arrack—Possession of arrack below normal strength—Offence.

Where the seals put on a cask containing arrack are not tampered with, and the weakness in the strength of the liquor is such as could be due to exposure owing to natural causes or constant sales, a conviction for possession of arrack below normal strength is unsustainable. *In re : Marutha Pillai*. 16 Cr. L. J. 606 : 30 I. C. 158 : A. I. R. 1916 Mad. 1226.

———Prosecution under—Opium Act (I) of 1878—Private complainant, locus standi of, to initiate proceedings.

The provisions of both the Abkari and the Opium Acts prohibit prosecution by private individuals and, therefore, a private complainant has no locus standi to institute proceedings for prosecution in respect of alleged offences under the said Acts. Under the Madras Abkari Act, the proceedings must be initiated and conducted under the elaborate rules contained in the said Act. For an offence against the Opium Act, the procedure which is indicated in that Act is to be strictly followed, the officers of the department mentioned, together with the Collector of the District, Deputy Commissioner or other officer authorised by Government, have alone the power to initiate proceedings. The utmost that a private person can do is to set one of these authorised persons in motion by information. *Hazar Fernando v. Amrithan Fernando*. 30 Cr. L. J. 1011 : 119 I. C. 174 : 30 L. W. 112 : 57 M. L. J. 214 : 52 Mad. 613 : 1929 M. W. N. 507 : I. R. 1929 Mad. 326 : A. I. R. 1929 Mad. 604.

———Selling arrack whether offence under Penal Code, S. 188.

A person selling arrack in his shop at an hour

MADRAS ABKARI ACT (I OF 1886)

in contravention of an order promulgated by the District Collector, does not commit an offence under S. 188, Penal Code. In such a case there is no question of causing or tending to cause obstruction, annoyance or injury to any one, and it does not follow, as a matter of course, that selling drinks will lead to riots or disturbance. *In re : Yerlagadda Venkanna*.

26 Cr. L. J. 1556 :
90 I. C. 436 : 48 M. L. J. 605 :
1925 M. W. N. 396 : 22 L. W. 98 :
A. I. R. 1925 Mad. 856.

———S. 29 (n)—Scope of—Power to order confiscated article to be sold or destroyed—Power of Court to direct the mode of sale—Cr. P. C., S. 517.

The powers conferred by S. 29 (n), Abkari Act of 1886, include the power to direct that the confiscated article may be destroyed or sold, as also to give directions as to the mode of the sale. Such an order cannot be supported if it purports to have been made under S. 517, Cr. P. C. *In re : Ponnusawmy Pillay*.

9 Cr. L. J. 149 :
1 I. C. 79 : 5 M. L. T. 258 :
19 M. L. J. 254.

———Ss. 30, 31—Power to arrest—Abkari Police Officer, with search warrant.

Under S. 31, Madras Abkari Act, an Abkari or Police Officer of a certain rank may search after recording reasons and may, if necessary, arrest, but though the person to whom a warrant is given may be an officer of the same rank, he is not authorized under S. 30 or any other section to arrest. *Public Prosecutor v. Munusami Mudali*. 32 Cr. L. J. 32 : 127 I. C. 656 : 1931 M. W. N. 120 : I. R. 1930 Mad. 1040 : A. I. R. 1930 Mad. 448 (1).

———S. 31—Prosecution under.

Where in a prosecution under S. 31, Abkari Act, the accused is neither arrested nor bailed out before the trial begins, the Police has authority to send him direct before a Magistrate. It is, therefore, a case to which S. 100 (1) (b), Cr. P. C., will apply. The absence of a report by an Abkari Inspector in such a case does not deprive a Magistrate from taking cognizance of an offence under S. 55 of the Act and a conviction by him is not open to objection. *In re : Yerlagadda Venkanna*.

26 Cr. L. J. 1556 :
90 I. C. 436 : 22 L. W. 98 :
48 M. L. J. 605 : 1925 M. W. N. 396 :
A. I. R. 1925 Mad. 856.

———S. 34—Powers of Abkari Officers—Possession of illicit quantity of arrack—Offence whether comes under S. 55 (a), or S. 56 (b)—Arrest by Abkari Officer—Escape from custody—Offence—Legality of arrest—Procedure.

Possession of an illicit quantity of arrack in breach of the licence or permit or rule under the Madras Abkari Act, comes under S. 55 (a) and, therefore, does not come under S. 56 (b) of the Act, and S. 34 authorises an Abkari Officer to arrest for such an offence. Under

MADRAS ABKARI ACT (I OF 1886)

the provisions of S. 34, Madras Abkari Act, an arresting officer is empowered to take an offender to a Police Station within 5 miles where he is not authorised to admit the offender to bail and there is a Police Inspector in such station having such power. *In re : Jayachandra Chetty*.

28 Cr. L. J. 275 :
100 I. C. 355 : 25 L. W. 227 :
52 M. L. J. 226 : 1927 M. W. N. 158 :
38 M. L. T. 116 : 50 Mad. 745 :
A. I. R. 1927 Mad. 413.

————S. 55.

See also Madras Abkari Act, 1886, S. 64.

————Ss. 55, 31—Procedure.

The Madras Abkari Act is not self-contained in the matter of the procedure for the investigation of offences under S. 55 of the Act. In such a case, the procedure to be followed is laid down in S. 5 (2) of the Cr. P. C. to be under that Code. There is nothing in the Act to indicate what is the procedure to be followed when an offender is sent under S. 31 of the Act direct to a Magistrate, nor is there a provision at all for a case where the offender is not placed under arrest. Where a case investigated by a Police Officer includes in addition to an offence under S. 55, Abkari Act, a non-cognizable offence under the Penal Code, the Police Officer would be correct in taking up the more serious offence as the principal offence, that is, the one in which he could arrest without a warrant, namely, under S. 55, Abkari Act, and following the provisions of that Act, so far as it can be done, rather than of the Cr. P. C., and, if he can follow the provisions of both for ensuring that the accused should appear before a Magistrate, it is obviously his duty to do so. The same procedure will be the proper procedure for a Police Officer to adopt when he is confronted with an offender whose offences are both under S. 55, Abkari Act and a cognizable offence under the Penal Code. *In re : Yerlagadda Venkanna*.

26 Cr. L. J. 1556 :
90 I. C. 436 : 48 M. L. J. 605 :
1925 M. W. N. 396 : 22 L. W. 98 :
A. I. R. 1925 Mad. 856.

————S. 55 (1)—‘Sell’, meaning of—Actual delivery to buyer, whether necessary.

It is not necessary to constitute a ‘sale’ within the meaning of S. 55 (1), Madras Abkari Act, that there should be an actual delivery of the thing sold to the buyer. A person accepted the price of a bottle of brandy and brought the bottle to be handed over to the buyer but was arrested before he had actually handed it over to the buyer: *Held*, that there was a sale within the meaning of S. 55 (1), Madras Abkari Act. *Public Prosecutor v. Bysani Ramasubbayya Chetty*.

29 Cr. L. J. 124 (b) :
106 I. C. 716 : 27 L. W. 84 :
51 Mad. 335 : 54 M. L. J. 712 :
A. I. R. 1928 Mad. 179.

————Ss. 55 (1), 64—Liability—Transport of liquor without licence—Servants transporting, whether guilty of offence.

Where a licensee-holder of a toddy shop had

MADRAS ABKARI ACT (I OF 1886)

toddy transported to an unlicensed place by servants who acted under his orders: *Held*, that such servants were themselves guilty of an offence under Ss. 55 and 64, Madras Abkari Act. Under S. 64 of the said Act, any act done by the servant of a renter or licensee of a toddy shop for the benefit of such a renter or licensee would make the renter or licensee liable under the Act only if the act is not one which is done in the course of the business. *In re : Mannen Venkayya*.

29 Cr. L. J. 929 :
111 I. C. 849 : 28 L. W. 511 :
1928 M. W. N. 788 : 55 M. L. J. 712 :
A. I. R. 1928 Mad. 1130.

————S. 55 (2)—‘Possession’, meaning of.

The term “possession” in S. 50 (2), Madras Abkari Act, means actual, and not constructive possession. Consequently, only those persons who are in actual possession of contraband liquor without a licensee are punishable under the section. *Jayaramulu v. Emperor*.

24 Cr. L. J. 152 :
71 I. C. 504 : 1922 M. W. N. 570 :
16 L. W. 496 : 31 M. L. T. 310 :
43 M. L. J. 553 : 45 Mad. 842 :
A. I. R. 1923 Mad. 50.

————S. 55 (a)—Possession, what amounts to.

A person who carries *arrack* in excess of the permissible quantity from one place to another is in “possession” of it within the meaning of S. 55 (a), Madras Abkari Act. *In re : Jayachandra Chetty*.

28 Cr. L. J. 275 :
100 I. C. 355 : 25 L. W. 227 :
52 M. L. J. 226 : 1927 M. W. N. 158 :
38 M. L. T. 116 : 50 Mad. 745 :
A. I. R. 1927 Mad. 413.

————Ss. 55 (a) and 61—Conviction under, legality of—Ordering servant to carry *arrack* to another place amounts to transporting.

Accused, the renter of an *arrack* shop, ordered his servant, to transport four gallons of *arrack* to a place, which was seized by the Abkari Officers in the course of transport. The Magistrate convicted him under Ss. 55 (a) and 61: *Held*, that coupling Ss. 55 (a) with S. 61 was unnecessary. *Quadiar Badsha Rowthen v. Emperor*.

1927 M. W. N. 212 : 38 M. L. T. 138 :
A. I. R. 1927 Mad. 470.

————S. 55 (b)—Offence under, when complete.

Under S. 55 (b), Abkari Act, an offence is committed the moment a person sells *arrack* below the strength specified in the permit, no matter what the cause of the variation may be. The fact that the offence is only technical, is not a matter for the Court, but one for the officers instituting the prosecution. *In re : Damodara Naidu*.

16 Cr. L. J. 800 :
31 I. C. 656 : 2 L. W. 1120 :
A. I. R. 1916 Mad. 32.

————S. 55 (g)—Duty of Magistrate—Exercise Officers lying in wait early morning to detect illicit manufacture of wash—Accused detected—Confession by accused to Excise Officer—Charge under S. 55 (g)—Evidence of Excise

MADRAS ABKARI ACT (I OF 1886)

Officers only—Held, their evidence was admissible under circumstances especially when reinforced by confession.

The Excise Officers were lying in wait from early hours in the morning for persons who were illicitly manufacturing wash for distillation and detected the accused preparing wash and took them to the Excise Circle Inspector before whom the accused made a confession. The accused were charged under S. 55 (g), Madras Abkari Act, but the Magistrate acquitted them on the ground that the evidence of the Excise Officers was not supported by that of disinterested witnesses who could have been procured: *Held*, that the Magistrate should not have rejected the evidence of the Excise Officers especially when it was reinforced by confession of the accused, as under the circumstances, it could hardly be expected to procure disinterested witnesses. *The Public Prosecutor v. Marimuthu Goundan.*

39 Cr. L. J. 338 :
173 I. C. 448 : 1938 M. W. N. 95 :
47 L. W. 275 : 1938, 1 M. L. J. 238 :
10 R. M. 584 : A. I. R. 1938 Mad. 460.

———Ss. 56, 64—*Liability of depot-writer.*

S. 56, Ahkari Act, when read with S. 64 makes also a depot-writer (not a licensee under the Act) if an actual offender, liable for an offence under the former section. *In re : M. Muthaya.*

17 Cr. L. J. 2 :
33 I. C. 130.

———S. 56 (b)—*Constructive offence.*

A constructive offence under S. 56 read with S. 64 is not punishable with imprisonment under the proviso to S. 64. *Quadier Badsha Rowther v. Emperor.*

1927 M. W. N. 212 : 38 M. L. T. 138 :
A. I. R. 1927 Mad. 470.

———S. 62—*Abkari Officer.*

A peon is not an Abkari officer within the meaning of S. 62, Madras Ahkari Act I of 1886. *In re : Pachappa Chetty.*

8 Cr. L. J. 405 :
18 M. L. J. 455 : 4 M. L. T. 107.

———S. 64—*Liability—Liability of licensee for act committed by employee—Absence of knowledge or consent of licensee, whether exempts him from liability—Object of S. 64.*

To convict the holder of a licence or permit under S. 64, Madras Ahkari Act, in respect of an offence committed by one of his servants, it is not necessary for the prosecution to prove that the actual offender committed the offence as the agent of the licensee and with his knowledge and approval, as for instance, where a man arranges his servants to commit a crime. The intention of S. 64 is to place a heavier responsibility for the act of his servant upon a licensee as such, than lies upon an employer under the ordinary criminal law. *Chinuappayya Mudali v. Emperor.*

154 I. C. 604 : 1934 M. W. N. 1142 :
40 L. W. 846 : 67 M. L. J. 876 : 7 R. M. 460 :
58 Mad. 346 : A. I. R. 1935 Mad. 79.

MADRAS ACT (I OF 1900)

———Ss. 64, 55—*Presumption—Accused found in possession of wash.*

Where the accused was found in possession of wash, the presumption set out in S. 64 operates and the accused is presumed to have committed an offence punishable under S. 55, Madras Abkari Act of 1886. *In re : Appu Goundan.*

39 Cr. L. J. 659 :
175 I. C. 896 : 1938 M. W. N. 592 :
1938, 2 M. L. J. 43 : 48 L. W. 145 (1) :
11 R. M. 18 : A. I. R. 1938 Mad. 784.

———S. 69—*Miscellaneous—Licence for sale of arrack 32 degrees under proof, sale in breach thereof—Adulteration—Allowance of 2 per cent. for wastage under r. 229, Standing Orders of the Board of Revenue, how far defence.*

Rule 229 of the Standing Orders of the Board of Revenue, which directs Ahkari officers to allow wastage in bottling up to 2 per cent is only a departmental rule for the guidance of its subordinates, the margin of 2 per cent. being fixed as an allowance for evaporation in cases where there is reason to believe that the diminution in strength is due to natural causes. It cannot be construed to mean that licensees can adulterate arrack so long as they do not exceed 2 per cent over the strength mentioned in the permit. The rule not having been made under S. 69, Madras Ahkari Act, 1886, has not the force of law and cannot be read as part of the Act. *In re : Damodara Naidu.*

16 Cr. L. J. 800 :
31 I. C. 656 : 2 L. W. 1120 :
A. I. R. 1916 Mad. 32.

MADRAS ACT (III OF 1869)

———*Service of summons—Witness's refusal to receive—Duplicate not thrown at witness—Personal service—Penal Code (Act XLV of 1860), Ss. 173, 174.*

The refusal by a witness to receive a summons tendered to him to appear and give evidence, does not amount to personal service under Madras Act (III of 1869). A witness so refusing cannot be charged under S. 173 or 174, Penal Code. *Emperor v. Salimullah.*

13 Cr. L. J. 246 :
14 I. C. 598 : 16 C. W. N. 471.

MADRAS ACT (I OF 1900)

———S. 3—*Licensee whether tenant.*

An agreement between licensor and licensee was that, if after three days' notice licensee did not pull down the hut, the licensor was at liberty to pull it down: *Held*, that the licensee (complainant in the case) was not a tenant within the meaning of S. 3, Madras Act I of 1900, and that consequently, it was not an offence on the part of the licensor to pull down the hut after service of notice on the licensee and non-compliance therewith. *In re : Oliveira.*

11 Cr. L. J. 258 :
5 I. C. 834 : 7 M. L. T. 121.

MADRAS BORSTAL SCHOOLS ACT (V OF 1926)

—S. 2—Applicability.

The provisions of the Madras Borstal Schools Act, 1926, can be applied to the case of an offender only if the Court is satisfied that the offender is addicted to criminal habits or tendencies or associates with persons of bad character and that he is likely to benefit by detention in a Borstal Institution. The mere fact that the offender is an adolescent is not a sufficient ground for applying the Act. *In re : Sellappa Goundan.* 32 Cr. L. J. 1044 : 133 I. C. 776 : 34 L. W. 45 : 1931 M. W. N. 772 : 61 M. L. J. 222 : 54 Mad. 764 : I. R. 1931 Mad. 776 : A. I. R. 1931 Mad. 771.

—S. 8.

See also (i) Cr. P. C., 1898, S. 397.
(ii) Madras Borstal Schools Act, 1926, S. 20.

—S. 8—Illegality of detention.

Order to give security for one year—Failure to give security—Detention in Borstal School for two years is legal. *In re : Mala Chengadu.*

35 Cr. L. J. 1153 : 150 I. C. 796 : 1934 M. W. N. 486 : 40 L. W. 63 : 67 M. L. J. 300 : 57 Mad. 928 : 7 R. M. 48 (1) : A. I. R. 1934 Mad. 457.

—S. 8—Sentence of detention—Sentence must take effect at once—Such sentence for lesser period than two years cannot be passed.

The Madras Borstal Act does not contain a provision corresponding to S. 397, Cr. P. C., and so a sentence of detention in a Borstal School must take effect at once and cannot be postponed to have effect from the date of subsequent release of the accused after the expiry of a term of sentence awarded previously. Similarly, no sentence for detention for a lesser period than two years can be passed. *In re : Nondi.* 39 Cr. L. J. 906 : 177 I. C. 554 : 47 L. W. 636 : 1938 M. L. J. 761 : 1938 M. W. N. 535 : 11 R. M. 343 : A. I. R. 1938 Mad. 663.

—Ss. 20, 8—Sentence of detention, nature and object of—Sentences of detention in Borstal School, if can be ordered to run consecutively.

The sentence of detention in Borstal School cannot be regarded as equivalent for all purposes to sentences of imprisonment, though for purposes of appeal and revision, they are to be deemed as sentences of imprisonment according to S. 20, Borstal Schools Act. The object of detention in a Borstal School being to reform the offender, and as the Magistrate has got sufficient discretion to detain an offender for such period as the law permits, there is no reason why one sentence of detention imposed upon an offender should be ordered to run after the expiry of another sentence imposed upon the same offender. The direction that the sentence of detention in one case should take effect after the expiry of the sentence of detention in the other case is not in consonance with law. *In re : Allah Baksh.* 39 Cr. L. J. 839 : 176 I. C. 763 : 47 L. W. 321 : 1938 M. W. N. 387 : 11 R. M. 167 (1) : A. I. R. 1938 Mad. 567.

MADRAS CANAL AND PUBLIC FERRIES ACT (II OF 1890)

—S. 4—Notification, necessity of.

Without a notification under S. 4 of the Act, the Act gives the Government no power to regulate navigation up and down the river and the prevention of navigation, up and down the river, is wholly outside the scope of the Act. *Abdul Wahab Sahib v. Emperor.*

30 Cr. L. J. 827 : 117 I. C. 728 : 28 L. W. 699 : 56 M. L. J. 277 : I. R. 1929 Mad. 712 : A. I. R. 1929 Mad. 50.

—S. 8—Scope of.

The power given by S. 8, Madras Canal and Public Ferries Act to define the limits of a ferry, cannot be interpreted so as to enable the Government to include in the place concerned both sides of a river for a distance of several miles. *Abdul Wahab Sahib v. Emperor.*

30 Cr. L. J. 827 : 117 I. C. 728 : 28 L. W. 699 : 56 M. L. J. 277 : I. R. 1924 Mad. 712 : A. I. R. 1929 Mad. 50.

—Ss. 8, 9—Conveying goods, etc., across channel within defined limits—Illegality of.

What S. 9 of the Act makes unlawful is conveying goods, animals, or passengers, across a channel within the defined limits of a ferry declared under S. 8. A voyage up the river is not one across it and cannot be prohibited under the Act. *Abdul Wahab Sahib v. Emperor.*

30 Cr. L. J. 827 : 117 I. C. 728 : 28 L. W. 699 : I. R. 1929 Mad. 712 : 56 M. L. J. 277 : A. I. R. 1929 Mad. 50.

MADRAS CHILDREN ACT (IV OF 1920)

—S. 37—Enquiry into age, necessity of.

S. 37, requires that a due enquiry into age shall be made, and it is most desirable that a declaration of age under S. 37 should not be made except on adequate and proper evidence. The burden of proof in such a matter is on the accused. *In re : Pichiguntla Katti Ramudu.*

33 Cr. L. J. 192 : 135 I. C. 622 : 34 L. W. 896 : 1931 M. W. N. 1192 : I. R. 1932 Mad. 190 : A. I. R. 1932 Mad. 213.

MADRAS CITY MUNICIPAL ACT (III OF 1904)

—S. 120—Profession-tax—Buying agent.

On a case referred to the High Court under S. 176, Madras City Municipal Act III of 1904, as to whether a person who is a trader in piece-goods and has a shop in Tinnevely where he sells the goods and earns his profits but keeps an agent in Madras to buy goods for him, without keeping an office, exercises his trade within the town of Madras : *Held*, that on the facts of the case, the trade was not carrying on business in Madras and he was not, therefore, liable to pay any profession-tax in Madras. *Skeikh Meera v. President of the Corporation, Madras.* 12 Cr. L. J. 179 : 5 I. C. 744 : 7 M. L. T. 80 : 33 Mad. 82.

MADRAS CITY MUNICIPAL ACT (III OF 1904)

—Ss. 125, 180, 188 (1) (2)—*Right of appeal—Omission by the person taxed to appeal to the President and two Commissioners—Right to plead non-exercise of the profession as a defence to the profession.*

A person failing to appeal or apply for revision of the tax imposed on him to the President and two Commissioners, as provided for by the Act, after service of notice, cannot plead non-exercise of the profession as a defence either to a distress under S. 180 or suit under Cl. (1) of S. 188, or a prosecution under Ss. 125, 188 (2). *In re : Veeraraghavulu.*

11 Cr. L. J. 521 :
7 I. C. 743 : (1916) 1 M. W. N. 583 :
8 M. L. T. 305 : 20 M. L. J. 773.

—Ss. 150, 188—*Plca of non-liability for tax—Failure to pay tax within time prescribed after service of bill—Omission to appeal to Standing Committee—Prosecution.*

An accused person, who is prosecuted under S. 188, City of Madras Municipal Act, for failure to pay Municipal tax within the time prescribed after service of the bill, cannot plead non-liability to pay the tax where he has failed to appeal to the Standing Committee against the imposition as required by the Act. *Crown Prosecutor v. Subraya Naicker.*

13 Cr. L. J. 207 :
14 I. C. 207.

—S. 172—*Scope of—Profession tax—Prosecution for failure to pay profession tax.*

S. 172, Madras Act, III of 1904, should not be so read as to limit the complaints and the applications for revision only to the question of classification. The meaning of the section is that all complaints against any tax or toll leviable under Part VI and all applications for revision of classification in respect of any such tax or toll are cognizable by the President and two Commissioners. Nor is the provision as to finality in S. 177 restricted to the question of classification, but applies also to all taxes imposed. *In re : Veeraraghavulu.*

11 Cr. L. J. 521 :
7 I. C. 743 : (1916) 1 M. W. N. 583 :
8 M. L. T. 305 : 20 M. L. J. 773.

—S. 176, Sch. V, Cl. III—*Question of Law—Whether money-lender included in dealers of every description.*

The question whether a money-lender comes within the expression "dealers of every description" in Cl. III, Schedule V, Madras City Municipal Act, is a question of law under S. 176 of the Act. *Sawmi Chetty v. Corporation of Madras.*

14 Cr. L. J. 47 :
18 I. C. 271 : 23 M. L. J. 591.

—Ss. 262, 325—*Scope of—Licence for storing timber—Permission of Municipality to put up a shed on timber yard, whether necessary.*

A licence obtained under S. 325, Madras City Municipal Act, does not cover the permission that is required under S. 262 of the Act. Therefore, a person who has obtained a licence for storing timber, is bound to take the permis-

MADRAS CITY MUNICIPAL ACT (III OF 1904)

sion of the Municipality for putting up a shed over it. *In re : Madamuni Nadar.*

21 Cr. L. J. 1 :
54 I. C. 49 : 10 L. W. 662 :
38 M. L. J. 84 : 27 M. L. T. 125 :
1920 M. W. N. 111 :
A. I. R. 1920 Mad. 220.

—Ss. 262, 420—*'Shall be made'—Meaning of—Keeping a pandal without licence—Absence of proof that accused constructed the building.*

The expression "shall be made," in S. 262, Madras City Municipal Act, means only 'shall be constructed' and does not mean 'shall be composed of.' The mere existence of a *pandal*, etc., with inflammable materials does not in the absence of proof that the accused constructed it constitute an offence. *Emperor v. Andiasavaloo Naidoo.*

13 Cr. L. J. 144 (b) :
13 I. C. 832 : 1912 M. W. N. 84.

—Ss. 282, 420—*Scope of—Construction of inflammable pandal—Offence—Owner and occupier, liability of.*

The words "whoever contravenes" in S. 420, Madras City Municipal Act, 1904, cover owners as well as occupiers of the premises. The construction of an inflammable *pandal* or the continuance of an existing one is an offence under S. 282 read with S. 420 of the Act. *Emperor v. Varadachariar.*

19 Cr. L. J. 948 :
47 I. C. 672 : 24 M. L. T. 180 :
8 L. W. 581 : 42 Mad. 7 :
A. I. R. 1919 Mad. 1075.

—S. 322—*Licence-fee leviable—Licensee for using place for dangerous or offensive trade or dangerous purposes.*

Where a place is used for more purposes than one, mentioned in S. 322, Madras City Municipal Act, the action of the President, in charging a licence-fee equal to the total of the fees, which would be leviable if a separate licence were taken for the use of a separate place for each of the said purposes, is not *ultra vires*, provided that it is levied with the approval of the Corporation and the sanction of the Government. *Nyna Mahomed Saib v. Llyod.*

11 Cr. L. J. 684 (a) :
8 I. C. 574 : 8 M. L. T. 373.

—Ss. 322 and 323—*Conviction under, maintainability of—Storing iron.*

Using a place for storing iron is not using it for a purpose which may endanger life, health or property, and a conviction under S. 323, Madras City Municipal Act, is not maintainable. *T. T. Aroomooga Chetty v. President, Corporation of Calcutta.*

8 Cr. L. J. 404 :
4 M. L. T. 321.

—S. 366.

See also Penal Code, 1860, S. 269.

—S. 409, Cl. (19)—*'Food,' meaning of—By-law framed thereunder—Aerated waters, whether food.*

The term "food" does not include "drinks" and, therefore, in the absence of a special

MADRAS CITY MUNICIPAL ACT (IV OF 1919)

inclusion, a person exposing for sale acrated waters unwholesome and unfit for human consumption, does not commit any offence under By-law 177 framed under S. 409 (19), Madras City Municipal Act. *Emperor v. Ganapathy Iyer*. 16 Cr. L. J. 7 :

26 I. C. 311 : 27 M. L. J. 752 :
16 M. L. T. 585 : A. I. R. 1915 Mad. 591.

———S. 413—*Power of Presidency Magistrate under—Election rules made thereunder—Charter Act, 24 and 25 Vic., C. 104, 1861, S. 15.*

A Presidency Magistrate authorized under rule 5 of the rules framed by the Local Government under S. 413, Madras City Municipal Act, to hold an inquiry and decide whether a particular candidate is fit to stand for election to a Municipal Council, is not a Court subject to the superintendence of the High Court under S. 15 of the Charter Act, and the High Court will not interfere in revision with an order passed by him. His position is that of a referee between the President of the Municipal Council and the candidate. *Vijayaraghavalu Pillai v. Emperor*. 15 Cr. L. J. 593 :

25 I. C. 345 : 16 M. L. T. 128 :
27 M. L. J. 227 : A. I. R. 1915 Mad. 360.

MADRAS CITY MUNICIPAL ACT (IV OF 1919)

———*Construction of Statute.*

Where the section of a Statute by itself is not very clear in its language, it is legitimate to look at the marginal note to see what the drift of the section itself is. *In re : A. E. Smith*. 25 Cr. L. J. 584 :

81 I. C. 72 : 45 M. L. J. 731 :
18 L. W. 879 : 33 M. L. T. 185 :
A. I. R. 1924 Mad. 389.

———S. 65 (2)—*Personating voter, what constitutes.*

To constitute an offence under S. 65 (2), Madras City Municipal Act, it is necessary that the accused must have actually applied for a ballot paper under a wrong name. Where, an intending voter merely applied for a slip of paper from a Subordinate Officer to enable him to get the ballot paper from the Polling Officer in the adjacent room, but the latter officer himself came out and saw the voter and recognised him not to be a voter : *Held*, that there was at best merely a preparation to apply for a ballot paper and no offence had been committed. *Syed Hussain v. C. S. Munikathanam Chetty*. 30 Cr. L. J. 528 :

115 I. C. 813 : I. R. 1929 Mad. 477 :
1929 M. W. N. 505 :
A. I. R. 1929 Mad. 489.

———Ss. 216, 217, 380—*Liability—"Street", within meaning of S. 216.*

In deciding whether a person intended to lay out or make a new private street within the meaning of S. 216, Madras City Municipal Act, the Court has to look more to the definition of the word "street," private or public, found in the Act itself rather than to English decisions as to the meaning of the word "street". It is not necessary that there

MADRAS CITY MUNICIPAL ACT (IV OF 1919)

should be rows of buildings on either side actually in existence before a street comes into existence so far as the provisions of the City Municipal Act are concerned. *V. Ranganadham Chetty v. Corporation of Madras*.

41 Cr. L. J. 23 :
184 I. C. 490 : (1939) 2 M. L. J. 33 :
50 L. W. 130 : 1939 M. W. N. 737 (2) :
12 R. M. 458 : A. I. R. 1939 Mad. 810.

———Ss. 233, 357, 392—*Limitation for prosecution—Maintaining shed with inflammable materials without licence—Offence, whether comes under S. 233—Essence of offence.*

The essence of an offence under Ss. 233 and 357, Madras City Municipal Act, IV of 1919, is the act of constructing or reconstructing with inflammable materials without the licence of the Government and not merely that of maintaining an already constructed building in existence. By virtue of S. 392 of the Act, a conviction for a Municipal offence under Ss. 233 and 357 on a prosecution initiated more than 12 months after the date of the offence cannot be sustained. *In re : M. A. Razack*. 28 Cr. L. J. 522 :

102 I. C. 218 : 25 L. W. 613 :
52 M. L. J. 620 : 38 M. L. T. 336 :
50 Mad. 760 : A. I. R. 1927 Mad. 501.

———S. 287—*Scope of.*

Under S. 287, no separate licence is necessary for each process, such for example, as manufacturing, storing, packing, etc., in respect of the same article. It is not desirable that recourse should be had to Courts in matters not involving any question of law but relating merely to Municipal routine or what should be done in office. *Samrapuri Chetti v. Corporation of Madras*. 32 Cr. L. J. 779 :

131 I. C. 621 (1) : 33 L. W. 553 :
1931 M. W. N. 404 : 60 M. L. J. 711 :
I. R. 1931 Mad. 573 :
A. I. R. 1931 Mad. 488 (1).

———S. 288—*Machinery — Nuisance—Permission of Commissioner for erection of machinery, necessity for.*

An electric motor-driving mill which emits disagreeable odours and produces considerable noise is 'machinery' for the erection of which permission from the Commissioner is necessary. For the application of S. 288, Madras City Municipal Act, it is not necessary that the machinery must be a nuisance. The question whether a machinery is or is not a nuisance is one for the Commissioner alone, and if he finds that it is a nuisance, he may refuse permission altogether. *In re : P. Natesa Mudaliar*.

28 Cr. L. J. 116 :
99 I. C. 324 : 51 M. L. J. 704 :
1927 M. W. N. 6 : 26 L. W. 890 :
38 M. L. T. 166 : 50 Mad. 733 :
A. I. R. 1927 Mad. 156.

———S. 288—*Nuisance—Erecting machinery—Licence-fee, prosecution for—Nuisance—Danger to inhabitants of locality—Onus—Soda water machine worked by electric motor.*

Before S. 288, Madras City Municipal Act,

MADRAS CITY MUNICIPAL ACT (V OF 1920)

can be used for the purpose of insisting on a licence-fee being paid for erecting machinery, it must be shown that its use was likely to produce either noise or vibration or any of the other things mentioned in the section which would amount to a nuisance. The burden is on the Municipality to show that the machinery that the accused works is such as could cause noise or vibration amounting to a nuisance, and that danger to the inhabitants of the locality is likely to arise by the use of this machinery. A small soda water machine worked by a small electric motor does not fall within the description of machinery likely to be dangerous to the inhabitants of the locality. *In re : A. E. Smith.*

25 Cr. L. J. 584 :
81 I. C. 72 : 45 M. L. J. 731 :
18 L. W. 879 : 33 M. L. T. 185 :
A. I. R. 1924 Mad. 389.

—S. 288—Right of accused.

There is no estoppel in a criminal case and the fact that an accused in a prosecution for non-payment of licence-fee under S. 288, Madras City Municipal Act, did not appeal to the Standing Committee in respect of the imposition of the fee does not prevent him from raising the plea before a Criminal Court. *In re : A. E. Smith.*

25 Cr. L. J. 584 :
81 I. C. 72 : 45 M. L. J. 731 :
18 L. W. 879 : 33 M. L. T. 185 :
A. I. R. 1924 Mad. 389.

—S. 380.

See also Madras City Municipal Act, 1919, Ss. 216, 217.

—S. 392—Limitation.

Assessment for second half of 1929-30—Notice given on 3rd September 1930—No reply from assessee—Complaint instituted on 7th November 1930—Complaint held to be within time. *In re : C. Jayaram Naidu.*

33 Cr. L. J. 601 :
138 I. C. 378 : 1932 M. W. N. 1220 :
I. R. 1932 Mad. 563 (2) :
A. I. R. 1932 Mad. 564.

MADRAS CITY MUNICIPAL ACT (V OF 1920)

—S. 362—‘Other materials’, meaning of—Removal of trees from Municipal land—Offence—‘Other materials’, meaning of.

Trees growing upon Municipal land, when cut, come within the expression ‘other materials’ in S. 362, Madras District Municipalities Act, and the removal of such trees without the authority of the Municipality is an offence under S. 362 (2) of the said Act. *Veeraragava Mudaliar v. Chairman, Municipal Council, Vaniyambadi.*

32 Cr. L. J. 107 :
128 I. C. 145 : 1930 M. W. N. 684 :
I. R. 1931 Mad. 1 : 33 L. W. 49 :
A. I. R. 1930 Mad. 861.

MADRAS CITY POLICE ACT (III OF 1888)

—S. 6—Powers of Deputy Commissioner.

Under S. 6 Deputy Commissioner can exercise powers given to Commissioner subject to orders of Commissioner. *In re : P. R. Subbier.*

36 Cr. L. J. 566 :
154 I. C. 741 : 40 L. W. 841 :
1935 M. W. N. 249 : 68 M. L. J. 348 :
7 R. M. 478 : A. I. R. 1935 Mad. 98.

—S. 7—Powers of Commissioner of Police as Presidency Magistrate.

Commissioner of Police as Presidency Magistrate can exercise power under S. 523, Cr. P. C., unless the Government restrains him from doing so. *Devidan Sowcar v. Janaki Ammal.*

33 Cr. L. J. 559 :
138 I. C. 126 : 62 M. L. J. 632 :
1932 M. W. N. 106 : 35 L. W. 625 :
I. R. 1932 Mad. 510 :
A. I. R. 1932 Mad. 428.

—Ss. 23, 75—A place of public resort—Arrack shop—Being drunk and disorderly in a arrack shop—Offence

An arrack shop is a place of public resort within the meaning of S. 75, Madras City Police Act, and it is an offence under the Act to be drunk and disorderly in such a shop. The doctrine of *ejusdem generis* should not be applied in considering the scope of S. 75, Madras City Police Act. *Emperor v. Moonoosawmy.*

9 Cr. L. J. 496 :
2 I. C. 84.

—S. 42—Faulty description of premises, effect of.

Warrant—Faulty description of premises is not fatal if description is sufficient to identify premises. *In re : P. R. Subbier.*

36 Cr. L. J. 566 :
154 I. C. 741 : 40 L. W. 841 :
1935 M. W. N. 249 : 68 M. L. J. 348 :
7 R. M. 478 : A. I. R. 1935 Mad. 98.

—S. 42—Issue of warrant.

Sworn information is not condition to issue of warrant under S. 42. *In re : P. R. Subbier.*

36 Cr. L. J. 566 :
154 I. C. 741 : 40 L. W. 841 :
1935 M. W. N. 249 : 68 M. L. J. 348 :
7 R. M. 478 : A. I. R. 1935 Mad. 98.

—S. 42—Scope of.

S. 96, Cr. P. C., has nothing to do with powers exercisable by Deputy Commissioner under S. 42, City Police Act. *In re : P. R. Subbier.*

36 Cr. L. J. 566 :
154 I. C. 741 : 40 L. W. 841 :
1935 M. W. N. 249 : 68 M. L. J. 348 :
7 R. M. 478 : A. I. R. 1935 Mad. 98.

—Ss. 42, 43—Search warrant, validity of—Omission to state that it is issued under S. 42.

A warrant which purports to be a warrant for search of gaming house and arrest of person found therein is not invalid merely because it does not expressly show that it is issued under S. 42, Madras City Police Act,

MADRAS CITY POLICE ACT (III OF 1888)

or because it does not state that the officer who issued it had reason to believe that a common gaming house was kept on the premises in question, and the presumption mentioned in S. 43 of the said Act can be raised even in the case of such a warrant. *The Crown Prosecutor, Madras v. Syid Kasim.*

38 Cr. L. J. 260 :
166 I. C. 665 : 1936 M. W. N. 1242 :
71 M. L. J. 863 : 9 R. M. 386 :
45 L. W. 527 : A. I. R. 1937 Mad. 179.

—Ss. 43, 46, 47—Common gaming house—Gambling—Gaming materials found on premises—Presumption.

The presence of cards, counters and so-called hundi boxes on the premises, is a strong presumption that it is used as a common gaming house, and the owner of it when he makes a profit out of it, is presumed to keep a common gaming house and the persons present on the spot are guilty of gaming, in the absence of rebutting evidence. *Desikachari v. Emperor.*

15 Cr. L. J. 408 :
23 I. C. 1008 : A. I. R. 1914 Mad. 399.

—S. 45—Common gaming house, essentials of.

Profit or gain is the cardinal constituent of the definition of a common gaming house. *In re : Rathwa Gramany.*

33 Cr. L. J. 769 :
139 I. C. 435 : 36 L. W. 208 :
1932 M. W. N. 1077 : I. R. 1932 Mad. 680 :
A. I. R. 1932 Mad. 675.

—S. 47—Forfeiture.

Forfeiture does not follow seizure as a matter of course—Before ordering forfeiture, Magistrate must be convinced that money or other articles were used or intended to be used for gaming. *In re : P. R. Subbier.*

36 Cr. L. J. 566 :
154 I. C. 741 : 40 L. W. 841 :
1935 M. W. N. 249 : 68 M. L. J. 348 :
7 R. M. 478 : A. I. R. 1935 Mad. 98.

—S. 53.

See also Penal Code, 1860, S. 21 (8).

—S. 71 (xi)—Scope of—Applicability of section to obstruction caused otherwise than by vehicles and animals—Intention, proof of, when necessary.

Clause (xi) of S. 71, Madras City Police Act, covers a case of obstructing a thoroughfare in any manner and is not limited to obstruction caused by vehicles and animals. In the case of obstruction by vehicles and animals, there is no question of intention. The act and obstruction caused by the act are sufficient. In other cases intention is necessary to be proved in addition to the obstruction. *Kuppammal v. Emperor.*

23 Cr. L. J. 175 :
65 I. C. 639 : 1921 M. W. N. 770 :
41 M. L. J. 562 : 14 L. W. 617 :
30 M. L. T. 82 : 45 Mad. 26 :
A. I. R. 1922 Mad. 142 and 349.

—S. 75—Conviction under—Conviction, if bar to prosecution under Ss. 323 and 352.

MADRAS CIVIL COURTS ACT (III OF 1873)

The conviction under S. 75, Madras City Police Act, is no bar to the trial for an offence under Ss. 323 and 352, I. P. C. *Thanammal v. Alamelu Ammal.*

41 Cr. L. J. 401 :
187 I. C. 82 : 50 L. W. 800 (1) :
1939, 2 M. L. J. 814 : 1940 M. W. N. 171 (1) :
12 R. M. 727 : A. I. R. 1940 Mad. 224.

—S. 75—Place of public resort under—What is.

The harbour premises which respectable people and other people who have business are permitted to enter are "places of public resort" within the meaning of S. 75, Madras City Police Act. *Emperor v. Govindarajulu.*

16 Cr. L. 764 :
30 I. C. 752 : 2 L. W. 937 :
A. I. R. 1916 Mad. 474 :

—S. 76—Licensee, if liable to conviction—Licence, breach of, conditions of, by servants of licensee.

Under S. 76, Madras City Police Act, a licensee under the Act is alone liable to conviction for a breach of the conditions of the licence, even though the breach was committed by his servants. Proceedings under the section cannot be had against the agent or servant of the licensee. *In re : Velayudha Mudali.*

22 Cr. L. J. 487 :
62 I. C. 183 : 11 L. W. 413 :
43 Mad. 438 : 39 M. L. J. 85 :
27 M. L. T. 211 : A. I. R. 1920 Mad. 802.

—"Ride" meaning of—S. 78, rule under—Person carried on bicycle, whether rides.

The word "ride" in the rule made under the Madras City Police Act as to riding bicycles in any street or public place, does not necessarily imply that the person riding should propel the bicycle himself. A person, therefore, who is carried on a bicycle propelled by another, rides the bicycle. *Crown Prosecutor v. A. Duraiswami.*

24 Cr. L. J. 358 :
72 I. C. 358 : 44 M. L. J. 201 :
17 L. W. 273 : 32 M. L. T. 152 :
46 Mad. 476 : A. I. R. 1923 Mad. 364.

MADRAS CIVIL COURTS ACT (III OF 1873)

—S. 3-A.

See also Legal Practitioners Act, 1879, S. 13.

—S. 8.

See also Cr. P. C., 1898, S. 195 (7),

—S. 24—Affidavit, —Admissibility—Affidavit sworn to in Munsif's Court—Affidavit sworn to before Head Clerk in absence of Nazir, admissibility of.

An affidavit sworn to in the Court of a District Munsif is a declaration which a Court of Justice is bound to receive as evidence of the facts stated in it, and it has nonetheless this character because it was sworn to before the Head Clerk of the District Munsif's Court, who was performing the Deputy Nazir's duties during his absence under the District Munsif's order in accordance with S. 24 of Act III of 1873. *In re : Kotayya Pillai.*

16 Cr. L. J. 111 :
27 I. C. 159 : A. I. R. 1915 Mad. 1069.

MADRAS CRIMINAL RULES OF PRACTICE

—R. 85.

See also Cr. P. C., 1898, S. 161.

MADRAS CRIMINAL RULES OF PRACTICE AND ORDERS, 1931

—R. 37—*Effect of.*

Rule 37 of the Madras Criminal Rules of Practice and Orders, 1931, is not in consonance with law or cannot affect a right given by a statute, namely the right of appeal from an order made under S. 476, Cr. P. C., to the Court to which that Court is subordinate. *In re : D. S. Raju Gupta.*

41 Cr. L. J. 705 :

189 I. C. 25 : 49 L. W. 330 :

1939 M. W. N. 243 : 1939, 1 M. L. J. 480 :

I. L. R. 1939 Mad. 439 : 13 R. M. 228 :

A. I. R. 1939 Mad. 472.

MADRAS CRIMINAL TRIBES ACT (VI OF 1924)

—S. 23—*Reduction of sentence—Special reasons—Second and third convictions whether must be after declaration of tribe as criminal or registration as member of criminal tribe.*

Where a member of a notified criminal tribe who has had two previous convictions subsequent to 1911, is convicted a third time, the only legal sentence which can, under S. 23, Madras Criminal Tribes Act of 1924, be passed on him is transportation for life, unless the Court is satisfied that there are special reasons for reducing the sentence. The mere fact that the offence is not of a very serious nature cannot form a special reason for reducing the sentence. Such special reasons must be something separate from the nature of the offence, such as, youth or age or illness or sex. *Mayandi Thevan v. Emperor.*

27 Cr. L. J. 1357 :

98 I. C. 477 : 51 M. L. J. 495 : 24 L. W. 543 :

1926 M. W. N. 823 : 50 Mad. 474 :

A. I. R. 1926 Mad. 1165.

—S. 23 (1) (b)—*Scope of.*

Under S. 23 (1) (b), Madras Criminal Tribes Act, it is not necessary that the second and third convictions should be after the tribe to which the accused belongs has been declared a criminal tribe or after the accused is registered a member of criminal tribe. *Mayandi Thevan v. Emperor.*

27 Cr. L. J. 1357 :

98 I. C. 477 : 51 M. L. J. 495 :

24 L. W. 543 : 1926 M. W. N. 823 :

50 Mad. 474 : A. I. R. 1926 Mad. 1165.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)

—Rules under—Cr. P. C. (Act V of 1898), S. 195—*Appeal, if lies—Proceedings of Collector according sanction for prosecution.*

The Collector of a District acting under the rules framed under the Madras District Municipalities Act, 1884, is not a 'Court'

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)

within the meaning of S. 195, Cr. P. C., and no appeal lies to the District Judge against an order passed by him under that section. *Singaravelu Mandalaiar v. Tardaraja Mandalaiar.*

10 Cr. L. J. 9 :

2 I. C. 426.

—Ootacamund Municipality By-law No. 54—*'Other building material,' meaning of—Saud, if included in the term.*

In By-law No. 54, Ootacamund Municipality, the expression "the other building material" must be *ejusdem generis* with bricks, stone and road metal in its potentially deleterious effect on the public thoroughfare. Therefore it does not include sand. *In re : Hassan Sahib.*

16 Cr. L. J. 716 :

30 I. C. 1004 : A. I. R. 1916 Mad. 1028.

—Ss. 3 (27), 169, 263—*Public street—Licence not required under S. 169 when verandah or other covering erected within the limits of adjacent property.*

A public street as defined in S. 3 (27), Madras District Municipalities Act, extends only up to the boundaries of the adjacent property. The special licence under S. 169 which is required in the case of projections 'over pynls and pavements in front of any building or land in a public street' is not required in the case of verandahs and other coverings within the limits of adjacent property. *Narasimma Chari v. Chairman, Municipal Council, Conjeevaram.*

8 Cr. L. J. 72 :

31 Mad. 181.

—Ss. 10-A, 39-A, 268 and 280—*Complaint by Secretary, withdrawal of—Municipal Council.*

It is not open to a Municipal Council to withdraw a complaint duly instituted by the Secretary of the Municipality under S. 248, District Municipalities Act. *Paramananda Nadar v. Karunakara Doss.*

15 Cr. L. J. 299 :

23 I. C. 507 : 27 M. L. J. 617 :

A. I. R. 1914 Mad. 387.

—Ss. 32 (4), 280—*Complaint by delegate, legality of—Chairman, delegation of powers of, to third person.*

Where the Chairman of a Municipal Council lawfully authorises a person under S. 32, Madras District Municipalities Act, to exercise his power including the power to lodge a complaint, that person is entitled to exercise that power so long as the authorization lasts, and he does not need express authorisation under S. 280 to institute a complaint in respect of an offence under the Act. *In re : Krishnasami Naidu.*

22 Cr. L. J. 315 :

60 I. C. 1003 : 12 L. W. 427 :

1920 M. W. N. 648.

—S. 60—*Exemption from further payment, when can be claimed—Payment of tax outside Municipal limits—Exercise of calling within Municipal limits—Liability to pay tax.*

It is only when a tax is paid to a Municipality that exemption from further payment

MADRAS DISTRICT MUNICIPALITIES ACT
(IV OF 1884)

under S. 60 of Act IV of 1884 can be claimed.
Bellary Municipal Council v. S. C. Sarkiss.

9 Cr. L. J. 91 :
4 M. L. T. 477.

———S. 89—Attachment of cart kept without licence—*Penal Code (Act XLV of 1860), S. 166—Goods placed in cart—Cart ready to receive passengers—Whether employed in conveying passengers or goods—Knowingly disobeying law—Offence.*

The attachment of a cart for being kept or used without a licence after the goods of passengers or hirers have been placed in it and just at the time when the passengers are about to get into it is illegal as an attachment while the cart is being used for the conveyance of goods or passengers under S. 89, Madras District Municipalities Act. A seizure under such circumstances is an offence under S. 166, Penal Code. A man's carriage taken to the station and waiting there for the purpose of carrying him home on his arrival is not, for the purpose of S. 89 on duty and employed in conveying passengers or goods irrespective of the question whether passengers had actually entered or were only about to enter. Nor is a hired carriage, called by a hirer, engaged, in conveying him the moment it is called. *Subraya Iyer v. Emperor.*

13 Cr. L. J. 199 :
14 I. C. 199.

———Ss. 103, 111, 147, 209, 218, 269—Toll kist, if tax—Non-payment of toll-gate kist—Prosecution, liability for.

A "toll-gate kist" is not an amount due on account of any tax within the meaning of S. 103, District Municipalities Act, but it is "money due under a contract" dealt with in S. 92, the non-payment of which is not penalized under S. 269. A prosecution for such non-payment will not, therefore, lie under S. 111 of the Act. *Mohamad Ibrahim Sahib v. Municipality of Anakapalli.*

16 Cr. L. J. 702 :
30 I. C. 750 : A. I. R. 1916 Mad. 1108.

———S. 179—External roofs.

The external roofs, verandahs, *pandals* and walls of buildings erected or renewed after the coming into operation of this Act, shall not be made of grass, leaves, mats or other such inflammable materials except with the permission of the Municipal Council: *Held*, that it is erroneous to say that S. 179 of the Act, operates only when the roofs, &c., are constructed outside the house, i. e., externally. *The Public Prosecutor v. Narayanaswami.*

7 Cr. L. J. 219 :
2 M. L. T. 499.

———Ss. 180 (1) and (5), 263—Penalty under Construction of walls for the purpose of erecting house—Construction commenced before receipt of licence—Offence.

The word 'building' in Cl. 5 of S. 180, Madras District Municipalities Act, includes 'mere walls' built for the purpose of erecting a house, and the construction of such walls without the licence of the Municipality

MADRAS DISTRICT MUNICIPALITIES ACT
(IV OF 1884)

renders the person constructing them liable to the penalty prescribed in S. 263 even though the house, to support which the walls were designed, had not been built. *Public Prosecutor v. Kalia Perumal.*

11 Cr. L. J. 574 :
8 I. C. 141.

———Ss. 187 (1) (2), 264-A—Penalty - Notice under S. 187 (1)—Procedure.

A party failing to comply with a notice issued under S. 187 (1), Madras District Municipalities Act, renders himself only liable to the penalty provided in Cl. 2 of the section and the Municipal Council is not competent to visit upon the person the penalty provided for in S. 264-A of the Act. *Esoof Sait Sahib v. Emperor.*

7 Cr. L. J. 8 :
17 M. L. J. 560 : 2 M. L. T. 520.

———S. 188 (1) (b), (5)—Application for fresh licence—Licence for boiling paddy, application for—Failure to pass order on application within 30 days of receipt, effect of.

Where, on the expiry of his licence under the Madras District Municipalities Act, to boil paddy in a particular place, a person applied for a fresh licence and no order having been passed on his application until after the expiry of the period of thirty days fixed by S. 188 (5) of the Act, he again boiled paddy after the order refusing licence was communicated to him: *Held*, that no offence was committed as the order refusing the licence not having been passed within thirty days, the place must be deemed to have been licensed for the financial year under S. 188 (5), District Municipalities Act. *In re: Maturi Venkatasubbayya.*

18 Cr. L. J. 831 :
41 I. C. 655 : 40 Mad. 589 :
A. I. R. 1918 Mad. 945.

———S. 188, Cl. (1) (1),—Issue of licence, necessity of.

Where the element of letting out on hire is involved in the use of the places indicated by the words in S. 188, Cl. (1) (1), Madras District Municipalities Act, a licence should be taken out for keeping such a place and the omission to take out a licence is an offence. *Public Prosecutor v. Mahomed Sheriff Saheb.*

20 Cr. L. J. 156 :
49 I. C. 348 : 36 M. L. J. 27 :
A. I. R. 1919 Mad. 316.

———S. 188 (1) (1)—Stable, what is.

A stable is a livery-stable within the meaning of S. 188, Cl. (1) (1), Madras District Municipalities Act, whether a single horse or more horses than one are kept there for hire. *Public Prosecutor v. Mahomed Sheriff Saheb.*

20 Cr. L. J. 156 :
49 I. C. 348 : 36 M. L. J. 27 :
A. I. R. 1919 Mad. 316.

———S. 188 (n)—Offence under, what constitutes—Not necessary to constitute offence that the cattle should have been kept for purposes of trade—No offence if cattle not habitually kept.

An offence under S. 188 (n), Madras Act

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

IV of 1881, is committed when a person keeps more than 10 head of cattle in a private place, though not for purposes of trade. It is necessary, however, that there must be regular user of the place for keeping more than 10 head of cattle; and a mere temporary user for such purpose will not constitute the offence. *Emperor v. Mayandi Konan*.

6 Cr. L. J. 128 :

I. L. R. 30 Mad. 220 : 2 M. L. T. 54 :

17 M. L. J. 371.

—Ss. 207, 217, 264-A—*Prosecution—Notice under S. 207, non-compliance with—Construction of latrines by Municipal Council or notice to party to provide movable receptacles, whether conditions precedent.*

Before prosecuting a person under S. 264-A, Madras District Municipalities Act, for failure to comply with a notice issued under S. 207, it is not necessary that the Municipal Council should have called on him to provide movable receptacles under S. 317 or should have constructed the latrines themselves under S. 264 (1). *Public Prosecutor v. Settigiri Narayana Reddi*.

19 Cr. L. J. 981 (a) :

48 I. C. 161 : 35 M. L. J. 442 : 42 Mad. 57 :

A. I. R. 1919 Mad. 848.

—S. 222—*Offence under—Allowing outflow of offensive liquid into street devoid of side drains.*

An occupier of land within a Municipal area who lets offensive liquid to flow out of the land into a public street, is guilty of an offence under S. 222, Madras District Municipalities Act, even where no side drains are provided for in the street. *Public Prosecutor v. Allawar Rama Rao*.

18 Cr. L. J. 384 :

38 I. C. 768 : A. I. R. 1918 Mad. 457.

—S. 222—*Scope of.*

It is not a condition precedent to the obligation imposed upon the occupier of a building or land by S. 222 that the street should have been provided with drains. The question of hardship arising by reason of the absence of drains will only go to mitigate the penalty. *Emperor v. Nagan Chetty*.

6 Cr. L. J. 235 :

I. L. R. 30 Mad. 221 : 17 M. L. J. 372.

—Ss. 268, 280—*Illegality of conviction—Municipal servant authorised to prosecute—Prosecution in excess of authority.*

Where a Municipal servant is specially authorised to prosecute for one offence, he cannot prefer a complaint about a totally different offence, and a conviction for such offence is illegal. *Kaliaperumal Naidu v. Emperor*.

21 Cr. L. J. 327 :

55 I. C. 599 : 11 L. W. 120 :

A. I. R. 1920 Mad. 151.

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920)

See also Cr. P. C., 1898, S. 197.

—Criminal trial—*Trial of three cases.*

Where there are three cases, those three cases should be kept distinct, evidence led

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

in each case separately and conclusions drawn on the evidence let in each particular case. However, in considering whether the revision petition should be allowed on that ground, one has to consider whether the petitioners suffered any prejudice by the three cases being clubbed together. In most cases of improper clubbing together of cases, it would undoubtedly be held that the accused had suffered prejudice by being called upon to meet three cases at the same time, but where it was only necessary to produce a few documents and to examine one witness, it could not be said that the petitioners were prejudiced in their defence by such irregular procedure. *In re : Mustafa Sahib*.

39 Cr. L. J. 935 :

177 I. C. 737 : 1938 M. W. N. 865 :

1938, 2 M. L. J. 382 :

48 L. W. 350 : 11 R. M. 373 :

A. I. R. 1938 Mad. 910.

—Ss. 3 (24), 317 (a), (c)—*Reconstruction, definition of.*

Where the reconstruction of a building is partial only, S. 3 (24), Madras District Municipalities Act, requires that the "re-erection" in order to constitute "reconstruction" should be done after more than one-half of the cubical contents of the building have been taken down or burnt down. A Magistrate, therefore, dealing with a case under S. 317 has no jurisdiction to frame a definition of his own in order to determine whether there has or has not been "reconstruction" within the meaning of the section. *In re : Valivela Venkata Sivayya*.

28 Cr. L. J. 295 :

100 I. C. 375 : 25 L. W. 475 :

38 M. L. T. 118 : A. I. R. 1927 Mad. 442.

—Ss. 52, 54, (a) (b), 56, 57—*Prosecution of Chairman—Maintainability of—Prosecution of Chairman for offences under S. 54 (a) (b)—Sanction, whether necessary—Facts alleged to constitute offence under S. 54 (a) (b), falling also under Chap. IX-A, Penal Code—Sanction, whether necessary—Chairman, whether 'Municipal Officer.'*

The Chairman of a Municipal Council cannot be prosecuted for offences under Ss. 50, 57, Madras District Municipalities Act, which relate only to offences by polling officers or others in attendance at the polling room at municipal elections. The Chairman of a Municipality is not an officer of the Municipality within the meaning of S. 52 and cannot be prosecuted for alleged offences under that section. Sanction under S. 197 (1), Cr. P. C., is not necessary in respect of a complaint against the Chairman of a Municipality under S. 54 (a) and (b), Madras District Municipalities Act, where the acts alleged against the Chairman cannot be said to have been committed by him in his capacity of public servant as such and while

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920)

acting in the discharge of his official duty.
Nunc Panakalu v. Ravula Subba Rao.

30 Cr. L. J. 191 :
113 I. C. 625 : 1928 M. W. N. 801 :
52 Mad. 695 : 57 M. L. J. 331 :
30 L. W. 624 : I. R. 1939 Mad. 161 :
A. I. R. 1928 Mad. 1158.

—S. 54 (a)—Cognizable offence.

Cognizance can be taken under the Madras District Municipalities Act of an offence made punishable by S. 54 (a) (b) under that Act, even though it is punishable also under Chap. IX-A, Penal Code, without the sanction required by S. 196, Cr. P. C. *Nunc Panakalu v. Ravula Subba Rao.*

30 Cr. L. J. 191 (b) :
113 I. C. 625 : 1928 M. W. N. 801 :
I. R. 1939 Mad. 161 : 52 Mad. 695 :
57 M. L. J. 331 : 30 L. W. 624 :
A. I. R. 1928 Mad. 1158.

—S. 54 (b) (2)—Offence under, what amounts to—Statement not materially affecting candidate or his election.

During the pendency of an election, the accused stated that the complainant, who was a candidate therein "failed in getting elected in his own place and had come to S expecting to be elected." The statement was made to the electors who were Municipal Councillors and intelligent persons and who were friends of the complainant. On a charge for an offence under S. 54 (b) (2), Madras District Municipalities Act: *Held*, that the statement could not materially affect the candidate or his election and did not amount to an offence under the section. *Sivapatha Mudaliar v. S.K. Abdul Razack.*

25 Cr. L. J. 951 :
81 I. C. 599 : 47 M. L. J. 199 :
1924 M. W. N. 490 : A. I. R. 1924 Mad. 815.

—S. 59 (c)—Deposit, purpose of.

The deposit which a complainant has to make under S. 59 (c), Madras District Municipalities Act, as a condition precedent for the filing of a valid complaint, is presumably intended as security for costs incurred by the accused and compensation, if any, payable to the latter. Where, therefore, on a complaint being dismissed, the complainant is not ordered to pay costs or compensation to the accused, the amount of the deposit should be refunded to the complainant. *Sivapatha Mudaliar v. S. K. Abdul Razack.*

25 Cr. L. J. 951 :
81 I. C. 599 : 47 M. L. J. 199 :
1924 M. W. N. 490 : A. I. R. 1924 Mad. 815.

—S. 93—Personal presence, if essential—Profession-law—Person holding appointment for certain period at certain place—Test for his liability to Profession-law.

The test for liability in the case of a person holding an appointment is not personal presence within the Municipality. Consequently, where a person was the Subordinate Judge of a certain place from April 1, 1934, to June 18, 1934, his absence from the place for vacation from March 29, 1934, to June 4, 1934, does not make any difference. *M. C. Krishnan*

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920)

Nambiar v. Municipal Prosecutor, Calicut Municipality.

39 Cr. L. J. 905 :
177 I. C. 560 : 47 L. W. 771 :
1938 M. W. N. 536 : 1938, 2 M. L. J. 31 :
11 R. M. 345 : A. I. R. 1938 Mad. 709.

—Ss. 146, 149, 313, 347—Second notice, issue of—Notice, failure to comply with—Failure to comply with second notice—Prosecution within three months after second notice but more than three months after first notice, whether permissible.

Where the Chairman of a Municipality issues a notice under Ss. 146, 149 and 313, Madras District Municipalities Act, but the notice is not complied with, there is nothing in the Act that prohibits the issue of a second notice, and if the second notice is not complied with, a prosecution can properly be instituted within three months from the date of such notice under S. 347 of the Act, although more than three months have elapsed from the date of the first notice. *In re : Ramchandra Chetty.*

27 Cr. L. J. 948 :
96 I. C. 500 : 50 M. L. J. 557 :
49 Mad. 880 : A. I. R. 1926 Mad. 783.

—Ss. 174 (a), 313 (1)—Offence under—Owner of lorry registered for private trade purposes plying it for hire on public street without requisite licence—Whether guilty under S. 174 (a) read with S. 313 (1).

S. 174 (a), Madras District Municipalities Act, provides that no person shall use any motor lorry, on any public street in any Municipality except on a licence obtained from the executive authority, and it is immaterial where the act of hiring takes place. It is the use of the lorry that is relevant. Where, therefore, an owner of a lorry registered for private trade purposes, plies it for hire on public streets in the Municipality without requisite licence for that purpose, he is guilty of an offence under S. 174 (a) read with S. 313 (a). *In re : A. T. Kava.*

40 Cr. L. J. 840 :
183 I. C. 784 : 1939 M. W. N. 338 :
49 L. W. 494 : 1939, 1 M. L. J. 700 :
12 R. M. 371 (2) : A. I. R. 1939 Mad. 524.

—S. 177—Applicability of—Whether restricts action to present owner—Person to whom notice under S. 177 is sent, parting with ownership—Conviction of, when proper.

Far from S. 177, Madras District Municipalities Act, restricting the action to the present owner, it clearly intends to have application only against the person who entered into the contract under S. 176. If by reason of parting with the ownership an accused person to whom a notice has been sent under S. 177 is unable to comply with the order, then on general principles, a Criminal Court would doubtless refuse to convict, if it is shown that the person has been prevented in any way from complying with the terms laid down by the Municipality. *Vaiyapuri Chelliar v. Municipal Commissioner, Salem.*

40 Cr. L. J. 26 :
178 I. C. 266 : 1938 M. W. N. 911 :
1938, 2 M. L. J. 579 : 48 L. W. 657 :
11 R. M. 437 : A. I. R. 1938 Mad. 916.

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

—S. 178—Conviction under—*For conviction under S. 178, persons must be owners of lands abutting streets.*

S. 178, Madras District Municipalities Act, is primarily intended for the proper maintenance of the private streets; and the Municipality is given power, in case the streets are not in a satisfactory condition, to issue notices requiring the owners or occupiers of buildings or lands fronting or abutting the streets to carry out the necessary repairs. The persons who are liable under this section are the owners or occupiers of the houses or lands abutting the streets and not the owners of the streets themselves. It would, therefore, seem necessary in order to sustain a conviction under this section that the accused are the owners or occupiers of the lands abutting the roads. *In re : Mustafa Sahib.*

39 Cr. L. J. 935 :
177 I. C. 737 : 1938 M. W. N. 865 :
1938, 2 M. L. J. 382 : 48 L. W. 350 :
11 R. M. 373 : A. I. R. 1938 Mad. 910.

—S. 180—Encroachment.

An encroachment upon land by the side of a street, even though such land is uncovered by any pavement or other structure, amounts to an encroachment on the street within the meaning of S. 180, Madras District Municipalities Act. *Jagannadh Naidu v. Rama Rao.*

26 Cr. L. J. 550 :
85 I. C. 646 : 20 L. W. 834 :
47 M. L. J. 917 : A. I. R. 1925 Mad. 186.

—S. 182—Scope of—*Acquisition of private property—Encroachment in public street—Acquisition of prescriptive title—Removal of encroachment—Compensation.*

The object of S. 182, Madras District Municipalities Act, is not to empower the Municipality to compulsorily acquire private property but its scope is limited to authorising the Municipal body in public interest to cause obstructions and encroachments to be removed. Even in the case where a person succeeds in proving that an encroachment made by him in a public street has existed for a period sufficient under the Law of Limitation to give him a prescriptive title thereto, he is all the same bound to comply with an order of the Municipality to remove the encroachment, but in such an event, he will be entitled to a reasonable compensation from the Municipal Council. *Public Prosecutor v. Varadarajulu Naidu.*

25 Cr. L. J. 1070 :
81 I. C. 894 : 47 M. L. J. 470 :
20 L. W. 573 : 47 Mad. 716 :
1924 M. W. N. 880 : A. I. R. 1925 Mad. 64.

—S. 182 (1)—Notice for removal of encroachment—*Whether can be given both to owner and occupier.*

Under S. 182, Madras District Municipalities Act, a notice for removal of encroachment or obstruction may be served both on the owner as well as the occupier. There is nothing in the said section to warrant the view that it

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

could not be given only to one or the other and not to both. *Public Prosecutor v. Pandaram.*

31 Cr. L. J. 1196 :
127 I. C. 297 : 58 M. L. J. 622 :
31 L. W. 754 : 1930 M. W. N. 536 :
A. I. R. 1930 Mad. 510.

—S. 188 (5)—Scope of.

S. 188 (5), Madras District Municipalities Act, should not be read subject to the reference to the refusal of the licence in S. 189 of the Act. *In re : Maturi Venkatasubbayya.*

18 Cr. L. J. 831 :
41 I. C. 655 : 40 Mad. 589 :
A. I. R. 1918 Mad. 945.

—Ss. 195, 321—Permission—*Licence to put up structure of inflammable material—Renewal of licence every year, whether necessary.*

Under the Madras District Municipalities Act, when a person wants to put up a roof, verandah or pandal or wall of a building, of grass, leaves or mats, or other inflammable materials within a Municipality, he has to obtain the permission of the Chairman under S. 195 of the Act and if he does not obtain it, he is liable to penalty under S. 318. But when he has once obtained permission to put up a structure of the kind mentioned in S. 195, he is not bound to obtain a licence from year to year for its continuance. S. 321 of the Act has no application to a licence granted under S. 195 of the Act. *Chairman, Municipal Council v. D. R. Nageswara Ayyar.*

29 Cr. L. J. 531 :
109 I. C. 361 : 54 M. L. J. 642 :
28 L. W. 144 : 51 Mad. 870 :
A. I. R. 1928 Mad. 846.

—S. 199—Construction without permission—*Offence.*

Owner applied for permission to erect latrine in eastern corner of the compound but permission was granted to erect in western corner. He applied again for permission to erect in eastern corner, but as no reply was received, he began construction there: *Held*, he was guilty of constructing a building without permission and that case did not fall under Ss. 201 and 202. *The Chairman, Municipal Council, Mangalore v. V. S. Vasudeva Kamath.*

32 Cr. L. J. 432 :
129 I. C. 635 : 59 M. L. J. 479 :
32 L. W. 754 : I. R. 1931 Mad. 299 :
A. I. R. 1931 Mad. 228.

—Ss. 219 (1), 313 (c)—Notice—*Chairman's notice for removal of dangerous tree disobeyed—Offender prosecuted—Duty of Criminal Court.*

If the Chairman of a Municipality prosecutes a person for non-compliance with a notice for the removal of a dangerous tree, the Criminal Court has only to see whether the notice was properly served and was disobeyed. It has no business to go into the question whether the Chairman was right in thinking the tree to be dangerous. *Chairman, Municipal Council, Chicacole v. Gajireddi Seetharamayya.*

26 Cr. L. J. 1496 :
90 I. C. 152 : 21 L. W. 280 :
A. I. R. 1925 Mad. 584.

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

—S. 249—Licence, necessity of—More than ten head of cattle kept within three miles of Municipal limits but not for industrial purpose.

The terms of S. 249, Madras District Municipalities Act, are general and the heading: "Industries and Factories" can in no way control the plain terms of the section. A person keeping more than ten head of cattle in a place within three miles of the Municipal limit, must take out a licence although the cattle are not kept for an industrial purpose. *Public Prosecutor v. Thalli Mennakshi*.

40 Cr. L. J. 762 :
183 I. C. 282 : 49 L. W. 150 :
1939 M. W. N. 125 : 12 R. M. 254 (1) :
A. I. R. 1939 Mad. 470.

—S. 249—Scope—"Likely to be dangerous to human life, health or property," interpretation of—Machinery—Presumption of danger.

The expression "which is likely to be dangerous to human life or health or property" occurring in Sch. V, Cl. (g), Madras District Municipalities Act, must be read as qualifying not only the last clause "any industrial purpose" but has to be read with each one of the preceding clauses. Ordinarily, any large machinery is dangerous to human life, but this cannot be presumed with reference to any particular machinery, such as a rice mill for converting paddy into raw rice. *In re: Ramachandra Rao*.

25 Cr. L. J. 3 :
75 I. C. 691 : 45 M. L. J. 555 :
1923 M. W. N. 767 : 18 L. W. 618 :
33 M. L. T. 234 : A. I. R. 1924 Mad. 375.

—S. 249—Scope of.

S. 249, Madras District Municipalities Act, which confers the power on a Municipality of requiring licences for uses of certain kinds of machinery is not rendered inoperative by S. 193, Madras Local Boards Act, which confers a similar power on District Boards in some cases for the same area since both the rights vesting in the two distinct bodies can consistently exist together. *The Public Prosecutor v. Ranganakalu Chetty*.

28 Cr. L. J. 491 :
101 I. C. 667 : 52 M. L. J. 653 :
25 L. W. 768 : 38 M. L. T. 373 :
50 Mad. 845 : A. I. R. 1927 Mad. 602.

—S. 249—Trade licence—Absence of valid notification, effect of—Application for renewal of licence beyond specified period of 30 days—Refusal, validity of.

The liability on the part of persons who carry on certain trades within the limits of a Municipality to take out licence therefor arises only where there is a valid Notification under S. 249 (1), Madras District Municipalities Act. Under S. 249 of the said Act for the purpose of carrying on certain specified kinds of businesses, with regard to opening new places, the section requires that application should be made 30 days before they are opened. But when it is a question of renewal of licence, there is no bar to the issue of a licence by reason of the applications not having been made not less than 30 days before the end of the year. The provisions of the Municipal Act should be understood and

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

worked in such a way as to avoid friction and without causing hardship to the public. *Municipal Chairman, Chidambaram v. Subramania Iyer*.

29 Cr. L. J. 994 :
112 I. C. 210 : 55 M. L. J. 495 :
28 L. W. 501 : 1928 M. W. N. 784 :
A. I. R. 1928 Mad. 1157.

—Ss. 249, 250 — 'Industries' and 'Factories'—Distinction.

The Madras District Municipalities Act clearly intends to draw a distinction between what is described as "industries" and "factories". The former are dealt with in S. 249 and the latter in S. 250. *Madura Municipality v. Muthubalu Chetty*.

27 Cr. L. J. 635 :
94 I. C. 411 : 50 M. L. J. 384 :
1925 M. W. N. 651 : A. I. R. 1926 Mad. 576.

—Ss. 249, 250 —Object and scope of—Permission under S. 250 for erecting machinery, whether dispenses with annual licence under S. 249.

The object and scope of Ss. 249 and 250, Madras District Municipalities Act, 1920, are entirely different. The permission to install machinery under S. 250 does not absolve the persons concerned from taking out the annual licence under S. 249. *In re: Muthubalu Chetty*.

27 Cr. L. J. 1316 :
99 I. C. 388 : 51 M. L. J. 490 :
A. I. R. 1926 Mad. 1131.

—Ss. 249, 250, (1) (a)—Scope of.

The word 'place' in S. 249 of the Act, must be taken to include not only a factory, workshop, or workplace as mentioned in S. 250, Cl. 1 (a) but any other place used for the purposes mentioned in Sch. V, whereas S. 250 clearly applies only to factories, work-hops, or places in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or places in which any machinery or manufacturing plant driven by steam, water or other power is installed. *Muthubalu Chetty v. Chairman, Madura Municipality*. (F. B.)

28 Cr. L. J. 974 :
105 I. C. 686 : 53 M. L. J. 633 :
1927 M. W. N. 835 : 39 M. L. T. 548 :
27 L. W. 239 : 51 Mad. 122 :
A. I. R. 1927 Mad. 961.

—Ss. 249, 250, 338—Annual licence.—Factory, construction of, permitted by Council—Annual licence, failure to take out.

Where permission has been granted by a Municipal Council under S. 250, Madras District Municipalities Act, for the construction and establishment of a factory to work a rice hulling machine, annual licence is not necessary to be taken from the Chairman under S. 249, and where a person uses a 22 horse-power gas engine in the factory without taking such licence, he is not liable to be prosecuted under S. 338 of the Act. *Madura Municipality v. Muthubalu Chetty*.

27 Cr. L. J. 635 :
94 I. C. 411 : 50 M. L. J. 384 :
1925 M. W. N. 651 : A. I. R. 1926 Mad. 576.

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

—Ss. 249, 321 (5), 338—*Cancellation of licence, legality of—Licence to run coffee-hotel—Cancellation for non payment of water tax.*

A licensee which has been granted by the Chairman of a Municipal Council under S. 249, Madras District Municipalities Act, cannot be cancelled under S. 321 (5) of the Act for any reason other than for a violation of any of the conditions or the terms of the licence. Accordingly, a licence to run a coffee-hotel cannot be cancelled for non-payment of water tax due to the Municipality. An improper or illegal cancellation of a licence by the Chairman does not deprive the licensee of the licence which he obtained properly and the terms of which he has not in any way violated. *Chairman, Municipal Council, Chidabaram v. Tirunarayana Iyengar.*

29 Cr. L. J. 710 :
110 I. C. 454 : 1928 M. W. N. 379 :
28 L. W. 218 : 51 Mad. 876 :
55 M. L. J. 566 : A. I. R. 1928 Mad. 847.

—Ss. 249, 338—*Annual licence, necessity of—Permission to establish factory under S. 250, whether obviates necessity to take out annual licence under S. 249.*

The fact that permission to construct or establish a factory or install in any premises any machinery, etc., has been obtained under S. 250, Madras District Municipalities Act, does not obviate the necessity to take out the annual licence required by S. 249. The permission given under S. 250 is given solely for the construction, establishment or installation. S. 250 of the Act does not deal with the user of such places but only with their inception. When the owner wishes to use them, and they are such as come within Sch. V, Cl. (g), S. 249 becomes applicable and the owner must take out an annual licence from the Chairman of the Council. *Muthu Baluchettiar v. Chairman, Madura Municipality.* (F. B.) 28 Cr. L. J. 974 :
105 I. C. 686 : 53 M. L. J. 633 :
1927 M. W. N. 835 : 39 M. L. T. 548 :
27 L. W. 239 : 51 Mad. 122 :
A. I. R. 1927 Mad. 961.

—Ss. 249, 338, Sch. V (c)—*Licence, necessity of—Commission agent for sale of grain.*

A commission agent who sells other people's grain wholesale, not as a mere carrier or auctioneer, but being treated as the actual seller of the goods, is a person who comes within Cl. (c) of Sch. V, Madras District Municipalities Act, and has to obtain a licence therefor under S. 249 of the Act, and in default, is liable to punishment under S. 338 of the Act. *Public Prosecutor v. Kalai Perumal Naicker.*

27 Cr. L. J. 477 :
93 I. C. 701 : 23 L. W. 642 :
49 Mad. 432 : 50 M. L. J. 654 :
A. I. R. 1926 Mad. 722.

—Ss. 249, 365, Sch. V—*'Wholesale trade'—Sale of grain wholesale without licence—Notification to take licence under new Act not yet in force issued by Council constituted under old Act, validity of—Conviction for infringement, legality of.*

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

The sale by a person of bags of grain from one to six at a time without opening them, constitutes a 'wholesale' trade within the meaning of Schedule V to the Madras District Municipalities Act (V of 1920). A Notification by a Municipal Council constituted under the old District Municipalities Act (Mad. IV of 1884) directing dealers in wholesale grain to take out a licence under S. 249 of the new Act (V of 1920) before that Act actually comes into force is *ultra vires* and void, as the notification being neither a rule, nor a Bye-law nor a Regulation cannot be validated under the proviso to S. 365 of that Act. *Sesha Prabhu v. Emperor.*

23 Cr. L. J. 285 :
66 I. C. 429 : 1922 M. W. N. 79 :
42 M. L. J. 149 : 31 M. L. T. 314 :
A. I. R. 1921 Mad. 713.

—S. 249, Sch. V, Cl. (g)—*'Machinery', meaning of—Collection of handlooms, whether necessary.*

The "machinery" contemplated by Sch. V, Cl. (g) of the Madras District Municipalities Act, is machinery worked by power, such as steam, water, or electrical power, and the word must be confined to such forms of machinery as may reasonably be held to be in the same category as combustibles and unwholesome or dangerous trades. Machinery worked by hand, such as handlooms or sewing machines, is excluded from the scope of S. 249 of the Act. A collection of muggoms is not "machinery" within the meaning of Sch. V, Cl. (g) of the Act and no licence is, therefore, required to be taken under S. 249 of the Act for using the same. *Alampath Krishnan v. Municipal Prosecutor.*

27 Cr. L. J. 361 :
92 I. C. 873 : 23 L. W. 413 :
1926 M. W. N. 463 : A. I. R. 1926 Mad. 430.

—S. 249, Sch. V (g)—*Machinery likely to be dangerous to human life, meaning of.*

Machinery likely to be dangerous to human life within the terms of Sch. V (g), Madras District Municipalities Act, is not confined to machinery dangerous to the outside public. *The Public Prosecutor v. Ranganakalu Chetty.*

28 Cr. L. J. 491 :
101 I. C. 667 : 52 M. L. J. 653 :
25 L. W. 768 : 38 M. L. T. 373 :
50 Mad. 845 : A. I. R. 1927 Mad. 602.

—S. 250—*Applicability of—Old machinery installed in new room—Office.*

S. 250, Madras District Municipalities Act, only applies when a person intends for the first time to construct or establish any factory, workshop, etc., in which it is proposed to employ steam power, water power or other mechanical or electric power. It is not applicable to a case where the machinery has not been interfered with but only the shed in which the machinery was kept has been altered by changing the original room into a new room of brick and mortar. *Garine Satyanarayana v. Emperor.*

24 Cr. L. J. 453 :
72 I. C. 613 : 17 L. W. 249 :
A. I. R. 1923 Mad. 375.

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920)

—S. 270-E—*Cart stand, meaning of—Petitioner's buses taken to shed after journey—Passengers alighting and new passengers getting in for return journey.*

Where the findings are that the petitioner's buses are taken to the shed on arrival after the journey, that the passengers alight at the shed and the new passengers for the return journey take their seats in the buses there, that the buses do actually "stand" in the shed meaning not merely that they stop there for a shorter period or longer time but that they "stand" for the purposes of their owner's business in the sense in which the word in the expressions "cab stand," "taxi stand" and the like is used, the shed is a "cart stand" within the meaning of S. 270-E, Madras District Municipalities Act. *In re : M. S. Ponnuswami Iyer.*

39 Cr. L. J. 719 (b) :
176 I. C. 185 : 1938, 1 M. L. J. 485 :
47 L. W. 433 : 11 R. M. 44 :
1938 M. W. N. 351 :
A. I. R. 1938 Mad. 535.

—S. 300—Illegality of conviction.

Conviction for continuing to neglect to produce the child under S. 11 (2) of the rules framed under S. 300, Madras District Municipalities Act, is not illegal. *K. V. Subramania Iyer v. Emperor.*

32 Cr. L. J. 662 :
131 I. C. 156 : 1930 M. W. N. 907 :
33 L. W. 133 : 60 M. L. J. 299 :
I. R. 1931 Mad. 492 :
A. I. R. 1931 Mad. 181.

—S. 300—Vaccination Rules, r. 11 (2) — Illegality of conviction.

Non-production of child for vaccination—Conviction—Non-compliance of fresh notice—Second conviction: *Held*, that the conviction of the accused for the second time on the same facts was illegal. *K. V. Subramania Iyer v. Emperor.*

32 Cr. L. J. 662 :
131 I. C. 156 : 33 L. W. 133 :
1930 M. W. N. 907 : 60 M. L. J. 299 :
I. R. 1931 Mad. 492 :
A. I. R. 1931 Mad. 181.

—S. 300—R. 11 (1)—'Continuing breach', what is.

Once a person has been convicted for neglecting to take his child to be vaccinated under r. 11 (1) (a) of the Vaccination Rules, his persistence in such neglect is punishable not as "neglect" under that rule, but as "continuing breach" under r. 11 (1). *K. V. Subramania Iyer v. Emperor.*

32 Cr. L. J. 662 :
131 I. C. 156 : 1930 M. W. N. 907 :
33 L. W. 133 : 60 M. L. J. 299 :
I. R. 1931 Mad. 492 :
A. I. R. 1931 Mad. 181.

—S. 306—Bye-law No. 1—Scope of.

Bye-law No. 1, framed under S. 306, Madras District Municipalities Act, is badly drafted. Use by a person of premises not constructed as mentioned in Bye-law No. 1, for hotel, etc.,

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920)

is not punishable. *Sanitary Inspector, Municipal Council, Dindigul v. Rajamani Ayyar.*

34 Cr. L. J. 1158 (2) :
146 I. C. 77 (1) : 6 R. M. 214 (1) :
A. I. R. 1933 Mad. 416.

—S. 317 (c)—Offence under, nature of.

The offence defined in S. 317 (c), Madras District Municipalities Act, is of quite a different character from that defined in Cl. (a) of the section, inasmuch as the essence of an offence under Cl. (c) is that after reconstruction has been commenced, an order is passed to prohibit its carrying on or completion except upon certain terms and that that order is disobeyed. Therefore, where a person is charged with an offence under S. 317 (a) of the Act and is convicted of it, he cannot, in appeal, be convicted of an offence under Cl. (c) of the section. *In re : Valivela Venkata Sivayya.*

28 Cr. L. J. 295 :
100 I. C. 375 : 25 L. W. 475 :
38 M. L. T. 118 : A. I. R. 1927 Mad. 442.

—S. 321.

See also Madras District Municipalities Act, 1920, S. 195.

—S. 338 — Prosecution for offence under.

On a prosecution for an offence under S. 338 of the Madras District Municipalities Act for using a rice mill without the licence prescribed by the rules under the Act, it is not within the province of a Criminal Court to determine whether such rules have been validly framed; the matter should be left for determination in a Civil Court. *Muthubalu Chettiar v. Chairman, Madura Municipality.* (F. B.)

28 Cr. L. J. 974 :
105 I. C. 686 : 53 M. L. J. 633 :
1927 M. W. N. 835 :
39 M. L. T. 548 : 27 L. W. 239 :
51 Mad. 122 : A. I. R. 1927 Mad. 961.

—S. 338—Prosecution under.

A prosecution under S. 338, Madras District Municipalities Act, being a criminal one in which a person is sought to be convicted, in order to sustain a conviction thereunder, it must be shown that the accused violated a legal order which a public servant or a statutory body was authorised under the law to pass. Where an act is *ultra vires* of a statutory body whether it be of the Chairman or of the whole Council, the Court, which is asked to convict a person for the violation of the statutory body, is not prevented from considering the legality of the order although where the order is within the powers of the Chairman or the Council or sanctioned by the rules framed under the Act, it is not open to the Magistrate or the Court to go into the necessity, expediency or the reasonableness of the order. *Chairman, Municipal Council, Chidambaram v. Tirunarayana Iyyengar.*

29 Cr. L. J. 710 :
110 I. C. 454 : 1928 M. W. N. 379 :
28 L. W. 218 : 51 Mad. 876 :
55 M. L. J. 566 : A. I. R. 1928 Mad. 847.

MADRAS DISTRICT MUNICIPALITIES ACT
(V OF 1920)

—S. 339.

See also Madras District Municipalities Act, 1920, S. 177.

—S. 339—*Conviction under.*

For a conviction under S. 339 of the Act, it would not be necessary to prove that the accused had any ownership in the land abutting the road. The owners of the streets are bound to metal the road and to carry out the various stipulations contained in their agreement with the Municipality, and upon failure to do that after receiving notice, they would be liable under S. 339. *In re : Mustafa Sahib.*

39 Cr. L. J. 935 :

177 I. C. 737 : 11 R. M. 373 :

1938 M. W. N. 865 :

1938, 2 M. L. J. 382 : 48 L. W. 350 :

A. I. R. 1938 Mad. 910.

—S. 347—*Limitation for prosecution.*

The proviso to S. 347 of the Madras District Municipalities Act does not deal with a case under S. 362 and a prosecution in respect of an act falling under the latter section must, therefore, be instituted within the period of three months prescribed by S. 347. *Jagannadh Naidu v. Rama Rao.*

26 Cr. L. J. 550 :

85 I. C. 646 : 20 L. W. 834 :

47 M. L. J. 917 : A. I. R. 1925 Mad. 186.

—S. 362—*Scope of.*

S. 362, Madras District Municipalities Act, deals with the removal of earth, sand or other materials or depositing such materials or making encroachment by depositing such materials on any land, river, estuary, canal, back-water or water-course. It has nothing to do with encroachment on streets, *Jagannadh Naidu v. Rama Rao.*

26 Cr. L. J. 550 :

85 I. C. 646 : 20 L. W. 834 :

47 M. L. J. 917 : A. I. R. 1925 Mad. 186.

—Sch. IV, Appendix A—*Distress warrant—With facsimile of Chairman, whether legal—Penal Code, S. 33—Removal of house front door, by distrainer, resistance to, whether constitutes offence.*

Except where the Chairman is illiterate, a distress warrant by a Chairman to be valid under Appendix A, Sch. IV, Madras District Municipalities Act, must bear his signature, being taken in its accepted sense of sign manual and not merely a facsimile stamp of his signature. A distrainer in pursuance of a distress warrant is not entitled to remove the front door of a house and resistance to such an act is not illegal and does not constitute an offence under S. 332, Penal Code. *In re : D. Madar Sahib.*

31 Cr. L. J. 639 :

124 I. C. 139 : 31 L. W. 205 :

58 M. L. J. 193 : 53 Mad. 508 :

1930 M. W. N. 170 :

A. I. R. 1930 Mad. 430.

—Sch. IV, Cl. 2, rr. 28, 30—*Prosecution for non-payment of profession-tax—Duty of prosecution to prove affirmatively that accused was bound to pay the tax—'Final', meaning of.*

MADRAS DISTRICT POLICE ACT (XXIV OF 1859)

The provision contained in r. 28 of Sch. IV of the Madras District Municipalities Act that where an assessment has not been objected to, or on objection, the assessment has been confirmed, it shall be final, does not mean that the person upon whom the assessment has been made cannot impeach the legality or validity of the assessment in Civil or Criminal Court, and where a person is prosecuted under r. 30, Cl. 2, of Sch. IV, for non-payment of profession-tax, it is open to him to plead that the tax was not leviable and it is incumbent upon the prosecution to establish affirmatively that the tax was payable and that the accused did not pay. *T. S. Ramasaway Ayyangar v. The Sivakasi Municipality.*

38 Cr. L. J. 464 :

167 I. C. 854 : 45 L. W. 236 :

1937, 1 M. L. J. 274 : 9 R. M. 487 :

1936 M. W. N. 1337 :

A. I. R. 1937 Mad. 291.

—Sch. V, Cl. (q)—*'Industrial purpose', what is.*

The conversion of paddy into rice is an industrial purpose within the meaning of Cl. (q) Sch. V in Madras Act V of 1920. *In re : Ramachandra Rao.*

25 Cr. L. J. 3 :

75 I. C. 691 : 45 M. L. J. 555 :

1923 M. W. N. 767 :

18 L. W. 618 : 33 M. L. T. 234 :

A. I. R. 1924 Mad. 375.

—Sch. V (q)—*Machinery under, what is.*

The machinery referred to in Sch. V of the Act is machinery of a kind that is propelled by means other than those described in S. 250 which contemplates some sort of mechanical motive power and must be such as is likely to be dangerous to human life, health or property, the object of the clause being to bring under control the storing, manufacturing, and using of things which are dangerous to human life, health or property. The last clause in Sch. V, Cl. (q) namely, "which is likely to be dangerous to human life or health or property" governs that part of Cl. (q) which begins with the words "using for any industrial purposes" and not the whole of Cl. (q). *Madura Municipality v. Muthubalu Chetty.*

27 Cr. L. J. 635 :

94 I. C. 411 : 50 M. L. J. 384 :

1925 M. W. N. 651 :

A. I. R. 1926 Mad. 576.

MADRAS DISTRICT POLICE ACT
(XXIV OF 1859)—S. 44—*Offence under—Police constable not returning to duty after expiry of leave, guilty of offence under.*

A police constable, who having obtained casual leave, does not return to duty on the expiry of such leave and stays away without obtaining fresh leave, is guilty under S. 44, of Act XXIV of 1859 of the offence of 'ceasing to perform the duties of his

MADRAS DISTRICT POLICE ACT (XXIV OF 1859)

office without leave.' *Emperor v. Ramasawmy Raju*. 3 Cr. L. J. 463 : I. L. R. 29 Mad. 192.

—S. 45—Gratuity, what it—Amount collected for feeding poor in Mohurram is fee or gratuity.

An amount collected for feeding the poor during the *Mohurram* festival is a fee or gratuity, within the meaning of S. 45. *Madras District Police Act. In re : Abdul Sattar Sahib*. 40 Cr. L. J. 759 (a) : 183 I. C. 257 : 49 L. W. 475 : 1939 M. W. N. 339 : 12 R. M. 251 (2) : A. I. R. 1939 Mad. 484.

—S. 45—Illegality of conviction—Application for certified copies of depositions for cross-examination—Copies not granted—Adjournment, refusal of—Grave prejudice.

An accused, who had applied for copies of the depositions of prosecution witnesses to instruct a Vakil to cross-examine them, did not get the copies in spite of reminders. He applied for the adjournment of the case on the day of hearing but the adjournment was refused and he was convicted: *Held*, that the adjournment had been improperly refused and that the accused had, in consequence, been gravely prejudiced thereby and had no fair chance of defending himself and that the conviction could not, therefore, be supported. *In re : Murugesu Naidu*. 16 Cr. L. J. 334 : 28 I. C. 670 : 2 L. W. 348 : 17 M. L. T. 260 : 1915 M. W. N. 254 : A. I. R. 1916 Mad. 142.

—S. 47—Conviction under S. 47—Intention of accused in making false charge, that criminal proceedings against Police Officer should be started, if necessary.

For a conviction under S. 47, Madras District Police Act, it is enough if the alleged charge against a Police Officer is found to be false. It is not necessary that the intention of the accused in making the false complaint against the Police Officer should be that criminal proceedings against the officer should have been instituted. *In re : Kotha Achayya Setti*. 39 Cr. L. J. 135 : 172 I. C. 396 : 46 L. W. 319 : 1937 M. W. N. 865 : 1937, 2 M. L. J. 435 : 10 R. M. 454 : A. I. R. 1937 Mad. 808.

—S. 47—Scope of—Whether same as S. 211, Penal Code (Act XLV of 1860).

Except that the word 'charge' appears both in S. 47, Madras District Police Act, and in S. 211, Penal Code, there is no similarity between the two sections at all. S. 211 provides for two offences, both of which are equally punishable. One is the actual institution of criminal proceedings with a certain intent and the other is the false charge against a person of having committed an offence knowing that there is no just or lawful ground for such a charge. And further the reference to the specific allegation that the person charged had committed an offence is an indication that

MADRAS ESTATES LAND ACT (I OF 1908)

the charge must be with the intention of bringing him to trial in a criminal proceeding. *In re : Kotha Achayya Setti*. 39 Cr. L. J. 135 : 172 I. C. 396 : 46 L. W. 319 : 1937 M. W. N. 865 : 1937, 2 M. L. J. 435 : 10 R. M. 454 : A. I. R. 1937 Mad. 808.

—S. 53—Object and scope of.

The object of S. 53, Madras District Police Act, XXIV of 1859, is to impose a bar of limitation against actions and prosecutions against officers for acts done or purporting to be done in pursuance of their official powers, and to impose further restrictions on such proceedings in respect of notice, tender and costs. The prosecution of a Police constable for receiving an unauthorised fee or recompense is not barred by limitation owing to the fact that the offence complained of was committed more than three months before the prosecution was launched. The words "under the provisions of this Act or under the general Police powers," occurring in S. 53 apply to the phrase "anything done or intended to be done" occurring in the same section and do not qualify "actions or prosecutions against any person." *In re : Murugesu Naidu*. 16 Cr. L. J. 334 : 29 I. C. 670 : 2 L. W. 348 : 17 M. L. T. 260 : 1915 M. W. N. 254 : A. I. R. 1916 Mad. 142.

MADRAS ELEMENTARY EDUCATION ACT (VIII OF 1920)

—Ss. 34, 36—Liability—Levy of education tax under head of profession-tax—Liability of assessee for education tax, when he has paid profession-tax to another Municipality not levying education tax.

Where the education tax levied under the head of profession-tax has been assessed by one Municipal Council, the assessee cannot escape liability by paying the profession-tax to another Municipality in which education tax is not levied. He is entitled only to credit for the amount paid to the other Municipal Council. *Krishnan Nambiar v. Municipal Prosecutor, Calicut Municipality*. 39 Cr. L. J. 905 : 177 I. C. 560 : 47 L. W. 771 : 1938 M. W. N. 536 : 1938, 2 M. L. J. 31 : 11 R. M. 345 : A. I. R. 1938 Mad. 709.

—Ss. 34, 36—Liability—Levy of education tax under head of profession-tax—Liability of assessee for education tax, when he has paid profession-tax to another Municipality not levying education tax.

MADRAS ESTATES LAND ACT (I OF 1908)

—Ss. 73, 212—Scope of—Penal provisions not exclusive—Penal Code (Act XLV of 1860), S. 424.

The penal provisions of the Estates Land Act I of 1908 are in addition to, and not in substitution for, those contained in the Penal Code. Where, therefore, an act is an offence under the Penal Code, but not punishable under the Estates Land Act, the accused can be tried for it. *In re : Sivanupandia Thevan*. 15 Cr. L. J. 295 (a) : 23 I. C. 503 : A. I. R. 1914 Mad. 398.

MADRAS ESTATES LAND ACT (I OF 1908)

—S. 212—Applicability of—Landlord and tenant—Decree for ejectment prior to Act—Tenant in possession without consent, whether can be convicted under S. 212.

Where a landlord had obtained a decree for ejectment against the *ryot* prior to the coming into force of the Madras Estates Land Act, the tenant cannot be prosecuted and convicted under S. 212, Madras Estates Land Act, for being in possession of the land without the landlord's consent. The section would apply if the decree could be treated as one passed under S. 163 of the Act. *Prati Appala Raju v. Mutharaju Surpa Raju*.

15 Cr. L. J. 620 :
25 I. C. 628 : 1914 M. W. N. 396 :
1 L. W. 338 : 27 M. L. J. 676 :
A. I. R. 1914 Mad. 504.

—S. 212 (1) (b)—Illegality and agreement.

Unregistered rental agreement executed by non-occupancy holders in favour of *inamdar*—Distrainment by *inamdar* made under S. 212 (1) is illegal. *Mudila Kuramayya v. Surn Satyanarayana*.

33 Cr. L. J. 704 (1) :
138 I. C. 877 : 35 L. W. 849 :
I. R. 1932 Mad. 613 : A. I. R. 1932 Mad. 700.

—S. 212 (b)—'Produce', meaning of—Forcible rescue of distrained cattle—Offence—Remedy.

The word "produce" in S. 212 (b), Madras Estates Land Act means "produce of the land or trees in the defaulter's holding" dealt with in S. 77 (ii) of the Act. A person, therefore, who forcibly rescues distrained cattle does not commit an offence under S. 212 (b) of the Act. The remedy of the distrainer in such a case is to apply before the Collector to get back the distrained property or its value. *Pandalapalli Narayana Reddi v. Dyvadrenachari*.

26 Cr. L. J. 877 :
86 I. C. 813 : 48 M. L. J. 215 : 21 L. W. 580 :
48 Mad. 505 : A. I. R. 1925 Mad. 578.

—S. 212 (b)—Resisting a - distrainment, offence of—Distrainment of cattle by landholder for arrears of rent—Obstruction by *ryot* to drive cattle out of pen, whether amounts to resisting a distrainment.

The essence of a distrainment for arrears of rent under the Madras Estates Land Act, is the act of taking out of the possession of the real owner, and such act will not be completed until the taking out of the possession of the real owner is complete. A *ryot* who prevents his landlord's agent from driving out of his pen cattle belonging to him but seized by the agent in distrainment for arrears of rent, is guilty of the offence of 'resisting a distrainment' under S. 212, (b), Madras Estates Land Act. *Satyanarayana-murthi v. Pilla Ramayya*.

27 Cr. L. J. 1247 :
98 I. C. 63 : 51 M. L. J. 401 : 24 L. W. 441 :
1926 M. W. N. 922 : A. I. R. 1926 Mad. 1143.

MADRAS FOREST ACT (V OF 1882)

—S. 16—Illegality of conviction for trespass—Private land wrongly included in notification regarding proposed reserve, but omitted in demarcation—Private party in possession with patta and paying assessment.

Where, under a notification published under S. 16, Madras Forest Act, V of 1882, certain land alleged to belong to the accused had been included in the tract proposed to be constituted a reserve forest but the same was excluded from the reserve at the time the latter was demarcated, and where the party alleging title continued in possession and enjoyment, a *patta* being issued to him and assessment received from him therefor, he cannot be convicted for trespass under the Forest Act. *In re : Ali Mahomed Mukri*.

16 Cr. L. J. 53 :
26 I. C. 645 : 2 L. W. 67 :
A. I. R. 1916 Mad. 531.

—S. 21 (d)—'Permitting cattle to trespass,' what is—Overt act, whether necessary for conviction.

The essence of the offence under S. 21 (d) consists either in a misfeasance as in the case of one wilfully pasturing cattle or in a malfeasance as in his neglecting to take proper measures to prevent the cattle trespassing in circumstances from which it may be reasonably inferred that such trespass might have been foreseen or known as the probable consequence of his negligence. The mere finding of the accused's cattle within the forest reserve is not enough. Omission to take reasonable precaution against trespass knowing or having reason to believe that cattle would trespass into the forest reserve, would amount to permitting cattle to trespass within the meaning of S. 21(d). Where the prosecution makes out a *prima facie* case of negligence or want of reasonable care on the part of the accused, the onus of proof will then shift on to the accused to show that he took all reasonable care to prevent cattle from trespassing, or that the trespass was in spite of his care or against his orders. *In re : Kammboyina Ramadas*.

27 Cr. L. J. 1005 :
96 I. C. 861 : 1926 M. W. N. 790 :
51 M. L. J. 502 : 49 Mad. 875 :
A. I. R. 1926 Mad. 1097.

—S. 21 (f)—Quarrying in reserved forest without permission—No dishonest or bad motive—Nominal sentence sufficient.

When quarrying is done in a reserved forest without a permit, but under a belief that it is quite proper and legal and without any dishonest or bad motive, no more than a nominal sentence is called for. *In re : Penchul Reddi*.

12 Cr. L. J. 99 :
6 I. C. 567 : 9 M. L. T. 216.

—S. 26, R. 8—Charge under, contents of—Omission to state the place from where accused cut tree was "reserved forest"—Material defect.

A charge framed under r. 8, S. 26, Madras Forest Act, must clearly state that the place from where the accused cut a tree was a

MADRAS FOREST ACT (V OF 1882)

'reserved forest.' The omission to state this is a material defect and vitiates the trial. *Govinda Reddi v. Emperor*. 13 Cr. L. J. 504 : 15 I. C. 648 : 1912 M. W. N. 1129.

—S. 26—Rules under r. 13 (3)—Quarrying of sand and stone on unreserved land, if offence.

Quarrying of sand and stone of the ordinary kind from a public cart track on an unreserved land does not amount to an offence under r. 13 (3), more so when the quarrying is for an agricultural purpose. The fact that the removal was from a public cart track has really nothing to do with the question whether such removal is an offence or not. Digging pits in a public cart track may be punishable in other ways, but it cannot amount to an infringement of r. 13. *In re : Perumal Reddiar*. 40 Cr. L. J. 805 : 183 I. C. 571 : 1939 M. W. N. 313 : 49 L. W. 478 : (1939) 1 M. L. J. 579 : 12 R. M. 312 : A. I. R. 1939 Mad. 551.

—S. 26—Right of free grazing.

The language of S. 20, Madras Forest Act, and the rules framed thereunder make it clear that a right of free grazing vested in the tenants of a village prior to the extension to that village of S. 26 is not affected by the Government Notifications under the Act. The second clause of S. 20 and the rules framed thereunder are perfectly legal and valid. *In re : Rangadu*. 18 Cr. L. J. 996 : 42 I. C. 724 : 22 M. L. T. 211 : 6 L. W. 428 : 1917 M. W. N. 682 : A. I. R. 1918 Mad. 505.

—S. 26—Scope of—Existing rights, saving of—Conviction without enquiry into rights claimed, legality of.

S. 26, Madras Forest Act, does not empower the Government to regulate the use of the land which is dealt with in Chap. III to the detriment of any rights existing in individuals and communities. Where the residents of a village claim the right of pasturage and the right to cut fuel, a conviction under S. 26 without an enquiry into these allegations is illegal. *Thatha Pillai v. Emperor*. 19 Cr. L. J. 600 : 45 I. C. 504 : 1919 M. W. N. 146 : A. I. R. 1919 Mad. 1139.

—S. 26—Scope of.

By the last sentence of S. 26, the Legislature really meant to conditionally prescribe the penalty for the breach of the rules made by the Government as regards matters mentioned in S. 26, Cls. (a) to (h), subject to the Governor-in-Council embodying in any rule or rules of the same penalties for acts done in a particular area which acts and which areas were also in the contemplation of the Legislature. *In re : Rangadu*. 18 Cr. L. J. 996 : 42 I. C. 724 : 22 M. L. T. 211 : 6 L. W. 428 : 1917 M. W. N. 682 : A. I. R. 1918 Mad. 505.

—S. 35—'Moving', meaning of—Rules 2, 7 and 10 of Rules by Local Government—Form 2—Cutting of tree—Whether moving in the act

MADRAS FOREST ACT (V OF 1882)

of cutting constitutes an offence under the Forest Act.

S. 35 of the Forest Act in empowering Government to make rules as regards transit, and Form No. 2, speaking of a transport do not contemplate the moving which is involved in the cutting of a tree as comprised within the meaning of the word 'transit' or 'transport'. Under r. 2 of the Rules framed by the Government under the Forest Act, the word 'moving' has not the sense attached to it in the definition of 'theft' in the Penal Code. *In re : V. S. Rangasawmy Iyer*. 10 Cr. L. J. 574 : 4 I. C. 405.

—S. 51—Illegality of arrest—Forest offence—Warrant entrusted to forester—Endorsement to watcher.

In order to justify the act of a Police Officer or a Forest Officer in arresting without warrant a person suspected of a forest offence, he must either have refused to give his name or must have given a false name and residence or there must have been reason to believe that he would abscond. In the absence of any of the conditions, no Police Officer or Forest Officer can lawfully arrest a person without a warrant. In order to justify a Court in entrusting a warrant of arrest to a person other than a Police Officer, there must be the necessity to arrest and that too immediately, and there must be the third condition, that no Police Officer is immediately available. In the absence of these three conditions, a Court is not justified in entrusting a warrant to a Forest Officer for execution. *Pasunathi Pillai v. Emperor*. 29 Cr. L. J. 541 : 109 I. C. 365 : 1928 M. W. N. 310 : 28 L. W. 141 : 55 M. L. J. 210 : 51 Mad. 873 : A. I. R. 1928 Mad. 624.

—S. 51—Power of watcher to arrest.

S. 70, Cr. P. C., has no application to Forest Officers and the endorsement of the warrant by a forester in favour of a watcher even if it be legal, can confer no power upon the watcher to arrest the person named in the warrant. *Pasuvathi Pillai v. Emperor*. 29 Cr. L. J. 541 : 109 I. C. 365 : 1928 M. W. N. 310 : 28 L. W. 141 : 55 M. L. J. 210 : 51 Mad. 873 : A. I. R. 1928 Mad. 624.

—S. 53—Scope of—Compounding offence—Payment of compensation during proceedings in Court—Proceedings, lapse of.

The provisions of S. 53, Forest Act, that on payment of compensation 'no further proceedings shall be taken' mean that proceedings in progress must lapse. *In re : Narayana Padayachi*. 15 Cr. L. J. 680 (a) : 25 I. C. 1008 : 37 Mad. 280 : A. I. R. 1915 Mad. 25.

—S. 55—Compounding of offence—Subsequent prosecution for same offence on ground of compensation being insufficient, legality of.

Under S. 55, Madras Forest Act of 1882, no

MADRAS GAMING ACT (III OF 1930)

further proceedings can be taken against an accused person or his property if the offence has been once compounded. The mere fact that sufficient compensation was not taken from the offender is no ground for starting a fresh prosecution for the same offence. *In re : Lambadi Latchma Naik.* 30 Cr. L. J. 385 : 115 I. C. 241 : 1929 M. W. N. 115 :

I. R. 1929 Mad. 401 :
A. I. R. 1929 Mad. 252.

MADRAS FOREST MANUAL

———R. 8—*Nominal fine*—“Use of a forest produce”, meaning of—*Grazing cattle in fuel reserve, whether within rule.*

The words “use of a forest produce” in r. 8 of the Forest Manual include the use of forest grass by grazing cattle thereon. Where, therefore, the accused grazed cattle in lands reserved as a fuel reserve in a particular estate but they did so in expectation of an order for which they had applied, and the damage done was trivial: *Held*, that they were rightly convicted but in the circumstances, a nominal fine would have met the ends of justice. *In re : Perumal Naik.*

17 Cr. L. J. 534 :
36 I. C. 582 : 4 L. W. 552 :
A. I. R. 1917 Mad. 888.

MADRAS GAMING ACT (III OF 1930)

———*Scope of.*

There is no reason for presuming that the Madras Gaming Act of 1930 is retrospective. *In re : Uppalapati Bulli Nagayya.*

32 Cr. L. J. 1279 :
134 I. C. 991 : 61 M. L. J. 474 :
34 L. W. 710 : 1931 M. W. N. 1310 :
I. R. 1931 Mad. 879 :
A. I. R. 1931 Mad. 777.

———S. 3—‘Common gaming house’, nature of—*Gaming house restricted to particular section of public—Whether common gaming house.*

A common gaming house can include any gaming house in which there was any restriction on its use by any section of the public. *In re : K. M. T. T. Kulandaivelu Cheltiar.*

39 Cr. L. J. 1003 :
178 I. C. 123 : 1938 M. W. N. 421 :
47 L. W. 643 : 1938, 2 M. L. J. 266 :
11 R. M. 404 : A. I. R. 1938 Mad. 705.

———Ss. 3, 4 (ii)—‘Gaming’, scope of—*Payment or sharing profits in fulfilment of betting on horse race, whether gaming.*

The definition of ‘gaming’ in S. 3, Madras Gaming Act, has included only the actual wagering or betting on a horse race, and payments in fulfilment of such agreement cannot be regarded as part of such betting and is consequently not gaming. *In re : Kanniah Maistry.*

41 Cr. L. J. 181 :
185 I. C. 385 : 1939 M. W. N. 1003 :
1939, 2 M. L. J. 618 : 50 L. W. 769 :
12 R. M. 565 : A. I. R. 1939 Mad. 976.

———Ss. 3, 6, 5—‘Making profits,’ what amounts to—*Accepting rent for building used*

MADRAS GAMING ACT (III OF 1930)

for gaming—Whether amounts to making profits—Warrant under S. 5.

Although there may not be any independent proof that any person makes a profit from gambling or from the use of the room for gambling, yet the mere finding of cards and instruments of gambling in a house searched on warrant, issued under S. 5, Madras Gaming Act, is evidence that the room was used for gambling and that some person was deriving a profit from it. *In re : K. M. T. T. Kulandaivelu Cheltiar.* 39 Cr. L. J. 1003 :

178 I. C. 123 : 1938 M. W. N. 421 :
47 L. W. 643 : 1938, 2 M. L. J. 266 :
11 R. M. 404 : A. I. R. 1938 Mad. 705.

———S. 5.

See also Madras Gaming Act, 1930, S. 3.

———S. 5—Common gaming house—*What constitutes.*

The mere fact that occasionally people used to play cards at a particular place and perhaps for money, does not necessarily make it a common gaming house. *Public Prosecutor v. Subramania Sastri.* 36 Cr. L. J. 799 :

155 I. C. 496 : 1934 M. W. N. 1170 :
68 M. L. J. 421 : 41 L. W. 679 :
7 R. M. 582 : A. I. R. 1935 Mad. 648.

———S. 5—Scope of.

The mere fact that reference was made to S. 5, Gaming Act, in the application for a warrant does not show that the Magistrate actually issued the warrant under that section. *Public Prosecutor v. Subramania Sastri.*

36 Cr. L. J. 799 :
155 I. C. 496 : 1934 M. W. N. 1170 :
68 M. L. J. 421 : 41 L. W. 679 :
7 R. M. 582 : A. I. R. 1935 Mad. 648.

———S. 5—Warrant—*Contents of.*

The warrant is to be in writing and must contain all the matters that the law requires to be stated therein. *Public Prosecutor v. Subramania Sastri.* 36 Cr. L. J. 799 :

155 I. C. 496 : 1934 M. W. N. 1170 :
68 M. L. J. 421 : 41 L. W. 679 : 7 R. M. 582 :
A. I. R. 1935 Mad. 648.

———S. 5—Warrant under, *legality of.*

A warrant issued under S. 5 is not illegal merely because it does not say expressly that the Magistrate who issued it had “reason to believe” that the place in question was used as a common gaming house. *Subramania Ayyar v. Emperor.* 37 Cr. L. J. 380 :

161 I. C. 32 : 1935 M. W. N. 1284 :
69 M. L. J. 835 : 43 L. W. 44 :
8 R. M. 762 : A. I. R. 1936 Mad. 65.

———S. 5—Warrant under—*Particulars—Reasons, if should be recorded.*

There is no prescribed form for warrants under S. 5, Gaming Act. That section does not require the Magistrate to record anywhere his reasons for believing any information the Police may have given him. It does not even require him to record the fact that he has reason to believe that any place is used as a

MADRAS GAMING ACT (III OF 1930)

common gaming house. All that it requires is that "the Magistrate shall have reason to believe....."; if he has, he can issue his warrant, not in any particular form, but his warrant giving authority to a Police Officer to do certain things. *In re: Bonlanathila Naranappayya.*

39 Cr. L. J. 719 (a) :
176 I. C. 256 : 1938 M. W. N. 319 :
1938, 1 M. L. J. 509 : 47 L. W. 750 :
11 R. M. 80 : A. I. R. 1938 Mad. 550.

—S. 5, 6—Common gaming house, proof of—Reasons for issue of search warrant not before Court—Finding of instruments of gaming—Whether sufficient to prove that place is common gaming house.

If the reasons which induced a Magistrate or a senior Police Officer to issue a search warrant are not put before the Court, the mere finding of cards or instruments of gaming in the execution of such a search warrant, though evidence, ought never by itself to be treated a sufficient evidence, i. e., proof that the place is a common gaming house. *In re: Annum Kesanna Chetty.*

39 Cr. L. J. 236 :
172 I. C. 909 : 1937 M. W. N. 1068 :
1937, 2 M. L. J. 741 : 46 L. W. 855 :
10 R. M. 500 : A. I. R. 1938 Mad. 29.

—Ss. 5, 6—Drafting of Ss. 5 and 6, is defective.

The drafting of Ss. 5 and 6 of the Madras Gaming Act, is defective. *In re: Annum Kesanna Chetty.*

39 Cr. L. J. 236 :
172 I. C. 909 : 1937 M. W. N. 1068 :
1937, 2 M. L. J. 741 : 46 L. W. 855 :
10 R. M. 500 : A. I. R. 1938 Mad. 29.

—S. 6.

See also Madras Gaming Act, 1930, S. 3.

—S. 6—Presumption—Evidence as to "proper information"—Presumption, if can be raised under Evidence Act (I of 1872) S. 114 (c).

Before the presumption under S. 6 can be availed of, there need not be some evidence for the prosecution that the warrant was issued under S. 5, upon proper information, sufficient to lead a Magistrate to believe that the room in question was used as a common gaming house. Presumption raised under S. 144, Illus. (c), Evidence Act, that judicial and official acts have been regularly performed should be here applied. *In re: K. M. T. T. Kulandaivelu Chettiar.*

39 Cr. L. J. 1003 :
178 I. C. 123 : 1938 M. W. N. 421 :
47 L. W. 643 : 1938, 2 M. L. J. 266 :
11 R. M. 404 : A. I. R. 1938 Mad. 705.

—Ss. 6, 5—Scope of—S. 6—Finding of instruments of gaming in place searched under S. 5.

S. 6, Madras Gaming Act, only enacts that gaming instruments found in any place entered or searched under the provisions of S. 5 shall be evidence that the persons found therein were there present for the purpose of gaming although no play was actually seen by the Police Officer. But, the section does not say that the mere finding of gaming instruments

MADRAS GAMING ACT (III OF 1930)

in such a place shall be evidence of gaming. There is obviously a wide difference between a person being present at a particular place for the purpose of gaming and his gaming at the place. It is only the latter act that is constituted an offence under S. 4 (ii) of the Act and not the former. *In re: C. Kanniah Maistry.*

41 Cr. L. J. 181 :
185 I. C. 385 : 1939 M. W. N. 1003 :
1932 2 M. L. J. 618 : 50 L. W. 769 :
12 R. M. 565 : A. I. R. 1939 Mad. 976.

—S. 6—Scope of.

S. 6 does not mean that the prosecution cannot succeed without calling evidence other than that the material objects were found in the place raided by the Police. *In re: K. T. K. A. Alagappa Chettiar.*

33 Cr. L. J. 790 :
139 I. C. 473 : 1932 M. W. N. 641 :
36 L. W. 620 : I. R. 1932 Mad. 720 :
A. I. R. 1932 Mad. 678.

—S. 6—Scope of.

The presumption referred to in S. 6 can only apply to searches conducted in pursuance of a warrant issued under S. 5 of that Act. It does not apply where the warrant is issued under S. 96, Cr. P. C. *The Public Prosecutor v. Subramania Sastri.*

36 Cr. L. J. 799 :
1934 M. W. N. 1170 : 68 M. L. J. 421 :
155 I. C. 496 : 41 L. W. 679 : 7 R. M. 582 :
A. I. R. 1935 Mad. 648.

—S. 9—Conviction of servants under, legality of—Servants of keeper of gaming house not gambling.

The servants of the keeper of the common gaming house not found to be gambling cannot be convicted under S. 9, Madras Gambling Act. *In re: M. R. V. Venkatachalam Chettiar.*

41 Cr. L. J. 813 :
189 I. C. 811 : 1939 M. W. N. 888 (2) :
50 L. W. 458 : 63 R. M. 371 :
A. I. R. 1940 Mad. 227.

—S. 10—Money.

Under S. 10 it is only money which is reasonably suspected of having been used or intended to be used for the purpose of gaming which can be forfeited and the Magistrate is not entitled, without some kind of material for a finding on this point, to order the confiscation of moneys seized from the persons of the accused. *Subramania Ayyar v. Emperor.*

37 Cr. L. J. 380 :
161 I. C. 32 : 1935 M. W. N. 1284 :
69 M. L. J. 835 : 43 L. W. 44 :
8 R. M. 762 : A. I. R. 1936 Mad. 65.

—S. 12—Gambling, when offence—Public place, meaning of.

Gambling is not a criminal offence in itself but gambling in a public street, place or thoroughfare is an offence. It is not an offence to gamble in every public place. The word "place" in S. 12, Madras Gaming Act, means from its context a place akin to a street or thoroughfare used regularly and necessarily by people going from one place to another.

MADRAS HIGH COURT APPELLATE RULES

The real offence dealt with in S. 12 is obstruction or annoyance to wayfarers and pedestrians. *In re : Unna Muhammad Sahib*.

39 Cr. L. J. 277 (a) :
173 I. C. 223 : 46 L. W. 641 :
1937 M. W. N. 1126 : 10 R. M. 534 :
I. L. R. 1938 Mad. 347 :
A. I. R. 1938 Mad. 74.

MADRAS HEREDITARY VILLAGE OFFICES ACT, 1895**—S. 10—Inam lands.**

In calculating the income of a joint Hindu family for the purpose of fixing the amount of maintenance payable to a widow, the income from *purohit* service *inam* lands cannot be taken into account. Such lands are not partible. *Nagadevara Venkatasubamma v. Nagadevara Venkataeswaralu*.

162 I. C. 292 : 1936 M. W. N. 269 :
8 R. M. 976 : 43 L. W. 718 :
A. I. R. 1936 Mad. 429.

MADRAS HIGH COURT

—Criminal Rules of Practice, R. 85—
Confession, admissibility of—Provisions of S. 164, Cr. P. C., complied with—Omission to comply with R. 85, if vitiales confession.

Where a Magistrate records at the end of the confession that it was voluntary one and does not at the beginning record in writing his reasons for believing that the accused was prepared to make the statement voluntarily as required by R. 85, Madras High Court Criminal Rules of Practice, but the perusal of the record shows that the Magistrate did satisfy himself that it was a voluntary confession and S. 164, Cr. P. C., is complied with, the confession is admissible in evidence even though R. 85 is not strictly complied with. *In re : Dasi Viraya*.

39 Cr. L. J. 585 :
175 I. C. 422 : 1938 M. W. N. 90 :
47 L. W. 161 : 10 R. M. 775 :
1938, 1 M. L. J. 289 :
A. I. R. 1938 Mad. 490.

MADRAS HIGH COURT APPELLATE RULES**—Constitution of Benches.**

Where a Judge or a Bench of Judges is properly asked to dispose of a certain matter, he or they have jurisdiction to dispose of it. The constitution of Benches is the province of the Chief Justice, and if the Judges refuse or neglect to be constituted into Benches arranged by him and chose to dispose of cases as they please, they would be acting without jurisdiction. *Kunhammad Haji v. Emperor*.

24 Cr. L. J. 439 :
72 I. C. 599 : 1923 M. W. N. 94 :
44 M. L. J. 450 : 46 Mad. 382 :
A. I. R. 1923 Mad. 426.

MADRAS HIGH COURT RULES, APPELLATE SIDE**—R. 4—Vacation Judge's power.**

The powers of the Vacation Judge of the High Court are not to be looked for in the Registrar's Notification as though it was a self-contained and exhaustive advertisement to the public of their scope and nature. Such a Notification is no more than a general statement of the powers which a Vacation Judge will ordinarily exercise and cannot be read as derogating from those which by virtue of Statutes and Rules he possesses and of which he cannot consistently with them be deprived. *Kunhammad Haji v. Emperor*.

24 Cr. L. J. 439 :
72 I. C. 599 : 1923 M. W. N. 94 :
44 M. L. J. 450 : 46 Mad. 382.
A. I. R. 1923 Mad. 426.

MADRAS HIGH COURT APPELLATE SIDE RULES MADE UNDER S. 491.(2), CR. P. C.**—Rr. 2 and 2-A—Powers of High Court—
Rr. 2 and 2-A held intra vires the powers of High Court.**

If the right to issue the prerogative writ has been taken away, there can be no question that the Rr. 2 and 2-A of the Appellate Side (Madras) Rules are *intra vires*, but even if the right has not been abolished, the Legislature can regulate the procedure which governs its issue. Hence an application for a Common Law writ of *habeas corpus* or for directions under S. 491, Cr. P. C., cannot be heard and disposed of by a single Judge of the High Court. *District Magistrate, Trivandrum v. K. C. Mammen Mappillai*. (F. B.)

40 Cr. L. J. 320 :
180 I. C. 216 : 1938 M. W. N. 1289 :
11 R. M. 663 : 1939, 2 M. L. J. 135 :
I. L. R. 1939 Mad. 708 :
A. I. R. 1939 Mad. 120.

MADRAS HILL MUNICIPALITIES ACT (MADRAS ACT II OF 1907)**—S. 23 — Penalty — Non-compliance — Appeal.**

On the 4th May 1909, the Chairman issued a notice under S. 23, requiring the owner of the building to make such alterations as were specified in the notice to bring it into conformity with the plans. An order confirming the notice was passed on 20th May 1909. Proceedings for the recovery of the penalty were instituted on the 16th June, and the order imposing the penalty was made on the 15th July, that is, before the expiration of 60 days from the 20th May. The alterations specified in the notice were not completed before 15th July. The owner presented an appeal on 16th July: *Held*, that the proceedings for the recovery of the penalty were not premature and the offence was complete before 15th July. *In re : Nabi Khan*.

11 Cr. L. J. 332 :
5 I. C. 929 : 7 M. L. T. 183.

MADRAS LOCAL AUTHORITIES ENTERTAINMENTS ACT (XX OF 1927)

—S. 4—Defence, sustainability of.

Tickets sold for value more than four annas—Defence that excess over four annas was to go towards accessory expenses held unsustainable. *In re : Dr. R. P. O'Hearn.*

34 Cr. L. J. 285 :
142 I. C. 191 : 1932 M. W. N. 1272 :
I. R. 1933 Mad. 204 (2) :
A. I. R. 1933 Mad. 461 (2).

MADRAS LOCAL BOARDS ACT (V OF 1884)

—Prosecution for public nuisance.

The fact that the Madras Local Boards Act provides a detailed procedure for the removal of prickly pear spreading from private property to public roads does not deprive the Local Boards or their servants of the right to prosecute the owners for public nuisance under the Penal Code. *In re : Molaiappa Goundan.*

30 Cr. L. J. 432 :
115 I. C. 242 : 28 L. W. 621 :
55 M. L. J. 715 : 52 Mad. 79 :
I. R. 1929 Mad. 402 :
A. I. R. 1928 Mad. 1235.

—S. 98 (1), (2)—Scope of—Other person duly authorised as aforesaid, meaning of—Delegation of authority.

The words 'other person duly authorised as aforesaid' in S. 98 (2), Madras Local Boards Act, do not refer only to 'some person duly authorised by him in that behalf' mentioned in S. 98 (1). There must be a separate authorization under each clause of the section and the words 'as aforesaid' in Cl. 2 must be read as meaning 'by him in that behalf'. *Public Prosecutor v. Sankaralingam Moopan.*

20 Cr. L. J. 395 (a) :
50 I. C. 1003 : 37 M. L. J. 92 :
10 L. W. 346 : 42 Mad. 787 :
A. I. R. 1919 Mad. 52.

—S. 162.

See also Penal Code, 1860, S. 43.

—S. 162-B—Joint trial—Joint trial of several accused for separate offences under S. 162-B—Illegality.

The trial of several accused persons jointly for separate and distinct offences under S. 162-B, Madras Local Boards Act, is illegal. *Public Prosecutor v. Irusan.*

13 Cr. L. J. 240 :
14 I. C. 432.

—S. 162-B (2)—Prosecution under.

In a prosecution under S. 162-B (2), Madras Local Boards Act, the material question is whether the erection is on a public road or not. *Chandra Mauliah v. Emperor.*

12 Cr. L. J. 63 :
9 I. C. 329 : 1911, 2 M. W. N. 78 :
9 M. L. T. 219.

MADRAS LOCAL BOARDS ACT (MAD. ACT III OF 1890)

—S. 162 (c)—Scope of Branch of tree in public road felled with Chairman's permission—Conversion of branches to personal use—Conviction under the section—Legality.

S. 162 (c), Local Boards Act, does not provide for wrongful conversion of trees; where, therefore, a person cut down, with the permission of the Chairman, the branch of a tree, and converted it to his own use, it was held that he could not be convicted under this section. *Emperor v. Adam Khan.*

12 Cr. L. J. 281 :
10 I. C. 577 : 9 M. L. T. 458.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

See also Penal Code, 1860, S. 19.

—S. 129—Offence under, what amounts to—Absence of drain or cesspool—Sewage water allowed to overflow on road.

There is no provision in the Madras Local Boards Act, XIV of 1920, which imposes upon a local authority any obligation to construct a drain or cesspool in every street. The absence of a drain or cesspool is not an excuse or justification for the owner of the premises for letting sewage water flow over the neighbouring road. Such an act is an offence under S. 120. *Public Prosecutor v. Pachappa Mudaliar.*

25 Cr. L. J. 56 :
75 I. C. 760 : 18 L. W. 694 :
33 M. L. T. 166 : A. I. R. 1924 Mad. 397.

—S. 3 (18)—Public road, scope of—Road poramboke lying between roadway and boundary of adjacent property, whether public road—Encroachment—Offence.

'Road poramboke' which lies between the roadway and the boundary of adjacent property, is included within the term 'public road' as defined in the Madras Local Boards Act. *Public Prosecutor v. Palaniyandi Naicken.*

29 Cr. L. J. 113 :
106 I. C. 705 : 27 L. W. 16 :
54 M. L. J. 261 : 51 Mad. 519 :
A. I. R. 1928 Mad. 160.

—Ss. 3 (18), 235—Public road, meaning of.

There is nothing in the alteration of the language of the definition of public road in the Madras Local Boards Act of 1920 to show that "public road" excludes a road margin belonging to the Government which might have been included in it under the older Act. *Kannayya Chetty v. President, Union Board, Tirukoilur.*

32 Cr. L. J. 643 :
131 I. C. 117 : 60 M. L. J. 462 :
33 L. W. 54 : 1931 M. W. N. 269 :
A. I. R. 1931 Mad. 424.

—S. 5.

See also Madras Survey and Boundaries Act, 1897, S. 18.

—S. 16.

See also Cr. P. C., 1898, S. 476.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

—S. 16—Notice—President of Taluk Board, notice of resignation by, to members individually, whether sufficient.

Under S. 16, Madras Local Boards Act, in order to constitute a valid resignation by a President of a Local Board, notice of resignation must be given to the Board. Acceptance of it by the Board is not necessary, but the receipt of the notice must be by the Board at a duly constituted meeting. Mere notice to individual members of the Board or acceptance of resignation by an irregularly constituted meeting of the Board does not operate to deprive the President of his office. *In re : T. Sivasankaram Pillai*.

30 Cr. L. J. 164 :

113 I. C. 462 : 28 L. W. 695 :

I. R. 1929 Mad. 142 : 52 Mad. 446 :

56 M. L. J. 157 : A. I. R. 1929 Mad. 8.

—Ss. 24, 223—Proper procedure—S. 223, whether limited by S. 24—Person complaining whether must be delegated by President.

The persons who can be expressly authorised under S. 223, Madras Local Boards Act, to file complaints are not confined to those to whom the President may delegate his authority under S. 24 of the Act. The proper procedure, in such cases is this : The Union or local body sanctions the prosecution and the President or the Board then expressly authorises some person, usually some responsible subordinate, to file the complaint. The authority should naturally be produced with the complaint so that the Court may be satisfied of the authorisation, which alone gives it power to entertain the complaint. *Public Prosecutor v. Ramayya Mudaliar*.

29 Cr. L. J. 587 :

109 I. C. 603 : 1928 M. W. N. 293 :

28 L. W. 140 : 55 M. L. J. 573 :

A. I. R. 1928 Mad. 969.

—S. 41—Power of President of District Board.

The President of a District Board has no power to direct the President of a *panchayat* to hold a meeting on any particular day. *A. Bakthavathsalu Naidu v. P. N. K. Ramanuja Naidu*.

34 Cr. L. J. 677 :

144 I. C. 215 : 1933 M. W. N. 730 :

I. R. 1933 Mad. 386 : A. I. R. 1933 Mad. 326.

—S. 42—Resolution of 'no confidence'—Validity of.

A resolution of 'no confidence' passed against a President of a *panchayat* at a meeting is invalid where leave to make the motion was given at a meeting convened by the Taluk Board President under the directions of the President of the District Board. *A. Bakthavathsalu Naidu v. P. N. K. Ramanuja Naidu*.

34 Cr. L. J. 677 :

144 I. C. 215 : 1933 M. W. N. 730 :

I. R. 1933 Mad. 386 : A. I. R. 1933 Mad. 326.

—S. 55—Defamation, what amounts to.

A petition to a Local Board President, however malicious, that a certain person was not

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

qualified for election as a member of the Local Board on account of his suffering from leprosy under S. 55 of the Madras Local Boards Act, does not amount to defamation. *Doraisami Naidu v. Kanniappa Chetty*. 32 Cr. L. J. 767 : 131 I. C. 654 : 1931 M. W. N. 366 : I. R. 1931 Mad. 558 : A. I. R. 1931 Mad. 487.

—Ss. 141, 214—Licence—Licence for burial in new place, whether must be in writing—Oral permission, effect.

Under Ss. 141 and 214, Madras Local Boards Act, all applications for licences to open new places of burial and all licences therefor must be in writing. It is not open to the President of a Local Board to grant a licence orally. *President, Union Board of Thiruvettiyore v. Atchu Achary*.

29 Cr. L. J. 935 :

111 I. C. 885 : 28 L. W. 503 :

1928 M. W. N. 790.

—S. 159.

See also Cr. P. C., 1808, S. 403.

—S. 159—Discretion.

Under the Act, the President of a Local Board may require the owner of any premises to remove an obstruction under S. 159, but the only duty imposed upon him under that section is to exercise his discretion in the matter. *S. Sindiappa Nadar v. President, District Board, Madura*.

32 Cr. L. J. 895 :

132 I. C. 319 : 1930 M. W. N. 1271 :

33 L. W. 475 : 60 M. L. J. 495 :

54 Mad. 595 : I. R. 1931 Mad. 671 :

A. I. R. 1931 Mad. 419.

—S. 159—Encroachment.

Prosecution by District Board—Acquittal on ground that property was within Union Board—Fresh notice and prosecution by Union Board is proper as subsequent case was not on same facts as previous one. *Union Board, Ayyampet v. Ramchandra Aiyer*.

32 Cr. L. J. 228 :

129 I. C. 80 : 1930 M. W. N. 500 :

I. R. 1931 Mad. 224 : 33 L. W. 107 :

A. I. R. 1930 Mad. 971.

—Ss. 159, 207—Disobedience by member of community—Order for removal of obstruction to public pathway—Charge against person as representative of community, competency of.

In order to make a person liable for disobedience under S. 159, Madras Local Boards Act, he must be the owner or the occupier of any premises which caused the obstruction or encroachment. A conviction under Ss. 159 and 207, Madras Local Boards Act, for alleged disobedience of an order to remove an obstruction to a public pathway cannot be had against the treasurer of a community in the absence of anything to show that he was the owner or occupier of the premises within the meaning of the Act. *In re : Vadugu Kumara Nadar*.

29 Cr. L. J. 727 :

110 I. C. 583 : 51 Mad. 524 :

28 L. W. 73 : 55 M. L. J. 206 :

A. I. R. 1928 Mad. 485.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

—Ss. 159, 207, 223—*Fresh notice—Failure to remove alleged encroachment after notice—Offence, acquittal—Second prosecution, legality of.*

In a prosecution against an accused for an offence under S. 207 (c) read with S. 159, Madras Local Boards Act, XIV of 1920, for failure to remove an alleged encroachment after due notice by the local authority, the real offence is the wrongful encroachment that is committed by the person. The notice referred to in S. 159 is in a sense merely in the nature of a condition precedent to the prosecution. An offence within the meaning of the sections comes to be committed, at any rate, on the expiry of the notice by which the person is called upon to remove the encroachment and fails to do so within the time limited in the notice. The local authority has no power by giving fresh notice to constitute the disobedience to each of such fresh notices as amounting to a fresh offence under S. 207 of the Act. Where an accused person who was charged under S. 207 of the Local Boards Act, for failure to remove an alleged encroachment after due notice under S. 159 is acquitted, a second prosecution for the same offence after a fresh notice is illegal, especially where it is instituted more than three months after the issue of the first notice. *Ramanujachariar v. Kailasam Iyer.* 26 Cr. L. J. 1049 : 87 I. C. 969 : 1925 M. W. N. 472 : 49 M. L. J. 386 : 22 L. W. 736 : 48 Mad. 870 : A. I. R. 1925 Mad. 1067.

—S. 159 (1)—*Prosecution under.*

The fact that the accused could have been proceeded against under S. 207 (2) of the Act is no bar to a prosecution under S. 159. *President, Panchayat Board, Velgode v. Venkata Reddi.* 33 Cr. L. J. 629 : 138 I. C. 491 : 36 L. W. 429 : 1932 M. W. N. 860 : I. R. 1932 Mad. 585 : A. I. R. 1932 Mad. 537.

—S. 159 (1)—*Subsequent prosecution.*

A previous acquittal or conviction of a person for non-compliance with a notice under S. 159 (1) for the removal of an encroachment does not bar a subsequent prosecution for disobedience of a fresh notice under the said section. *President, Panchayat Board, Velgode v. Mandla Chinna Venkata Reddi.*

33 Cr. L. J. 629 : 138 I. C. 491 : 36 L. W. 429 : 1932 M. W. N. 860 : I. R. 1932 Mad. 585 : A. I. R. 1932 Mad. 537.

—S. 159 (1)—*Subsequent prosecution.*

The fact that a person had been acquitted in respect of non-compliance with a notice under S. 159 (1), is no bar to a subsequent prosecution of the same person in respect of the same encroachment on a second notice. *Moidi Beary v. President, Taluk Board of Mangalore.*

33 Cr. L. J. 626 : 138 I. C. 488 : 36 L. W. 426 : 1932 M. W. N. 632 : I. R. 1932 Mad. 583 : A. I. R. 1932 Mad. 535.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

—Ss. 159 (1), 207 (1) — *Subsequent Prosecution — Notice to remove encroachment — Failure to comply with—Fresh notice regarding same encroachment—Previous conviction or acquittal, if bars fresh prosecution.*

Even if a person is acquitted or convicted in a prosecution for disobedience of notice under S. 159 (1), Madras Local Boards Act, he can be subsequently prosecuted for disobedience of a fresh notice under that section, even where the encroachment remains the same. The same offence is failure to comply with any direction lawfully given or any requisition lawfully made ; it is not, strictly speaking, correct to say that the offence consists in failure to remove an encroachment. He only commits an offence under S. 207 (1) when he fails to comply with a direction lawfully given. It makes no difference whether there has or has not been any previous prosecution. *The Public Prosecutor v. B. V. Sabhapathy Chetty.*

39 Cr. L. J. 712 : 176 I. C. 395 : 47 L. W. 777 : 1938 M. W. N. 578 : 1938, 2 M. L. J. 456 : I. L. R. 1938 Mad. 902 : 11 R. M. 69 : A. I. R. 1938 Mad. 847.

—Ss. 159 (1), 207 (1), 223 — *Issue of fresh notice, legality of—Notice to remove alleged encroachment—Negotiations—Failure to obey notice—Prosecution—Limitation.*

A Union Board issued a notice under S. 159 (1), Madras Local Boards Act, to the accused to remove an alleged encroachment in front of his house, but on the representations of the accused, a fresh inquiry was commenced, and as a result of it, a fresh notice was issued to the accused for removal of the encroachment. In a prosecution under S. 207 (1) : *Held*, that it was competent to the President of the Union Board to issue a fresh notice after the close of the inquiry which was initiated at the suggestion of the accused, and that a complaint filed before the expiry of three months from the date of the second notice was not time-barred by virtue of S. 223 of the Act. *Raghavachariar v. President, Union Board, Tiruvellore.*

27 Cr. L. J. 824 : 95 I. C. 600 : 23 L. W. 620 : 1927 M. W. N. 343 : A. I. R. 1926 Mad. 806.

—S. 164 — *Penalty — Encroachment — Penalty—Proceedings before Magistrate to recover.*

Where an application is made to a Magistrate under S. 221, Madras Local Boards Act, for collection from an occupier of land of a penalty demanded from him under S. 164 (1) of the Act, for non-compliance with a requisition by a Local Board to remove an alleged encroachment, the defaulter cannot be heard to say that the demand is illegal. In such a case, there cannot be any dispute as to the amount, and all that the Magistrate has to do is to collect the penalty demanded. *In re : Syed Mustapha Sahib.*

27 Cr. L. J. 1180 : 97 I. C. 812 : 1926 M. W. N. 678.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

—Ss. 164, 184—*Stand of motor buses.*

A motor omnibus is a carriage and not a cart within the meaning of the said Act. The standing of an omnibus for a few minutes periodically on a public road is not the sort of occupation contemplated by S. 164 of the said Act. A stand for motor buses is neither a halting place, nor a public landing place nor is it a cart stand, within the meaning of S. 184 of the said Act, and a Union Board is not entitled to levy a fee from motor omnibuses in respect of a motor bus stand. *In re : A. Raheem Saheb.*

30 Cr. L. J. 911 :
118 I. C. 278 : 30 L. W. 181 :
57 M. L. J. 317 : I. R. 1929 Mad. 774 :
56 Mad. 714 : 1929 M. W. N. 515 :
A. I. R. 1929 Mad. 600.

—Ss. 164, 221—*Penalty—Encroachment—Magistrate to whom case is referred, whether competent to inquire if encroachment was true.*

A Magistrate to whom a case is referred under S. 221, Madras Local Boards Act, is competent to go into the question whether the alleged encroachment was true and, therefore, justified the imposition of the penalty. *Pillai Ramaswami v. President, Taluk Board, Tadepalligudam.* (F. B.)

31 Cr. L. J. 1008 :
126 I. C. 490 : 32 L. W. 269 :
1930 M. W. N. 917 : 59 M. L. J. 346 :
53 Mad. 873 : A. I. R. 1930 Mad. 766.

—S. 166—*Liability of owner and driver—Motor vehicle—Plying car for hire along public road without licence—Offence.*

Where a motor vehicle is plied for hire on a public road without a licence in contravention of the provisions of S. 166, Madras Local Boards Act, the owner of the car as well as the driver are liable to be convicted. The responsibility of a driver who plies a car knowingly without a licence is not taken away by the mere fact that the master is also liable. *President, District Board v. Ismail Sahib.*

29 Cr. L. J. 251 :
107 I. C. 428 : 27 L. W. 28 :
51 Mad. 512 : 55 M. L. J. 204 :
A. I. R. 1927 Mad. 1195.

—S. 166—*Scope of—Words “use any such vehicle for carrying passengers at separate fares,” meaning of.*

In Cl. 1 of S. 166, Madras Local Boards Act, the words “use any such vehicle for carrying passengers at separate fares” on a District Board road do not mean plying for hire. That section is intended to make persons who use the road of a District Board for making money by using motor vehicles upon it, pay for that privilege. The first part is intended to make persons who ply a motor vehicle for hire within the limits of the District Board pay for it by taking out a licence, and the latter part of it is intended to make persons who pick up passengers at separate fares outside the area of the District Board and who carry those passengers

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

over a road of the District Board, also take out a licence. What is meant by ‘separate fares’ is individual fares as distinguished from a fixed amount for the whole vehicle. *Shroff Veerappa v. Emperor.* 31 Cr. L. J. 625 :
124 I. C. 15 : 31 L. W. 202 :

1930 M. W. N. 187 : 59 M. L. J. 239 :
53 Mad. 439 : A. I. R. 1930 Mad. 441.

—Ss. 166, 207—*Liability of masters for servant’s act—Conductor plying on forbidden road—Licensee, whether guilty of offence.*

Persons who obtain licences to ply motor vehicles under the Local Boards Act, are in law responsible for breaches of the conditions of the licence committed by their servants. The principle is that the act of the servant of a licensee is the act of his master and that it is the licensee who does everything that is done under cover of the licence. It is he who undertakes to conform to the terms of it and to be responsible that no breach of it takes place. Where a person obtained a licence to ply motor buses in particular roads under S. 166, Madras Local Boards Act, but a conductor employed by him plied his car for hire on a forbidden road : *Held*, that the licensee was guilty of an offence under S. 166 (1) and S. 207 of the Act. *Sivarama Mudaliar v. Muthunaiengar.*

28 Cr. L. J. 566 :
102 I. C. 502 : 52 M. L. J. 561 :
38 M. L. T. 320 : 26 L. W. 13 :
50 Mad. 913 : 1927 M. W. N. 925 :
A. I. R. 1927 Mad. 612.

—Ss. 166, 207 (a), Sch. VIII—*‘Plying for hire,’ meaning of—Mere use of hired vehicle, whether amounts to plying for hire—Soliciting for custom, necessity of.*

A vehicle cannot be said ‘to ply for hire’ on a public road simply because it is made use of as a hired vehicle on that road; plying for hire means the act of waiting for soliciting custom and the act of plying for hire can only be done at the place and time that the hiring is effected. A person who lets out his car for hire in a Municipality is not bound to take a licence from the District Board for taking the car beyond the Municipal limits and traversing any of the District Board roads, inasmuch as there is no hiring and therefore, no “plying for hire” in any of the District Board roads. *Local Fund Overseer v. Pakkirisami Thevan.*

29 Cr. L. J. 30 :
106 I. C. 446 : 27 L. W. 66 :
I. L. T. 40 Mad. 108 : 55 M. L. J. 213 :
51 Mad. 527 : A. I. R. 1928 Mad. 166.

—Ss. 166 (1), 212 (4) (11)—*Offence under, what constitutes—Prosecution for plying motor car without licence—Licensee, improper, refusal of, whether constitutes good defence.*

In a prosecution under S. 166 (1), Madras Local Boards Act, for plying a motor car for hire without a licence, the accused must show that he had a licence from the President of the District Board, or that he comes under Cl. (11) of S. 212 of the Act by which

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

he will be deemed to have been allowed a licence for one year where no order has been passed and communicated to him within 30 days on his application for licence. The fact that the person authorised to grant or refuse the licence did not exercise his discretion reasonably in refusing to grant the licence, would not afford an answer to such a prosecution and does not bring the case within S. 212, Cl. (11) of the Act. *In re : Krishnaswami Pillai*. 26 Cr. L. J. 681 :

86 I. C. 57 : 1925 M. W. N. 47 :
21 L. W. 254 : 48 M. L. J. 132 :
A. I. R. 1925 Mad. 476.

———S. 170—Market—‘Market,’ what is—Market in existence before Act, whether “new market.”

A market is a place set apart for the meeting of the general public, of buyers and sellers, freely open to any such, to assemble together, where any seller may expose his goods for sale and any buyer may purchase. Where areca-nuts were brought to certain premises, weighed and there purchased or sold to or by people and a fee was levied by the owner thereof; *Held*, that the place constituted a “market” within the meaning of the Madras Local Boards Act. The expression “new market” in S. 170, Madras Local Boards Act, “is used in its ordinary signification as for the first time opened or kept open.” *Public Prosecutor v. Cheru Kulli*. 26 Cr. L. J. 1053 :
87 I. C. 973 : A. I. R. 1925 Mad. 1095.

———Ss. 171, 173, 176, 177, 188, 212—Refusal of licence by Local Board, legality of.

A person who owned a private market before the commencement of the Madras Local Boards Act of 1920, is entitled to the grant of a licence under S. 171 of the Act, subject only to such conditions as are prescribed by S. 173. An order of the Local Board merely refusing licence to such a person does not come under S. 212 (11), Madras Local Boards Act, and is illegal and *ultra vires*, and unless and until a legal order is passed, his application for licence cannot be considered to have been properly disposed of and the owner cannot be convicted under S. 175 of the Act. *Ellamal v. Emperor*. 29 Cr. L. J. 126 (b) :

106 I. C. 718 : 1927 M. W. N. 801 :
53 M. L. J. 810 : 26 L. W. 771 :
A. I. R. 1928 Mad. 164.

———S. 193—Scope of.

S. 193 is imperative in its terms like S. 166. *Satyanarayana v. H. B. Yorke*. 34 Cr. L. J. 26 :
140 I. C. 524 : 1933 M. W. N. 102 :
37 L. W. 264 : I. R. 1933 Mad. 17 :
A. I. R. 1933 Mad. 148.

———Ss. 193, 207, Sch. VII (c)—Licence, necessity of—Forwarding Agent for consigning fish—Keeping fish in rented shed before consignment, whether amounts to “storing” or “dealing with”—Licence, whether necessary.

A Forwarding Agent who collects packages of fish, and before consigning them elsewhere, keeps them for a day or two in a rented shed

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

must be held to “store or deal with” fish within the meaning of Sch. VII (c), Madras Local Boards Act, and is bound to take out a licence therefore under S. 193 and default to do so amounts to an offence under S. 207. *Public Prosecutor v. Saidali Kulli*.

28 Cr. L. J. 515 :
102 I. C. 211 : 50 Mad. 752 : 52 M. L. J. 559 :
25 L. W. 665 : 1927 M. W. N. 389 :
38 M. L. T. 341 : A. I. R. 1927 Mad. 624.

———Ss. 193, 221—Power of Local Board—Licence under S. 193 not taken—Proceedings to recover licence fees under S. 221, legality of.

A Local Board cannot, without taking steps in time to compel a person who has not taken out a licence for carrying on a trade to take out such licence, institute proceedings under S. 221, Madras Local Boards Act, for recovery of licence fees, as if the licence has in fact been issued. *Health Inspector, Taluk Board, Kumbakonam v. Govinda Padayachi*. 29 Cr. L. J. 1087 :
112 I. C. 591.

———Ss. 193, 221, 207—Procedure—Licence under S. 193, failure to take out—Prosecution under S. 207 or recovery of fee under S. 221.

Where the President of a Local Board thinks that a person should take out a licence under S. 193, Madras Local Boards Act, and that person refuses to do so, and carries on his industry without a licence, the proper course is to prosecute him under S. 207 and not to apply under S. 221 for the recovery of the fee for the licence. *Union Board, Paramakudi v. Chelaswami Thevar*. 27 Cr. L. J. 1187 :
97 I. C. 947 : 1926 M. W. N. 676 :
A. I. R. 1926 Mad. 1068.

———Ss. 193, 223—Proviso—Limitation for prosecution—Omission to take out licence—Continuing offence.

Under the proviso to S. 223, Madras Local Boards Act, failure to take out a licence or to obtain permission under the Act, is a continuing offence and prosecution for such offence may be commenced within three months of the expiry of the period during which the licence or permission, if granted, would enure. *Arthur v. Appavu Velan*. 29 Cr. L. J. 388 :
108 I. C. 411.

———S. 193, Sch. VII—Licence—Licence for business within Union Board limits—Taluk Board President, right of, to issue Notification under S. 193.

Under S. 193, Madras Local Boards Act, the authority which is to notify that a licence for the purposes mentioned in Sch. VII of the Act, should be obtained, is the Taluk Board and the licence has to be obtained, if the business is to be carried on within Union limits, from the President of the Union Board, and if the business is to be carried on outside the Union limits but inside the Taluk Board limits, from the President of the Taluk

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

Board. *President of the Union Board, Pathanur v. Ramasubba Ayyar.* 30 Cr. L. J. 367 : 114 I. C. 824 : I. R. 1929 Mad. 344.

—S. 193, Sch. VII, Cl. (j)—*Licence, if necessary—"Brick-kiln"—Piles of bricks heaped up for burning, whether kiln.*

Piles of bricks simply heaped together in open space for burning without an outer structure, do not constitute a "brick kiln" and no licence is required from Local Boards Authorities for burning bricks in such piles under S. 193 read with Cl. (j) of Sch. VII of the Madras Local Boards Act. *Public Prosecutor v. Vallai Udayan.*

29 Cr. L. J. 928 : 111 I. C. 736 : A. I. R. 1928 Mad. 1195.
—S. 193 (1)—*Notification under, legality of.*

Where a rice mill was notified under S. 193 (1) of the Madras Local Boards Act : *Held*, that it must be assumed that the President had considered that the rice mill was likely to be dangerous to human life, health or property and that the Notification was issued in conformity with the law. *President, Union Board, Alandur v. A. M. Balakrishna Reddiar.*

33 Cr. L. J. 655 (1) : 138 I. C. 583 (1) : 1932 M. W. N. 720 : I. R. 1932 Mad. 594 (1) : A. I. R. 1932 Mad. 508.

—S. 194—*Continuing offence.*

The offence of installing machinery without a licence is not a continuing offence. *Arunachala Chetty v. Emperor.*

32 Cr. L. J. 851 : 132 I. C. 141 : 1931 M. W. N. 495 : 34 L. W. 529 : I. R. 1931 Mad. 637 : A. I. R. 1931 Mad. 490 (1).

—S. 207.
See also (i) Madras Local Boards Act, 1920, Ss. 159, 166, 207.
(ii) Madras Survey and Boundaries Act, 1928, Ss. 18, 14.

—Ss. 207 (1) (e), 223—*Disobedience of notice for removal of encroachment—Gist of offence Limitation for prosecution, starting point of—Offence.*

In a prosecution under S. 207 (1) (e), Madras Local Boards Act, for failure to obey a notice to remove an encroachment, the gist of the offence is not the making of the encroachment but the failure to comply with the order to remove it, and the date of the latter is the determining factor for computing the period of the three months' limitation within which a prosecution for non-compliance of order can be instituted. There is nothing to prohibit the prosecution of a person against whom two notices for removal of an encroachment have been served and who has disobeyed the second notice. On such a prosecution it is not the province of the Criminal Courts to go into the question whether the encroachment exists. *Narayan Iyer v. Subramanian Chetty.*

28 Cr. L. J. 894 : 104 I. C. 910 : 1927 M. W. N. 346 : 39 M. L. T. 205.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

—S. 208—*Person ceasing to be President.*

A person who has ceased to be President can thenceforth neither act, nor purport to act, though he may pretend to act as President. *Bakhtvanthasalu Naidu v. Ramanuja Naidu.*

34 Cr. L. J. 677 : 144 I. C. 215 : 1933 M. W. N. 730 : I. R. 1933 Mad. 386 : A. I. R. 1933 Mad. 326.

—Ss. 208, (2), (3), 210, 227 (a)—*Sanction to prosecute, necessity of.*

Where a member of the Panchayat Board who was appointed temporary President for the purpose of election, is charged for offences punishable under S. 208 (2) and (8), Madras Local Boards Act in respect of acts or omissions alleged to have been done with reference to something intimately related to his position as a member of the Panchayat Board or as some time temporary President of the Board, the sanction of the Government is absolutely necessary as a prerequisite to taking cognizance of the alleged offence. *In re : V. K. Subramania Mudali.*

41 Cr. L. J. 496 : 187 I. C. 643 : 1940 M. W. N. 353 : 51 L. W. 532 : 12 R. M. 763 : A. I. R. 1940 Mad. 297.

—S. 210.

See also Madras Local Boards Act, 1920, S. 208 (2) (8).

—S. 212.

See also Madras Local Boards Act, 1920, S. 171.

—S. 212 (9)—*Powers of Court to refuse to allow summary recovery of unreasonable licence-fees.*

Where the licence-fees imposed are excessive or unreasonable, the Court can refuse to allow their summary recovery under S. 212 (9). *Satyanarayana v. H. V. Yorke.*

34 Cr. L. J. 26 : 140 I. C. 524 : 1933 M. W. N. 102 : 37 L. W. 264 : I. R. 1933 Mad. 17 : A. I. R. 1933 Mad. 148.

—S. 214.

See also Madras Local Boards Act, 1920, S. 141.

—S. 214 (2)—*Warrant, validity of—Warrant issued by President for attaching property for arrears of tax—Facsimile stamp of President's signature, if invalidates it—Penal Code, Ss. 186, 353—Warrant, if should be legal.*

The omission of the regular signature of the President of the Local Board does not invalidate the warrant issued to attach certain property for arrears of tax. The affixture of a facsimile stamp is enough. S. 353 and S. 186, Penal Code, do not presuppose the existence of a legal warrant. There is no duty laid upon the Bill Collectors and other persons executing warrants to make independent

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

enquiries regarding the validity of the warrant.
In re : Peer Masthan Rowther.

39 Cr. L. J. 879 :
177 I. C. 448 : 1938 M. W. N. 418 :
47 L. W. 673 : 11 R. M. 332 :
A. I. R. 1938 Mad. 659.

—S. 219 (b)—*Notice, if necessary.*

Erection of *pandal* over public street without licence—Absence of inconvenience for public is no defence to prosecution. Notice to remove is not condition precedent to prosecution. *The Public Prosecutor v. Subramania Pandara Saunodhi.*

35 Cr. L. J. 553 :
147 I. C. 1226 (2) : 1933 M. W. N. 912 :
66 M. L. J. 179 : 39 L. W. 196 :
6 R. M. 424 : A. I. R. 1934 Mad. 398.

—S. 221.

See also Madras Local Boards Act, 1920, Ss. 103, 104.

—S. 221—Duty of Magistrate—*Application under S. 221, before exhausting other remedies—Government orders directing Board to exhaust all available means before resorting to S. 211, effect of.*

A Magistrate to whom an application is made by a Local Board under S. 211, Madras Local Boards Act, to realise the amount of a penalty for an unauthorised occupation or encroachment upon the property of the Board is bound to proceed with the application even if the Local Board has not exhausted all other processes for the recovery of the dues. Government orders directing that the Boards should exhaust all other remedies before making an application to the Magistrate, are mere advisory and administrative directions and have not got the force of law. *Pulavarthi Lakshmanaswami v. Abdul Khudavande Sahib Garu.*

31 Cr. L. J. 984 :
126 I. C. 110 : 1930 M. W. N. 349 :
A. I. R. 1930 Mad. 703.

—S. 221—Jurisdiction of Magistrate—*To revise assessment by Local Board.*

A Magistrate acting under S. 221, Madras Local Boards Act, has no jurisdiction to revise an assessment made by the Local Board, or to inquire into the basis of assessment or to vary the amount assessed by the Board. He can determine the amount only if the amount claimed is disputed on the ground that it has been paid wholly or partly or that some one else is the assessee. The only remedy of a party aggrieved by the action of the President of a Local Board in imposing an assessment is to appeal to the Board whose decision according to the rules under the Act is final. *A. S. Rangesa Rao v. A. Swaminatha Iyer.*

29 Cr. L. J. 389 :
108 I. C. 414 : 27 L. W. 320 :
A. I. R. 1928 Mad. 495.

—S. 221—Magistrate acting under 'Inferior Criminal Court'—*Cr. P. C., Ss. 435, 439—Government of India Act, 1915 (5 and 6 Geo. V. O. 61), S. 107—Revision—Order directing payment of fees—Fine, whether can be imposed.*

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

A Magistrate taking action under S. 221, Madras Local Boards Act of 1920, is an "inferior Criminal Court" within the meaning of S. 435, Cr. P. C., and an order made by him under S. 221 is subject to the revisional jurisdiction of the High Court under S. 439, Cr. P. C., or S. 107 of the Government of India Act. Under S. 221, Madras Local Boards Act of 1920, the imposition of a fine in addition to directing the payment of the fees due is illegal. *In re : Puniya Syamalo.*

24 Cr. L. J. 464 :
72 I. C. 624 : 1922 M. W. N. 840 :
17 L. W. 155 : A. I. R. 1923 Mad. 275.

—S. 221—Money due under contract, *whether can be recovered summarily.*

Money due to a Municipality under a contract cannot be summarily recovered by the Municipality under S. 221, Madras Local Boards Act of 1920. *Mahabab Alli Khan v. President, Talug Board, Kurnoo.*

26 Cr. L. J. 261 :
84 I. C. 325 : 1924 M. W. N. 54 :
A. I. R. 1924 Mad. 898.

—S. 221—Other sums, meaning of—*Money payable under contract of toll lease.*

The amount due under a contract of the lease of toll does not fall under S. 221, Local Boards Act. The words "other sums" in that section must be read as *ejusdem generis* with what precedes them. *In re : Puniya Syamalo.*

25 Cr. L. J. 352 :
77 I. C. 240 : 47 Mad. 381 :
A. I. R. 1924 Mad. 669.

—S. 221—Power of District Magistrate.

A Magistrate acting under S. 221, Madras Local Boards Act, acts in the capacity of a Magistrate and his orders are subject to the provisions of Ss. 435 and 439, Cr. P. C. The District Magistrate, therefore, has power to call for the records of the case and may proceed in accordance with the provisions of Ss. 435 and 439 if the facts of the case warrant such action. *A. S. Rangesa Rao v. A. Swaminatha Iyer.*

29 Cr. L. J. 389 :
108 I. C. 414 : 27 L. W. 320 :
A. I. R. 1928 Mad. 495.

—Ss. 221—Prosecution for omission to pay fee, *legality of—Legality of fee, jurisdiction of Magistrate to decide.*

The fee to be paid under S. 221, Madras Local Boards Act, must be due to a Local Board under or by virtue of the Act and it is, therefore, open to a party appearing before a Magistrate under S. 221 of the Act to allege and prove that the fee claimed is not due from him under or by virtue of the Act, and to have the legality of the fee considered. *In re : A. Raheem Saheb.*

30 Cr. L. J. 911 :
118 I. C. 278 : 30 L. W. 181 :
57 M. L. J. 317 : I. R. 1929 Mad. 774 :
52 Mad. 714 : 1929 M. W. N. 515 :
A. I. R. 1929 Mad. 600.

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

—Ss. 221, 219—Pandal erected without licence—Subsequent levy of fee—"Licence fee," whether due—Penalty, whether leviable by Magistrate.

A Union Board cannot move a Magistrate under S. 221, Madras Local Boards Act, to recover the penalty imposed by it upon a person who erected a *pandal* without obtaining a licence from the Board under S. 168 of the Act. Acting under Ss. 212 and 219, a Magistrate after convicting a person for failure to obtain a licence can, in addition to the fine which may be imposed, recover and pay to the Local Board the amount of fee chargeable for the licence but there is no provision in the Act empowering the Local Board to fix a penalty for erecting a *pandal* without a licence. *Maridu Gopayya v. Emperor*. 29 Cr. L. J. 681 : 110 I. C. 233 : 1928 M. W. N. 319 : 55 M. L. J. 27 : 28 L. W. 342 : 51 Mad. 866 : A. I. R. 1928 Mad. 682.

—S. 221 (2)—Irregularity of proceedings.

Accused convicted for failure to pay lease amount—Agreement to lease being subsequent to new Act (XI of 1930)—Proceedings taken under S. 221 (2) of the old Act—No attempt made to recover amount by distraint—Under S. 221 (2) lease amount could not be recovered—If prosecution be taken under new Act, proceedings were irregular as no attempt was made to recover amount by distraint of defaulter's property. *Ahmad Hussain v. President, Union Panchayat, Punganur*. 33 Cr. L. J. 603 : 138 I. C. 370 : 1932 M. W. N. 815 : I. R. 1932 Mad. 564 : A. I. R. 1932 Mad. 660.

—S. 221 (3)—Penalty—Encroachment—Magistrate moved to recover penalty—Defence of no encroachment, whether competent.

When a Local Board moves a Magistrate under S. 221, Madras Local Boards Act of 1920, to recover a penalty imposed for encroachment, the defaulting party cannot ventilate before the Magistrate his claim that there was no encroachment at all. The question for decision under S. 221 (3), Madras Local Boards Act, is as to the amount due or its apportionment and not whether the penalty is at all leviable. S. 221 of Madras Local Boards Act only applies to the manner of recovery of the penalty and does not re-open the question whether the defaulter is "bound" to pay the penalty imposed. *Ramachandran Servai v. President, Union Board*. 27 Cr. L. J. 97 : 91 I. C. 529 : 49 M. L. J. 356 : 22 L. W. 393 : 1925 M. W. N. 743 : 49 Mad. 888 : A. I. R. 1925 Mad. 1015.

—S. 222, Sch. IV, r. 25—Alteration of assessment.

Sch. IV, r. 25, Madras Local Boards Act, contemplates the preparation of the list every half-year showing the persons who have to pay taxes and the amount due by each of them. It is not, however, necessary for the President to prepare an entirely fresh list every half-year. He can adopt the old one with such amendments as may be necessary subject only

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

to the condition that he must prepare a completely fresh list once in every five years. *Parichayut Board, Sivaganga v. T. Pillalhan Servai*. 38 Cr. L. J. 760 :

169 I. C. 452 : 1937 M. W. N. 50 : 1937, 1 M. L. J. 101 : 45 L. W. 219 : 10 R. M. 41 : A. I. R. 1937 Mad. 272.

—S. 223.

See also Madras Local Boards Act, 1920, S. 24.

—S. 223—Prosecution.

Person can be prosecuted within three months of expiry of period of licence. *The President, District Board, Tanjore v. Adam Ghanni Rowther*. 33 Cr. L. J. 363 :

136 I. C. 781 (2) : 62 M. L. J. 343 : 35 L. W. 316 : 55 Mad. 432 : 1931 M. W. N. 1308 : I. R. 1932 Mad. 317 (2) : A. I. R. 1932 Mad. 271.

—S. 223—Withdrawal of complaint—President sanctioning prosecution—Complaint filed by section officer.

Upon a sanction by the President of a District Board under the Madras Local Boards Act, the section officer filed a complaint. The officer subsequently applied for the withdrawal of the prosecution but the application was rejected by the Magistrate on the ground that the President alone could withdraw the prosecution, he having originally sanctioned it : *Held*, that the view of the Magistrate was not correct because S. 223, Local Boards Act, did not refer to withdrawal of legal proceedings but only to the initiation of legal proceedings. So far as the withdrawal of the prosecution was concerned, that is to say, in cases instituted under the Local Boards Act, the authority for withdrawal was conferred not by the Local Boards Act but by the Cr. P. C. *In re : Periaswami Goundan*. 39 Cr. L. J. 707 :

176 I. C. 149 : 47 L. W. 308 : 1938, 1 M. L. J. 854 : 11 R. M. 35 : 1938 M. W. N. 423 : A. I. R. 1938 Mad. 524.

—S. 227-A—Sanction, necessity of—Member of Panchayat Board, snatching away Minutes Book from another member—Prosecution for offence.

The alleged offence was the snatching away of the Minutes Book by a member of a Panchayat Board from the member who was present at the meeting apparently with a view to prevent him from making an entry therein, which was objected to. Both the accused in the case were members and one was charged with having instigated the other to snatch away the Minutes Book. In the complaint reference was made to the official character of the various acts, and occurrences that took place leading up to the snatching away of the Minutes Book : *Held*, that the act must be deemed to be done by the accused when purporting to act in his official capacity as a member. Taking a reasonable view of the facts alleged, this was a case in which the Magistrate was not entitled to take cognisance of the offence in the absence

MADRAS LOCAL BOARDS ACT (XIV OF 1920)

of any sanction of the prosecution by the Government. *Karuppalah Thevan v. N. Krishna Pillai*.

40 Cr. L. J. 531 :
181 I. C. 254 : 49 L. W. 204 :
1939, 1 M. L. J. 444 : 11 R. M. 785 :
1939 M. W. N. 240 :
A. I. R. 1939 Mad. 437.

———Ss. 227-A, 208 (3)—*Illegality of trial—Trial for offence under S. 208 (3) committed in discharge of official duty without sanction of Local Government under S. 227-A.*

Where no sanction of the Local Government has been obtained under S. 227-A, Madras Local Boards Act, in a case under S. 208 (3) of the Act for an offence committed by the accused while acting in the discharge of his official duty, the trial is illegal. *Bethambhotla Subbayya v. Pothula Venkata Narasayya*.

40 Cr. L. J. 833 (a) :
183 I. C. 743 : 49 L. W. 555 :
1939, 1 M. L. J. 830 : 12 R. M. 369 (1) :
1939 M. W. N. 412 :
A. I. R. 1939 Mad. 598.

———Sch. IV, r. 33—*Limitation for prosecution for non-payment of tax—Preparation of half-yearly lists—Public notice, whether sufficient—Starting point.*

Individual notice to the tax-payer concerned is necessary only when an alteration in the assessment is made at some time other than the occasion on which the half-yearly list is prepared; in other cases public notice of the amendments made to the list is enough. A prosecution for non-payment of assessment under r. 33 of the Local Boards Act, must be lodged within three years of the date on which distraint of defaulter's property becomes impracticable. *Panchayat Boards, Sivaganga v. T. Pillathian Servai*.

38 Cr. L. J. 760 :
169 I. C. 452 : 45 L. W. 219 :
1937 M. W. N. 50 : 10 R. M. 41 :
1937, 1 M. L. J. 101 :
A. I. R. 1937 Mad. 272.

———Sch. VII.

See also Madras Local Boards Act, 1920, S. 193.

———Sch. VIII.

See also Madras Local Boards Act, 1920, S. 166.

———Sch. VII, Cls. (p) (g)—*Machinery, Licence.*

A printing press which is entirely worked by hand is not 'machinery' and does not require a licence. *Siva Bushana Mudaliar v. The President, Panchayat Board, Tiruvallur*.

37 Cr. L. J. 424 (1) :
161 I. C. 217 : 70 M. L. J. 113 :
43 L. W. 200 : 59 Mad. 261 :
8 R. M. 803 : 1936 M. W. N. 191 (1) :
A. I. R. 1936 Mad. 204.

MADRAS LOCAL BOARDS ACT (XI OF 1930)

———Sch. IV, r. 33 (2)—*Distraint, when impracticable.*

Mere refusal to answer notices demanding the amount due is no sort of proof that distraint is impracticable within the meaning of r. 33 (2) of Sch. IV of the new Act. *Ahmad Hussain v. President, Union Panchayat, Punganur*.

33 Cr. L. J. 603 :
138 I. C. 370 : 1932 M. W. N. 815 :
I. R. 1932 Mad. 564 :
A. I. R. 1932 Mad. 660.

MADRAS MOTOR VEHICLES ACT (I OF 1907)

———Motor Rules, Rule No. 9—*Offence under, what constitutes—Omission to blow the horn at turning—Negligence.*

An omission to sound the horn, when a motor car driver goes from the right side to the wrong side of the road for the purpose of turning, which causes a collision with another vehicle, constitutes an offence under Rule 9 of the Rules framed under the Madras Motor Vehicles Act, 1907. *Rathnam v. Emperor*.

13 Cr. L. J. 487 :
15 I. C. 487 : 1912 M. W. N. 539.

MADRAS MOTOR VEHICLES RULES, 1923

———R. 30 (1)—*Licence, renewal of—Licence, whether may be taken during year—"Annually", meaning of.*

The word 'annually' in r. 30 of Madras Motor Vehicles Rules, does not mean at the expiry of every twelve months but means once in a calendar year. Where the registration certificate for running a motor bus expired on 20th March, 1926, but an application for renewal was not made till some days thereafter: *Held*, that the owner was not guilty of an offence under r. 30 and that if a certificate was obtained before the end of December, 1926, r. 30 would be sufficiently complied with. *Public Prosecutor v. Ganapathi Hedge*.

28 Cr. L. J. 1022 :
106 I. C. 110 : 39 M. L. T. 269 :
A. I. R. 1927 Mad. 969.

MADRAS MOTOR VEHICLES RULES, 1938

———Rr. 175, 176, 262—*Scope of—'G', permit under old Rules of 1923 regarding maximum number of passengers that can be carried in a bus—Terms violated—Driver, if can be punished under new rules.*

There is no rule in Madras Motor Vehicles Rules of 1938 corresponding to r. 39 (a) (1) of the Rules of 1923 making the driver liable for the offence of over-loading and r. 262 is only a saving clause which validates the 'G', permit issued under the old rules till its expiry. It cannot possibly be construed as a penal provision. *In re: Duraisami Raju*.

40 Cr. L. J. 666 :
182 I. C. 415 : 1939, 1 M. L. J. 518 :
1939 M. W. N. 343 : 49 L. W. 536 :
12 R. M. 74 : A. I. R. 1939 Mad. 491.

MADRAS MOTOR VEHICLES TAXATION ACT (III OF 1931)

—Ss. 5, 7—*Proof*;

Prosecution for non-payment of tax—Prosecution should prove that vehicle was kept or used in Madras Presidency—Mere description of owner is no evidence. *In re: The United Motor Finance Co.* 37 Cr. L. J. 99 : 159 I. C. 432 : 1935 M. W. N. 183 : 68 M. L. J. 336 : 41 L. W. 434 : 8 R. M. 498 : A. I. R. 1935 Mad. 325.

MUNICIPAL ACT (III OF 1904)

—S. 176, and Sch. V—*Miscellaneous*—The word “capital” does not mean nominal capital but only paid-up capital—Construction of statutes—Reference under S. 176 of Act must state all necessary facts.

On a reference by the Magistrate under S. 176, Madras Municipal Act III of 1904, as to the meaning of the word “capital” in Sch. V of the Act: *Held*, that in the absence of any statutory definition of the word applicable in construing the Act, the word must be taken to be used in its ordinary and popular meaning, and so construed, it means the amount of money actually used in the business, i. e., the paid-up capital. The fact that the word, in the Indian Companies Act, is used in the sense of nominal capital is no argument for so construing it in the Municipal Act, as the two Acts are not *in pari materia*. The underlying principle of Sch. V of the Act is that taxation should be roughly proportionate to the professional incomes of individuals. The word “capital” is used in the same sense in Sch. V of Act III of 1904 and in Sch. A of Act I of 1884. In construing fiscal Acts, the construction most beneficial to the subject ought to be adopted. In making references under S. 176, the Magistrate ought to state all the facts necessary for the decision of the particular case. *Mylapore Hindu Permanent Fund (Limited) v. Corporation of Madras.* 9 Cr. L. J. 68 : 31 Mad. 408 : 3 M. L. T. 400 : 18 M. L. J. 349.

MADRAS PANCHAYAT COURTS ACT (II OF 1920)

—S. 78—*Rules under—Penal Code S. 179*—Refusal of accused to plead, if amounts to offence.

Under the Madras Panchayat Courts Act as under the Cr. P. C. the mere refusal on the part of an accused person to plead to a charge before the Panchayat Court is not an offence under S. 179, Penal Code. An accused person is not bound to answer any question put to him at all and can, if he likes, decline to plead. *In re: Thirumala Reddi.* 25 Cr. L. J. 374 :

77 I. C. 422 : 46 M. L. J. 40 : 1924 M. W. N. 141 : 19 L. W. 292 : 47 Mad. 396 : A. I. R. 1924 Mad. 540.

MADRAS PLAGUE REGULATIONS

—Regulation 14 (3)—‘Local Plague Authorities,’ meaning of.

The words ‘Local Plague Authorities’ in Regulation 14 (3), Madras Plague Regulations refer to the plague authorities of the port of disembarkation. *In re: Atchuta Menon.*

10 Cr. L. J. 366 : 3 I. C. 734 : 6 M. L. T. 300.

MADRAS PLANTERS LABOUR ACT (I OF 1903)

—Ss. 4, 30—*Conviction for breach of contract, validity of—Rules framed under Act, r. 2 (4)—Contract without descriptive marks of labourer, validity of.*

When the Legislature requires certain formalities to be gone through, or observed, in order to make a contract valid, or when it requires certain descriptions or particulars to be given in a contract to make it valid, the Court cannot consider any one of the terms or requisites as of no importance. A contract between a planter and a labourer under the Madras Planters Labour Act, which does not give the descriptive marks of the labourer as required by r. 2 (4) of the rules framed under S. 4 of the Act is invalid and unenforceable and a conviction of the labourer under S. 30 of the Act for breach of the terms of such a contract is unsustainable. *Public Prosecutor v. Ayitha.* 27 Cr. L. J. 1352 :

98 I. C. 472 : 23 L. W. 559 : 49 Mad. 426 : 50 M. L. J. 659 : A. I. R. 1926 Mad. 670.

—Ss. 24, 35—*Conviction for disobedience, effect of—Power of Magistrate to issue repeated directions—“Failure to account for money advanced,” meaning of.*

There is no limit to the number of repeated directions which may be issued under S. 35, Madras Planters Labour Act, or to the number of prosecutions and convictions which may follow in default. Action taken under S. 35, Madras Planters Labour Act, does not put an end to the contract and is, therefore, no bar to a second trial and conviction for disobedience to a direction to fulfil it. The words “fails to account for the money advanced to him” mean simply this; failure to either supply labour equivalent to the advance received or to refund any balance of the advance for which he is unable to supply labour or to prove that it has been legitimately expended. *N. C. Whilton v. Mammad Maistry.*

16 Cr. L. J. 777 : 31 I. C. 377 : 2 L. W. 1069 : 18 M. L. T. 511 : 1916 M. W. N. 2 : A. I. R. 1916 Mad. 527.

MADRAS POLICE ACT (XXIV OF 1859)

—S. 46—*Offence under—“Mamul”, payment of, to Police Officer—Offence.*

The mere demand by a Police Officer of ‘mamul’ or a customary payment with a view to extend his favour to the person making the payment is in itself a threat, and consequently, the obtaining of money by such a demand

MADRAS PREVENTION OF ADULTERATION ACT (III OF 1918)

comes within S. 46 of the Police Act. *Emperor v. Lal Bage*.

19 Cr. L. J. 942 :
47 I. C. 666 : 41 Mad. 465 :
A. I. R. 1919 Mad. 587.

MADRAS POLICE ACT (III OF 1888)

—S. 76—*Liability of licensee—Licensee under Act—Servant of licensee disobeying conditions of licensee.*

Where licence was given under the Madras Police Act to the manager of a theatre to go in a bus with music for the purpose of distributing hand-bills on a particular day at stated hours and a servant of the licensee drove the bus in a prohibited street in contravention of the conditions of the licence: *Held*, that the licensee was as much guilty as his servant of an offence under S. 76 of the Act, even though he did not actually go out in the bus. *In re : Manager, Krishna Vinodha Sabha, C. Cunniah & Co.*

29 Cr. L. J. 431 (a) :
108 I. C. 636 : 27 L. W. 87 :
54 M. L. J. 315 : 51 Mad. 341 :
I. L. T. 40 Mad. 272 :
A. I. R. 1928 Mad. 473.

MADRAS PREVENTION OF ADULTERATION ACT, (III OF 1918)

—S. 2—*Local Executive Officer, what is.*

A Special Officer appointed to administer the Municipality for a certain period in supersession of the powers of the Municipal Council and Chairman is not a 'Local Executive Officer'. *The Public Prosecutor v. Chinta Venkatarayodu.*

37 Cr. L. J. 627 :
162 I. C. 425 : 1936 M. W. N. 210 :
43 L. W. 544 : 70 M. L. J. 503 :
8 R. M. 997 : A. I. R. 1936 Mad. 471.

—S. 5 (1) (b)—*Conviction under.*

A person who sells as milk an admixture of milk and water can be convicted under S. 5 (1) (b). *In re : Narayana Iyer.*

34 Cr. L. J. 16 :
140 I. C. 260 : 1932 M. W. N. 1350 :
I. R. 1932 Mad. 842 : A. I. R. 1933 Mad. 99.

—Ss. 5 (1) (b), 20 (2)—*Rules under r. 28 Offence under—Service of ghee to customers by hotel-keeper amounts to sale—Ignorance of nature or quality of article is no defence.*

The ignorance of the accused of the nature or quality of the article is no defence to a prosecution under S. 5 (1) (b), Madras Prevention of Adulteration Act. Where a hotel-keeper has stored adulterated ghee for serving it to his customers, with their meal, the price of the ghee is necessarily included in the price of the meal, and thus amounts to its sale and he cannot be acquitted on the ground that the ghee is not sold to the customers. *Public Prosecutor v. Narayana Ayyar.*

41 Cr. L. J. 377 :
186 I. C. 785 : 1939 M. W. N. 1128 (1) :
50 L. W. 790 : 12 R. M. 681 :
A. I. R. 1940 Mad. 173.

MADRAS PREVENTION OF ADULTERATION ACT (III OF 1918)

—S. 5 (1) (d)—*Conviction under, if proper—Butter offered for sale in sealed tins as purchased—Extra moisture in it got admixed in process of manufacture.*

Where the butter which is offered for sale in sealed tins in the state in which it is purchased by the vendor contains extra moisture, and the evidence shows that the extra moisture must have got unavoidably admixed in the process of the manufacture of the butter, the vendor cannot be convicted under S. 5 (1) (d). *Delhi Bather v. Corporation of Madras.*

41 Cr. L. J. 552 :
188 I. C. 150 : 1939 M. W. N. 1224 (2) :
51 L. W. 203 : 13 R. M. 3 :
1940, 1 M. L. J. 169 :
A. I. R. 1940 Mad. 221.

—S. 5, Cl. 1 (d)—*Offence under, what amounts to.*

The Government not having laid down any standard in respect of sweetmeats like 'Kajoor', the selling of the sweetmeats which do not contain what they are usually expected to contain does not amount to an offence under S. 5, Cl. 1 (d), Madras Prevention of Adulteration Act. *In re : K. S. Ambi Iyer.*

40 Cr. L. J. 513 :
181 I. C. 51 : 49 L. W. 202 :
1939, 1 M. L. J. 332 :
1939 M. W. N. 239 : 11 R. M. 768 :
A. I. R. 1939 Mad. 375.

—Ss. 5 (1) (d), 14, Rr. 24, 28, 29 under S. 20 (2)—*Supply and sample of butter, whether sale—Person so supplying, if can be convicted under S. 5 (1) (d) and Rr. 24, 28 and 29 framed under S. 20 (2).*

Supply of sample of butter to the Sanitary Inspector under S. 14, Madras Prevention of Adulteration Act, is not a sale, and when a Secretary and an Accountant of a Co-operative Society so supply butter under S. 14, they cannot be convicted under S. 5 (1) (d) and Rr. 24, 28, 29 framed under S. 20 (2) nor can they be said to offer the butter for sale. *Public Prosecutor v. Srinivasa Rao.*

39 Cr. L. J. 735 :
176 I. C. 272 (1) : 1938 M. W. N. 317 :
1938, 1 M. L. J. 669 :
47 L. W. 535 : 11 R. M. 50 :
A. I. R. 1938 Mad. 541.

—Ss. 5 (1), 20 Rules under S. 20—*R. 18—Applicability of.*

The accused had been convicted of an offence punishable under S. 5, Cl. (1) (d), Madras Prevention of Adulteration Act. The charge was that he sold milk below the standard of purity prescribed by Government. The certificate of analysis by the Government Analyst was to the effect that the sample contained 60.5 parts of genuine milk, 35.0 parts of added water and 4.5 parts of cane sugar in a total of 100 parts. This opinion was based on the assumption that the milk that was sent as sample, that is the milk that was sold by the petitioner, was sold as buffalo's

MADRAS PREVENTION OF ADULTERATION ACT (III OF 1918)

milk. The sample was found to contain 3·4 per cent. of milk fat. There was nothing to show that the quantity of solid found was below the prescribed minimum: *Held*, that the sample must be dealt with as if it were cow's milk. The minimum percentage of milk fat was only 3 per cent. under R. 10. The sample contained 3·4 per cent. milk fat. It could not therefore be said that the sample was below the minimum prescribed so far as milk fat was concerned. R. 18 did not apply and the offence had not been established. *In re : Krishna Iyer*.

41 Cr. L. J. 106 :
185 I. C. 3 : 49 L. W. 205 :
1939, 1 M. L. J. 266 :
1939 M. W. N. 244 : 12 R. M. 524 :
A. I. R. 1939 Mad. 384.

—S. 6 (2)—*Privilege under, when can be claimed—Privilege of employer, whether should be claimed before prosecution closes its case.*

The privilege conferred on an employer by S. 6 (2), Madras Prevention of Food Adulteration Act, 1918, need not necessarily be claimed before the prosecution closes its case. As no time limit is fixed for claiming this privilege except the natural limit of pronouncement of judgment, the employer is entitled to claim the privilege at any stage of the trial. *In re : D. M. Venkatanarayana Ayyar*.

38 Cr. L. J. 537 :
168 I. C. 291 : 45 L. W. 240 :
1937 M. W. N. 173 : 9 R. M. 559 :
1937, 1 M. L. J. 338 :
A. I. R. 1937 Mad. 448.

—S. 14.

See also Madras Prevention of Adulteration Act, 1918, S. 5 (1) (d).

—S. 19—*Limitation.*

A complaint which has been filed within three months in the Court of a Magistrate who had no jurisdiction but which has been transferred to the proper Magistrate only after three months is not time-barred. *The Public Prosecutor v. Chinta Venkatarayadu*.

37 Cr. L. J. 627 :
162 I. C. 425 : 1936 M. W. N. 210 :
43 L. W. 544 : 70 M. L. J. 503 :
8 R. M. 997 : A. I. R. 1936 Mad. 471.

—S. 20 (d)—*Scope of.*

Where certain Rules under S. 20 (d) and (e) were framed and published in 1926, but the Act itself was not extended to a particular Municipality till 1929 : *Held*, the rules cannot be deemed to be in force within that Municipality from 1929. *In re : V. Narayana Iyer*.

34 Cr. L. J. 16 :
140 I. C. 260 : 1932 M. W. N. 1350 :
I. R. 1932 Mad. 842 :
A. I. R. 1933 Mad. 99.

MADRAS PROHIBITION ACT (X OF 1937)

—S. 4, Cls. (a), (g) — *Sentence—Accused found in possession of distiller containing some arrack—Separate sentences under Sub-cls. (a) and (g) are not called for.*

A distiller of arrack will necessarily possess the arrack and separate sentences are not called for where the accused is found in possession of a distiller of arrack containing some arrack. *In re : Vyapuri Kavandan*.

41 Cr. L. J. 92 (a) :
184 I. C. 613 : 50 L. W. 667 :
1939, 2 M. L. J. 109 :
1939 M. W. N. 472 : 12 R. M. 474 :
A. I. R. 1939 Mad. 574.

—S. 4 (1) (a) — *Interference, legality of—Ignorance on the part of accused as to law is no excuse.*

The ignorance of the petitioner as to the law is no excuse for interference with her conviction under S. 4 (1) (a), Madras Prohibition Act. *Annapurni Ammal v. Emperor*.

41 Cr. L. J. 938 :
190 I. C. 526 : 1940 M. W. N. 529 (1) :
52 L. W. 64 : 13 R. M. 431 :
A. I. R. 1940 Mad. 816.

—S. 4 (1) (a) and (i) — *Possession of illicit liquor—Person possessing and offering for sale illicit liquor—His undivided son offering bottle to father's customers along with father—Father alone held guilty under S. 4 (1) (a).*

An accused who was a toddy renter possessed and offered for sale illicit liquor but no actual sale took place. The accused had an undivided son aged about 19 years, and the evidence against him was that he offered a bottle to his father's customers along with the father: *Held*, that the father was guilty under S. 4 (1) (a), and not under S. 4 (1) (i). The son was not guilty under S. 4 (1) (a), as the evidence did not warrant a finding of possession by him. *Public Prosecutor v. Perianna Goundan*.

40 Cr. L. J. 156 (a) :
178 I. C. 944 : 48 L. W. 649 :
1938, 2 M. L. J. 813 :
1938 M. W. N. 1275 : 11 R. M. 508 :
A. I. R. 1939 Mad. 53.

MADRAS REGULATION (II OF 1816)

—S. 10—*Power of village Magistrate—Confinement in front of temple, legality of.*

Under S. 10, Madras Regulation II of 1816, a village Magistrate has power to enforce a sentence of confinement only in the village choultry and nowhere else. Confinement of an accused person in front of a temple is illegal. *In re : Ponnusami Pillai*.

22 Cr. L. J. 208 :
60 I. C. 64 : 12 L. W. 638 :
1920 M. W. N. 786 : 39 M. L. J. 709 :
44 Mad. 113 : A. I. R. 1921 Mad. 410.

MADRAS REGULATION (II OF 1819)

—S. 2 (3)—*Commitment by Government after start of judicial proceedings—Reasons, propriety of, if can be canvassed in Court—Habeas corpus.*

A commitment under Madras Regulation II of 1819 is an executive act of the Government and is not a judicial proceeding. The fact that a judicial proceeding has already been started against an individual does not render Madras Regulation II of 1819 inapplicable or deprives the Governor-in-Council of the power of taking proceedings under it. *In re: Etakandan Kunhokker.*

25 Cr. L. J. 123 :
76 I. C. 187 : 45 M. L. J. 473 :
18 L. W. 517 : 1923 M. W. N. 741 :
33 M. L. T. 17 : A. I. R. 1924 Mad. 372.

MADRAS REVENUE RECOVERY ACT (II OF 1864)

—S. 8—*Production of warrant, if necessary—Distrain of movable property of defaulter—"Produced," meaning of.*

The word "produced" in S. 8, Madras Revenue Recovery Act, only means that the distrainer should have the warrant in his possession at the time of distraint and should show it as his authority to any one interested in the attached property who may be present and disposed to question the legality of his action. It is not necessary that the warrant should be shown, unless the party whose property is distrained asks for it. *Public Prosecutor v. Kayaniyil Kunhamad.*

18 Cr. L. J. 622 :
39 I. C. 990 : 5 L. W. 537 :
1917 M. W. N. 413 : A. I. R. 1918 Mad. 562.

—S. 8—*Resistance, whether offence—Defaulter absent at time of distraining—Demand in writing not necessary.*

The Madras Revenue Recovery Act does not contain any provision requiring, in cases where the defaulter is absent at the time of distraining, that the demand in writing described in S. 8, should be delivered to the defaulter before the distress. A person distraining in these circumstances is not doing anything illegal and resistance to him is punishable as an offence under the Act. *In re: Marakkur.*

16 Cr. L. J. 607 :
30 I. C. 159 : 29 M. L. J. 60 :
A. I. R. 1916 Mad. 458.

MADRAS SALT ACT, 1889

—S. 74 (d)—*Power of Magistrate.*

Magistrate can take cognisance of a case under the Act on a report by the Police charging the accused with an offence under the Act. *In re: Maddi Sudarsanam.*

32 Cr. L. J. 1035 :
133 I. C. 383 : 1931 M. W. N. 405 :
61 M. L. J. 127 : 34 L. W. 211 :
I. R. 1931 Mad. 735 : A. I. R. 1931 Mad. 769.

MADRAS SUPPRESSION OF IMMORAL TRAFFIC ACT (V OF 1930)

—S. 5 (1)—*Conviction under, legality of—Being inmate of brothel, whether an offence.*

The mere fact that a person is an inmate of a

MADRAS SURVEY AND BOUNDARIES ACT (IV OF 1897)

brothel does not warrant her conviction under S. 5, Cl. (1), Madras Suppression of Immoral Traffic Act. *In re: Pappa.*

40 Cr. L. J. 799 (a) :
183 I. C. 112 : 49 L. W. 544 (1) :
1939 M. W. N. 410 : 12 R. M. 295 :
A. I. R. 1939 Mad. 468.

—S. 6 (2)—*Illegality of order—Search not under S. 6 (1) but under Ss. 13 and 14—Magistrate, if can pass order under S. 6 (2).*

The warrant under which the Inspector made the raid of the house was issued, not under S. 6 (1) but under Ss. 13 and 14, Madras Suppression of Immoral Traffic Act. It was issued by the Commissioner of Police, to the Inspector authorizing him to enter into the premises for the purpose of ascertaining whether an offence punishable under Ss. 9, 10, 11 or 12 of the said Act has been or is being committed. The nature of the warrant issued indicated that the Commissioner was not satisfied that the girls under the age of 18 years had been carrying on business of prostitution in a brothel. The Magistrates of the Juvenile Court passed an order under S. 6 (2) : *Held*, that since the search was not under S. 6 (1), the order passed by the Magistrates of the Juvenile Court was not an order passed under S. 6 (2). *In re: Kamalammal.*

39 Cr. L. J. 869 :
177 I. C. 390 : 47 L. W. 742 :
1938, 1 M. L. J. 886 : 1938 M. W. N. 611 :
11 R. M. 316 : A. I. R. 1938 Mad. 667.

MADRAS SURVEY AND BOUNDARIES ACT (IV OF 1897)

—S. 13—*Power of Survey Officer to alter Union limits—Madras Local Boards Act, Ss. 5, 207, 232—Notification fixing limits of Union—Subsequent alteration of limits of Revenue village by Board of Revenue by including new hamlet—Included place, whether within Union limits—Summons to attend in respect of assessment of tax on houses in newly included hamlet—Disobedience—Offence.*

Under the Madras Local Boards Act, 1920, the limits of a Union can be altered only by the District Board acting under S. 5 of that Act with the approval of the Government. Under the Madras Local Boards Act, 1884, a Union was constituted in respect of a certain Revenue village. In 1910 the Revenue village was enlarged by the Board of Revenue so as to include another hamlet : *Held*, that the whole of the village so enlarged was not automatically thereby brought within the limits of the Union. Where a person owning house in the newly hamlet was summoned in respect of assessment of tax in that house : *Held*, that he was not bound to attend and committed no offence by disregarding the summons of the Union Board President, as the Union had no power to levy tax on a house which was not situated within the Union limits. The boundaries which become final under S. 13, Madras Survey and Boundaries Act are so far as Government land is concerned the boundaries of the holdings of "registered holders" and not the boundaries of Revenue

MADRAS TOWN NUISANCES ACT (III OF 1889)

villages except so far as they are determined by the boundaries of such holdings. That Act gives no power to fix the limits of Unions and the Survey Officer concerned has no power by his map or operations to alter the effect of a Notification of Government declaring the limits of a Union. *President, Union Board, Tirukurangudi v. Narayana Nadar.*

30 Cr. L. J. 116 :
113 I. C. 276 : 28 L. W. 657 :
55 M. L. J. 718 : I. R. 1929 Mad. 96 :
A. I. R. 1928 Mad. 1261.

MADRAS SURVEY AND BOUNDARIES ACT (VIII OF 1923)

— — — Ss. 13, 14—*Record of survey, if conclusive—Madras Local Boards Act (IV of 1920), S. 207—Survey of Union lands—Land in possession of private party declared encroachment—Prosecution by Local Board within three years of order for non-compliance with order of removal of encroachment.*

Under S. 13, Madras Survey and Boundaries Act, a decision of a Survey Officer that certain property in the possession of a party is an encroachment by him and that the property belongs to a Local Board is final and unless the Survey so notified be modified by a decree of a Civil Court under the provisions of S. 14, the record of the Survey is conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded. But inasmuch as the party aggrieved has a period of three years under S. 14 of the Act within which to file a suit to set aside the order, the order cannot be treated as conclusive in a prosecution launched within the said period of three years under S. 207 of the Local Boards Act for non-compliance with an order of removal of the alleged encroachment, and in such a prosecution, the Criminal Court is entitled and is bound to go into the evidence as to the title to the property taking the decision of the Survey Officer as *prima facie* evidence in favour of it. *Palimuthu Ambalagar v. President, Union Board.*

29 Cr. L. J. 1085 :
112 I. C. 589 : 28 L. W. 653 :
A. I. R. 1928 Mad. 1278.

MADRAS TOWN NUISANCES ACT (III OF 1889)

— — — S. 3—*Confiscation, legality of—Gambling, conviction for.*

Money or coins can be said to be used for the purpose of gaming under S. 3, Madras Town Nuisances Act III of 1889 only if they are actually staked. To justify their confiscation, the money or coins should have been actually used or displayed in the Act of gambling. *Appaji v. Emperor.*

19 Cr. L. J. 301 :
44 I. C. 205 : 34 M. L. J. 253 :
7 L. W. 528 : 41 Mad. 644 :
A. I. R. 1919 Mad. 889.

— — — S. 3 (5)—*Playing gramophone inside*

MADRAS TOWN NUISANCES ACT (III OF 1889)

shop, if offence—Causing wilful obstruction in public street—Nature of offence—Crowd attracted outside shop—Owner of shop, whether commits offence.

An offence under S. 3, Sub-s. (5), Madras Town Nuisances Act, 1889, is committed only when wilful obstruction is caused in any public street, road, thoroughfare or place of public resort. Where a person played gramophone records inside his shop for the benefit of prospective buyers; *Held*, that he cannot be convicted under S. 3 (5) even though the play had attracted a crowd in the street outside the shop and traffic had been obstructed. *In re : Ramaswamy Ayyar.*

38 Cr. L. J. 544 :
168 I. C. 511 : 45 L. W. 239 :
1937 M. W. N. 184 (1) : 1937, 1 M. L. J. 310 :
9 R. M. 595 : A. I. R. 1937 Mad. 534.

— — — S. 3 (5)—*Power of Sanitary Officer—Use of charge-sheet forms—Complaint—Police report.*

A Sanitary Inspector, not empowered to exercise the powers of a Police Officer, can initiate proceedings under the Madras Town Nuisances Act. He cannot put in a charge-sheet or submit a Police Report to the Magistrate, but the mere use by him of a printed form appropriate to offences under the District Municipalities Act for embodying the substance of his complaint will not render the prosecution illegal when the document was treated as a complaint under S. 190 (1) (a), Cr. P. C., and the complainants examined under S. 200. *Public Prosecutor v. Shamsudin Sahib.*

18 Cr. L. J. 641 :
40 I. C. 289 : A. I. R. 1918 Mad 455.

— — — S. 3 (6)—*Exposing fish for sale—Offence.*

Where the evidence showed conclusively that owing to the accused selling fish on the road-side near the market, numbers of people collected there and caused an obstruction; *Held*, the exposing of the fish was an offence under S. 3 (6) of the Town Nuisances Act. *The Public Prosecutor v. Kanna.*

8 Cr. L. J. 149 :
3 M. L. T. 400 : 18 M. L. J. 329.

— — — S. 3 (10)—*Gaming, meaning of.*

The word "gaming" in Madras Act III of 1889 is used in the sense of playing a game for a stake or a prize or for money or other thing wagered upon the issue of the game. The question of chance or skill does not enter into the connotation of the term. The fact that the accused paid the players after they had been successful and did not stake before they played, cannot affect his responsibility since he induced them to play on an implicit understanding that he would pay, if he lost. *In re : Musa.*

18 Cr. L. J. 7 :
36 I. C. 839 : 31 M. L. J. 285 :
1916, 2 M. W. N. 196 : 4 L. W. 503 :
40 Mad. 556 : A. I. R. 1917 Mad. 124.

— — — S. 3, Cl. 10—*Gambling on pial of private house, if an offence.*

Gambling on the pial of a private house

MADRAS TOWN NUISANCES ACT (III OF 1889)

was not an offence committed in any public street, road, thoroughfare, or place of public resort within the meaning of S. 3, Cl. 10 of Act III of 1889. *In re : Chinniah Mudaly.*

7 Cr. L. J. 130 :
3 M. L. T. 137.

————S. 3 (10)—*Playing ring game, offence.*

Playing a 'ring game' in an open space in a Hindu temple, which is not closed by gates or otherwise, is an offence under S. 3 (10), Madras Town Nuisances Act. *In re : Musa.*

18 Cr. L. J. 7 :
36 I. C. 839 : 31 M. L. J. 285 :
1916, 2 M. W. N. 196 : 4 L. W. 503 :
40 Mad. 556 : A. I. R. 1917 Mad. 124.

————S. 3 (10)—*'Public resort'—Hindu temple.*

The compound of a Hindu temple is a place of public resort though other religionists might be excluded from its precincts, just as a mosque can be called a place of public worship though only Mussalmans are allowed to enter it to pray therein. It is not necessary that every member of the public should have a right of access to a place in order to make it a place of public resort. *In re : Musa.*

18 Cr. L. J. 7 :
36 I. C. 839 : 31 M. L. J. 285 :
1916, 2 M. W. N. 196 : 4 L. W. 503 :
40 Mad. 556 : A. I. R. 1917 Mad. 124.

————S. 3 (10)—*'Resort,' meaning of.*

A place to which the public go, whether they have a right to go or not, is a 'place of public resort' within the meaning of the section. *In re : Musa.*

18 Cr. L. J. 7 :
36 I. C. 839 : 31 M. L. J. 285 :
1916, 2 M. W. N. 196 : 4 L. W. 503 :
40 Mad. 556 : A. I. R. 1917 Mad. 124.

————S. 3 (12)—*Riotous and disorderly behaviour—Breach of peace—Offence under S. 3 (12) if can involve breach of peace—Conviction under S. 3 (12).*

It is ordinarily objectionable, when the accused is convicted only of some petty offences under the Town Nuisances Act, that he should also be bound over for a considerable time under S. 106, Cr. P. C., for this binding over would involve a far more serious punishment than the main sentence. Those guilty of disorderly and riotous conduct are usually poor men who may not be able to find security, in which case they would be liable to be imprisoned for a substantial period, although the maximum punishment awarded under S. 3 (12), Town Nuisances Act, is only one month's rigorous imprisonment. On the other hand, binding over an accused for only two or three months would not serve the purpose for which an order under S. 3 (12) is passed. S. 106, Cr. P. C., should, therefore, be very sparingly invoked where the offence committed is a petty one. *In re : Ballan.*

40 Cr. L. J. 165 :
179 I. C. 169 : 1938 M. W. N. 588 :
1938, 2 M. L. J. 152 : 48 L. W. 138 :
11 R. M. 526 : A. I. R. 1938 Mad. 795.

MADRAS TOWN NUISANCES ACT (III OF 1889)

————S. 3 (12)—*Scope of—Penal Code (Act XLV of 1860), Ss. 95, 504—Madras Town Nuisances Act (III of 1889). S. 3 (12)—Accused using abusive language in street in performance of civic duties.*

Accused should have been tried for an offence under S. 504, Penal Code, and not under S. 3 (12) of the Madras Town Nuisances Act. *In re : Abdal Rahiman Khan Sahib.*

17 Cr. L. J. 462 :
36 I. C. 142 : 4 L. W. 556 :
A. I. R. 1917 Mad. 769.

————S. 6—*'Common Gaming House,' what is.*

A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming and it makes no difference that the use of the house and the gaming therein was limited to the subscribers and members of the club and that it was not open to all persons who might be desirous of using the same. *In re : Chinniah.*

25 Cr. L. J. 367 :
77 I. C. 303 : 19 L. W. 219 :
46 M. L. J. 309 : 1924 M. W. N. 237 :
34 M. L. T. 195 : 47 Mad. 426 :
A. I. R. 1924 Mad. 729.

————Ss. 6, 7—*'Resort,' what constitutes—Common gaming house, meaning of.*

To constitute a common gaming house within the meaning of Ss. 6, 7, Madras Town Nuisances Act, it must be proved to be a public place of resort of persons who want to play games of chance for money. 'Resort' means that people are accustomed to go there. But it does not mean that the same person need go more than once but a number of people are in the habit of resorting to the house as a place well known to them where they can get what they want in the way of gambling. *Avoor Ramaswami Iyer v. Emperor.*

30 Cr. L. J. 1009 :
119 I. C. 165 : 1929 M. W. N. 267 :
I. R. 1929 Mad. 917 : A. I. R. 1929 Mad. 603.

————Ss. 6, 7—*Re-trial, legality of—Gambling in common gaming house, conviction for—Appeal.*

The accused were convicted of the offence of gambling in a common gaming house under Ss. 6 and 7, Madras Town Nuisances Act. On appeal, however, the Sub-Divisional Magistrate found that there was no evidence that the house where the gaming was carried on was a common gaming house, but ordered a re-trial in the interests of justice. On revision by the High Court: *Held*, that in the absence of evidence on record or of an assurance by the prosecution, that evidence would be forthcoming that the house was a common gaming house, the Appellate Court acted irregularly in ordering a new trial. *In re : Mogambara Pattan.*

17 Cr. L. J. 193 :
34 I. C. 305 : 28 M. L. J. 379 :
A. I. R. 1916 Mad. 1108.

————S. 7—*Common gaming house, meaning of.*

A common gaming house is a place of public

MADRAS VILLAGE COURTS ACT (I OF 1889)

resort where a number of persons are invited to congregate for the purpose of gaming. Where the accused were gaming with cards, betting money and gambling, and the keeper of the house was collecting *ranga kasu* for all such plays, and gaming went on there day and night: *Held*, that the keeper of the house was keeping a gaming house and the rest gambling within the meaning of the Act. *In re: Kandasami Chetty*. 31 Cr. L. J. 459: 122 I. C. 788: 30 L. W. 721: 1929 M. W. N. 793: A. I. R. 1930 Mad. 128.

—S. 9—First offence, sentence for.

For a first offence, it is not proper to give the accused the maximum term of imprisonment together with confiscation which is three times the maximum fine. *In re: Uppalapati Bulli Nagayya*. 32 Cr. L. J. 1279: 134 I. C. 991: 61 M. L. J. 474: 34 L. W. 710: 1931 M. W. N. 1310: I. R. 1931 Mad. 879: A. I. R. 1931 Mad. 777.

—S. 9—Imprisonment.

For the statutory crimes outside the Penal Code, imprisonment should be the last resort. *In re: Uppalapati Bulli Nagayya*.

32 Cr. L. J. 1279: 134 I. C. 991: 61 M. L. J. 474: 34 L. W. 710: 1931 M. W. N. 1310: I. R. 1931 Mad. 879: A. I. R. 1931 Mad. 777.

—S. 9—Onus of proof.

The onus is on the prosecution to prove how much was used or intended to be used for gambling. *In re: Uppalapati Bulli Nagayya*.

32 Cr. L. J. 1279: 134 I. C. 991: 61 M. L. J. 474: 34 L. W. 710: 1931 M. W. N. 1310: I. R. 1931 Mad. 879: A. I. R. 1931 Mad. 777.

—S. 9—Power of Court to confiscate money used for gaming.

Under S. 9 a Police Officer may seize all moneys reasonably expected to have been intended to be used for the purpose of gaming, and under S. 517 (1), Cr. P. C., the Court can confiscate the moneys. The Court should, in such cases, specifically pass orders under S. 517. *In re: Uppalapati Bulli Nagayya*.

32 Cr. L. J. 1279: 134 I. C. 991: 61 M. L. J. 474: 34 L. W. 710: 1931 M. W. N. 1310: I. R. 1931 Mad. 879: A. I. R. 1931 Mad. 777.

—S. 9—Safe containing couries—Presumption.

That a safe contains *couries*, does not necessarily mean that its whole contents must have been used for gambling. *In re: Uppalapati Bulli Nagayya*.

32 Cr. L. J. 1279: 134 I. C. 991: 61 M. L. J. 474: 34 L. W. 710: 1931 M. W. N. 1310: I. R. 1931 Mad. 879: A. I. R. 1931 Mad. 777.

MADRAS VILLAGE COURTS ACT (I OF 1889)

—S. 9 (4)—Proceedings under, if valid—Rr. 17, 64.

Where certain persons whose term of office

MADRAS VILLAGE COURTS ACT (I OF 1889)

as *panchayatdars* had expired, tried and convicted an accused person under the Madras Village Courts Act: *Held*, that the proceedings were wholly invalid. *Palavallu Krishnayya v. Emperor*. 32 Cr. L. J. 603: 130 I. C. 743: 1930 M. W. N. 905 (2): I. R. 1931 Mad. 439: A. I. R. 1930 Mad. 1002.

—S. 9 (5)—‘Court’, r. 21.

Revenue Divisional Officer enquiring into objections to election of a President under r. 21 is not a Court. *Lakshmi Narayana Ayyar v. Chinnappagoundan*. 32 Cr. L. J. 969: 133 I. C. 3: 1930 M. W. N. 1109: I. R. 1931 Mad. 690: A. I. R. 1931 Mad. 492.

—S. 48.

See also Cr. P. C., 1898, S. 197.

—S. 52.

See also Penal Code, 1860, S. 22.

—As amended by Act II of 1920, Ss. 75, 76—Powers of Village Magistrate—Madras Village Police Regulation XI of 1816, S. 10.

A Village Magistrate acting under Madras Village Police Regulation, XI of 1816, is not required to do more than conduct a verbal examination and to record his decision. It is entirely contrary to the spirit of the Regulation that a Court acting in accordance with it should be required to adopt the ordinary rules relating to the conduct of criminal cases, so long as it observes the fundamental dictates of justice, equity and good conscience. *In re: Suppan Chelli*. 28 Cr. L. J. 977: 105 I. C. 801: 53 M. L. J. 526: 1927 M. W. N. 786: 26 L. W. 555: 39 M. L. T. 450: 51 Mad. 171: A. I. R. 1927 Mad. 1022.

—S. 76 (8)—Another complaint.

Conviction set aside on the ground that trial Bench had no jurisdiction. Another complaint on same facts before same *panchayat*—S. 403, Cr. P. C., is no bar. *Narayanaswami v. Karumbayiram Periyari*. 36 Cr. L. J. 550: 154 I. C. 602: 1934 M. W. N. 1022: 58 Mad. 256: 68 M. L. J. 534: 41 L. W. 708: 7 R. M. 458: A. I. R. 1934 Mad. 716.

—S. 76 (8)—Scope of.

Powers of revision under S. 76 (8) are greater than those under Cr. P. C., S. 439. *Narayanaswami v. Karumbayiram Periyari*.

36 Cr. L. J. 550: 154 I. C. 602: 1934 M. W. N. 1022: 58 Mad. 256: 68 M. L. J. 534: 41 L. W. 708: 7 R. M. 458: A. I. R. 1934 Mad. 716.

—S. 76 (8)—‘Want of jurisdiction,’ meaning of.

“Want of jurisdiction” is legal misconduct within the meaning of S. 76 (8), Madras Village Courts Act. *Narayanaswami v. Karumbayiram Periyari*. 36 Cr. L. J. 550: 154 I. C. 602: 1934 M. W. N. 1022: 58 Mad. 256: 68 M. L. J. 534: 41 L. W. 708: 7 R. M. 458: A. I. R. 1934 Mad. 716.

MADRAS VILLAGE POLICE REGULATION (XI OF 1816)

—S. 77—Amendment of, necessity of.

The necessity of amending S. 77, Madras Village Courts Act, by providing that S. 476, Cr. P. C., would be applicable to proceedings of Panchayat Courts pointed out. *In re: Appadurai Nainar.*

37 Cr. L. J. 159 :
159 I. C. 853 (b) : 59 Mad. 165 :
69 M. L. J. 812 : 8 R. M. 565 :
1935 M. W. N. 946 (2) :
A. I. R. 1936 Mad. 89.

MADRAS VILLAGE COURTS (AMENDMENT) ACT (II OF 1920)

—Powers of High Court—Conviction by Panchayat—Mischief—Value of property damaged not mentioned in judgment—Interference by High Court—Revision—Cr. P. C., (Act V of 1898), Ss. 435, 439—Government of India Act, 1915 (5 & 6 Geo. V. C. 61), S. 107.

The provisions of the Cr. P. C. are not made applicable to Panchayat Courts under the Madras Village Courts (Amendment) Act. The High Court cannot, therefore, interfere with an order of a Panchayat Court under Ss. 435 and 439 of the Code. But under S. 107 of the Government of India Act, the High Court has powers of supervision over all Criminal and Civil Courts in the Presidency, and when a grave error of a Panchayat Court, which is not governed by the provisions of the Cr. P. C., appears on the face of the record, the powers given by S. 107 of the Government of India Act could be invoked to correct such error. *Munigadu v. Emperor.*

26 Cr. L. J. 1161 :
88 I. C. 521 : 1925 M. W. N. 600 :
A. I. R. 1925 Mad. 1144.

—S. 76—Powers of Panchayat Court.

Under S. 76, Madras Village Courts (Amendment) Act, a Panchayat Court is empowered to try, among other offences, one under S. 426, Penal Code, when the loss or damage caused thereby does not exceed Rs. 10, and under the same section, the Court is bound to mention the amount of loss or damage caused by mischief. Where the judgment of a Panchayat Court convicting a person of an offence under S. 426, Penal Code, does not mention the value of the amount of loss or damage by mischief alleged to have been caused by the accused, the judgment is liable to be set aside by the High Court in the exercise of its powers of superintendence under S. 107 of the Government of India Act. *Munigadu v. Emperor.*

26 Cr. L. J. 1161 :
88 I. C. 521 : 1925 M. W. N. 600 :
A. I. R. 1925 Mad. 1144.

MADRAS VILLAGE POLICE REGULATION (XI OF 1816)

—S. 10.

See also Madras Village Courts (Amendment) Act, 1920, Ss. 75, 76.

—S. 10—Kallan—Whether one of lower caste.

MAGISTRATE

A *kallan* is not one belonging to the servile caste contemplated by the Regulation XI of 1816. *Koila Thevan v. Emperor.*

11 Cr. L. J. 249 :
5 I. C. 797 : 1 M. W. N. 52 :
7 M. L. T. 305.

MAGISTRATE

See also (i) Confession.

(ii) Cr. P. C., 1898, Ss. 18, 107, 122, 138, 144, 145, 191, 200, 211, 437, 476.

(iii) Possession.

—Magistrate and Collector of the District, duties of.

The Magistrate and Collector of the District, being, for most purposes, the principal representative and administrator of the law in the eyes of the people of the District, a position of great power and great responsibility, it is of supreme importance that his acts should be examples of equal justice, rigid impartiality and obedience to the law. *Gopinath Paryah v. Emperor.*

3 Cr. L. J. 169 :
2 C. L. J. 555 : 10 C. W. N. 82.

—Duty of.

A Magistrate should at once give the accused an opportunity to cross-examine the prosecution witnesses, if they should so desire, even though the charge may not be framed. *Ashirbad Muchi v. Maju Muchini.*

1 Cr. L. J. 838 :
8 C. W. N. 838.

—Duty of—Duty to decide points of law raised at the trial—Postponement of case to enable accused to get a ruling from the High Court—Impropriety of.

Where the trying Magistrate finding it difficult to decide whether certain coins, which the accused was charged with making, were King's coins or not, postponed the case to enable the accused to obtain a ruling of the High Court on the point: *Held*, that the Magistrate was wrong in doing so; it was his duty to decide whether the coins were King's coins or not, and, whether any offence was committed under S. 280, 1. P. C. It was not the business of the High Court to decide the point at that stage. *Mahesh Sonar v. Emperor.*

7 Cr. L. J. 400 :
12 C. W. N. 604.

—Duty of, in his judgment passing strictures on evidence.

The right of Magistrates to make disparaging remarks on persons who appear, or are named, in the course of a trial is one that should be exercised with great reserve and moderation, especially where the person disparaged has had little or no opportunity of explaining or defending himself. It would involve a great danger to the administration of justice if witnesses were restrained from stating their real opinions for fear of displeasing the Magistrate before whom they are giving evidence and great caution should be taken to avoid producing any such unfor-

MAGISTRATE

tunat result. *Nur Din alias Kada v. Emperor.*

1 Cr. L. J. 99 :

5 P. L. R. 76 : 27 P. R. Cr. of 1903.

-----Duty of—In inflicting small sentences.

Magistrates inflicting small sentences should be most careful to avoid doing an injury that cannot be repaired. *Palandin v. Emperor.*

2 Cr. L. J. 19 :

2 A. L. J. 26 : 25 A. W. N. 19.

-----Duty of—Taking an active part in the investigation—Whether he ought not to have tried the case himself.

The District Magistrate took an active part in the investigation : *Held*, that he ought not to have tried it himself. *Kauk Saing v. Emperor.*

9 Cr. L. J. 66 :

14 Bur. L. R. 335.

-----Duty of, to ascertain facts of case—*Cr. P. C., Ss. 344, 540.*

It is a Magistrate's business to find out the truth, and to supplement defects in the case either of the prosecution or of the defence by using the powers to postpone or adjourn proceedings, and to summon material witnesses, which are conferred by Ss. 344 and 540, *Cr. P. C. Shwe Ko v. Emperor.*

3 Cr. L. J. 361 :

3 L. B. R. 128.

-----Finding, unreasonable and perverse—When and under what circumstances.

As regards the paternity of the child, the petitioner swore that the respondent was the father of the child. The respondent admitted that he used frequently to visit her house by day and by night. And several witnesses proved that petitioner was the mistress of the respondent and that he gave her jewellery and money : *Held*, that the finding of the Magistrate, on the question of the paternity of the child, was unreasonable and perverse, especially as the evidence for the defence that the respondent paid frequent visits to the petitioner for the purpose of making inquiry into the state of the paddy market was not worthy of belief. *Ma Ket v. Maung.*

4 Cr. L. J. 39 :

12 Bur. L. R. 150.

-----Jurisdiction of—Review of order.

A Magistrate has no power to alter or review the order once passed by him. *Narasinga Rao v. Vittoba Rao.*

16 Cr. L. J. 584 :

30 I. C. 136 : A. I. R. 1916 Mad. 1220.

-----Jurisdiction of law—First complaint dismissed—Second complaint by a different person—Same acts.

A complaint was filed by a woman charging the accused with certain offences. One of these offences was that her daughter had been wrongfully taken away by the accused. This complaint was dismissed. A second complaint was filed by the husband of the daughter. The acts complained of by the husband were the same as the acts that the girl's mother

MAGISTRATE

had complained of, although the offences suggested by the complaints were different : *Held*, that the Magistrate had jurisdiction and was bound to entertain the second complaint and deal with it according to law. *Emperor v. Meharban Hussain.*

4 Cr. L. J. 59 :

3 A. L. J. 562 : I. L. R. 29 All. 7 :

26 A. W. N. 245.

-----Jurisdiction to try—Personal knowledge and suspicion.

A Magistrate is not entitled to base his order on his local and personal knowledge of the accused and witnesses. If it be important to utilize the personal knowledge of a Magistrate, the proper procedure is for the case to be tried by another Magistrate, and the Magistrate with personal knowledge to give evidence as a witness. A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. *Nur Din alias Kada v. Emperor.*

1 Cr. L. J. 99 :

5 P. L. R. 76 : 27 P. R. Cr. of 1903.

-----Magistrate cannot import personal knowledge into case.

A Magistrate is not justified in importing any personal opinion which he might have had occasion to form regarding the personal character, or the general reputation of a witness for the prosecution, into his decision of the case, or in putting it forward as a reason for refusing to believe the evidence laid before him on behalf of the accused. *Jai Narain v. Emperor.*

20 Cr. L. J. 283 :

50 I. C. 171 : 1 U. P. L. R. All. 22 :

A. I. R. 1919 All. 345.

-----Meaning of.

The words "a Magistrate" in S. 449, Calcutta Municipal Act, mean any Magistrate having jurisdiction in Calcutta and include a Municipal Magistrate. *Sew Prosad Poddar v. The Corporation of Calcutta.*

2 Cr. L. J. 1 :

9 C. W. N. 18.

-----Power of - After transfer.

A Magistrate, who after trying a case, has been transferred from the charge of the particular Court in which the case was tried, to some other duty in the same district, is not competent to make an order under S. 476, Cr. P. C., in respect of a case which he tried as presiding officer of such Court. *Chuni Lal v. Harbans Rai.*

1 Cr. L. J. 596 :

1 A. L. J. 315.

-----Powers of.

The appointment of a Magistrate of the first class as Sub-Divisional Officer gives him certain additional powers in the area of which he becomes Sub-Divisional Officer, but it does not deprive him of all his powers as a Magistrate of the first class in the District. *Abbu Singh v. Emperor.*

13 Cr. L. J. 716 :

16 I. C. 524 : 10 A. L. J. 169 : 34 All. 597.

-----Power of - To order demolition of building irrespective of its value.

It is within the province of a Magistrate to order demolition of a building erected in con-

MAINTENANCE OF WIFE

travention of rules, irrespective of the value of such building. *Sew Prosad Poddar v. The Corporation of Calcutta.*

2 Cr. L. J. 1 :
9 C. W. N. 18.

———Powers of, under S. 349, Cr. P. C.

A Magistrate to whom a case has been submitted under S. 349, Cr. P. C., has no power to return the case for the purpose of supplying omissions. *Emperor v. Taw Pyu.*

5 Cr. L. J. 416 :
3 L. B. R. 279.

———As such acting exclusively—Orders not in accordance with law—Jurisdiction.

Where a Magistrate acting high-handedly deprived one person of the possession of certain movable and immovable properties and put another in possession of them in total disregard of the provisions of the law : *Held*, that there was no justification for such order. The orders were set aside. *Akhileshwar Singh Roy v. Emperor.*

3 Cr. L. J. 199 :
10 C. W. N. 246.

MAINTENANCE

See also (i) Cr. P. C., 1898, Ss. 4 (b), 488, 489.

(ii) Muhammadan Law.

———Arrears of, if attachable—Order of Criminal Court allowing arrears of maintenance—If only personal right is created, they are not attachable.

Arrears of maintenance payable under order of a Criminal Court cannot be attached if the right to receive maintenance is only a personal right created by the order. It cannot be said that the amount cannot be attached merely because the order is passed by a Criminal Court. The true test is whether a purely personal right is created by the order for maintenance or not. *Giribala Debi v. Nirmalabala Debi.*

157 I. C. 1089 :
39 C. W. N. 281 : 62 Cal. 404 :
A. I. R. 1935 Cal. 578.

———Right of—Ground for refusing order for—Buddhist Law—Husband and wife—Polygamy—Refusal to live with husband and second wife—Cr. P. C., S. 488.

Where a Burman Buddhist has taken a lesser wife without the consent of his chief wife, the refusal by the chief wife to live with her husband in the same house with the lesser wife does not necessarily deprive her of her right to maintenance under S. 488, Cr. P. C. *Ma Ka U v. Po Saw*

9 Cr. L. J. 25 :
4 L. B. R. 340.

———Right of, during iddat.

A divorced Muhammadan wife is entitled to be awarded maintenance during the period of her iddat. *Ghulam Rukia v. Niaz Ali.*

2 Cr. L. J. 40 :
5 P. R. Cr. 1905 : 6 P. L. R. 335.

MAINTENANCE OF WIFE

See also Cr. P. C., 1898, S. 488.

MAINTENANCE ORDERS ENFORCEMENT ACT (XVIII OF 1921)

———Power of High Court to interfere.

The High Court of Bombay can interfere in revision with an order made by the Chief Presidency Magistrate of Bombay under the provisions of the Maintenance Orders Enforcement Act, 1921. *Pandurang S. Katti v. Minnie Henrietta Katti.*

29 Cr. L. J. 513 :
109 I. C. 337 : 30 Bom. L. R. 350 :
52 Bom. 262 : A. I. R. 1928 Bom. 117.

———S. 7—Scope of—Maintenance orders.

S. 7, Maintenance Orders Enforcement Act, deals with the opportunities to be allowed to the person affected by the provisional order to oppose its confirmation and provides for the ease of further evidence being taken when necessary for the purposes of the defence, but it does not affect the general power of the Court to call for further evidence in other cases, which is implied by Sub-s. (4) of S. 3, Maintenance Orders (Facilities for Enforcement) Act of 1920. The right of a wife to maintenance against her husband is not lost because she makes a false or scandalous allegation against her husband and a husband has no right to insist on the wife conditionally withdrawing the allegation before claiming maintenance from him. *Pandurang S. Katti v. Minnie Henrietta Katti.*

29 Cr. L. J. 513 :
109 I. C. 337 : 30 Bom. L. R. 350 :
52 Bom. 262 : A. I. R. 1928 Bom. 117.

MAINTENANCE ORDERS (FACILITIES OF ENFORCEMENT) ACT, 1920 (10 AND 11 GEO. V, CHAP. 33)

———S. 3.

See also Maintenance Orders Enforcement Act, 1920, S. 7.

MALABAR LAW

See also Cr. P. C., 1898, S. 488.

———Maintenance.

See Cr. P. C., S. 488—Maintenance to children.

———Marriage.

Relation is in truth not marriage but a state of concubinage into which woman enters of her own choice and which she is at liberty to change. *K. Raman v. A. Parvathi.*

34 Cr. L. J. 1159 (2) :
145 I. C. 970 (1) : 38 L. W. 587 :
1933 M. W. N. 1276 : 6 R. M. 178 (1) :
65 M. L. J. 629 : A. I. R. 1933 Mad. 794.

MALABAR (RESTORATION OF ORDER) ORDINANCE (I OF 1922)

———S. 4 (2) (b)—Special Magistrate, who is—Retired Magistrate, appointment of—Trial by such Magistrate—Illegality—Criminal Procedure Code (Act V of 1898), Ss. 12, 26, 41.

Under S. 4 (2) (b), Malabar (Restoration of Order) Ordinance, only a person who is already a Magistrate is eligible for appointment as

MALICE

"Special Magistrate." The powers of a Magistrate terminate on his retirement from service and a retired Magistrate is, therefore, incompetent to be appointed a Special Magistrate under the Ordinance. A conviction on trial by such a Magistrate is illegal and must be set aside. *Kottithoti Hamid Haji v. Emperor*.

24 Cr. L. J. 381 :
72 I. C. 381 : 44 M. L. J. 428 :
17 L. W. 429 : 1923 M. W. N. 288 :
32 M. L. T. 195 : A. I. R. 1923 Mad. 598.

—Ss. 10, 11, 16—Miscellaneous—
Cr. P. C. (Act V of 1898), Ss. 257, 503—Refusal
to issue process to witness in a warrant case—
Powers of Special Judge to issue commission—
Illegality.

Under S. 257, Cr. P. C., in trials of warrant cases, if the accused, after he has entered upon his defence, applies to the Magistrate to issue process for examination of witnesses, the Magistrate is bound to comply with the request unless he is satisfied that the application should be refused, on the ground that it is made for purpose of vexation or delay or for defeating the ends of justice in which case he is bound to record his reasons. In a trial under the provisions of the Malabar (Restoration of Order) Ordinance I of 1922, the Special Judge refused to issue process for the attendance of certain material defence witnesses but examined them by commission without assigning any reason. In reply to a reference by the High Court, the Judge reported that he did so on the ground that to obtain the witnesses from distant places would entail unreasonable delay, expense and inconvenience: *Held*, (1) that the Special Judge was wrong in refusing to issue process for the attendance of the witnesses as by virtue of S. 10 of that Ordinance, he was bound to follow the procedure laid down in S. 257, Cr. P. C.; (2) that inasmuch as the powers of a Special Judge under S. 10 of the Ordinance were confined to those of a "Magistrate" and did not include those of a District Magistrate or a Presidency Magistrate, the issue of a commission by him under S. 503, Cr. P. C., was *ultra vires*. *In re: Ayarvati Pokker*.

24 Cr. L. J. 840 :
74 I. C. 952 : 45 M. L. J. 305 :
1923 M. W. N. 758 : 18 L. W. 899.

MALICE

See also Penal Code, 1860, S. 499.

—Arrest of father to induce son to confess crime.

The law does not permit of a man being arrested in order to put pressure on his son to confess, even if the person causing the arrest believes that by so doing he will get evidence that will lead to the conviction of persons engaged in a huge conspiracy. *Peary Mohan Das v. Weston*.

13 Cr. L. J. 65 :
13 I. C. 721 : 16 C. W. N. 145.

—Malice.

Malice is not to be imputed without definite and solid reasons. *P. K. Chakravarty v. Emperor*.

27 Cr. L. J. 1154 :
97 I. C. 738 : 30 C. W. N. 953 :
44 C. L. J. 172 : 54 Cal. 59 :
A. I. R. 1926 Cal. 1133.

MALICIOUS PROSECUTOIN

—Discretion of Court, exercise of—Appellate Court differing with Trial Court.

Although a Court directing prosecution for malicious prosecution is endowed with considerable discretion, yet it is neither safe, nor desirable on the part of an Appellate Court to conclude malice where there is a split of opinion on the point between the First Court and itself. *Raghupat Sahay v. Emperor*.

23 Cr. L. J. 272 :
66 I. C. 336 : 3 P. L. T. 93 :
1922 Pat. 26 : A. I. R. 1922 Pat. 160.

—Prosecution.

After a Magistrate has issued a warrant and the warrant was executed, the proceedings in the Police Court constitute a prosecution such as to found an action for malicious prosecution. *Nagarmull Chaudhuri v. Jhaharmull Sureka*.

35 Cr. L. J. 925 :
148 I. C. 1129 : 60 Cal. 1022
6 R. C. 490 : A. I. R. 1933 Cal. 909.

—Prosecution.

In a case where sanction has been obtained by the defendant maliciously and without reasonable and proper cause and by false evidence, the prosecution which ensues is to be regarded as a prosecution by the individual. *Nagarmull Chaudhuri v. Jhaharmull Sureka*.

35 Cr. L. J. 925 :
148 I. C. 1129 : 60 Cal. 1022 :
6 R. C. 490 : A. I. R. 1933 Cal. 909.

—Inference.

Though the basis for a finding of absence of reasonable and probable cause and the presence of malice consists in matters of fact, the inference that should be drawn from the proved facts and the question whether these facts are sufficient to establish the absence of reasonable and probable cause and the presence of malice are matters of law upon which interference in second appeal is permissible. *Narayana Mudali v. Peria Kalathi*.

41 Cr. L. J. 677 :
188 I. C. 801 : 49 L. W. 644 :
1939 M. W. N. 593 : 1939, 2 M. L. J. 296 :
13 R. M. 110 : A. I. R. 1939 Mad. 783.

—'Prosecution', what amounts to.

The 1st defendant, a Police Officer, proceeded to the scene of occurrence on receipt of a report made by the second defendant and made a report of assault and obstruction. It was found that all the three defendants conspired to prosecute the plaintiff maliciously and without reasonable and probable cause and that, in furtherance of their design, the defendant No. 1 figured as the complainant in a cognizable offence of which information was lodged by him to the Police and the Police prosecuted the plaintiff on the faith of such information. In the proceedings which followed before the Joint Magistrate, all the defendants gave evidence. Defendants Nos. 2 and 3, actively aided the Police in other ways in prosecuting the plaintiff. The plaintiff instituted a suit for damages for malicious prose-

MARRIAGE

cution against all the defendants: *Held*, that all the defendants must, under the circumstances be considered to have prosecuted the plaintiff so as to entitle the latter to sue them for compensation for malicious prosecution. *Mohammad Sharif v. Nasir Ali*.

132 I. C. 17 : 1930 A. L. J. 1443 :
I. R. 1931 All. 449 : 53 All. 44 :
A. I. R. 1930 All. 742.

———Malicious prosecution.

Suit for damages for—Nature of damages—Basis of action—Action can be founded on institution of proceedings under S. 144, Cr. P. C., provided necessary facts are established. *Narayana Mudali v. Peria Kalathi*.

41 Cr. L. J. 677 :
188 I. C. 801 : 49 L. W. 664 :
1939 M. W. N. 593 : 1939, 2 M. L. J. 296 :
13 R. M. 110 : A. I. R. 1939 Mad. 783.

MAMLATDAR'S COURTS A C T
(BOMBAY II OF 1906)

See also Cr. P. C., 1898, S. 476.

———See also Cr. P. C., 1898, Ss. 195, 7 (3).

MANUAL OF GOVERNMENT
ORDERS (U. P.) PARA, 852

———S. 23—Duty of Magistrate and Sessions Judge.

Magistrates and Sessions Judges should pay attention to and observe the provisions of paras. 852, 853, 853-A of the Manual of Government orders when recording confession. *Patey Singh v. Emperor*. 32 Cr. L. J. 1052 :
133 I. C. 593 : 1931 A. L. J. 1000 :
I. R. 1931 All. 705 : A. I. R. 1931 All. 609.

MARKET

See also (i) City of Bombay Municipal Act, 1888, Ss. 402, 403.
(ii) Madras Local Boards Act, 1920, Ss. 171, 173, 176, 177.

MARRIAGE

See also (i) Burmese Buddhist Law.
(ii) Child Marriage Restraint Act, 1929.
(iii) Chinese Buddhist Law.
(iv) Extradition Act, 1903, Ss. 2 (a), 7.
(v) Hindu Law.
(vi) Muhammadan Law.
(vii) Penal Code, 1860, Ss. 494, 496, 497.

———Jhanjara marriage.

Jhanjara marriage is valid in the Kangra District. *Nihala v. Emperor*.

11 Cr. L. J. 155 :
4 I. C. 1042 : 22 P. W. R. 1909 Cr. :
12 P. L. R. 1910.

———Validity of, test as to—Law applicable.

The law of the place where it is contracted determines the validity of a marriage. *Ma Twa v. Lwe Hain*.

28 Cr. L. J. 123 :
59 I. C. 555 : 13 Bur. L. T. 105 :
A. I. R. 1919 L. Bur. 14.

MARTIAL LAW ORDINANCE (IV OF
1919)

———Applicability of—Ordinance, whether confined to persons taken in the act of committing an offence specified in Regulation X of 1804—Government of India Act, 1915 (5 and 6 Geo. V, 61), Ss. 65 (2), (2), 72.

The Martial Law (Further Extension) Ordinance 1919 (Ordinance No. IV of 1919) is not confined in its application to persons taken in the act of committing one of the offences specified in Regulation (X of 1804), or to the persons and offences described in Martial Law Ordinance I of 1919, but extends to all offences committed on or after March 30th, 1919. *Bugda v. Emperor*.

21 Cr. L. J. 456 :
56 I. C. 440 : 12 L. W. 296 :
5 P. W. R. 1920 Cr. : 39 M. L. J. 1 :
24 C. W. N. 650 : 18 A. L. J. 455 :
1920 M. W. N. 326 :
2 U. P. L. R. (P. C.) 50 :
22 Bom. L. R. 609 :
1 Lah. 326 : 47 I. A. 128 :
A. I. R. 1920 P. C. 23.

MARTIAL LAW ORDINANCE (II OF
1921)

———Ss. 6, 7—Illegality of conviction—Offence, commission of, in Martial Law area—Trial by Summary Magistrate outside area, legality of—Habeas corpus, writ of, issue of, to jailor of prison where prisoner confined, validity of—Jurisdiction.

The trial of a person for an offence committed in the Martial Law area proclaimed under Ordinance II of 1921 by a Summary Magistrate holding his Court outside such area is illegal and a conviction following thereon is liable to be set aside. In case of such conviction the High Court has power to interfere by the issue of a writ of *habeas corpus* to the jailor of the jail in which the prisoner is confined. *In re : Erada Padinharedile Govindan Nair*.

23 Cr. L. J. 614 :
68 I. C. 838 : 16 L. W. 349 :
43 M. L. J. 396 : 31 M. L. T. 304 :
45 Mad. 922 : A. I. R. 1922 Mad. 499.

MARTIAL LAW (SUPPLEMENTARY)
ORDINANCE (III OF 1921)

———Cl. (6).

See also Criminal Procedure Code, 1898, Ss. 196, 252.

MASTER AND SERVANT

See also (i) C. P. Municipal Act, 1903, S. 159.

(ii) Forest Act, 1878, S. 25 (d).
(iii) Madras Local Boards Act, 1920, Ss. 166, 207.
(iv) Motor Vehicles Act, 1914, S. 16.
(v) Penal Code, 1860, S. 361.
(vi) U. P. Prevention of Adulteration Act, 1912, S. 17.

———Liability of master for agent's acts.

A licensee under the Indian Forest Act (VII of 1878) would be liable *criminaliter* for every

MASTER AND SERVANT

act of his agent, done in carrying on the business delegated to him, which amounts to a breach of the condition of the licence made criminally punishable by the Act or any rule thereunder. *Saiyyad Rahim v. Emperor*.

16 Cr. L. J. 485 :

11 N. L. R. 76 : A. I. R. 1915 Nag. 2.

———*Liability of master for servant's acts*
—*Criminal acts of servants—Master, liability of conditions of.*

A master is not criminally responsible for the acts of his servants, unless he expressly commands or personally co-operates with them or unless the criminal liability is imposed by Statute upon him as regards the acts or omissions of his servants. In the cases where a master is held liable for the criminal acts of his servants under a Statute, the question is whether upon the true construction of the Statute in question, the master is intended to be made criminally liable for the acts of his servants done within the scope or in the course of their employment. *Saiyyad Rahim v. Emperor*.

16 Cr. L. J. 485 :

11 N. L. R. 76 : A. I. R. 1915 Nag. 2.

———*Liability of master for servant's act.*

Master is not ordinarily liable. But if statutory liability is cast, he is so liable. *Maung Ba Cho v. Emperor*.

36 Cr. L. J. 450 :

154 I. C. 57 : 7 R. Rang. 248 :

12 Rang. 300 : A. I. R. 1934 Rang. 245.

———*Liability of master for servant's acts.*

The general rule is that a master is not criminally answerable for the acts of his servant. *Bhuban Ram v. Bibhuti Bhushan Biswas*.

19 Cr. L. J. 915 :

47 I. C. 287 : 22 C. W. N. 1062 :

29 C. L. J. 262 : A. I. R. 1919 Cal. 539.

———*Liability of owner.*

Where the owner of a certain number of cattle entrusted them to a grazier who took them into a forest reserve to afford them better pasturage: *Held*, that the owner was not criminally liable, though he was civilly liable: *Held*, further, that the words of S. 25 (d), Forest Act, (VII of 1878), clearly apply only to the person who does any of the acts mentioned therein. *Saiyyad Rahim v. Emperor*.

16 Cr. L. J. 485 :

11 N. L. R. 76 : A. I. R. 1915 Nag. 2.

———*Master's liability for acts of servant.*

A master is criminally responsible for the acts of his servants if those acts are shown to have been done with his co-operation or under his authority. *Gambhir Chand v. Secretary, Municipal Committee, Nagpur*.

20 Cr. L. J. 86 :

48 I. C. 886 : A. I. R. 1918 Nag. 134.

———*Master's liability for offence by servant.*

A master is not criminally responsible for the wrongful act of a servant unless he can be shown to have expressly authorized it. *Uttam Chand v. Emperor*.

13 Cr. L. J. 591 :

15 I. C. 1007 : 16 C. W. N. 551 :

15 C. L. J. 401 : 39 Cal. 344.

MEDICAL DEGREES ACT (VII OF 1916)

———*Master's liability for offence by servant.*

When a servant does anything within the scope of his employment for that purpose his action will be binding on his master and the master will be criminally liable for any wrongful act of the servant. *Uttam Chand v. Emperor*.

13 Cr. L. J. 591 :

15 I. C. 1007 : 16 C. W. N. 551 :

15 C. L. J. 401 : 39 Cal. 344.

———*Possession of servant, if that of master.*

Possession of a servant is not necessarily a possession of his master. *Suraj Narain Chaube v. Emperor*.

39 Cr. L. J. 925 :

177 I. C. 462 : 1938 A. L. J. 649 :

11 R. A. 201 : 1938 A. W. R. 453 :

I. L. R. 1938 All. 776 :

A. I. R. 1938 All. 513.

———*Master and servant.*

Master cannot sue for defamation of servant. *Til Kaucham Gir v. Emperor*.

11 Cr. L. J. 594 :

8 I. C. 220.

MASTER'S LIABILITY

See also Motor Vehicles Act, 1914, Ss. 0, 16.

MAXIM

See also (i) Cr. P. C., 1898, S. 1 (2).

(ii) Criminal trial.

(iii) Penal Code, 1860, S. 186.

———*Factetur facinus qui judicium fugitis—Applicability of, to India.*

The old maxim *factetur facinus qui judicium fugitis* is not to be applied in India. *Emperor v. Suar Gola*.

36 Cr. L. J. 262 :

152 I. C. 1021 : 16 P. L. T. 95 :

7 R. P. 289 : A. I. R. 1934 Pat. 533.

———*Falsus in uno falsus in omnibus—Applicability of, to India.*

It is generally unsafe to apply the doctrine *falsus in uno falsus in omnibus* to evidence of witnesses in India. *Chhotey Lal v. Emperor*.

35 Cr. L. J. 58 :

146 I. C. 452 : 10 O. W. N. 482 :

6 R. O. 122 : A. I. R. 1933 Oudh 269.

———*Ignorance of law is no excuse—Presumption of knowledge of law, scope of.*

The maxim 'ignorance of law is no excuse' is very widely stated. Though ignorance of law is not a ground for acquittal for a breach of it, it is ordinarily very much of an excuse as it leads to a reduction of the sentence. *Sitaram Kunbi v. Emperor*.

29 Cr. L. J. 506 :

109 I. C. 234 : 11 N. L. J. 46 :

24 N. L. R. 110 : A. I. R. 1928 Nag. 188.

MEDICAL DEGREES ACT (VII OF 1916)

———*Ss. 3, 6—Scope of—M. D. B., L. M. H., meaning of—Addition of initials, whether amounts to falsely assuming medical titles.*

The addition to one's name of the initials "M.D.B." (i. e. "Doctor of Biochemic Medicines"), and "L.M.H." (i. e. "Licentiate of

MERCHANDISE MARKS ACT (IV OF 1889)

Homoeopathic Medicines") does not in itself constitute an offence under S. 6, Medical Degrees Act, as they do not represent any degree or diploma or licence or certificate referred to in S. 3 of the Act, nor do they imply any qualification in Western Medical Science. *Atalari Kishenchand v. Emperor*.

25 Cr. L. J. 709 :
81 I. C. 197 : 17 S. L. R. 344 :
A. I. R. 1925 Sind 71.

MEDICAL EVIDENCE

See also (i) Criminal trial.
(ii) Expert evidence.
(iii) Penal Code, 1860, S. 302.

MENS REA

See also (i) Cr. P. C., 1898, S. 45.
(ii) Muhammadan Law.

MERCANTILE AGENT

See also Contract Act, 1872, S. 178.

MERCHANDISE MARKS ACT (IV OF 1889)

———Object of.

The main object of the Legislature contained in the Merchandise Marks Act and similar enactments is to prevent a trader passing off his own goods as those of another. *Dunbar v. Holland Bombay Trading Company*.

20 Cr. L. J. 277 :
50 I. C. 165 : 12 S. L. R. 129 :
A. I. R. 1919 Sind 93.

———S. 2 (2)—'Trade description'—Pattern or design covering whole body of goods, whether trade mark—Indian Patents and Designs Act, S. 2 (5)—Trade mark.

Where a design or pattern covers the whole body of goods and is part and parcel of the goods themselves, it falls within the definition of "design" given in S. 2 (5), Patents and Designs Act, II of 1911, and does not satisfy the ordinary conception of a trade mark. Nor is such a design or pattern a "trade description", within the meaning of S. 2 (2), Merchandise Marks Act, IV of 1889. *Narumal Khemchand v. The Bombay Company, Ltd.*

15 Cr. L. J. 670 :
25 I. C. 998 : 8 S. L. R. 39 :
A. I. R. 1914 Sind 109.

———S. 2 (2) (a), (b) (c)—Applicability of.

Cls. (a), (b), (c) and (d) in S. 2 (2) cannot apply where no existing patent, privilege or copyright has been proved. *Hafizullah Hamidullah v. Sk Papa*.

35 Cr. L. J. 373 :
146 I. C. 1084 : 30 N. L. R. 45 :
6 R. N. 112 : A. I. R. 1933 Nag. 344.

———S. 5—Scope of.

The Act is based on the English Act. But it makes separate provisions for the use of trade marks, marks and property marks on the one hand, and trade descriptions on the other. If the means used is a handbill and it is intended to mislead, it is as much an offence as the issue of the invoice, or the placing of

MERCHANDISE MARKS ACT (IV OF 1889)

a label on the goods themselves. *Raja Singh v. Tikamdas*.

36 Cr. L. J. 908 :
156 I. C. 321 : 29 S. L. R. 179 :
7 R. S. 242 : A. I. R. 1935 Sind 107 (2).

———S. 6.

See also Penal Code, 1860, S. 482.

———Ss. 6, 7—'Merchandise,' meaning of.

In connection with trade marks, merchandise conveys the idea of goods offered for sale by some person or persons concerned in or connected with the history of the goods of whose guarantee and reliability the trade marks are a symbol. The word "merchandise" in Ss. 478 and 480, Penal Code, implies goods not only offered for sale, but also selected, and, so to say, guaranteed by the proprietor of the trade mark, and a selector-importer who affixes his name or other trade marks to goods is a person "whose merchandise they are", within the meaning of S. 480, Penal Code. *Dunbar v. Holland Bombay Trading Company*.

20 Cr. L. J. 277 :
50 I. C. 165 : 12 S. L. R. 129 :
A. I. R. 1919 Sind 93.

———Ss. 6, 7—Offence under — "Person whose goods they are", meaning of—Affixing of name to goods—Offering goods of another as one's own.

Where an accused person passes off his own inferior goods as the superior goods of the complainant and counterfeits the complainant's trade mark, the complainant must prove the reputation of his trade mark, for otherwise the counterfeit mark does not involve a false representation that the goods are the goods of the complainant. But even in such a case if the accused were to mark his own inferior goods with the name of the complainant, it would be unnecessary for the complainant to prove the reputation of his mark, for the complainant's name forged on the goods would be in itself a direct representation that the goods are of the complainant. Where, however, the accused puts his own name on goods purchased from the complainant and passes them off as his own goods in order to advertise himself, no question of the reputation of the complainant's trade mark arises. In such a case the appropriation is not of the complainant's mark but of the complainant's goods and the inscription of the accused's name on the goods is a representation that the goods are of the accused. *Dunbar v. Holland Bombay Trading Company*.

20 Cr. L. J. 277 :
50 I. C. 165 : 12 S. L. R. 129 :
A. I. R. 1919 Sind 93.

———Ss. 6, 7—Trade mark, what is.

The affixing of a name to goods can be a valid trade mark, and it is not necessary for a mark on goods to be a trade mark that the goods should be in the market with the mark affixed for any definite or any considerable time. *Dunbar v. Holland Bombay Trading Company*.

20 Cr. L. J. 277 :
50 I. C. 165 : 12 S. L. R. 129 :
A. I. R. 1919 Sind 93.

MERCHANDISE MARKS ACT (IV OF 1889)

—S. 7—'Goods', what constitutes—*Property Mark*—Penal Code, Ss. 482, 486—'Goods'—*Books of goods*.

On a complaint alleging that the accused printed and sold an unauthorized edition of a book known as 'A Manual of Telugu Grammar by Ahhoy Naidu' with the contents, outer cover and title-page exactly the same as in the authorized edition: *Held*, that books are goods within the meaning of the Merchandise Marks Act: *Held*, also, that in order to bring the case under S. 482, Penal Code, the question will be whether the accused has marked the book he is selling in a manner reasonably calculated to cause it to be believed that it is the manufacture or merchandise, it is not or belongs to one to whom it does not belong. *Ragavulu Naidu v. Sundaramurti Mudaliar*. 6 Cr. L. J. 374: 17 M. L. J. 490.

—S. 14—Costs—Costs to be awarded under S. 14 and not under S. 546-A, Cr. P. C.—Such costs include Advocate's fees.

On any prosecution mentioned in S. 13, or for an offence under the relevant section of the I. P. C., the Court should award costs under S. 14, Merchandise Marks Act, and not under S. 546-A, Cr. P. C. These costs include the Advocate's fees. *T. M. Mohamed Cassim v. G. S. Shaikh Thumby Sahib*. 41 Cr. L. J. 392: 187 I. C. 77: 12 R. Rang. 310: A. I. R. 1940 Rang. 33.

—S. 15.

See also Penal Code, 1860, S. 486.

—S. 15—'Commission of offence', meaning of.

The words 'commission of the offence' mean commission of the offence in respect of which a prosecution is launched, that is to say, commission of the offence charged. If the date of the offence specified in the charge is more than three years before the commencement of the prosecution, then the prosecution is barred under S. 15, whether or not the complainant had knowledge of the offence. If the offence charged is less than three years, but more than one year before the date of the prosecution, then the prosecution is barred if the complainant had knowledge of the commission of the offence charged for more than a year before the date of the prosecution. But if the offence is less than one year from the date of the prosecution, then there is no bar under S. 15. *Emperor v. Chhotalal Amarchand*. 38 Cr. L. J. 156: 166 I. C. 7: 38 Bom. L. R. 1164: 9 R. B. 221: I. L. R. 1937 Bom. 183: A. I. R. 1937 Bom. 1.

—S. 15—Infringement of trade mark—Penal Code (Act XLV of 1860), S. 482—Tests.

For the purpose of establishing a case of infringement of trade mark, it is not necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an

MERCHANDISE MARKS ACT (IV OF 1889)

exclusive right to use. It is enough if the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade mark belongs, and, therefore, the standard of comparison is not that of the expert, but it is that of the lay public, of "the unwary purchasers". The word 'offence' in S. 15 of the Merchandise Marks Act, refers to the offence charged. *Nagendra Nath Sahu v. Emperor*. 31 Cr. L. J. 1227: 127 I. C. 555: 34 C. W. N. 339: 51 C. L. J. 477: A. I. R. 1930 Cal. 274.

—S. 15—Limitation for prosecution.

Where an infringement of trade mark was discovered in September, 1927, but the accused gave an undertaking not to infringe any further and a complaint was made in March, 1929, for an infringement committed in June, 1928: *Held*, that the prosecution was not barred by limitation under S. 15, Merchandise Marks Act. *Nagendra Nath Saha v. Emperor*. 31 Cr. L. J. 1227: 127 I. C. 555: 34 C. W. N. 339: 51 C. L. J. 477: A. I. R. 1930 Cal. 274.

—S. 15—Limitation.

Offence of infringement is a continuing one—Discontinuance not proved—Time under S. 15 begins to run from first infringement or discovery. *In re: Abdul Satar Khan Kamruddin Khan*. 36 Cr. L. J. 1372: 158 I. C. 168: 37 Bom. L. R. 580: 59 Bom. 551: 8 R. B. 119: A. I. R. 1935 Bom. 359.

—S. 15—Limitation.

Prosecution under S. 15 and S. 486, Penal Code, can be instituted within three years of specific offence complained against. *Muhammad Ahmad v. Bezvada Venkanna*. 32 Cr. L. J. 809: 131 I. C. 848: 1930 M. W. N. 1263: I. R. 1931 Mad 608: A. I. R. 1931 Mad. 276.

—S. 15—Limitation—Starting point.

In all cases under S. 15, Merchandise Marks Act, the starting point of limitation is the date of the offence charged. *Emperor v. Chhotalal Amarchand*. (F. B.) 38 Cr. L. J. 156: 166 I. C. 7: 38 Bom. L. R. 1164: 9 R. B. 221: I. L. R. 1937 Bom. 183: A. I. R. 1937 Bom. 1.

—S. 15—'Offence', meaning of—Infringement continuing for several years—Prosecution in respect of offence committed within three years, competency of.

The word 'offence' in S. 15, Merchandise Marks Act, means the particular offence charged and not the act of infringement generally, and a person can be prosecuted under the said section within three years of the commission of the offence with which he is charged or within one year of the first discovery of that offence even though

MERCHANT SHIPPING ACT, 1894

he has been infringing the mark for several years. *Akhoy Kumar Dey v. Emperor*.

30 Cr. L. J. 252 :
114 I. C. 131 : 32 C. W. N. 609 :
I. R. 1929 Cal. 195 : A. I. R. 1928 Cal. 495.

———S. 15—'Offence', meaning of—Limitation under S. 15.

The word "offence" in S. 15, Merchandise Marks Act, means the offence in respect of which the prosecution is launched. The limitation prescribed by S. 15 is three years from the date of the commission of the offence charged and one year from the date of discovery by the prosecutor of the offence charged, whichever is less. *T. M. Mohamed Cassim v. G. S. T. Shaik Thumby Sahib*.

41 Cr. L. J. 797 :
189 I. C. 777 : 1940 Rang. 244 :
13 R. Rang. 57 : A. I. R. 1940 Rang. 114.

———S. 15—'Offence', scope of.

The word 'offence' in S. 15 does not mean the very first offence. *Sirumal v. Emperor*.

33 Cr. L. J. 778 :
139 I. C. 335 : 26 S. L. R. 241 :
I. R. 1932 Sind 119 : A. I. R. 1932 Sind 94.

MERCHANT SEAMEN ACT (I OF 1859)

———S. 83—Provision as to transhipment, if ultra vires—Articles of agreement—Order of transhipment by Marine Superintendent in presence of Chief Officer of ship.

The applicant signed the usual articles of agreement with the Captain of the steamship "Arcadia" for a term of one year's service. In addition to the stereotyped conditions the applicant agreed to accept a transfer from that to any other of the P. and O. Company's steamships. The Company disposed of the "Arcadia" and the applicant was ordered by the Marine Superintendent in the presence of the Chief Officer of the "Arcadia" to tranship to the "Salsette." The applicant refused to obey the order: *Held*, that having regard to S. 114, and to the fact that the additional terms of the agreement had been initialled by an Officer of the Board of Trade, the terms were not ultra vires. *Emperor v. A. Goodhew*.

16 Cr. L. J. 585 :
30 I. C. 137 : 17 Bom. L. R. 603 :
39 Bom. 558 : A. I. R. 1915 Bom. 61.

MERCHANT SHIPPING ACT, 1894 (57 AND 58 VIC. C. 96)

———S. 686—'High seas', meaning of.

If the ship is not in a port or harbour, then it is to be considered on the 'high seas' within the meaning of S. 686. *Francis Xavier Fernandes v. Emperor*.

37 Cr. L. J. 314 :
160 I. C. 375 : 29 S. L. R. 281 : 8 R. S. 122 :
A. I. R. 1936 Sind 3.

———S. 686—Jurisdiction.

Sind Judicial Commissioner's Court has Admiralty Jurisdiction—Offence committed in

MINOR OFFENCE

British ship lying at anchor in State of Virginia—Accused arrested at Karachi—Accused need not be British subject—Court has jurisdiction to try. *Francis Xavier Fernandes v. Emperor*.

37 Cr. L. J. 314 :
160 I. C. 375 : 29 S. L. R. 281 :
8 R. S. 122 : A. I. R. 1936 Sind 3.

MERCHANT SHIPPING ACT (57 AND 58 VICT. C. 60)

———S. 686—Natural born British subject.

The expression "natural born British subject" in S. 686, Merchant Shipping Act, does not include a natural born subject of a Native Indian State. *Punja Guni v. Emperor*.

19 Cr. L. J. 337 :
44 I. C. 449 : 20 Bom. L. R. 98 : 42 Bom. 234 :
A. I. R. 1918 Bom. 249.

MERCHANT SHIPPING ACT (XXI OF 1923)

———S. 63—Complaint—Procedure.

A complaint filed under the Merchant Shipping Act of 1923 has to be enquired into in accordance with the provisions of that Act. It cannot be dismissed under the provisions of S. 203, Cr. P. C. *Jafar Ali v. Mr. James*.

35 Cr. L. J. 25 :
146 I. C. 333 (a) : 37 C. W. N. 1185 :
58 C. L. J. 116 : 6 R. C. 203 (1) :
A. I. R. 1933 Cal. 647 (1).

MINES ACT (IV OF 1923)

———S. 3 (f)—'Mine', meaning of.

The term 'mine' is not a definite term, but is susceptible of limitation or expansion according to the intention in which it is used. *Keshardeo Goenka v. Emperor*.

35 Cr. L. J. 742 :
148 I. C. 739 : 38 C. W. N. 418 :
59 C. L. J. 122 : 61 Cal. 445 : 6 R. C. 479 :
A. I. R. 1934 Cal. 387.

———S. 3 (f)—'Mine', meaning of.

The word 'mine' as defined in cl. (f), S. 3, Mines Act, means an excavation and includes works and machinery, tramways and sidings. *Keshardeo Goenka v. Emperor*.

35 Cr. L. J. 742 :
148 I. C. 739 : 38 C. W. N. 418 :
59 C. L. J. 122 : 61 Cal. 445 : 6 R. C. 479 :
A. I. R. 1934 Cal. 387.

———S. 3 (f)—Scope of.

In addition to excavations, machinery, etc., works which are incidental to or connected with mining operations clearly fall within the definition. *Keshardeo Goenka v. Emperor*.

35 Cr. L. J. 742 :
148 I. C. 739 : 38 C. W. N. 418 :
59 C. L. J. 122 : 61 Cal. 445 : 6 R. C. 479 :
A. I. R. 1934 Cal. 387.

MINOR OFFENCE

———Conviction for—Claim to be tried for major offence—Conviction not invalid. *Narayana Naicken v. The Tahsildar of Conjeevaram*.

7 Cr. L. J. 215 :
2 M. L. T. 495.

MIRZAPUR STONE MAHAL ACT (V OF 1886)

-----S. 18—*Power of High Court—High Court, if can interfere with orders passed under Act.*

There is no provision in the Mirzapur Stone Mahal Act, giving jurisdiction to High Court to interfere with the orders passed by the Sub-Divisional Officer under the Act. *Emperor v. Jharlag.* 40 Cr. L. J. 777 : 183 I. C. 421 : 1939 A. L. J. 380 : 1939 A. W. R. 399 : 12 R. A. 134 : A. I. R. 1939 All. 541.

MISAPPROPRIATION

See also Penal Code, 1860, S. 400.

-----*Duty of Crown.*

The Crown which has considerable facilities at its disposal, ought ordinarily, unless for very good reasons, be able to put alleged offenders on their trial within a reasonable time. It is not merely a question of enabling witnesses to have distinct recollection, though that is a very important one, because the greater the lapse of time, the fainter will be the recollection, at least of truthful witnesses, who do not imagine or invent, but it becomes more difficult for the accused person to defend himself and all the more difficult if he happens to be an innocent man. *Rex v. V. Krishnan.* 41 Cr. L. J. 824 : 190 I. C. 123 : 1939 M. W. N. 1213 : 13 R. M. 386 : A. I. R. 1940 Mad. 329.

-----*Duty of prosecution.*

The cardinal or basic rule of the administration of criminal justice, according to British notions, is that the prosecution must prove the guilt of the accused, and that the accused need not prove anything. He is entitled to stand on the innocence which the law imputes to him till it is displaced. The mere fact that a person failed to account for the money which he was entrusted with is not in law sufficient to establish that he has committed the offence of criminal breach of trust in the absence of other evidence, unless some kind of conversion, is proved, i. e., a wrongful diversion to his own purposes or a purpose not consistent with law or with contract. *Rex v. V. Krishnan.* 41 Cr. L. J. 824 : 190 I. C. 123 : 1939 M. W. N. 1213 : 13 R. M. 386 : A. I. R. 1940 Mad. 329.

-----*Misappropriation, what is.*

Misappropriation is the wrongful setting apart or assigning of a sum of money to a purpose or use to which it should not be lawfully assigned or set apart. *Rex v. V. Krishnan.* 41 Cr. L. J. 824 : 190 I. C. 123 : 1939 M. W. N. 1213 : 13 R. M. 386 : A. I. R. 1940 Mad. 329.

MISBEHAVIOUR

See also Sind Courts Act, 1866, S. 16.

MISCARRIAGE OF JUSTICE

See also Cr. P. C., 1898, S. 297.

MISCELLANEOUS

-----*Legal practitioner.*

Conviction under S. 506, Penal Code, for threatening a person that his tenants would stop paying rent—Release by Local Government under Notification dated March 5, 1931—Suspension, is not proper. *In the matter of : a Mukhtear of Gorakhpur.*

33 Cr. L. J. 830 : 139 I. C. 787 : 1932 A. L. J. 116 : I. R. 1932 All. 588 : A. I. R. 1932 All. 232.

MISCHIEF

See also Penal Code, 1860, Ss. 425, 426, 430.

-----*What constitutes.*

Act diminishing supply of water does not of itself constitute mischief. *Crown v. Nga Myal Aung.* 1 Cr. L. J. 663 : 10 Bur. L. R. 122.

MISCONDUCT

See also (i) Legal Practitioner.

(ii) Legal Practitioners Act, 1879.

(iii) Letters Patent, Pleader.

-----*Practitioner.*

Pleader appearing in Court in state of drunkenness—Unable to conduct cases—Insulting the Court—Name of Pleader, should be struck off from the rolls. *In the matter of : a Lower Grade Pleader. (S. B.)*

150 I. C. 736 : 12 Rang. 180 : 6 R. Rang. 377 : A. I. R. 1934 Rang. 156.

MISDIRECTION

See also (i) Cr. P. C., 1898, Ss. 297, 303.

(ii) Jury.

(iii) Penal Code, 1860, Ss. 302, 411, 414.

-----*Omissions, effect of—Sessions trial.*

In a Sessions trial the prosecution did not examine certain material witnesses named in the First Information and also in the evidence. The Judge, in his summing-up, did not tell the Jury that they could draw an inference unfavourable to the prosecution from its omission to examine these witnesses and also failed to draw the attention of the Jury to certain discrepancies in the evidence of the principal witnesses for the prosecution : *Held*, that these omissions constituted material misdirection sufficient to vitiate the trial. *Tenaram Mondal v. Emperor.*

22 Cr. L. J. 475 : 61 I. C. 1003 : 33 C. L. J. 180 : A. I. R. 1921 Cal. 257.

MISJOINDER

-----*Illegality of trial—Dacoity—Offence committed on different days—One trial.*

Where four accused were charged and tried together for two offences of dacoity committed on 30th May and 2nd June 1909, not forming part of the same transaction : *Held*, that the trial was bad and that the convictions

MISTAKE OF LAW

should be quashed. *Shanmooga Tevan v. Emperor*.
11 Cr. L. J. 477 :

7 I. C. 390 : 1910, 1 M. W. N. 540 :
8 M. L. T. 286.

MISJOINDER OF CHARGES

See also (i) Cr. P. C., 1898, Ss. 170,
283, 284, 285, 289.

(ii) Criminal Trial.

———*Gambling Act, Ss. 3, 4—Discretion of Chief Court to hear pleader in revision.*

A person accused under S. 3, Gambling Act, III of 1867, cannot be tried together with the persons accused under S. 4, on the ground of misjoinder of charges. When the District Magistrate has refused to appoint a legal practitioner to represent the Crown in revision, the Chief Court must decline to hear the Counsel. *Makhan v. Emperor*.

11 Cr. L. J. 211 :
5 I. C. 720 : 5 P. W. R. 1910 Cr.

———*Objection, effect of.*

An objection as to misjoinder of charges in a criminal case, whenever and wherever taken, is fatal to the conviction, and there must be a re-trial. *Shyambar Koyal v. Emperor*.

15 Cr. L. J. 472 :
24 I. C. 352 : 19 C. L. J. 633 :
A. I. R. 1914 Cal. 589.

MISJOINDER OF OPPOSITE PARTIES

———*Misjoinder of opposite parties.*

Misjoinder of opposite parties in security cases is illegal. *Pran Krishna Saha v. Emperor*.

1 Cr. L. J. 58 :
8 C. W. N. 180.

MISJOINDER OF PARTIES

See also Cr. P. C., 1898, S. 230.

———*Criminal trial—Persons guilty of separate offences—Joint conviction and joint penalty, whether legal.*

A house having been found to be unfit for human habitation, an order was issued prohibiting persons from using the same. The owner and the occupier were jointly convicted for disobedience to that order, and jointly sentenced: Held, that, in each of the two accused, the act of disobedience was a separate offence, and the passing of joint conviction and joint penalty on them was illegal. A re-trial was ordered. *Bhairab Chandra v. Corporation of Calcutta*.

11 Cr. L. J. 412 :
6 I. C. 874 : 14 C. W. N. 911 :
37 Cal. 895.

MISTAKE OF LAW

———*Is no excuse.*

No mistake of law can be claimed by any person to exonerate him from blameworthiness for an act committed by him which is an offence. *Soloman David v. The King*.

39 Cr. L. J. 754 :
176 I. C. 460 : 11 R. Rang. 65 :
A. I. R. 1938 Rang. 245.

MOLESTATION ORDINANCE (V OF 1932)

———S. 4—Conviction under, when sustained.

A conviction under S. 4, of the Ordinance, cannot be sustained where there is nothing to show that the act which the complainant was prevented from doing was an act which the latter had a right to do. *In re : Pendyola Narasanna*.

34 Cr. L. J. 96 (1) :
140 I. C. 773 : I. R. 1933 Mad. 37 :
A. I. R. 1933 Mad. 147.

MOTIVE

See also Penal Code, 1860, Ss. 221, 302, 326.

———*Enmity, a double-edged weapon.*

Enmity is a double-edged weapon, and what would be a reason for murder, might well be the reason for a fabricated case. *Bahadur v. Emperor*.

29 Cr. L. J. 999 :
112 I. C. 215 : 10 L. L. J. 229.

———*Motive.*

Motive, evidence of, cannot supply want of reliable evidence. *Vaithinatha Pillai v. Emperor*.

14 Cr. L. J. 577 :
21 I. C. 369 : 17 C. W. N. 1110 :
14 M. L. T. 263 : 1913 M. W. N. 806 :
15 Bom. L. R. 910 : 25 M. L. J. 518 :
11 A. L. J. 881 : 18 C. L. J. 365 :
40 I. A. 193 : 36 Mad. 501 P. C.

———*Motiveless act—Murder.*

The circumstance of an act being apparently motiveless, is not a ground from which the existence of a powerful and irresistible influence or homicidal tendency can be safely inferred. Motives exist, unknown and innumerable, which might prompt the act. *Sobha v. Emperor*.

2 Cr. L. J. 714 :
6 P. L. R. 510 : 40 P. R. 1905 Cr.

———*Omission by prosecution to allege or prove motive—Actual commission of offence proved—Conviction, whether to be upheld.*

It is not the duty of the prosecution to suggest or to prove any motive on the part of the accused in committing an offence. If the actual evidence as to the commission of the offence is believed, then no question of motive remains to be established, and the conviction should be upheld. *Tilak Ram v. Emperor*.

29 Cr. L. J. 768 :
110 I. C. 800 : 5 O. W. N. 596.

MOTIVE AND INTENTION

See also Criminal trial.

MOTIVE OF CRIME

See also Penal Code, 1860, S. 364.

MOTOR-CAR AND CYCLE ACT (III B. C. OF 1903)

—By-law No. 4, Rr. 4, 20 — *Liability of owner for acts of driver—Driving recklessly or negligently—Absence of owner—Master and servant.*

The owner of a motor-car is responsible for the act of his servant whom he permits to use his motor-car. If the servant drives the car recklessly or negligently, the master is liable. But it is not in every case of improper use by the servant that the master should be punished. There must be permission express or implied to use the car; and once the permission is given, any misuse of the car, while that permission lasts, is punishable and the owner is responsible. A general injunction to the chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of the owner's responsibility. *Edward Thornton v. Emperor.*

12 Cr. L. J. 89 :
9 I. C. 480 : 15 C. W. N. 390 :
13 C. L. J. 335 : 38 Cal. 415.

MOTOR DRIVERS

—Rash driving.

Merely showing that the person to whom or to whose property they have caused injury was himself negligent is not sufficient to absolve them from the consequence of rash driving. *Doota Misir v. Emperor.* 32 Cr. L. J. 1061 :
133 I. C. 601 : 1931 A. L. J. 770 :
I. R. 1931 All. 713 : A. I. R. 1931 All. 708.

MOTOR VEHICLES

See also (i) Madras Local Boards Act, 1920, S. 166.

(ii) Penal Code, 1860, S. 304-A.

(iii) U. P. Municipalities Act, 1916, Ss. 128, 299.

—*Punjab Motor Vehicles Plying for Hire Rules, 1922, rr. 3, 7—'Plying for hire' meaning of.*

Merely hiring a vehicle to another does not amount to plying for hire. To ply for hire means to exhibit a vehicle in such a way as to invite those who may desire to do so, to hire it or to travel in it on payment of the usual fares and also to offer its use on payment to any member of the public, thereby soliciting custom. *Sardul Singh v. Emperor.*

30 Cr. L. J. 700 :
116 I. C. 885 : I. R. 1929 Lah. 507 :
10 Lah. 505 : 31 P. L. R. 95 :
A. I. R. 1929 Lah. 422.

MOTOR VEHICLES ACT (XI OF 1890)

—S. 6 (1)—Charge against both coachman and owner, legality of.

There is nothing in S. 6 (1) of Act XI of 1890, restricting the prosecution of either the "coachman or the owner." The prosecution of both or one after another is not illegal. A conviction of one does not operate as a bar to the trial of the other. *Emperor v. Rice.*

15 Cr. L. J. 695 :
26 I. C. 143 : A. I. R. 1915 Mad. 541.

MOTOR VEHICLES ACT (VIII OF 1914)

—U. P. Motor Vehicles Rules, Rule No. 22—Conviction, legality of—'Driver,' whether applies only to person actually driving—Order by Magistrate to produce licence in Court—Non-compliance.

No person is a driver within the meaning of S. 8, Motor Vehicles Act, which requires a driver to produce his licence on demand by any Police Officer, unless he is actually driving. Rule 22 of the U. P. Motor Vehicles Rules has no application to the case of a person who has been licensed in the United Provinces. A Magistrate in United Provinces cannot, therefore, convict a person who has been licensed as a driver in the United Provinces for non-compliance of his order to attend his house or Court with the licence. *Emperor v. Sita Ram.*

28 Cr. L. J. 492 :
101 I. C. 668 : 25 A. L. J. 534 :
49 All. 754 : A. I. R. 1927 All. 478.

—Liability of owner.

The owner would be liable if the vehicle was plied for hire without a permit, whether he permitted it or not. But the mere payment to the owner of the cost of petrol used while the vehicle was at the disposal of another does not amount to 'hiring' the vehicle. *In re : Kadir Mohideen Sahib.* 36 Cr. L. J. 924 (2) :
156 I. C. 325 (1) : 41 L. W. 498 :
1935 M. W. N. 325 (1) :
68 M. L. J. 481 : 7 R. M. 689 :
A. I. R. 1935 Mad. 577.

—Omission in charge to specify sections, effect of.

Omission in a charge to specify the sections of the Motor Vehicles Act, or rules made thereunder for breach of which an accused is being prosecuted is a serious defect. *Hasan Ahmad v. Emperor.* 29 Cr. L. J. 799 :

111 I. C. 127 : 50 All. 876 :
26 A. L. J. 1381 : A. I. R. 1928 All. 492.

—Rules under the Act, r. 46, para. 7—'Ply,' meaning of—Person merely driving his vehicle—Whether can be said to be plying the vehicle.

The word 'ply' in para. 7 of r. 46 framed under the Motor Vehicles Act, has exactly the same meaning as to ply for hire, that is to say, it means that the person driving a vehicle stops to take up or put down passengers for reward. A person merely driving his vehicle cannot be said to be plying the vehicle. *Berry Mahapatra v. Emperor.*

37 Cr. L. J. 850 :
163 I. C. 399 : 17 P. L. T. 378 :
2 B. R. 593 (1) : 9 R. P. 6 (2) :
A. I. R. 1936 Pat. 321 (1).

—'Plying for hire' what amounts to.

Punjab Motor Vehicles Plying for Hire Rules, r. 8—Accused bringing goods in their private lorry from another town in their own name—Selling goods to others on arrival : Held, no plying for hire. *Khushi Ram Shadi Ram v. Emperor.* 32 Cr. L. J. 948 :

132 I. C. 702 : I. R. 1931 Lah. 670.

MOTOR VEHICLES ACT (VIII OF 1914)

—*Prosecution under — Summons must specify rules, which the accused is alleged to have broken.*

Summons issued to an accused for an offence under the Motor Vehicles Act, must specify the rule or rules made under the Act, which the accused is said to have broken and unless this is done, the trial is bad. It is extremely unfair to an accused that a prosecution should be launched against him without the prosecution having made up their mind as to the exact offence with which it is intended to charge him. *Muhammad Hafiz v. Emperor.*

38 Cr. L. J. 947 :
170 I. C. 476 : 1937 O. L. R. 432 (a) :
10 R. O. 20 : 1937 O. W. N. 815 :
A. I. R. 1937 Oudh 444.

—*Public conveyance, what is.*

The definition of a 'public conveyance' in S. 1 of Bombay Act VI of 1863, does not include a motor car. *Aba Appa Dharwade v. Emperor.*

28 Cr. L. J. 397 (b) :
100 I. C. 1053 : 29 Bom. L. R. 191 :
A. I. R. 1927 Bom. 154.

—*S. 2—'Public place,' what is, for the purposes of Penal Code and Gambling Act, if necessarily public place within meaning of S. 2—What is public place within meaning of section, stated—Held, that the place in question was not a public place.*

From the mere fact that for the purposes of the Gambling Act, and for the purposes of the Penal Code, a certain place would properly be styled a public place, it does not necessarily follow that it is a public place as defined in S. 2, Motor Vehicles Act. To make it a public place under the Motor Vehicles Act, it must be a road, street, way or a place over which the public have a right to pass or to which the public are granted access: *Held*, on facts that the place in question was not a public place within the meaning of S. 2, Motor Vehicles Act. *Abdul Hakim v. Emperor.*

40 Cr. L. J. 284 :
179 I. C. 921 : 11 R. L. 652 :
A. I. R. 1938 Lah. 817.

—*S. 4—Dangerous driving—Question of fact.*

In determining whether the manner of driving a motor car was dangerous to the public or not, regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. It is really a question of fact depending on the circumstances of the case. The mere fact of deviating from a line of traffic does not necessarily amount to negligently, recklessly or dangerously driving a car. *Khodabux v. Emperor.*

27 Cr. L. J. 1213 :
97 I. C. 973 : 28 Bom. L. R. 1066 :
A. I. R. 1926 Bom. 564.

—*S. 4—Negligence, test.*

In cases of negligence of motorists, the law or usage of the road is not the criterion of negligence. The test is whether the accident

MOTOR VEHICLES ACT (VIII OF 1914)

could have been avoided by the accused. *Emperor v. Homnarin Sukhailal Kachhi.*

35 Cr. L. J. 696 :
148 I. C. 541 : 6 R. N. 186 :
A. I. R. 1934 Nag. 65.

—*S. 4—Power of Police Officer to stop motors.*

Under S. 4 of the Motor Vehicles Act, the driver of a motor vehicle can be stopped even by a Police Officer who is not engaged in traffic, for, ascertaining his name and address with a view to a prosecution or for the purpose of enforcing any of the provisions of the Act such as overloading of the bus, or inspection for checking licence. *In re : Ramanujam Naidu.*

31 Cr. L. J. 639 (b) :
124 I. C. 206 : 57 M. L. J. 457 :
30 L. W. 468 : 1929 M. W. N. 596 :
A. I. R. 1930 Mad. 445.

—*S. 4—Scope of.*

Under the Motor Vehicles Act, it is an essential feature of the section imposing a liability on drivers to respond to signals that it is not for them to speculate as to the reason why the signal was given and to act accordingly. *W. C. Dutt v. Emperor.*

34 Cr. L. J. 1260 :
146 I. C. 208 : 6 R. N. 80 :
A. I. R. 1933 Nag. 177.

—*S. 5.*

Sec also (i) Cr. P. C., 1898, S. 403 (1).
(ii) Penal Code, 1860, S. 279.

—*S. 5—Criminal negligence.*

To convict a man for rash and negligent driving under S. 5, an error of judgment alone is not sufficient. There must be criminal negligence. *H. B. Spiers v. Johi-ud-Din.*

33 Cr. L. J. 549 :
138 I. C. 98 : 36 C. W. N. 246 (2) :
59 Cal. 113 : I. R. 1932 Cal. 419
A. I. R. 1932 Cal. 461.

—*S. 5—Rash and negligent driving — What is.*

A driver of a car who attempts to force his way past a car in front of him on his side of the road at a time when there is a car approaching on the opposite side of the road from the opposite direction almost immediately in front of his car, is guilty of conduct which comes within the purview of S. 5 of the Motor Vehicles Act. *Charan Singh v. Emperor.*

26 Cr. L. J. 1254 :
88 I. C. 998 : 23 A. L. J. 790 :
A. I. R. 1925 All. 798.

—*S. 5—Scope.*

S. 5 of Act VIII of 1914 refers to a person who is driving a car in a manner which would, in ordinary circumstances, be proper, but which is improper owing to the special condition of the road on which he is driving at the time. The section does not cover the case of a person who is not on the right side of the road which is always and

MOTOR VEHICLES ACT (VIII OF 1914)

in every condition improper. *Yar Mahommed v. Emperor*. 26 Cr. L. J. 253 :

84 I. C. 253 : 16 S. L. R. 147 :
A. I. R. 1921 Sind 97.

———S. 5—Difference between—Penal Code, S. 279.

S. 5, Motor Vehicles Act, deals with reckless driving, dangerous to the public having regard to all the circumstances of the case. S. 279, Penal Code, refers to driving in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person. The difference between these two sections is this: A man may drive a motor vehicle in a manner "dangerous to the public" even if there is no person actually on the spot to be endangered the public being regarded as some kind of an all-pervading presence which may reasonably be expected to be at the place at the time. Still his offence cannot come under S. 279 because there is not "any other person" who is likely to be hurt. For an offence under S. 279, there must definitely be some other person to be endangered. So, if in driving across the main road in this manner some passer-by only saves his life by a wild leap to safety, then the driver of the vehicle is driving in a manner so rash and negligent as at least to be likely to cause hurt to that person who only saved his life by his agility and an offence under S. 279 has been committed. *The King v. Maung Thoun Shwe*.

39 Cr. L. J. 642 :
175 I. C. 639 : 11 R. Rang. 9 :
A. I. R. 1938 Rang. 161.

———Ss. 5, 16—Separate trials, legality of—Rash driving while intoxicated.

Where a person drove a motor car while he was intoxicated and by rash and negligent driving caused damage to another car: *Held*, that there was nothing illegal in his being separately charged and tried for offences under r. 27-A of the Motor Vehicles Rules and S. 5 of the Motor Vehicles Act. *Emperor v. Rama Deoji*. 29 Cr. L. J. 981 :

112 I. C. 101 : 30 Bom. L. R. 636 :
A. I. R. 1928 Bom. 231.

———Ss. 5, 16, 4 (c)—Rash and negligent driving, test of—Driver not knowing that accident had occurred and not stopping—Whether offence under S. 16 read with S. 4 (c).

Where a person having found that the driver was not willing to stop the bus to pick him up, thought that if he went so close to the bus with extended hand, the driver would certainly stop the bus in order to avoid an accident, and if thus he courted an accident, and the driver could not have anticipated that a man who was shouting out to stop the bus would be so reckless as to come so close to the bus as to hurt himself, the action of the driver did not amount to rash and negligent driving. And where there was nothing to show that the driver knew and had reason to believe that

MOTOR VEHICLES ACT (VIII OF 1914)

the person was hurt and the driver did not stop, it did not amount to an offence under S. 16 read with S. 4 (c) of not stopping the bus when an accident had taken place. *Muhammad Rafiq v. Emperor*.

39 Cr. L. J. 382 :
173 I. C. 860 : 10 R. P. 451 :
4 B. R. 351 : A. I. R. 1938 Pat. 268.

———Ss. 5, 18 (2)—Conviction for dangerous driving—Fine, amount of—Cancellation or suspension of licence.

A fine inflicted on an accused person should not be excessive, having regard to his pecuniary means. The best way to stop dangerous driving of motors is for the Court, on a conviction of the offender under S. 5, Motor Vehicles Act, instead of imposing a fine disproportionate to the pecuniary means of the latter, to exercise its power under Sub-s. (2) of S. 18, and to cause particulars of the conviction to be endorsed on the licence held by the offender and to cancel or suspend that licence, or to declare the offender disqualified for obtaining a licence either permanently or for such period as it thinks fit. *Basappa Rachappa Hundekar v. Emperor*. 26 Cr. L. J. 1536 :

90 I. C. 320 : 27 Bom. L. R. 1056 :
A. I. R. 1925 Bom. 526.

———S. 6—Conviction under, legality of.

The owner of a motor car which is taken beyond the limits of the licence by the driver without the owner's knowledge is not, therefore, liable to be convicted under S. 6. *Emperor v. Shantaram*. 33 Cr. L. J. 746 (2) :
139 I. C. 270 : 34 Bom. L. R. 897 :
I. R. 1932 Bom. 490 (2).
A. I. R. 1932 Bom. 474.

———S. 6—Liability of owner for acts of unlicensed driver.

The owner of a bus left for home leaving the bus in charge of his licensed driver. The bus was driven during his absence, without his knowledge and without his consent, express or implied, by a person who was not a licensed driver: *Held*, that the owner could not be said to have allowed the unlicensed person to drive the bus and could not be convicted under S. 6, Motor Vehicles Act; *Held*, further, that the owner could not be held responsible for the act of his licensed driver inasmuch as, even if the latter had allowed an unlicensed man to drive the bus, he could not be held to have acted in the scope of his employment. *Indra Mohan Roy v. Emperor*.

29 Cr. L. J. 694 :
110 I. C. 326 : 47 C. L. J. 460 :
A. I. R. 1928 Cal. 410.

———S. 6—Plea of ignorance of expiry of licence—Bus owner allowing driver to drive bus without licence, validity of.

A motor bus owner who allows his driver to drive his omnibus without licence in contravention of S. 6 of Act VIII of 1914 is guilty of an offence under the section and cannot plead that he was not aware of the expiry of the licence. A man cannot

MOTOR VEHICLES ACT (VIII OF 1914)

entrust his car to another person and plead that he presumed that he was licenced. He must assure himself that he is licenced. *Crown Prosecutor v. Kadhir Mohideen.*

28 Cr. L. J. 962 :
105 I. C. 674 : 26 L. W. 568 :
1927 M. W. N. 852 : 53 M. L. J. 757 :
51 Mad. 187 : A. I. R. 1927 Mad. 1080.

—Ss. 6, 8—*Prosecution for driving with defective lights.*

In a prosecution for driving a motor vehicle on a public road with defective lights, time is practically the most important point. In such a case, there should be independent and direct evidence indicating exactly the time at which the car has been observed being driven on the public road with defective lights. It is of little practical use for a Police Officer to come into Court and say "sometime after dusk" or "about 7 p. m." or words to that effect, if it is hoped that such a prosecution is to be successfully conducted. *Aklu v. Emperor.*

27 Cr. L. J. 1072 :
97 I. C. 48 : 7 P. L. T. 542 :
A. I. R. 1926 Pat. 446.

—Ss. 6, 8—*Local rules, rr. 12, 13—Prosecution under—Driving licence, demand of—Car standing in private premises—Licence not on person of chauffeur.*

A Police Officer can ask the driver of a motor vehicle for his licence in the private grounds of a person, and it is not necessary that the car should be actually being driven on a public road. It is a harsh way of administering the law to institute a prosecution against a properly licenced chauffeur simply because he may have not got the licence on his person. The offence, if at all, is a technical one and does not merit a prosecution. *Aklu v. Emperor.*

27 Cr. L. J. 1072 :
97 I. C. 48 : 7 P. L. T. 542 :
A. I. R. 1926 Pat. 446.

—Ss. 6, 16—*'Allow a person to drive'—Meaning of—Owner leaving bus in charge of licensed driver—Criminal Law—Master's liability for acts of servant.*

Whether the owner of a bus can be said to have allowed any person who is not licenced to drive it, within the meaning of S. 6, Motor Vehicles Act, is a question of fact depending on the facts of each case. A servant has no implied authority to engage a stranger to do work on behalf of his master, so as to render the master liable for the stranger's acts or defaults except perhaps in a case of necessity, which term comprises only some well-known exceptional cases. *Indra Mohan Roy v. Emperor.*

29 Cr. L. J. 694 :
110 I. C. 326 : 47 C. L. J. 460 :
A. I. R. 1928 Cal. 410.

—S. 8—*Duty of driver to produce licence upon demand—"Upon demand", meaning of.*

Under S. 8, Motor Vehicles Act, it is compulsory upon a driver of a motor vehicle to carry his licence with him, and he is bound to produce it at once directly a Police Officer calls upon him to do so. Failure to produce

MOTOR VEHICLES ACT (VIII OF 1914)

a licence immediately upon such demand, is punishable under the section. The words "upon demand" in S. 8, Motor Vehicles Act, mean at once directly the demand is made. *Madan Mohan Nath v. Emperor.*

21 Cr. L. J. 724 :
58 I. C. 148 : 18 A. L. J. 933 :
2 U. P. L. R. All. 297 : 43 All. 123 :
A. I. R. 1921 All. 277.

—S. 8—*Offence under—What constitutes.*

Under S. 8 failure of the driver to produce the driving licence on demand is an offence and not merely non-carrying of it on person. *Bahadur Singh v. Emperor.* 33 Cr. L. J. 646 (2) :
138 I. C. 400 : 33 P. L. R. 278 :
I. R. 1932 Lah. 470 : A. I. R. 1932 Lah. 363.

—S. 8—"Upon demand", meaning of.

The words 'upon demand' in S. 8, Motor Vehicles Act, connotes something imperative that brooks no delay. *Narasayya v. Emperor.*

37 Cr. L. J. 1012 :
164 I. C. 351 : 9 R. N. 23 (2) :
I. L. R. 1936 Nag. 164 : A. I. R. 1936 Nag. 150.

—Ss. 8, 9—*Applicability of.*

Ss. 8 and 9, Motor Vehicles Act, do not apply to any permit issued under r. 24, U. P. Motor Vehicles Rules, but apply only to the driving licence prescribed by S. 6 of the Act and rr. 20 to 22. *Hassan Ahmad v. Emperor.*

29 Cr. L. J. 799 :
111 I. C. 127 : 50 All. 876 :
26 A. L. J. 1381 : A. I. R. 1928 All. 492.

—Ss. 8, 16—*Technical offence—Driver not producing licence when asked but producing it after very little delay—Licence kept in inaccessible place.*

Where a motor driver on being asked by a Policeman to produce his driving licence refused to do so saying that it was kept in the box under the rear seat, and that as ladies were in the car, he could not ask them to descend at that spot, but later on after the ladies got down, the licence was shown to a Sub-Inspector: *Held*, that there was a breach of the rule and conviction under S. 8, read with S. 16, was justifiable but prosecution might have been waived, in view of the driver's dilemma and his production of the licence after very little delay. But, on the other hand, the driver was to blame for keeping the licence in an inaccessible place, and there was no doubt that he was technically guilty of the offence. *Narasayya v. Emperor.*

37 Cr. L. J. 1012 :
164 I. C. 351 : 9 R. N. 23 (2) :
I. L. R. 1936 Nag. 164 : A. I. R. 1936 Nag. 150.

—Ss. 10, 11 (2)—*Registration of motor vehicles—Power of Local Government to fix time limits—Ultra vires.*

S. 11 (2) (a) Motor Vehicles Act, does not empower a Local Government to prescribe by rule the duration of time during which a certificate of registration shall be valid. *Sherston Baker v. Emperor.*

23 Cr. L. J. 169 :
65 I. C. 633 : 24 Bom. L. R. 50 :
46 Bom. 646 : A. I. R. 1922 Bom. 42.

MOTOR VEHICLES ACT (VIII OF 1914)

—S. 11—Rules framed by U. P. Government under Act, r. 12, Cl. (1)—‘Front portion of vehicle’, meaning of—Requirements of.

All that rule 12 of the rules framed by the U. P. Government under S. 11, Motor Vehicles Act, requires is that there must be affixed on each side of the front portion of the vehicle a lamp showing a white light in front. The words “front portion” in clause (a) of the rule must be read as contradistinguished from the rear and the back of the vehicle mentioned in clause (b). The ‘front portion’ of the vehicle does not mean the extreme end of the bonnet or the extreme end of the front portion. The front portion is the portion which is outside the seats and the steering wheel. *Muhammad Said v. Emperor*.

19 Cr. L. J. 860 :
46 I. C. 1004 : 16 A. L. J. 623 :
A. I. R. 1918 All. 258.

—S. 11—Rules framed under — Calcutta Rules, Part II, rr. 3, 16—Liability of owner.

Where a particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for his servant’s acts, if an act is expressly prohibited, but not otherwise, and he cannot be so made liable if the act provides for liability for permitting and causing a certain thing, unless it can be shown that the act was done with the master’s knowledge and assent, express or implied. *Varaj Lal v. Emperor*.

25 Cr. L. J. 1209 :
82 I. C. 137 : 28 C. W. N. 854 :
51 Cal. 948 : A. I. R. 1924 Cal. 985.

—S. 11—Rules framed under—Part II, rr. 3—19, contravention of, by driver—Liability of owner.

The owner of a motor car who has permitted or authorised the use of his car, is liable for any contravention of the rules framed by the Governor-in-Council under S. 11, Motor Vehicles Act, for the purpose of regulating the use of motor vehicles in Calcutta, committed by his licensee or servant during the period of such user, even though such owner may not have abetted the contravention. *Baidya Nath Bose v. Emperor*.

18 Cr. L. J. 985 :
42 I. C. 601 : 26 C. L. J. 37 :
22 C. W. N. 72 : A. I. R. 1918 Cal. 966.

—S. 11—Rules by Burma under S. 11—R. 38-B—Nature of.

The power to seize a licence from its owner and keep it for a certain time, cannot in any way help to carry into effect the provisions of the Motor Vehicles Act. It is not even a temporary suspension of the licence because it provides that a temporary substitute is to be given for it, and S. 18 only provides for a licence to be cancelled or suspended by the Local Government or by a Court trying the holder of a licence for an offence. R. 38-B made by the Burma Government, under S. 11 must, therefore, be held to be *ultra vires*. *The King v. Maung Thoun Shwe*.

39 Cr. L. J. 642 :
175 I. C. 639 : 11 R. Rang. 9 :
A. I. R. 1938 Rang. 161.

MOTOR VEHICLES ACT (VIII OF 1914)

—Ss. 11, 16—Prosecution without notice, legality of—Motorist from outside British India not evading licence-fee but offering to pay it on spot—Prosecution without service of notice under rules framed under S. 11—Legality.

A motorist coming from Bangalore made no attempt to evade payment of the British licence-fee. He offered to pay the entire quarterly tax on the spot and he did pay it to the Magistrate: *Held*, that to prosecute him thereafter was illegal, for, as a matter of fact, by rules framed under S. 11, Motor Vehicles Tax Act, the proper procedure was to serve a notice on the motorist calling him to pay the tax within seven days: *Held*, also, ignorance of the law is no defence for persons accused of breaking the law, but ignorance on the part of those who have to administer the law, is quite inexcusable. *In re : Tirumalai Mudaliar*.

39 Cr. L. J. 264 :
173 I. C. 145 (1) : 1937 M. W. N. 1195 (2) :
46 L. W. 729 : 10 R. M. 523 :
A. I. R. 1938 Mad. 128.

—S. 11 (2) (h) (1)—Bombay Motor Vehicles Rules, r. 21—Whether comes under Cl. (h) or Cl. (i) of S. 11 (2)—Powers of authority—Rule, if *ultra vires*—Authority can specify and prohibit vehicles carrying load above certain weight.

R. 21, Bombay Motor Vehicles Rules, comes under Cl. (i) of S. 11 (2), Motor Vehicles Act, and is not framed under Cl. (h). The rule is not *ultra vires*. When r. 21 speaks of a specified class or classes of motor vehicles, what is meant obviously is specified by the authority who is given power to prohibit, that is to say, the Commissioner of Police or the District Magistrate as the case may be. Further, there is no reason why the authority should not specify and prohibit motor vehicles carrying a load above a certain weight. *Emperor v. Vinayak Mahadev Habbu*.

40 Cr. L. J. 111 :
178 I. C. 599 : 11 R. B. 180 :
40 Bom. L. R. 1099 :
I. L. R. 1939 Bom. 19 :
A. I. R. 1938 Bom. 506.

—R. 12—Number plate.

Under r. 12 of the rules made under the Motor Vehicles Act, it is the owner of the car who is responsible for fixing the number plates on the car, and a person who has merely the use of the car cannot be prosecuted for the absence of such plates. *Akhu v. Emperor*.

27 Cr. L. J. 1072 :
97 I. C. 48 : 7 P. L. T. 542 :
A. I. R. 1926 Pat. 446.

—S. 14—U. P. Government Motor Vehicles Rules, r. 32—Duty of person in charge of vehicle—‘If any person is injured,’ whether governs whole clause—Motorist, whether bound to report accident to Police Station when no one is injured.

Under r. 32 of the Rules framed by the U. P. Government under S. 15, Motor Vehicles Act, the person in charge of a motor vehicle is under a duty to report an accident to the nearest Police Station only if any person is

MOTOR VEHICLES ACT (VIII OF 1914)

injured by the accident. The words "if any person is injured" in the said rule govern, the whole of the clause and not merely the first part of it. *Mansa Singh v. Emperor*.

30 Cr. L. J. 1085 :
119 I. C. 570 : 1929 A. L. J. 1044 :
I. R. 1929 All. 1066 :
A. I. R. 1929 All. 750.

—S. 14—Liability of master—*Punjab Motor Vehicles Rules, rr. 10, 17, applicability of—Servant driving motor car, without lights.*

Rules 10 and 17, Punjab Motor Vehicles Rules, only apply to the driver or to a person using the car at the time it is being driven, and not to an absent owner. The owner of a car, therefore, is not liable to be fined because, in his absence, his servant drove his motor-car without lights after lighting-up time. *Sohan Singh v. Emperor*.

19 Cr. L. J. 928 :
47 I. C. 444 : 27 P. R. 1918 Cr. :
37 P. W. R. 1918 Cr. : 15 P. L. R. 1919 :
A. I. R. 1919 Lah. 418.

—S. 15-A—Burden of proof—*Accused must know that lorry was overloaded.*

The wording of S. 15-A and the general plan of the Motor Vehicles Act show that the burden is on the prosecution to show that the accused knew that the lorry was overloaded. Such knowledge could be proved by adducing evidence, that for example, the lorry had just left the owner's premises or that all the goods on the lorry had come from there. *In re : W. K. Devaraja Mudaliar*.

39 Cr. L. J. 980 (b) :
178 I. C. 117 : 1938 M. W. N. 867 :
48 L. W. 319 : 1938, 2 M. L. J. 582 :
11 R. M. 403 (1) : A. I. R. 1938 Mad. 998.

—S. 16.

See also (i) Cr. P. C., 1898, S. 403.
(ii) Motor Vehicles Act, 1914,
Ss. 5, 11.

—S. 16—*Madras Motor Vehicles Rules, r. 16-A—Applicability of, whether applies to absent owner—Non-lighting of car, conviction for, legality of, when owner not in or near car.*

Rule 16-A, Madras Motor Vehicles Rules, does not apply to an absent owner, and the conviction of the owner under the rule for not lighting the car is illegal when the owner was not in the car or so near it as to be aware that the lamps were not lighted. *In re : Krishnaswami Iyer*.

20 Cr. L. J. 825 :
53 I. C. 825 : 10 L. W. 399 :
26 M. L. T. 331 : A. I. R. 1919 Mad. 41.

—S. 16—*Applicability of—Motor Vehicles Rules, 1935, rr. 131, 87—Offence under the Rules—Summons mentioning only S. 16—No particulars of charge given in summons—Trial, if legal.*

S. 16, Motor Vehicles Act, applies to all contraventions of the provisions of the Act or of the rules made thereunder so that a mere reference to that section in the summons can give absolutely no idea to the accused of the exact nature of the offence with which he is being charged. Consequently, where the actual charges against the accused

MOTOR VEHICLES ACT (VIII OF 1914)

were for breach of r. 131 of the Motor Vehicles Rules, 1935, and of r. 87, first part, but the summonses issued to the accused only mentioned S. 16 of the Act and no particulars of the charge were given in the summonses : *Held*, that the conviction following the trial on such charge should be set aside. *Emperor v. Maiku Lal*.

38 Cr. L. J. 326 :
166 I. C. 978 : 1937 O. W. N. 283 :
1937 O. L. R. 79 : 9 R. O. 353.

—S. 16—U. P. Motor Vehicles Rules, r. 11—*Applicability of, to vehicles registered outside U. P.*

R. 11 of the U. P. Motor Vehicles Rules does not apply to motor vehicles registered outside the United Provinces which have been brought to the United Provinces for a short duration. *P. C. Chaudhuri v. Emperor*. 31 Cr. L. J. 40 :
120 I. C. 272 : 1930 A. L. J. 527 :
52 All. 212 : A. I. R. 1930 All. 34.

—S. 16—*Punjab Motor Vehicles Rules, 1931, rr. 23, 47, 91—S. 23, liability under—Whether liable even if checker and ticket seller were present.*

R. 23 of the Punjab Motor Vehicles Rules, 1931, makes the driver as well as the owner responsible for breach of any rule, provided that the driver knows that the rule has been contravened. This rule has been made in the public interest and imposes on the driver the duty of refusing to drive if he knows that a rule is being broken. Consequently, where a lorry driver carries passengers in excess of those permitted in the licence, he commits an offence under rr. 47 and 91 of the Rules, even though the checker and ticket seller are present. *Emperor v. Dayal Singh*.

38 Cr. L. J. 432 (a) :
167 I. C. 559 : 17 Lah. 604 :
38 P. L. R. 1015 : 9 R. L. 519 (2) :
A. I. R. 1937 Lah. 132.

—S. 16—U. P. Rules, r. 87—*Compliance with.*

During the night the car of the accused and an *ekka* came to a collision at the cross roads. The driver of the *ekka* could have seen the car approaching, and if the driver had acted with any care whatever, he would have waited until the car had passed the crossing. The car on the other hand had no knowledge that a vehicle was approaching and it approached the crossing at a reasonable speed. After the accident the accused left another man on the spot to send the injured man to hospital. The injured man did not actually arrive at the hospital. The accused had left the place because his wife was sick and in his report he had explained the matter in a greater detail. The report was made not until the next morning when he sent one report to the Superintendent of Police and another in the course of the day to the Police Officer of the Police Station. *Held*, that the accident was solely due to the *ekka* neglecting the elementary precautions ; *Held*, also that since the accused had left a man on the spot to carry the injured person to hospital, and since he was actually so taken, it could not be said that

MOTOR VEHICLES ACT (VIII OF 1914)

the accused did not comply with the elementary rule to render assistance to the injured.
W. K. Wesley v. Emperor. 40 Cr. L. J. 4 :

178 I. C. 183 : 11 R. A. 276 :

1938 A. W. R. 505 : A. I. R. 1938 All. 571.

—S. 16—Conviction, illegality of—Issue of summonses—Summonses not giving notice of charge.

The practice in United Provinces to issue summonses under the Motor Vehicles Act, without defining the exact offence with which the accused is being charged is a most reprehensible practice. It is the duty of the clerk who issues the summonses under the Motor Vehicles Act, to define therein the exact nature of the charge which is being preferred against the person against whom the summonses is being issued. The time, the place and the exact nature of the offence charged must be clearly set forth. If this is not done, then clearly the clerk issuing the summonses is guilty of gross breach of duty. A conviction which follows upon a summons in which the accused is not given notice of the charge which is brought against him is an illegal conviction.
Gujraj Singh v. Emperor. 38 Cr. L. J. 69 :

165 I. C. 716 (1) : 1936 A. L. J. 1011 :

9 R. A. 300 : 1936 A. W. R. 874 :

1937 All. 130 : A. I. R. 1936 All. 761.

—S. 16—Conviction under, legality of.

A person who drives a vehicle without a permit under r. 24 or who fails to produce such a permit on demand, cannot be convicted under S. 16, Motor Vehicles Act, for breach of the conditions imposed by Ss. 8 and 9. R. 24 of the U. P. Motor Vehicles Rules does not authorise a District authority to prescribe fixed routes for public motor vehicles and prohibit them from plying along any route other than these. *Hasan Ahmad v. Emperor.*

29 Cr. L. J. 799 :

111 I. C. 127 : 50 All. 876 :

26 A. L. J. 1381 : A. I. R. 1928 All. 492.

—S. 16—Driving without permit, effect of—Motor car carrying mails, whether exempt from rules—Driving without permit.

A person driving a motor car for hire without a driver's permit as required by the rules, is guilty of a breach of the rules and liable to be convicted under S. 16, Motor Vehicles Act. A car which carries passengers for hire is not exempt from the operation of the rules under the Motor Vehicles Act regulating the number of passengers merely because it carries mails also. *Aba Appa Dharwade v. Emperor.*

28 Cr. L. J. 397 (b) :

100 I. C. 1053 : 29 Bom. L. R. 191 :

A. I. R. 1927 Bom. 154.

—S. 16—'G' permit, necessity of—Rules under Act—Madras Motor Vehicles Rules, r. 30 (a)—Let for hire—Lorry engaged for journey from Calicut to Pollachi for hire—No "G" permit—Offence held committed in Malabar District as well as in Coimbatore District, if the lorry gets out of Malabar District—Violation of r. 30 (a)—Trial for.

Where a lorry without "G" permit is engaged for a journey from Calicut to Pollachi for hire,

MOTOR VEHICLES ACT (VIII OF 1914)

it is quite justifiable to say that the vehicle has been let for hire along the public roads in the Presidency of Madras in the Districts of Malabar and Coimbatore and therefore the offence is committed in the District of Malabar as well as in the District of Coimbatore if the lorry gets beyond the limits of the District of Malabar on its journey to Pollachi. It is an error to think that it was the intention of the framers of the Motor Vehicles Rules that no "G" permit should be necessary for the local areas through which the lorries passed. It would be much more reasonable to suppose that the framers of the Motor Vehicles Rules intended that permits should be taken out for every area through which vehicles engaged or plied for hire travel. *Emperor v. Kuzikkal Krishnan.* 39 Cr. L. J. 861 :

177 I. C. 314 : 1938, 1 M. L. J. 800 :

47 L. W. 774 : 1938 M. W. N. 822 :

11 R. M. 303 : A. I. R. 1938 Mad. 743.

—S. 16—Inspection of lorries—Punjab Motor Vehicles Rules, r. 40—Only Superintendent of Police can fix date for inspection of lorries—He fixing a particular week for the purpose—Inspector fixing a date within that week—Driver producing lorry during that week, but not on that date—Offence, if committed.

Under r. 40, Punjab Motor Vehicles Rules, only the Superintendent of Police is authorised to fix dates for inspection of lorries. Where he fixes a certain week for the purpose and the Inspector subsequently fixes a particular date in that week, and there is no proof of delegation of powers to him, the driver cannot be convicted on the ground that he failed to produce his lorry on that particular date, though he produced it during that week. In cases where peculiar powers are exercised by officials against private persons, technicalities are of importance and their observance is to be insisted upon. *Brahm Nath v. Emperor.*

38 Cr. L. J. 762 :

169 I. C. 426 : 39 P. L. R. 130 :

10 R. L. 11 : A. I. R. 1937 Lah. 23.

—S. 16—Interpretation of.

S. 16, Motor Vehicles Act, does not create any offence. It is merely a penalty clause prescribing the penalties which may be inflicted upon anybody who contravenes any of the provisions of the Act or any rule made under the Act. *Emperor v. Rananjai Singh.* 29 Cr. L. J. 357 :

108 I. C. 230 : I. L. T. 40 All. 102 :

26 A. L. J. 331 : A. I. R. 1928 All. 261.

—S. 16—Joint trial, legality of.

If both the owner and the driver had committed the offence in respect of a single journey, there is no objection to the joint trial of those two, but it is very objectionable that several owners and several drivers should be tried in one trial for several offences committed on different dates. *Emperor v. Kuzikkal Krishnan.* 39 Cr. L. J. 861 :

177 I. C. 314 : 1938, 1 M. L. J. 800 :

47 L. W. 774 : 1938 M. W. N. 822 :

11 R. M. 303 : A. I. R. 1938 Mad. 743.

MOTOR VEHICLES ACT (VIII OF 1914)

-----S. 16—Journey within British territory, *what is*—Rules under, rr. 31, 33—Person carrying passengers in bus from outside British territory into British territory for hire without registration—Rr. 31 and 33, if contravened.

If a person carries passengers in his bus from outside British territory and comes to Karachi into British territory without registration and passengers pay their fare to him to carry them there and back, he does ply his bus for hire within British territory. The fact that the end of the journey at one side terminates outside British territory, does not exclude the bus from the operation of r. 31 and r. 33 made under S. 16, Motor Vehicles Act, so far as the journey within British territory is concerned. *Elias v. Emperor*. 40 Cr. L. J. 558 :

181 I. C. 449 : 11 R. S. 221 (1) : 1939 Kar. 391 : A. I. R. 1939 Sind 85.

-----S. 16—Bombay Motor Vehicles Rules, rr. 3 (1), 7 (1)—Liability of owner—Vehicle licensed for plying for hire.

Where the owner of a motor bus licensed to ply for hire, who was himself a driver possessing a permit form "B" drove the bus himself on a private errand : *Held*, that the words 'in any circumstance' in r. 7 (1), Bombay Motor Vehicles Rules, did not imply that once a motor car was licensed for being let or for plying for hire, it could be driven only by a driver possessing a permit in form "B" irrespective of whether it was at the time let or plying for hire, or not. *Ganesh Ramchandra Rajwade v. Emperor*. 31 Cr. L. J. 931 :

125 I. C. 716 : 32 Bom. L. R. 337 : A. I. R. 1930 Bom. 161.

-----S. 16—Liability of owner—Calcutta Motor Vehicles Rules, r. 28—Permit to vehicle plying for hire—Condition prohibiting carriage of more than 4 persons—Gratuitous use by five persons.

The condition of a permit granted to a motor vehicle intended for being let or for plying for hire, prohibiting the use of the vehicle for the carriage of more than a prescribed number of persons applies not only when the vehicle is let or is plying for hire but also when the vehicle is allowed by the owner to be used gratuitously. *Emperor v. Ram Tahal Singh*.

31 Cr. L. J. 436 : 122 I. C. 580 : 11 P. L. T. 179 : 9 Pat. 169 : A. I. R. 1929 Pat. 522.

-----S. 16—Liability of owner—Punjab Motor Vehicles Plying for Hire Rules, r. 3—Driver carrying more than licensed number of passengers—Owner's liability—Master and servant.

Where the driver of a motor lorry which was licensed to carry 10 passengers, carried 17 passengers in the same and carried one of them on the mudguard and thereby committed a breach of r. 3 of the Punjab Motor Vehicles Plying for Hire Rules : *Held*, that the owner of the lorry could be convicted under S. 16, Motor Vehicles Act, read with the said rule, even though he was not present in the lorry when the driver committed the offence. *Devi Dayal v. Emperor*. 31 Cr. L. J. 1185 :

127 I. C. 211 : A. I. R. 1930 Lah. 865.

MOTOR VEHICLES ACT (VIII OF 1914)

-----S. 16—Miscellaneous.

U. P. Motor Vehicles Rules—Reproduction of arithmetical number and letters on number plate in Hindi is not sufficient. *Shiv Prasad Gupta v. Emperor*. 34 Cr. L. J. 1029 : 145 I. C. 670 : 1933 A. L. J. 1239 : 6 R. A. 137 : A. I. R. 1933 All. 820.

-----S. 16—'Number'—Scope of.

The word 'number' in the U. P. Motor Vehicles Rules, 1928, framed under the Motor Vehicles Act, is not used in only the arithmetical sense but is wide enough to cover letters, figures and marks, which may be assigned by the registering authority, to a motor vehicle. *Shiv Prasad Gupta v. Emperor*. 34 Cr. L. J. 1029 :

145 I. C. 670 : 1933 A. L. J. 1239 : 6 R. A. 137 : A. I. R. 1933 All. 820.

-----S. 16—Madras Motor Vehicles Rules, r. 30 (a)—Offence under—Owner of private vehicle carrying goods on one occasion for reward without 'G' permit.

It may be true that r. 30 (a), Madras Motor Vehicles Rules, was primarily intended to apply to motor vehicles which are used for the express purpose of letting for hire ; but even if a motor vehicle is used only once for such a purpose, then on that one occasion it is nonetheless let for hire because the owner does not ordinarily use his lorry for purposes of reward. If, therefore, a person undertakes to convey goods for reward in his private vehicle even on a single occasion without 'G' permit, he has let that vehicle for hire and so commits an offence under r. 30 (1), Madras Motor Vehicles Rules. *Public Prosecutor v. Rajagopal*. 39 Cr. L. J. 447 :

174 I. C. 127 : 46 L. W. 959 : 1938 M. W. N. 30 : 10 R. M. 672 : A. I. R. 1938 Mad. 233.

-----S. 16—'Ply', meaning of—Motor Vehicles Rules, r. 79—Holder of permit for plying on certain routes using vehicle on private errand on another route, whether liable to be convicted.

Where the driver of a motor vehicle who held a licence to ply the vehicle on certain roads used the vehicle for transporting himself through a road in respect of which he held no permit for plying, and he was charged under S. 16, Motor Vehicles Act, read with r. 79 of the Rules : *Held*, that the word 'ply' in the permit meant 'ply for hire' and the accused was not liable to be convicted as he had not plied for hire in the latter road. *Emperor v. Mohammad Hanif*. 31 Cr. L. J. 1084 :

126 I. C. 657 : 7 O. W. N. 464 : A. I. R. 1930 Oudh 251.

-----S. 16—Patna Motor Vehicles Rules, r. 20 (5)—Position of reflecting mirror—It must reflect traffic from rear—Truck, if found so loaded as not to be reflect approaching traffic from the rear, the offence under Rules is committed.

There is no requirement in the Motor

MOTOR VEHICLES ACT (VIII OF 1914)

Vehicles Act or Rules that the mirror should be fitted in any particular position. What the rule requires is that it should be capable of reflecting traffic approaching from the rear. Where the mirror fitted to truck is incapable of reflecting traffic coming from behind and there is no evidence that the truck was so heavily loaded that the mirror would not reflect approaching traffic, that would not constitute an offence under the Act and the rule. *Ramackers v. Emperor*.

38 Cr. L. J. 291 (b) :
166 I. C. 741 : 18 P. L. T. 62 : 3 B. R. 221 (1) :
9 R. P. 347 : A. I. R. 1937 Pat. 3.

—S. 16—Power of Magistrate—*Motor Vehicles Rules, r. 41—Conviction under S. 16—Power to cancel permission to ply for hire.*

A Magistrate has no power under the Rules framed under the Motor Vehicles Act, 1914, to cancel a permit to ply for hire though he has power under r. 41 to cancel a driver's licence. *Sheodatt Roy v. Emperor*.

29 Cr. L. J. 771 :
110 I. C. 803 : 10 P. L. T. 429 :
A. I. R. 1929 Pat. 64.

—S. 16—Proceedings, validity of—*Charge for offence under S. 16—Summons to accused, form and contents of—Summons not giving particulars of charge.*

A summons issued by a Magisterial Court, which does not contain, in the form prescribed by the Statute, particulars of the place where, the time when the offence charged was committed and the nature of the offence charged, may be disregarded by the person summoned, and proceedings taken thereon, if objected to, must necessarily be invalid. In a case under the Motor Vehicles Act, where there are a variety of offences included either in one section, or in a Code of rules, it is essential both for the purpose of the proper conduct of the Court's business itself, as well as for the protection of a respectable class of people summoned for sometimes trivial and sometimes serious offences, that it should be known from the first what it is which the Court has in fact to deal with. *Emperor v. Rananjai Singh*.

29 Cr. L. J. 357 :
108 I. C. 230 : 26 A. L. J. 331 :
I. L. T. 40 All. 102 : A. I. R. 1928 All. 261.

—S. 16—Scope of rule—*Madras Motor Vehicles Rules, r. 27-C—'Accident', meaning of.*

While the petitioner was driving his car along a road, it went over a parapet of a culvert and fell into a channel. The front axle of the car was bent and the petitioner and others in the car were slightly hurt but they returned home in the same car. There was nothing to show that the car was rendered unserviceable. The petitioner was convicted under S. 16, Motor Vehicles Act, for failing to report the accident to the nearest Police Station as required by r. 27-C of the Madras Motor Vehicles Rules: *Held*, that the accident which happened was not one within the contemplation of r. 27-C and the conviction of

MOTOR VEHICLES ACT (VIII OF 1914)

the petitioner was illegal. *In re: Nagaraja Mooppanar*.

29 Cr. L. J. 461 :
108 I. C. 909 : 27 L. W. 425 :
51 Mad. 504 : 55 M. L. J. 320 :
A. I. R. 1928 Mad. 364.

—S. 16—Tax, imposition of, legality of—*Rules framed under Act, r. 19—Motor vehicle plying for hire—Rules for imposing tax not framed.*

R. 10 of the rules framed under the Motor Vehicles Act was passed for the protection of the roads and it was not intended that a prohibition under this rule should distinguish between private vehicles and vehicles plying for hire. Where no rules have been framed under the Act to enable a Municipality to impose a tax on motor vehicles plying for hire, the Municipality cannot take advantage of r. 19 to impose the tax. *Sudhamay Das v. Chairman, Krishnanagar Municipality*.

26 Cr. L. J. 1269 (a) :
88 I. C. 1045 : 41 C. L. J. 566 :
A. I. R. 1925 Cal. 1026.

—S. 16—Trivial offences, effect of—*Burma Motor Vehicles Rules, 1915, r. 26 (3)—Rear light, absence of—Master, whether liable while servant was driving.*

The owner of a car is not liable for a breach of r. 26 (3), Burma Motor Rules, 1915, committed while the car was being driven by his chauffeur. In the case of trivial breaches of the Motor Vehicles Rules, it is only just and reasonable that, in the first instance, a Police Officer should point out to a driver that the requirements of the law are not being strictly complied with. Magistrates, should so far as it lies in their power, discourage prosecutions for every trivial offence under the Motor Vehicles Act and Rules, except where a previous warning has been ignored or where public safety has in fact been endangered. *Mahomed Sarly v. Emperor*.

25 Cr. L. J. 196 :
76 I. C. 564 : 2 Bur. L. J. 201 :
1 Rang. 600 : A. I. R. 1924 Rang. 63.

—Ss. 16, 18 (2)—*Licence, suspension of—Licensed motor driver—Licence not on his body—Driving whether offence—Order suspending licence, whether appealable—Cr. P. C., S. 565.*

There is no prohibition against the driving of a motor car by a properly licensed person who has not got his licence with him; it is only the non-production of the licence upon demand by a Police Officer that is an offence. The suspension of a licence of a motor driver under S. 18 (2), Motor Vehicles Act, if ordered in addition to the imposition of a fine for an offence under S. 16, Motor Vehicles Act, is a part of the sentence, as an order under S. 505, Cr. P. C., is. An order of suspension under S. 18 (2), as well as the order imposing fine for an offence under S. 16, Motor Vehicles Act, are both appealable under S. 407, Cr. P. C., and are also subject to revision by a High Court. *Dheklia Kunbi v. Emperor*.

23 Cr. L. J. 73 :
65 I. C. 425 : A. I. R. 1922 Nag. 71

MOTOR VEHICLES CARRYING ONLY PASSENGERS FOR HIRE

See also Calcutta Municipal Act, 1923, S. 175, Sch. VI, Item No. 18.

MOTOR VEHICLES RULES (BOMBAY) 1915

—R. 3 (1)—'Plying for hire'—Principles as regards "plying for hire" apply to "letting for hire"—R. 3 (1), applicability of.

The plying of a motor vehicle for hire means the act of waiting for soliciting custom, and, therefore, as soon as any person has hired it, the act of plying for hire is complete. This principle as regards plying for hire must also apply to letting for the purposes of r. 3, Motor Vehicles Rules (Bombay), 1915. The rule applies to letting in public places and this implies that the actual transaction of letting must be done in a public place where it is open for any member of the public to take the car on hire. It cannot, therefore, apply to a case where the letting was to a selected customer, and was not done in a public place. *Emperor v. Nandkishorsingh Gayaprasad*.

38 Cr. L. J. 1049 :
171 I. C. 277 : 39 Bom. L. R. 616 :
I. L. R. 1937 Bom. 719 : 10 R. B. 186 :
A. I. R. 1937 Bom. 399.

MOTOR VEHICLES RULES

—R. 27-A—'Intoxicated', meaning of.

The word 'intoxicated' in R. 27-A of the Motor Vehicles Rules, does not necessarily mean that the driver must be absolutely incapable of driving a motor vehicle in the sense of not being able to steer in the direction in which he wants to go. It corresponds to the word 'drunk.' *Emperor v. Rama Deoji*.

29 Cr. L. J. 981 :
112 I. C. 101 : 30 Bom. L. R. 636 :
A. I. R. 1928 Bom. 231.

—R. 79.

See also Motor Vehicles Act, 1914, S. 10.

—R. 46, para. 7.

See also Motor Vehicles Act, 1914.

MUHAMMADAN LAW

See also Cr. P. C., 1898, Ss. 147, 488.

—'Ahmadiyas'—Muhammadans, who are—Ahmadiyas, whether Mussulmans—Penal Code, Ss. 79, 494—Bigamy—Muhammadan joining Ahmadiya sect, whether becomes apostate—Wife of convert remarrying whether commits offence of bigamy.

The Ahmadiyas are a sect of Mussulmans, and a Mussulman who joins the Ahmadiya Faith does not become a *murtad* or apostate. The wife of a person who joins the Ahmadiya sect and remarries during the lifetime of her first husband without obtaining a divorce from him, commits the offence of bigamy punishable under S. 494, Penal Code. The Ahmadiyas are only a reformed sect of Muham-

MUHAMMADAN LAW

madans, *Naruntakath Avullah v. Parakkal Mammu*.

24 Cr. L. J. 17 :
71 I. C. 65 : 1922 M. W. N. 662 :
16 L. W. 626 : 43 M. L. J. 663 :
45 Mad. 986 : A. I. R. 1923 Mad. 171.

—Custody of minor girl.

Divorced wife is entitled to custody of minor girl. *Emperor v. Ayshabai*.

1 Cr. L. J. 599 :
6 Bom. L. R. 536.

—Divorce—Husband authorising wife to divorce him, whether can pronounce divorce—Maintenance—Wife, whether entitled to maintenance for iddat.

The fact that a Muhammadan husband gives his wife the right to divorce him, does not divest the husband of the right of pronouncing a divorce. A Muhammadan wife who is divorced by her husband is entitled to maintenance during the period of her iddat. *Ngau Kyaw v. Mi Hla*.

20 Cr. L. J. 113 (b) :
49 I. C. 97 : 3 U. B. R. (1918) 99 :
A. I. R. 1919 U. Bur. 27.

—Guardianship.

A Muhammadan woman who marries a person not related to her daughter within the prohibited degrees as laid down by the Muhammadan Law, loses her right to the guardianship of her daughters. *Harbhorsha Mahomed v. Jhapuran Bibi*.

32 Cr. L. J. 90 :
128 I. C. 181 : 51 C. L. J. 476 :
I. R. 1931 Cal. 37 :
A. I. R. 1930 Cal. 665 (2).

—Maintenance—Wife forsaking husband, whether entitled to maintenance—Children living with her, whether should be given maintenance.

Where a Muhammadan husband makes a *bona fide* offer to maintain his wife and children in his house but the wife refuses the offer, the wife is not entitled to maintenance but the children living with the wife who is their legal guardian, are entitled to maintenance. *Mohideen Bi v. Bashu Sahib*.

39 Cr. L. J. 22 :
171 I. C. 905 : 1937 M. W. N. 565 :
1937, 2 M. L. J. 278 : 46 L. W. 318 :
10 R. M. 409 : A. I. R. 1937 Mad. 809.

—Marriage before iddat, null and void.

The marriage of a Muhammadan woman before expiry of the period of iddat, is null and void. *Isa v. Ranon*.

13 Cr. L. J. 139 :
13 I. C. 824 : 1 P. W. R. 1912 Cr. :
83 P. L. R. 1912.

—Marriage during iddat—Apostacy of husband—Marriage void—Bigamy—Penal Code (Act XLV of 1860), S. 494.

The marriage of a Muhammadan man and woman is rendered *ipso facto* void by the apostacy of the former. But the woman has to observe the period of iddat. If she marries during the iddat after the apostacy of her first husband, the second marriage is invalid by reason of a special doctrine of the Muhammadan Law, and not by reason of its taking place during the life of a prior husband; and,

MUKHTAR

therefore, she is not guilty of bigamy under S. 491, Penal Code. *Abdul Gani v. Azizul Haq.*

13 Cr. L. J. 257 :
14 I. C. 641 : 15 C. L. J. 263 :
16 C. W. N. 451 : 39 Cal. 409.

—*Marriage—On one of the parties renouncing Muhammadanism, marriage is dissolved.*

Where a Muhammadan married woman renounces her religion and she is thereafter taken away by the accused, the latter cannot be convicted under S. 498. *Karan Singh v. Emperor.*

34 Cr. L. J. 869 :
145 I. C. 156 : 1933 A. L. J. 733 :
6 R. A. 42 : A. I. R. 1933 All. 433.

—*Marriage—Ratification—Effect—Marriage not valid ab initio—Whether can be cured by ratification.*

Where it is proved that the marriage of a minor Muhammadan girl has been consummated and she has continued to live with her husband after attainment of puberty, this ratification will cure any lack of consent on the part of the legal guardian. But it cannot cure a marriage which was not valid *ab initio*. *Joga Bibi v. Mesel Shaikh.*

37 Cr. L. J. 1072 :
164 I. C. 957 : 63 Cal. 415 :
9 R. C. 323.

—*Marriage.*

The question of option of repudiation does not arise when the girl is still a minor and she has not attained puberty. *Hub Ali v. Emperor.*

21 A. L. J. 187 : A. I. R. 1928 All. 329.

—*Marriage—Validity of.*

Marriage with enticed wife of another is invalid and not void—Intercourse between such husband and wife being illicit, person enticing with intention to remarry does so for illicit intercourse. *Hamad v. Emperor.*

32 Cr. L. J. 1210 :
134 I. C. 589 : I. R. 1931 Lah. 973 :
A. I. R. 1931 Lah. 194.

—*Right of divorced wife to maintenance during the period of iddat.* *Syed Saib v. Meeram Beg.*

10 Cr. L. J. 502 :
4 I. C. 140 : 7 M. L. T. 33 : 20 M. L. J. 12.

MUHAMMADAN LAW (SHIA)

Custody of infant children—Mother's right as against executor.

9 Cr. L. J. 214.

MUKHTAR

See also (i) Cr. P. C., 1898, Ss. 4 (1) (r), 4 (r).

(ii) Legal Practitioner.

(iii) Legal Practitioners Act, 1879, S. 13.

—*Right of, to practise in Criminal Courts.*

A Mukhtar is not entitled to practise generally, and as of right, in criminal Courts but can act only when he has received the permission of the Court to act in any particular proceedings. *In re : Anant Ram.*

7 Cr. L. J. 21 :
28 A. W. N. 11 : I. L. R. 30 All. 66 :
5 A. L. J. 40.

MUNICIPAL COMMISSIONER

See also Cr. P. C., 1898, S. 556.

MUNICIPAL COMMITTEE OF PEN.

—*Bye-laws for privies—Bye-law No. 9—Privy erected without permission—Non-compliance with Bye-laws.*

The Bye-law No. 9 of the Bye-laws for Privies, made by the Pen Municipal Committee, does not apply where a privy has been erected without the permission of the Committee. In such a case there is no obligation under the said bye-law on the owner to communicate the fact of the completion of the privy to the Chairman, Managing Committee, nor is he under any obligation not to commence to make use of the privy before obtaining the written order to that effect from the Chairman. The bye-law, as it stands, relates to the privy in respect of which an application has been made under Bye-law No. 7, and for which, permission has been granted under Bye-law No. 8. *Ezekiel Moses Penkar v. Emperor.*

25 Cr. L. J. 1290 :
82 I. C. 362 : 26 Bom. L. R. 715 :
A. I. R. 1924 Bom. 484.

MUNICIPAL OFFICER

See also Madras District Municipalities Act, 1920, Ss. 52, 54 (a) (b), 56, 57.

MUNICIPALITY.

See also Punjab Municipal Act, 1891, Ss. 20, 100.

MUNICIPALITIES ACT (I OF 1900)

—*S. 167—Scope of.*

The scope of S. 167, Act I of 1900, is clearly to prevent danger, alarm, or annoyance to any person. To read it as applying to injury to land, is a gross misinterpretation. *Pataudin v. Emperor.*

2 Cr. L. J. 19 :
2 A. L. J. 26 : 25 A. W. N. 19.

MURDER.

—*Absence of material evidence.*

—*Acquittal.*

—*Application of accused for further material evidence.*

—*Benefit of doubt.*

—*Charge of.*

—*Charge to Jury.*

—*Circumstantial evidence.*

—*Confession of co-accused.*

—*Doubt, effect of.*

—*Duty of Jury.*

—*Evidence.*

—*Illegality of conviction.*

—*Insanity.*

—*Intention.*

—*Jurisdiction.*

—*Misdirection.*

—*Poisoning by opium.*

—*Possession of ornaments immediately after murder.*

MURDER

———Transportation for life.

———What amounts to.

See also (i) Criminal trial.

(ii) Penal Code, 1860, Ss. 200, 300, 302, 304.

———Absence of material evidence, effect of Corpus delicti not established — Conviction, whether justified.

In the absence of the *corpus delicti* and of the best evidence as to the cause of death, a conviction for murder would be unjustified, the fact that the accused has made it difficult to procure evidence, cannot be accepted as a substitute for the evidence. *Jagannath Singh v. Emperor*.

23 Cr. L. J. 278 :

66 I. C. 422 : A. I. R. 1922 All. 30.

———Acquittal—Accused seen last with deceased—No direct or circumstantial evidence—Acquittal.

Accused was charged with murder and the only evidence against him was that he was seen last in the company of the deceased at about 8 o'clock in the night and, that when the body of the deceased was discovered the next morning, he was unable to give any explanation about the cause of the death: *Held*, that in the absence of other evidence, circumstantial or direct, tending to show that he was concerned in the crime, the accused was entitled to an acquittal. *Ohlidda v. Emperor*.

23 Cr. L. J. 452 :

67 I. C. 724 : 20 A. L. J. 564 :

4 U. P. L. R. All. 126 : A. I. R. 1922 All. 340.

———Application of accused for further material evidence—Duty of Court.

Where, during the course of a trial, the accused applies to call further material evidence bearing on his line of defence, there is nothing in law prohibiting a Court from allowing an adjournment in order that this further evidence may be produced. It is due to an accused person that he should be given every opportunity of producing evidence upon which he relies in rebuttal especially if he has to meet a charge entirely based on assumptions. When such an application by an accused person is refused by a lower Court, but is renewed in the Appellate Court, the accused should be permitted under S. 375, Cr. P. C., to produce the further evidence. Where an inspection of the scene of the crime is material either to the case for the prosecution or the defence, an Appellate Court should inspect the scene. *Bhagwan Kaur v. Emperor*.

12 Cr. L. J. 412 :

11 I. C. 596 : 16 P. W. R. 1911 Cr.

———Benefit of doubt—Evidence—Complaint to the Police—Evidence of prosecution witnesses contradictory.

The evidence in support of a charge of murder consisted of a complaint to the Police immediately after the occurrence, and a number of witnesses for the prosecution. There was a considerable difference between the story

MURDER

narrated in the said complaint, and the evidence of such witnesses. It appeared that these discrepancies were not merely *minor ones* but on material points: *Held*, that as it was not possible to believe either story, there was considerable doubt as to whether the prosecution had established the case against the accused, and that they were entitled to the benefit of that doubt. *Teli Khaja Hussain v. Emperor*.

12 Cr. L. J. 497 :

12 I. C. 217 : 1911, 2 M. W. N. 14.

———Benefit of doubt—Evidence—Village Munsif's report silent as to murderer—Jewels worn by deceased missing and not accounted for—Motive for murder very slight—Conviction bad.

Where the evidence against a person convicted of murder consists only of statement made by a brother of the deceased that he saw him run away after the commission of the offence, and where against that evidence, there is a strong array of circumstantial evidence in favour of the accused, e.g., omission of his name in the first report, the missing jewels not being traced out, the accused not absconding after the alleged offence, a reasonable doubt arises, the benefit of which must be given to the accused. *Sundara Gounden v. Emperor*.

12 Cr. L. J. 551 :

12 I. C. 527 : 1911, 2 M. W. N. 370 :

10 M. L. T. 373.

———Charge of—Inference.

A charge of murder like any other charge of an offence can be established by inferences, but when there is very little in the way of direct evidence, it is due to the accused that there should be no exaggeration of minor incidents in the case and that each inference against him should be verified with scrupulous accuracy and expressed in language of studied moderation. *Bhagwan Kaur v. Emperor*.

12 Cr. L. J. 412 :

11 I. C. 596 : 16 P. W. R. 1911 Cr.

———Charge to Jury—Omission to explain distinction between murder and culpable homicide, —Misdirection.

In a trial on a charge of murder at a Criminal Sessions of the Chief Court, the Judge presiding omitted to explain to the Jury the distinction between murder and culpable homicide, or upon what views of the facts the accused had committed the one offence or the other. The charge to the Jury also suggested that a strong inference should be drawn against the accused from the fact that he had failed to take steps to bring to justice a person who, it had been suggested, was the real offender: *Held, per curiam*, that in both respects the charge to the Jury contained material misdirection. *Hla Gyi v. Emperor*.

3 Cr. L. J. 1 :

11 Bur. L. R. 298 : 3 L. B. R. 75.

———Circumstantial evidence, conviction on.

A conviction on circumstantial evidence cannot be had unless and until all the inferences to be drawn from the whole history of the case point so strongly to the commission of the

MURDER

crime by the accused that the defence theory appears, on the face of it, impossible or highly improbable. The general rule is that in order to justify an inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *Bhagwan Kaur v. Emperor*.

12 Cr. L. J. 412 :

11 I. C. 596 : 16 P. W. R. 1911 Cr.

—Circumstantial evidence.

In order to justify an inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. This is said to be the fundamental rule, and to be *experimentum cruois*, by which the relevancy and effect of circumstantial evidence should be estimated. *Sundar Singh v. Emperor*.

23 Cr. L. J. 251 :

66 I. C. 187.

—Confession of co-accused, value of—Accomplice, evidence of—Corroboration.

In a charge of murder against three accused, it was sought to use as evidence against them, (a) a confession made by one accused against the others, (b) the evidence of a witness taken as an approver. In regard to (a), the confession did not implicate, but it exculpated, the accused himself and in respect of (b) the fact used as corroboration was that the deceased was seen alive with the accused just before the murder: *Held*, (1) that as the accused exculpated himself, his statement was not a confession and could not, therefore, be used against the others, (2) that as the fact sought to be used as corroboration took place before the commission of the offence, there was no corroboration. *Mure Venkala Reddi v. Iragakagari Nagi Reddi*. 12 Cr. L. J. 562 :

12 I. C. 650 : 1911, 2 M. W. N. 375 :

10 M. L. T. 375.

—Doubt, effect of—A person murdered by two.

Where it is shown that one of two persons must have murdered a deceased person but it is not clear, which, both must be acquitted. *Muzammal v. Emperor*.

10 Cr. L. J. 321 :

3 I. C. 622 : 8 P. W. R. 1909 Cr.

—Duty of Jury.

Juries are expected to give the best of their brains to consideration of the matters brought before them and to give a sound and honest decision. If that is not done, it must bring the Jury system into disrepute. As regards belief of witnesses, Juries should not expect the witnesses to come to the reputed standard of Washington, but must take people as they are and try and discover the truth by close consideration of each one's evidence in order that truth may prevail and that justice may be done in the acquittal of an innocent man or in the conviction of a guilty man. Before the Jury convict an accused of the offence with which he is charged, they must come to a certain conclusion on the matters brought before them. Those matters

MURDER

must appear to them to leave no reasonable doubt and prove with certainty that the accused and the accused alone could have been the man who committed the offence. By 'certainty' it is not meant that Juries are not to act upon evidence unless it puts them in the position of having actually seen the thing done; but that they have to be satisfied upon the whole evidence beyond reasonable doubt as they would be on any important question on which they have to take action one way or the other. *Emperor v. Ali Cassim Ariff*. 12 Cr. L. J. 329 :

10 I. C. 929 : 4 Bur. L. T. 97.

—Evidence—Death by strangulation, symptoms of.

Symptoms of death by strangulation discussed. *Emperor v. Alia*. 31 Cr. L. J. 348 :

122 I. C. 97 : 10 Lah. 876 :

31 P. L. R. 115 : A. I. R. 1930 Lah. 259.

—Illegality of conviction—Single witness—Corroboration of his evidence.

Where a person was convicted on a charge of murder, on the uncorroborated evidence of a single witness, which was once before discredited: *Held*, that the guilt of the accused was not proved beyond reasonable doubt; and that he was entitled to an acquittal. *Narayana Mudaly v. Emperor*.

12 Cr. L. J. 488 :

12 I. C. 96 : 1911, 2 M. W. N. 6.

—Defence—Defence of ungovernable fury—Insanity.

There is no rule of law which enables a person to set up a defence of ungovernable fury unless that defence is proved affirmatively to amount to a defence of insanity so that the accused either did not know what he was doing or did not know that what he was doing was wrong. *Nga Kwe La Sal v. Emperor*.

38 Cr. L. J. 278 :

166 I. C. 527 : 9 Rang. 273 :

A. I. R. 1937 Rang. 26.

—Insanity, effect of—When an accused can benefit by plea of insanity—Penal Code Ss. 84 and 302.

In order to gain the benefit of insanity under S. 84, Penal Code, the defence is bound to prove that at the time of committing the crime, the offender was incapable of knowing the nature of his act. But the Indian Law, like the Law of England, limits non-liability only to those cases in which insanity affects the cognitive faculties, and the cases in which insanity affects only the emotions and the will, subjecting the offender to impulses whilst it leaves the cognitive faculties unimpaired, have been left outside the exception, because it has been thought that the object of the Criminal Law is to make people control their insane as well as their sane impulses, to guard against mischievous propensities and homicidal impulses. *Chajju Mal v. Emperor*.

11 Cr. L. J. 105 :

4 I. C. 985 : 16 P. W. R. 1909 Cr. :

94 P. L. R. 1909 : 6 M. L. T. 101.

MURDER

———*Intention—Circumstantial evidence—Conviction based on circumstantial evidence.*

Intention is the result of working of the brain, and as one human being cannot see into another human being's brain, the only way of gathering intention is to judge from the act itself and from the circumstances under which it was done. Circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence. Circumstances, however, sometimes afford just as strong, if not stronger grounds, for coming to a conclusion as to something having happened than the evidence of any witness even of the highest stamp, who may say he saw it happen. *Emperor v. Ali Cassim Ariff.*

12 Cr. L. J. 329 :
10 I. C. 929 : 4 Bur. L. T. 97.

———*Jurisdiction — Offence committed by an Indian on High Seas — Steamer touched at other places—Calcutta, the destination of ship.*

The accused, an Indian of Sylhet, was charged with having committed a murder on the High Seas on board a steamer. After the offence, the ship touched at the ports of Perim, Aden and Tuticorin : *Held*, that S. 684, Merchant Shipping Act, provided for jurisdiction in any place in which the offender may be, and as the accused was now in Calcutta, the High Court had jurisdiction to try him. *Emperor v. Salimulla.*

13 Cr. L. J. 246 :
14 I. C. 598 : 16 C. W. N. 471 :
39 Cal. 487.

———*Misdirection—Jury, method of charging—Language of charge to Jury—Misinterpretation of words by Jury.*

In charging a Jury in a trial for murder and in directing them, as to what constitutes murder, the Judge should refer to the sections of the Penal Code which relate to culpable homicide. To direct the Jury that "murder is the intentional killing of another human being with malice afore-thought," although a comprehensive way of describing what the meaning of murder is, amounts to a misdirection. Where, in dealing with one of the charges against the accused, the Judge in charging the Jury uses words which the Jury might misinterpret, and might thereby be induced to come to the conclusion that there was nothing more to be said about the matter, that would amount to a misdirection. *Emperor v. Durga Charan Bepari.*

23 Cr. L. J. 567 :
68 I. C. 407 : 36 C. L. J. 171 :
26 C. W. N. 1002 : A. I. R. 1922 Cal. 124.

———*Poisoning by opium — Circumstantial evidence—Insufficient for conviction.*

A died from an overdose of opium. The prosecution evidence was that B, the accused, had mixed some sugar with milk which he gave to A to drink; A drank the milk and about half-an-hour afterwards, he exhibited symptoms of having been poisoned or drugged, and attributed these symptoms to the milk given to him by B : *Held*, that this evidence was not sufficient to place the guilt of B

MURDER

beyond all reasonable doubt, especially as no strong motive for the murder was made out, and as there was no inherent improbability of the deceased being an opium eater. *Kala Singh v. Emperor.*

12 Cr. L. J. 483 :
12 I. C. 92 : 25 P. W. R. 1911 Cr. :
241 P. L. R. 1911.

———*Possession of ornaments immediately after murder—Presumption.*

The fact that shortly after a murder a person is found to be in possession of ornaments belonging to the murdered person, creates very grave suspicion that he was concerned in the murder. Where, however, the ornaments are not produced until nearly two months after the murder, during most of which period the accused was detained by the Police, and any one could have placed the ornaments where they were found, the suspicion is not nearly so strong. *Sunder Singh v. Emperor.*

23 Cr. L. J. 251 :
66 I. C. 187.

———*Transportation for life — Offences not premeditated.*

Where the offence of murder is not premeditated, a sentence of transportation for life is quite justified. *Sheo Prasad v. Emperor.*

28 Cr. L. J. 452 :
101 I. C. 484 : 4 O. W. N. 445 :
A. I. R. 1927 Oudh 174.

———*What amounts to.*

The finding on which the appellant was convicted of murder was that he intended to cause bodily injury sufficient in the ordinary course of nature to cause death, and the question was whether that finding was justified. The act of the appellant, which caused the deceased's death, was a slash with a *dashe* at her back. The *da* cut into and fractured the deceased's left shoulder blade and penetrated into the pleural cavity. The deceased died on the third day after the infliction of the injury. The hospital assistant considered that the wound was necessarily a fatal one, owing to the opening of the pleural cavity. The Junior Civil Surgeon, Rangoon, stated that there might have been a chance of the deceased's recovery, if she had been kept quiet and had not been moved about : *Held*, that a man, who strikes at the back of another a violent blow with a weapon such as a *dashe* must be taken to know that he is doing an act imminently dangerous to the life of the person : *Held*, also, that his knowledge or want of knowledge of the details of the injury he will probably cause, or of their results is immaterial, that he takes all the ordinary risks of his act and intends to do an act attended with risk to another human being's life and therefore the offence was *prima facie* that of murder : *Held*, further, that, as there was provocation, the accused's crime did not call for confirmation of the death sentence. *Nga Maung v. Emperor.*

6 Cr. L. J. 389 :
13 Bur. L. R. 330.

MYSORE GAME AND FISH PRESERVATION REGULATION (II OF 1901).

—Four accused joined in beating of which two only gave fatal blows—Responsibility of other two—Hurt—Penal Code, Ss. 300, 323.

Where four persons joined in beating another, and out of them two gave him fatal blows on the head which resulted in his death, while the remaining two struck him on the body with no exceptional violence, and were not shown to have realized that they were taking part in a murder or how grave the injuries inflicted by their comrades were: Held, that the latter were guilty only of causing simple hurt under S. 323, Penal Code. *Gul Shah v. Emperor*. 16 Cr. L. J. 93 : 26 I. C. 1005 : 220 P. L. R. 1915 : 41 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 552.

MURDER CASE

See also Evidence Act, 1872, S. 114.

MUSSALMAN WAQF ACT (XLII OF 1923)

—Scope of.

There is no foundation for the argument that the act only applies in which the waqf is admitted. *In re : Sirdar Sayedna Taher*. 154 I. C. 940 : 36 Bom. L. R. 311 : 58 Bom. 302 : 7 R. B. 384 : A. I. R. 1934 Bom. 169.

—S. 10—Prosecution under S. 10.

Essentials to be proved and duty of Magistrate indicated. *In re : Sirdar Sayedna Taher*. 154 I. C. 940 : 36 Bom. L. R. 311 : 58 Bom. 302 : 7 R. B. 384 : A. I. R. 1934 Bom. 169.

MUSSALMAN WAQF ACT (XLII OF 1923) AS AMENDED BY (BOMBAY ACT XVIII OF 1935)

—Ss. 10, 10-B—Offences under.

So far as Bombay Presidency and presumably Sind is now concerned, whatever may have been the case before the Bombay Amending Act of 1935, there is no doubt that it is not now the scheme of the Mussalman Wakf Act, that offences under the Act should be punished only by the District Court as the only Court contemplated by the Act, for the Amending Act has created other offences besides the offence under S. 10 and added S. 10-B, which applies generally to offences committed under the Act as a whole. *Shahdino Shah Ali Bux Shah v. Emperor*. 39 Cr. L. J. 805 : 176 I. C. 767 : 11 R. S. 36 : A. I. R. 1938 Sind 149.

MYSORE GAME AND FISH PRESERVATION REGULATION (II OF 1901).

—Rules thereunder—Fishing in tank, if offence.

Fishing in a tank is no offence under the Mysore Game and Fish Preservation Regulation or under the rules framed thereunder unless tank has been closed for fishing by the

MYSORE MINES REGULATION (IV OF 1906)

Deputy Commissioner by means of a notification in the Gazette. *In the matter of : Dodda Ranga*. 9 Cr. L. J. 337 : 12 M. C. C. R. 100.

—S. 8—Rules framed thereunder—Rule 9—Netting, if offence.

R. 9 of the rules framed under the Mysore Game and Fish Preservation Regulation, prohibits killing by shooting and cannot be extended so as to include the catching of a hare in a net. *In re : Hulcha*. 10 Cr. L. J. 267 : 12 M. C. C. R. 210.

MYSORE MINES REGULATION ACT (IV OF 1906)

—S. 3 (6)—Mining material.

Copper wire, such as is used for electrical purposes on the Kolar Gold Fields is not "mining material" within the meaning of S. 3 (6), Mysore Mines Regulation. *Mahamed Maslan v. The Government of Mysore*. 9 Cr. L. J. 313 : 12 M. C. C. R. 56.

—Ss. 5, 13—Joint trial, illegality of.

A joint trial of a European British subject, the Magistrate acting in the capacity of a Justice of the Peace appointed by the Governor-General in Council, with a subject of His Highness the Maharaja of Mysore, the Magistrate acting as a 1st Class Magistrate appointed by the Government of Mysore, is an illegality which vitiates the whole trial. *Mahamed Maslan v. The Government of Mysore*. 9 Cr. L. J. 313 : 12 M. C. C. R. 56.

—Ss. 12 and 13—Scope of—Possession of unwrought gold without licence.

The provisions of Ss. 12 and 13, Mysore Regulation, do not apply retrospectively so as to include the possession of unwrought gold without licence by a person prior to the passing of the Regulation. S. 12 of the Regulation does not apply to persons who are neither gold-smiths nor gold-dealers as defined in the Regulation. *Venkatramiah Chetty v. Government of Mysore*. 9 Cr. L. J. 416 : 12 M. C. C. R. 231.

—S. 17—Offence under, what amounts to.

Mere re-entry by a person who has quitted a mine under the orders of the Superintendent without any intention of remaining or residing there, does not constitute an offence under S. 17 of the Mines Regulation. The idea of continued residence of some duration should not be imported into the word "re-enter" in S. 17 and the act made punishable under that section is a kind of criminal trespass, but with the criminal intention left out, and re-entering of a person on the mines after quitting it under an order is an offence. A person who, after quitting a mine under an order of the Superintendent of the

NATIVE PASSENGER SHIPS ACT (X OF 1887)

Mine, re-enters the same for any purpose without the permission of the Superintendent, commits an offence under S. 17 of the Mines Regulation. *In re : Raman*. 9 Cr. L. J. 555 : 13 M. C. C. R. 124.

-----S. 17—Procedure—Notice.

A notice to a person under S. 17 of the Mines Regulation, must be signed by the Superintendent of the Mine himself. *In the matter of : Nadamuni*. 9 Cr. L. J. 317 : 12 M. C. C. R. 64.

MYSORE VILLAGE SANITATION REGULATION 1898

-----Rules thereunder, S. III, r. 3—Illegality of conviction.

The accused rebuilt the compound wall of a temple and was convicted under S. III, Cl. 3 of the rules under the Mysore Village Sanitation Regulation, for building without a licence : *Held*, that the conviction was illegal. *In the matter of : Siddappa*.

9 Cr. L. J. 330 : 12 M. C. C. R. 83.

-----Rules under S. III—R. 3—Joint trial, legality of—Rebuilding.

Where there are several persons accused of an offence under r. 4, S. III of the above Regulation, a joint trial of the accused is irregular. Mere digging of the ground for laying foundation is not rebuilding within the meaning of the Regulation. *In the matter of : Siddalinganna*.

9 Cr. L. J. 318 : 12 M. C. C. R. 65.

MYSORE VILLAGE SANITATION RULES

-----R. 3—Rebuilding, what constitutes.

Removing a door frame and replacing it with another, does not constitute rebuilding. *In the matter of : Sanjivi*.

9 Cr. L. J. 347 : 12 M. C. C. R. 127.

MYSORE WHIPPING REGULATION (NO. V OF 1903)

-----S. 4—Whipping, validity of conviction.

Whipping in addition to imprisonment can only be inflicted on a second conviction of a person who having served a sentence of imprisonment again commits the same or a similar offence of the kind mentioned in S. 8 of the Regulation. *Abdul Kareem v. Government of Mysore*.

9 Cr. L. J. 340 : 12 M. C. C. R. 118.

N**NATIONALITY**

-----See also Extradition Act, 1908, Ss. 2 (a), 7.

NATIVE PASSENGER SHIPS ACT (X OF 1887)

-----Ss. 5, 9—Voyage—Coasting vessel.

A ship sailing from a port, calling at

NEWSPAPER

coast ports, stopping a short time at each and then returning to the port from which it originally sailed, continues on a single voyage the whole time, within the meaning of S. 9, Native Passenger Ships Act, and it cannot be said that the outward voyage from its port or place of departure was one voyage and the return voyage from the furthest port reached a second voyage. *Machado v. Emperor*.

23 Cr. L. J. 651 : 69 I. C. 91 : 23 Bom. L. R. 1200 : 46 Bom. 438 : A. I. R. 1922 Bom. 167.

-----Ss. 10, 31—Certificate 'A', necessity of.

Where the master of a ship starts on such a voyage holding certificate "A" under S. 10, Native Passenger Ships Act, the owners are not liable to punishment under S. 31 merely because the certificate expired before the ship reached the furthest port of call and commenced the return voyage. *Machado v. Emperor*.

23 Cr. L. J. 651 : 69 I. C. 91 : 23 Bom. L. R. 1200 : 46 Bom. 438 : A. I. R. 1922 Bom. 167.

NATIVE TESTIMONY

-----Reliability of.

The testimony of respectable native witnesses cannot be ignored on the general ground that the native testimony is unreliable. *Emperor v. Bal Gangadhar Tilak*.

1 Cr. L. J. 305 : 6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

NEGLIGENCE

-----See also Admiralty.

-----Contributory negligence.

In a case of contributory negligence, the crucial question on which liability depends, is whether either party could, by the exercise of reasonable care, have avoided the consequences of the other's negligence; if he could, then, that party is legally responsible for the accident. *Deota Misir v. Emperor*.

32 Cr. L. J. 1061 : 133 I. C. 601 : 1931 A. L. J. 770 : I. R. 1931 All. 713 : A. I. R. 1931 All. 708.

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

-----S. 7—Scope of.

'Drawer', definition of, is not exhaustive—Maker of promissory note can be called a drawer—Presentment is not necessary in such a case. *Shiv Nath v. Bishambar Das*.

36 Cr. L. J. 217 : 152 I. C. 1006 : 37 P. L. R. 31 : 7 R. L. 354 (1) : A. I. R. 1935 Lah. 153.

NEWSPAPER

-----See also (i) Evidence Act, 1872, Ss. 81, 159.

(ii) Penal Code, 1860, Ss. 153-A, 499.

-----Article.

Not only the article must be read as a whole but it must be considered in a fair,

NEWSPAPER (INCITEMENT TO OFFENCES) ACT (VII OF 1908)

free and liberal spirit. And, while dealing with it, one should not pause upon an apparently objectionable sentence here or a strong word there, but the article should be dealt with in the spirit of freedom and not viewed with an eye of narrow criticism. *In the matter of: The "Zamindar."* (S. B.)

35 Cr. L. J. 966 :
149 I. C. 370 : 35 P. L. R. 40 : 6 R. L. 669 :
A. I. R. 1934 Lah. 219.

———*Journalist.*

Printer—Fair comment—Journalist not expected to write with precision. *Mon Mohan Ghosh v. Emperor.*

11 Cr. L. J. 667 :
8 I. C. 531 : 5 C. W. N. 141.

NEWSPAPER (INCITEMENT TO OFFENCES) ACT (VII OF 1908)

———S. 2 (1) (b)—'Newspaper', meaning of.

The term "Newspaper" as defined in S. 2, (1) (b), Act VII of 1908, involves the idea of periodicity, as also the fact that what is contained in the paper is public news or comments thereon. The definition ought to be read as a whole, and in order to determine whether a particular publication is a "Newspaper" within the meaning of the Act or not, it is not enough to take a single number and to pick out an isolated sentence or paragraph therein which may, by stretch of language, be interpreted to contain public news or comment thereon. When it is disputed that a particular publication is not a newspaper, the prosecution ought to establish its alleged character by proof of the contents of more than one issue of the paper. The mere fact that in one particular issue an isolated sentence or paragraph may be found which may be interpreted to contain public news or comments thereon, does not make the publication a newspaper. *Sarat Chandra v. Emperor.*

11 Cr. L. J. 515 :
7 I. C. 641 : 12 C. L. J. 294 :
15 C. W. N. 18.

———Ss. 2 (c), 3—*Scope of—Forfeiture—Portion of press actually used in printing offending newspaper.*

S. 3, Newspaper Incitement to Offences Act, provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. As the section refers to the whole of the press, no order can be made under it limited only to such portions of the press as were actually used for the printing of the newspaper. *In re: Dhondo Kashinath.*

11 Cr. L. J. 268 :
5 I. C. 858 : 12 Bom. L. R. 120.

———S. 3 (1)—*Scope of.*

The use of seditious language sufficient to bring a case under S. 124-A, Penal Code, is not equivalent to an incitement to the offences mentioned in S. 3 (1) of Act VII of 1908. That section confers very limited powers of forfeiture, and is applicable only to cases of presses used for the printing of newspapers

NORTHERN INDIA CANALS AND DRAIN. AGE ACT (VIII OF 1873)

which contain incitements to the particular crimes or classes of crimes specifically mentioned in that section. *Sarat Chandra v. Emperor.*

11 Cr. L. J. 515 :
7 I. C. 641 : 12 C. L. J. 294 :
15 C. W. N. 18.

———S. 3, (1) (5)—*Duty of Court—Cr. P. C., S. 429—Difference of opinion between two Judges—Reference to third Judge—Reference of whole case, not particular point.*

When the Judges of the Court of Appeal are equally divided in opinion upon the question of the guilt of an accused person, though upon certain aspects of the case they may be agreed in their view, what is laid before another Judge under S. 429, Cr. P. C., is, not the point or points upon which the Judges are equally divided in opinion, but the "case". This obviously means that so far as that particular accused is concerned, the whole case is laid before the third Judge, and it is his duty to consider all the points involved before he delivers his opinion upon the case. *Sarat Chandra v. Emperor.*

11 Cr. L. J. 515 :
7 I. C. 641 : 12 C. L. J. 294 :
15 C. W. N. 18.

NEWSPAPER INCITEMENT TO VIO- LENCE ACT (VII OF 1908)

———*Incitement—Question of intention—Personal criminality.*

Under the Newspapers Incitement to Violence Act, no question of the intention of the writer, printer or publisher arises, and no personal criminality is imputed to any individual, and it is not necessary to prove any criminal intention against any person under the Act. There can be no hard and fast canon to decide what words or whether a given set of words constitute an incitement to murder or to any act of violence. It is a question of fact in each case. The article must be read in the sense in which it was read by that section of the public to whom it was addressed, and the occasion and place of its publication and the class of persons who are likely to be affected by it must also be considered. *Girija Sunder Chakravarti v. Emperor.*

9 Cr. L. J. 545 :
2 I. C. 285 : 9 C. L. J. 143 :
13 C. W. N. 672 : 36 Cal. 405.

NORTHERN INDIA CANALS AND DRAINAGE ACT (VIII OF 1873)

———Ss. 3, 20, 21, 70—*Presumption—Interfering with watercourse—Watercourse about 30 years old—Presumption that it was started by agreement or under Act.*

In a prosecution for an offence under S. 70 (2), Northern India Canal and Drainage Act of 1873, where the watercourse is an old one, the Court is entitled to draw a presumption that it was started by agreement or under the provisions of S. 20 or S. 21 of the Act. *Ganga Sahai v. Emperor.*

30 Cr. L. J. 669 :
116 I. C. 785 : I. R. 1929 All. 609 :
1929 A. L. J. 463 : A. I. R. 1929 All. 271.

NORTHERN INDIA CANALS AND DRAINAGE ACT (VIII OF 1873)

—Ss. 3 (2), 70—*Offence under—Watercourse, permissive, stoppage of.*

A right to obtain the passage of water over another man's property can be secured legally by the Canal Department acting on its own authority, or it can be obtained on the application of a private person to the Divisional Canal Officer under S. 21, Northern India Canals and Drainage Act. Such a right can also be obtained by a private agreement. Where, however, one person merely permits another to take water through a watercourse existing on the former's land and after some years discontinues the permission and stops the watercourse, he cannot be held guilty of an offence under S. 70. *Hukman v. Emperor.*

22 Cr. L. J. 429 :
61 I. C. 717 : 13 P. L. R. 1921 :
1 P. W. R. 1921 Cr. : A. I. R. 1921 Lah. 327.

—Ss. 31, 70 (12)—*Canal water used for building pucca house—Rules framed under S. 31, 10, 33—Offence.*

S. 70 (12), Northern India Canal and Drainage Act, punishes a person who violates any rule made under the Act for a breach of which a penalty may be incurred. Therefore, although the use of water from a tank which has been filled with canal water for the purpose of building a pucca house is unauthorised by r. 10 of the rules framed under S. 31 of the Northern India Canals and Drainage Act, there is no penalty attached to such use, and a person guilty of such use cannot be punished under S. 70 (12) of the Act. *Harnam Singh v. Emperor.*

23 Cr. L. J. 17 :
64 I. C. 497 : 7 P. L. R. 1922 :
A. I. R. 1921 Lah. 187 (2).

—S. 45.

See also Penal Code, 1860, S. 186.

—S. 47.

See also Penal Code, 1860, S. 186.

—S. 70.

See also Penal Code, 1860, S. 430.

—S. 70.—*Conviction under.*

Forcibly opening canal distributary and diverting the flow of water—Utility of distributary injuriously affected—Proper conviction is under S. 70 of Northern India Canal and Drainage Act and not under S. 430, Penal Code. *Mewa Ram v. Emperor.*

35 Cr. L. J. 1250 :
150 I. C. 1048 : 7 R. A. 96 :
A. I. R. 1934 All. 687 (2).

—Ss. 70, 74—*Canal, meaning of—Damage to the trees on the banks of the canal—Whether any offence.*

Cutting branches of a tree on the banks of a canal without permission, is an offence falling under CL (1), S. 70, Canal and Drainage Act. S. 74 of Act provides that in the part of the Act dealing with offences and penalties, the word canal includes among other things trees standing on land occupied by Government for the purposes of canals. *Emperor v. Umrao Singh.*

5 Cr. L. J. 196 :
4 A. L. J. 204 : 1907 A. W. N. 18.

NORTHERN INDIA FERRIES ACT (XVII OF 1878)

—S. 70, Sub-ss. (1) and (2)—*Scope of—Preventing digging of watercourse—Revision—Finding of fact based on inadmissible evidence.*

The preventing of the digging of a watercourse for taking water from a canal does not come within the purview of S. 70 of Act VIII of 1873. A finding of fact based on no evidence is liable to be set aside on revision under S. 439, Cr. P. C. *Arura v. Emperor.*

16 Cr. L. J. 202 :
27 I. C. 762 : 7 P. W. R. 1915 Cr. :
94 P. L. R. 1915 : A. I. R. 1915 Lah. 392.

—S. 70 (4)—*'Authorised distribution,' meaning of—Distribution made by proprietary body of village, whether authorised.*

The words "authorised distribution," in Cl. (4), S. 70, Northern India Canals and Drainage Act, mean a distribution made by some authority. A distribution made simply by the proprietary body of a village cannot be regarded as an "authorised distribution," within the meaning of the clause. *Emperor v. Pakhar Singh.*

22 Cr. L. J. 203 :
60 I. C. 59 : 1 Lah. 604 :
A. I. R. 1920 Lah. 317.

—S. 70 (12)—*Conviction, legality of—Opening closed outlet, proof of—Irrigation of fields, whether sufficient.*

A person cannot be convicted under S. 70 (12) Northern India Canal and Drainage Act, for opening an outlet closed under the orders of the Canal Authorities, when the only fact against him is that he irrigated his fields with the canal water. *Sheo Ram v. Emperor.*

25 Cr. L. J. 1199 :
82 I. C. 63 : A. I. R. 1923 Lah. 603.

—S. 70 (12)—*Procedure—Prosecution for breach of rules—General accusation of infringement of some rule not enough.*

In a prosecution for breach of a rule framed under S. 70 (12), Northern India Canals and Drainage Act, 1873, the accused must be told what particular rule he has violated. A general accusation that he has broken some rule made under S. 70 (12) of the Act is quite inadequate. *Sandhi v. Emperor.*

31 Cr. L. J. 528 :
123 I. C. 530 : A. I. R. 1930 Lah. 54.

—S. 74.

See Northern India Canal and Drainage Act, 1873, S. 70.

NORTHERN INDIA FERRIES ACT (XVII OF 1878)

—S. 4, 26—*Conviction, legality—Change in course of river—No limit fixed by Government.*

Where there has been a change in the course of a river and there has been no specification of limits under S. 4, Ferries Act, subsequent to the change, a conviction under S. 26 of the Act for working a Ferry within the previously prohibited limits cannot be sustained. *Bansi Dhar v. Emperor.*

11 Cr. L. J. 595 :
8 I. C. 221.

N.-W. F. PROVINCE COURT'S REGULATION (1931)

—Ss. 13 and 26—*Limits of public ferry*—*Government Notification No. 536, dated the 14th February 1883.*

A notification of Government published under the Northern India Ferries Act, 1878, laid down limits of the various public ferries in one column, and in another column the distances within which a private ferry was not allowed to ply for hire. In the case of some ferries, very wide limits were assigned, and the prohibited distance was defined as the limits given in the column laying down the limits of the ferry. In other cases, where the limits of the ferry were not so wide, the prohibited distance was described with reference to S. 13 of the Act as two miles: *Held*, that in the former case, the very wide limits given were deemed sufficient by the Local Government to guard the interests of the lessee of the ferry, and consequently the prohibited area was reduced to the space contained within these limits. *Emperor v. Baban.*

3 Cr. L. J. 50 :
25 A. W. N. 262.

N.-W. FRONTIER CRIMES REGULATION (III OF 1901)

—*Applicability of General Clauses Act (X of 1897), S. 24.*

The Frontier Crimes Regulation, III of 1901, is still in force in Leiah Tahsil, Muzaffargarh District, and it applies to all persons not being 'European subjects' born or residing in districts to which the Regulation applies. Though the Regulation IV of 1887 has been repealed by Regulation III of 1901, the notifications issued under Regulation IV of 1887 must be deemed to be still in force by virtue of S. 24 of the General Clauses Act, 1897. *Bhola Ram v. Emperor.*

16 Cr. L. J. 790 :
31 I. C. 646 : 25 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 355.

N.-W. F. PROVINCE COURT'S REGULATION (1931)

—S. 6 (2)—*Scope of*—*"Proceedings" in second sentence are to be ejusdem generis with those of first.*

The words "European British subjects" used in S. 6 (2) must be read as if they were followed by the words "who have not asserted and established their right to be tried as such," though the word "such" does not precede the word "proceedings" but the second sentence is separated from the first only by a comma, and the proceedings contemplated in the second sentence shall be *ejusdem generis* with those of the first sentence. *Emperor v. Private T. B. A. W. Johnson, K. O. Y. L. I.*

141 I. C. 445 :
A. I. R. 1933 Pesh. 6.

—S. 6 (2)—*Scope of.*

The words "European British subjects" used in S. 6 (2) must be read as if they were followed by the words "who have not asserted

N.-W. P. AND OUDH LAND REVENUE ACT (III OF 1901)

and established their right to be tried as such. *Emperor v. Private Johnson.*

141 I. C. 445 :
A. I. R. 1933 Pesh. 6.

—S. 7—*Constitution of Bench—Rules made under, on May 19, 1931, rr. 1 and 3.*

An appeal from a conviction under Ss. 302-120-B, I. P. C., was heard by the Judicial Commissioner, Peshawar, sitting alone as the other Judge constituting the Bench was absent on leave which was to expire only after twenty days, and as the Judge appointed under S. 222 (2), of the Government of India Act, to act as a Judge of the Court during the absence of the Judge on leave was disqualified from sitting on the appeal because, he had exercised judicial functions in the proceedings: *Held*, that the Court was legally constituted as when the appeal came on for hearing, it was not practicable to constitute a Bench without the newly appointed Judge because there was no other Judge of the Court available to sit with the Judicial Commissioner. In the event, the precise language of r. 3 was thus satisfied. *Akbar v. King Emperor.*

41 Cr. L. J. 871 P. C. :
190 I. C. 233 : 52 L. W. 662 :
1940 M. W. N. 1112 :
7 B. R. 118 : 1940 O. L. R. 619 :
1940 A. L. J. 778 : 13 R. P. C. 88 :
1940, 2 M. L. J. 811 :
43 Bom. L. R. 20 : 43 P. L. R. 69 :
41 O. W. N. 43 :
I. L. R. 1940 Lah. 612 :
1940 Kar. P. C. 302 Sup. :
A. I. R. 1940 P. C. 176.

N.-W. P. AND OUDH LAND REVENUE ACT (III OF 1901)

—Ss. 46 and 55—*Conviction under—Facts to be proved in order to justify conviction—Penal Code, Ss. 176 and 177.*

The *zemindars* of certain village were convicted under S. 167, Penal Code, for not having furnished to the *patwaris*, preparing the *jamabandis*, the particulars relating to the enhancement of rents of certain tenants. The conviction was arrived at under S. 46 of N.-W. P. & Oudh Land Revenue Act, III of 1901, read with the above section : *Held*, that in order to justify a conviction under S. 46 of N.-W. P. & Oudh Land Revenue Act, III of 1901, read with S. 176, Penal Code, definite facts must be proved. Unless a requisition to furnish information is made and the information is refused or, if furnished, is found to be false, no conviction can be sustained. *Emperor v. Janki Singh.*

2 Cr. L. J. 307 :
8 O. C. 128.

—S. 55.

See also N.-W. P and Oudh Land Revenue Act, S. 46.

N.-W. P. AND OUDH MUNICIPALITIES ACT (I OF 1900)

—S. 3.

See also N.-W. P. and Oudh Municipalities Act, 1900, S. 87.

—Ss. 55 (c), 168—Public drain—Acts done on private drain—No offence.

The Municipalities Act is a Local Act of a highly technical nature, and one which touches the private rights of individuals. It has, therefore, to be most carefully construed, and if the intention of the framers of the Act was to include an act done upon private property which might result in obstruction of public property at some distance from the place, where the physical obstruction took place, it should have been provided for in a more particular language than has been done in S. 168 of the Act. The word "public", although it does not immediately precede the word 'drain' in S. 55 (c) does extend to the words which immediately follow and that the sewers, drain, culverts, etc., mentioned in the section are public sewers, public drains, public culverts and public watercourses and that the word drain mentioned in S. 168 is a public drain. The action of private proprietors with drains on their private property is not illegal. *Dassu v. Emperor*. 10 Cr. L. J. 1 : 2 I. C. 408 : 6 A. L. J. 544.

—S. 69 (2)—Offence under Special Act.

Where an offence is an offence under a Special Act, the guilt of the accused ought to be strictly proved. *Abdul Ghani v. Emperor*. 2 Cr. L. J. 352 : 2 A. L. J. 411.

—S. 87—Scope of—Re-erection of building abutting on a public street.

The blocking up of the archways of a verandah abutting on a public street so as to convert the verandah into rooms amounted to the re-erection of a building within the meaning of S. 87 of the North-Western Provinces and Oudh Municipalities Act, 1900. *Emperor v. Jagannath Prasad*. 1 Cr. L. J. 915 : 24 A. W. N. 233.

—Ss. 87, 3—Interpretation of Statute—Municipal Board—Bye-laws.

Where a rule framed by a Municipal Board forbade the "erection or re-erection of any building" in the civil station except with the previous sanction of the Board, it was held that such prohibition could not apply to the inclosing by means of a canvas screen of a certain space adjoining a house. *Kamta Nath v. The Municipal Board of Allahabad*. 2 Cr. L. J. 793 : 2 A. L. J. 676 : 25 A. W. N. 252 : 28 All. 199.

—Ss. 88, 147 and 152—Right of accused—Removal of building—Right to challenge validity of order under S. 88—Notice.

By S. 152, N.-W. P. and Oudh Municipalities Act, an accused person is not prohibited from challenging the validity of a notice issued under S. 88 of the Act, where the Board's order is wholly *ultra vires*. *Chhole v. The Municipal Board of Lucknow*. 3 Cr. L. J. 205 : 9 O. C. 29.

N.-W. P. TENANCY ACT (II OF 1901)

—Ss. 132, 147—Interpretation.

The words "first conviction" in Ss. 132 and 147, N.-W. P. and Oudh Municipalities Act, make it clear that the Legislature contemplated a conviction for an original offence or disobedience of a lawful order and subsequent conviction for a continuation of or persistence in an original offence or disobedience. *Mahadeo Parshad v. Municipal Board, Lucknow*. 7 Cr. L. J. 454 : 11 O. C. 122.

—S. 147—Second prosecution—Building erected without sanction.

'One B. D. built a wall without the permission of the Municipality where the house was situate. B. D. was, therefore, prosecuted under S. 87 of Act I of 1900 (the Municipalities Act) and convicted. He was sentenced to pay a fine of Rs. 20, but the Magistrate trying the case did not impose a recurring fine. During the pendency of these proceedings, the house was transferred by B. D. to a minor of whom S. D., the applicant, was the guardian. After a termination of the above proceedings, the Municipal Board again lodged a fresh notice and ordered the applicant to pull down the wall. On a disobedience of the notice, the guardian was prosecuted and convicted: Held, that in face of the previous conviction, no subsequent conviction of the applicant was permissible. The maxim of *nemo debet bis vexari* was applied. *Sridhar v. Emperor*. 2 Cr. L. J. 511 : 8 O. C. 249.

—S. 152—Procedure—Order of Municipal Board under S. 87 for removal of building erected without permission—Disobedience to order—Finality of order.

No prohibition notice or order, issued by a Municipal Board under S. 87 of the N.-W. P. and Oudh Municipalities Act, 1900, is liable to be called in question otherwise than by means of an appeal under S. 152 of the Act. *Emperor v. Shadi*. 1 Cr. L. J. 209 : 24 A. W. N. 57 : 1 L. R. 26 All. 386.

—S. 167.

See also Penal Code, 1860, S. 425.

—S. 168—Daily fine, legality of—Order to vacate land, conviction on failure to comply with.

S. 168, North-Western Provinces and Oudh Municipalities Act (I of 1900), does not authorize the imposition of a daily fine. *Ramjas v. Municipal Board, Lucknow*. 8 Cr. L. J. 226 : 11 O. C. 121.

N.-W. P. TENANCY ACT (II OF 1901)

—Chap. IX—S. 134—Distraint—Postponement of sale by Ameen.

A sale held under the provisions of Chap. IX, N.-W. P. Tenancy Act, cannot be postponed on the ground that there are no bidders. Nor does the law authorise an adjournment of the sale beyond the next day or the next market :

NOTICE

day. The only section which provides for a postponement is S. 134, and it requires an application by the defaulter. It is the duty of the distrainer to see that bidders are present at a sale, and if none are present (*semble*) the distraint falls through. *Tara Singh v. Emperor*.

2 Cr. L. J. 90 :
2 A. L. J. 128 : 25 A. W. N. 65.

N.-W. PROVINCES VILLAGE AND
ROADS ACT (XVI OF 1873)

See also Criminal trial.

NOTE OF IDENTIFICATION

——— *Whether evidence.*

A note of a test identification is no evidence of the identification unless it is proved by the Magistrate who held the identification and gives full particulars of the identification. *Bhagwat Jha v. Emperor*.

25 Cr. L. J. 557 :
81 I. C. 45 : 6 P. L. T. 310 :
A. I. R. 1925 Pat. 158.

NOTICE.

See also (i) Accused person.

- (ii) Appeal.
- (iii) Bengal Municipal Act, 1884, S. 202.
- (iv) Bombay City Police Act, 1902, Ss. 28, 129.
- (v) Bombay District Municipal Act, 1901, S. 86.
- (vi) Bombay Regulation, 1827, S. 27.
- (vii) Calcutta Municipal Act, 1899, S. 406.
- (viii) Cantonment Code, 1899, Rules 94 and 104, Ss. 79, 94.
- (ix) Cr. P. C., 1898, Ss. 107, 112, 123, Sub-s. 2, 128, 133, 145, 145 cls. (3) and (4), 195, 422, 437, 528.

——— *Duty of Magistrate.*

Invalid—Accused not prevented from raising question of invalidity of notice—Duty of Magistrate to ask prosecution to prove validity of notice. *Hazari Lal v. Emperor*.

15 Cr. L. J. 574 :
25 I. C. 326 : 12 A. L. J. 312 :
36 All. 227.

——— *Further inquiry—Dismissal of complaint—Order of further inquiry without notice to the accused—Cr. P. C., Ss. 437, 202, 203, 204 and 439.*

No notice to the accused person is necessary where the Court of Revision acting under S. 237, Cr. P. C., 1898, directs further inquiry to be made into any complaint which has been dismissed under S. 203 or Sub-s. 3 of S. 204 of the said Code. *Ohanan Singh v. Emperor*.

7 Cr. L. J. 347 :
3 P. W. R. Cr. 25.

——— *Notice to accused.*

Notice should be issued to accused before an

NUISANCE

order for further enquiry is passed under S. 437, Cr. P. C. *Sanwal Bheru v. Dipchand*.
9 Cr. L. J. 446 :
1 I. C. 938 : 3 S. L. R. 7.

——— *Notice to accused.*

Notice to an accused person is not necessary in point of law before an order under S. 437, Cr. P. C. *Vecrasimhanaswami v. Mari Goroda*.

7 Cr. L. J. 176 :
12 M. C. C. R. 47.

——— *Notice under Burma Municipal Act.*

Notice under Burma Municipal Act must require alterations that are reasonable and possible. *Partial Maistry v. Emperor*.

14 Cr. L. J. 484 :
20 I. C. 740 : 6 Bur. L. T. 138.

——— *Notice.*

Revision—Revision of an order under S. 203, Cr. P. C.—Notice to opposite party not necessary. *Gada Husain v. Janki*.

11 Cr. L. J. 629 :
8 I. C. 371 : 13 O. C. 289.

——— *Notice.*

The safer and more convenient course is to issue notice and to hear the accused before ordering further enquiry. *Emperor v. Muhammad Mutaqi*.

7 Cr. L. J. 157 :
28 A. W. N. 45 : 5 A. L. J. 74.

——— *Notice.*

Notice of hearing of appeal must be given—Hearing without notice, illegal. *Ratanchand v. Emperor*.

9 Cr. L. J. 553 :
2 I. C. 247 : 5 N. L. R. 76.

NOTIFICATION NO. 34 I. B. OF JAN-
UARY 14, 1937

See also Jurisdiction.

NOTIFICATION NO. 754 I. B. OF
MARCH 28, 1912

See also Jurisdiction.

NUISANCE

See also (i) Bombay Municipal
Boroughs Act, 1925,
S. 167.

(ii) Cr. P. C., 1898, Ss. 133, 135,
137.

(iii) Penal Code, 1860, Ss. 283,
290.

——— *Cutting of overhanging branches.*

It is not in all cases that a person is entitled in India to cut away branches which overhang his house. *Kastur Chand v. Emperor*.

35 Cr. L. J. 1304 :
150 I. C. 1033 : 15 P. L. T. 107 :
7 R. P. 70 : A. I. R. 1934 Pat. 221.

——— *Public nuisance.*

See also Cr. P. C., 1898, S. 133.

——— *Public nuisance—Nuisance dangerous to health cannot be legalized by long enjoyment.*

No length of enjoyment can legalize a public

OATHS ACT (X OF 1873)

nuisance involving actual danger to the health of the community. *Maksood Ali v. President, Union Board, Garhwa.*

40 Cr. L. J. 516 :
180 I. C. 852 : 17 Pat. 669 :
20 P. L. T. 288 : 5 B. R. 505 :
11 R. P. 549 (2) : A. I. R. 1939 Pat. 183.

O

OATH

—*Kalma.*

There is no authority for a Magistrate requiring a witness to take *kalma* oath when the witness does not volunteer to do so. *Nur Din alias Kada v. Emperor.* 1 Cr. L. J. 99 :
5 P. L. R. 76 : 27 P. R. Cr. of 1903.

OATH OF DECLARATION OF AFFIDAVIT

—*Any Court competent to administer.*

Any Court may administer the oath of the declaration to an affidavit under S. 197, Cl. (a), Cr. P. C., and, therefore, a Village Munsif can sign the declaration to an affidavit intended to be used in support of an application for attachment before judgment. *Palanaippa Chetti v. Annamalai Chetti.* 1 Cr. L. J. 321 :
I. L. R. 27 Mad. 74 : I. L. R. 27 Mad. 223 :
14 M. L. J. 74 : 2 Weir 208.

OATHS ACT (X OF 1873)

—S. 4.

See also Penal Code, 1860, Ss. 181, 191.

—S. 4—Power of Magistrate—Cr. P. C. S. 122.

In inquiring into the fitness of a surety, a Magistrate has power to record evidence on oath in the exercise of the power and duty conferred and imposed on him by S. 122, Cr. P. C. *Emperor v. Ghulam Mustafa.*

1 Cr. L. J. 190 :
24 A. W. N. 52 : I. L. R. 26 All. 371.

—Ss. 4, 5—Power of Magistrate.

Magistrate acting under S. 164 is authorised under Ss. 4 and 5 to administer oath to a person being examined. *Suppa Tevan v. Emperor.*

3 Cr. L. J. 370 :
I. L. R. 29 Mad. 89.

—S. 5.

See also Cr. P. C., 1898, Ss. 4 (1) (i), 342, 415-A, 449 (1) (c).

—Ss. 5, 6—Tender child—Witness—Evidence Act (I of 1872), S. 118—Child of tender years, when competent witness.

A child of tender years can be a competent witness only when such a child is intellectually sufficiently developed to be able to understand what he or she has seen and afterwards to be able to inform the Court about it, and this may be tested even during the course of the examination of the child. *Syed Rasul v. Emperor.* 31 Cr. L. J. 114 :
120 I. C. 514 : A. I. R. 1930 Sind 129.

—Ss. 5, 6, 13—'Omission', meaning of—Oath, if compulsory.

OATHS ACT (X OF 1873)

Under Ss. 5 and 6, Oaths Act, 1873, every person who is examined as a witness shall make an oath or affirmation and there is no exception in the case of a child of tender years. Therefore if the child is adjudged to be a competent witness, an oath or affirmation must be administered to the child before he is examined. The word "omission" as used in S. 13, Oaths Act, includes any kind of omission and is not restricted to accidental or negligent omissions. *Ah Phut v. The King.*

41 Cr. L. J. 129 :

185 I. C. 205 : 1940 Rang. 104 :

12 R. Rang. 185 : A. I. R. 1939 Rang. 402.

—Ss. 5, 6, 13—Omission to administer oath—Effect of—Duty of Judge.

Although under Ss. 5 and 6 it is the duty of the Judge in all cases to administer an oath or affirmation to a witness who is competent to give testimony, the omission to carry out this duty would not invalidate the proceedings or render inadmissible the evidence given. *Fatu Santal v. Emperor.*

22 Cr. L. J. 417 :

61 I. C. 705 : 6 P. L. T. 147 :

2 P. L. T. 288 : A. I. R. 1921 Pat. 109.

—Ss. 5, 6, 13—Unsworn testimony of young child, admissibility of.

An unsworn testimony of a young child is admissible in evidence. S. 13, Oaths Act, expressly provides for cases in which the provisions of Ss. 5 and 6 of that Act have not been carried out. *In re : Dasi Viraya.*

39 Cr. L. J. 585 :

175 I. C. 422 : 1938 M. W. N. 90 :

1938, 1 M. L. J. 289 :

47 L. W. 161 : 10 R. M. 775 :

A. I. R. 1938 Mad. 490.

—Ss. 6, 13—Child's evidence—Evidence of child taken without oath, admissibility of.

The mere fact that a Court advisedly refrained from administering oath to a witness, who was a child of tender years, does not make his statement inadmissible in evidence. A Court should only examine a child of tender years as a witness after it has satisfied itself that the child is intellectually sufficiently developed to enable it to understand sufficiently what he has seen and to afterwards inform the Court thereof. If the Court is of opinion that by reason of tender years, the child is unable to do this, it ought not only to refrain from administering oath but from examining the child at all. If, on the other hand, the Court thinks that the child, though of tender years, is capable of informing the Court of what it has seen or heard, it is best that the Court should comply with the provision of S. 6, Oaths Act. A child is frequently a most satisfactory witness when the matters deposed to, are not beyond the intelligence of the child. *Dhani Ram v. Emperor.*

16 Cr. L. J. 829 :

31 I. C. 1005 : 13 A. L. J. 1072 : 38 All. 49 :

A. I. R. 1915 All. 437.

—Ss. 6, 13—Child witness—Evidence without oath or affirmation, admissibility of—Duty of Court.

Although the evidence of a child recorded

OATHS ACT (X OF 1873)

without oath or affirmation is not inadmissible, the Court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the Court. *Hussain Khan v. Emperor*.

25 Cr. L. J. 317 :

76 I. C. 1037 : A. I. R. 1923 Lah. 332.

———Ss. 6, 13—*Scope of — Affirmation by Hindu witness—Deliberate omission to administer oath, effect of.*

The words "omission to take an oath or make an affirmation" in S. 13, Oaths Act, do not extend to cases where the omission of the oath or affirmation was intentional. *Deiya v. Emperor*.

17 Cr. L. J. 500 :

36 I. C. 468 : 9 Bur. L. T. 133 :

A. I. R. 1918 L. Bur. 22.

———Ss. 8, 9, 10, 11—*Applicability—Criminal trial.*

The provisions of Ss. 8—11, Oaths Act, do not apply to criminal proceedings. *Imperator v. Afu*.

13 Cr. L. J. 23 :

13 I. C. 215 : 3 S. L. R. 129.

———Ss. 9, 11—*Scope of—Bombay Village Police Act (VIII of 1867), Ss. 14, 15—Proceedings before, Police Patil, nature of—Special oath, whether applicable to criminal proceedings.*

Proceedings before a Police Patil under Ss. 14 and 15, Bombay Village Police Act, are essentially criminal proceedings. The scheme of Ss. 9 to 11 of the Oaths Act, shows that these sections are not intended to apply to criminal proceedings. In criminal matters, the truth has to be ascertained by the Court, and the matter stated on special oath cannot be and ought not to be accepted as conclusively proved by such an oath in a criminal proceeding. *Chiman Damodar Bhate v. Emperor*.

21 Cr. L. J. 723 :

58 I. C. 147 : 45 Bom. 96 :

22 Bom. L. R. 898 :

A. I. R. 1921 Bom. 425.

———S. 11—*Conclusive proof — Special oath—Conclusive proof of statement made—Statement can be proved to be false.*

The evidence given under S. 11, Oaths Act, is not conclusive proof of the matter stated, but is conclusive proof of the matter stated as against the person who offers to be bound by the special oath. Therefore, it can be proved that a statement made on a special oath was false, and false to the knowledge of the person making it. *Ramdas Vishnudas v. Emperor*.

25 Cr. L. J. 1287 :

82 I. C. 359 : 26 Bom. L. R. 713 :

A. I. R. 1924 Bom. 511.

———S. 13.

See also (i) Cr. P. C., 1898, S. 539-A.

(ii) Oaths Act, 1873, Ss. 5, 6.

———S. 13—*Administering oath to child witness.*

OATHS ACT (X OF 1873)

The deposition of a girl aged 8 was objected to on the ground that the Magistrate had not administered an oath to her nor placed her on solemn affirmation : *Held*, that when a Judge or Magistrate has elected to take the statements of a person as evidence, he has no option but to administer either the oath or affirmation to such a person as the case may require. *Pwa Nyun v. Emperor*.

1 Cr. L. J. 1131 :

2 L. B. R. 322.

———S. 13—*Applicability.*

A great divergence of judicial opinion exists on the question, whether S. 13, Oaths Act, 1873, applies to cases where the omission to take oath or affirmation is the result of the deliberate act of the Court or of the witness. *Nafar Sheikh v. Emperor*.

14 Cr. L. J. 485 :

20 I. C. 741 : 41 Cal. 406 : 18 C. L. J. 582 :

18 C. W. N. 147.

———S. 13—*Duty of Court to administer oath—Administering oath to child witness—Indian Oaths Act, S. 13.*

The deposition of a girl aged 8 was objected to on the ground that the Magistrate had not administered an oath to her nor placed her on solemn affirmation : *Held*, that when a Judge or Magistrate has elected to take the statements of a person as evidence, he has no option but to administer either the oath or affirmation to such a person as the case may require. *Pwa Nyun v. Emperor*.

1 Cr. L. J. 1131 :

2 L. B. R. 322.

———S. 13—*Evidence of child witness—Procedure—Omission to administer oath, effect of—Evidence, weight of.*

The evidence of a witness of tender years, though taken without any solemn affirmation in the prescribed form, is admissible by virtue of the provisions of S. 13, Oaths Act. Such evidence, however, must be received with due care and caution. It is necessary that before proceeding to examine such witnesses, the Court should satisfy itself that the witness is competent to testify, that is, is capable of understanding the questions put to him and of giving rational answers to those questions. Thereafter the Court should proceed to administer an oath or affirmation as required by the Oaths Act. *Hari Ramji Pavar v. Emperor*.

19 Cr. L. J. 593 :

45 I. C. 497 : 20 Bom. L. R. 365 :

A. I. R. 1918 Bom. 212.

———S. 13—*'Omission,' effect of—Oath or affirmation, omission to administer, effect of—Child witness—Oath or affirmation not administered—Evidence, whether admissible.*

The omission to administer the oath or affirmation to a witness, even if intentional, would not, under S. 13, Oaths Act, render the evidence of the witness inadmissible. Where the oath or affirmation is not administered to a child witness, because the witness is too young to take an oath or give affirmation, this fact alone would not make

OBSTRUCTION

the witness one whose testimony cannot be taken into account. *Emperor v. Shasi Bhusan Maity*.

21 Cr. L. J. 817 :
58 I. C. 817 : 32 C. L. J. 31 :
24 C. W. N. 767 :
A. I. R. 1920 Cal. 414.

—S. 13—Omission to administer oath defect, if cured.

Child of tender years able to understand the deed seen and to inform the Court thereof, examined as a witness—Intentional omission to administer oath—Defect is cured. *Sahdeo Ram v. Emperor*.

36 Cr. L. J. 1013 :
166 I. C. 849 : 1935 A. L. J. 618 :
1935 A. W. R. 777 : 8 R. A. 41 :
A. I. R. 1935 All. 579.

—S. 13—Scope.

S. 13, Oaths Act, cures the form of the oath and even an entire omission to take the oath, but does not cure the absence of authority in the officer administering the oath. *Ganpat Devaji Patil v. Emperor*.

30 Cr. L. J. 593 :
116 I. C. 248 : 31 Bom. L. R. 144 :
I. R. 1929 Bom. 344 : A. I. R. 1929 Bom. 136.

—S. 13—Scope of—Competency to testify but inability to understand oath—Oath or affirmation, evidence recorded without administering—Admissibility of evidence so recorded against the accused—Evidence Act, 1872, S. 118.

Where a person is competent to testify according to the provisions of S. 118, Evidence Act, but is unable, owing to his tender age, to comprehend the nature of an oath or affirmation, S. 13, Oaths Act, relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. *Ram Samujh v. Emperor*.

7 Cr. L. J. 89 :
10 O. C. 337.

—S. 13—Scope of—'Omission,' intentional, effect of.

S. 13, Oaths Act, does not extend to cases where the omission of the oath or affirmation has been intentional. *Daya v. Emperor*.

19 Cr. L. J. 54 :
43 I. C. 86 : 9 L. B. R. 88 :
A. I. R. 1918 L. Bur. 22.

—S. 13—Scope of.

The word "witness" in the concluding portion of S. 13 of the Oaths Act includes an interpreter and a juror. Therefore, the only effect of the omission of an interpreter to take the oath is to render it necessary to prove that the interpretation was made accurately; it does not make the deposition inadmissible. *Rakhal Chandra v. Emperor*.

10 Cr. L. J. 150 :
2 I. C. 697 : 9 C. L. J. 690.

OBSCENE BOOK

See Penal Code, 1860, S. 292.

OBSTRUCTION

See also Penal Code, 1860, S. 283.

OCCUPATION OF LAND

See also Madras Local Boards Act, 1920, S. 164.

OCTROI RULES

—Confiscation of illicit tobacco—Notification No. 341, dated 2nd February 1871.

A Magistrate can order confiscation of smuggled articles only in the case of conviction of the person evading payment of duty. *In re : Abdul Wahab*.

7 Cr. L. J. 182 :
12 M. C. C. R. 53.

OFFENCE

See also (i) Merchandise Marks Act, 1889, S. 15.
(ii) Penal Code, 1860, S. 40.

—Offences falling under different acts—One act constituting two, under different laws—Conviction for both offences, legality of.

When one act constitutes two offences, separate punishment for each offence can only be inflicted, if both offences are against the same law. Where the accused by one act endangered the lives of the public and committed an offence under S. 101, Railways Act : *Held*, that the one offence being under the Penal Code and the other under the Railways Act, the accused could only be convicted of one offence, and the conviction and sentence under the latter Act, therefore, could not stand. *Rahmatulla v. Emperor*.

18 Cr. L. J. 321 :
38 I. C. 433 : 1 B. L. J. 373 :
1 P. L. W. 340 : A. I. R. 1916 Pat. 86.

—Offences punishable with Death sentence—Murder—Death sentence, normal sentence—Mitigated sentence—Reason—Enhancement of sentence after 9 months.

For an offence punishable with death, the extreme sentence is the normal sentence and the mitigated sentence is the exception. Therefore if the Judge does not pass the death sentence, he must find that there are really extenuating circumstances and not merely an absence of aggravating circumstances. The existence of some provocation is not enough to justify the passing of the mitigated sentence. Where a capital sentence should have been passed by the Sessions Judge but a sentence of transportation for life was passed instead, after 9 months the Chief Court found itself unable to enhance the sentence. *Emperor v. Shwe Hlau*.

23 Cr. L. J. 437 :
67 I. C. 613 : 11 L. B. R. 323 :
A. I. R. 1922 L. B. 32.

OFFENDER

See also Penal Code, 1860, S. 212.

OFFICER-IN-CHARGE OF POLICE STATION

See also Cr. P. C., 1898, S. 4.

OFFICIAL DUTY

—'Official duty' is something that a person is under an obligation to do in virtue

OPIUM ACT (I OF 1878)

of his official capacity. *Rajrang Bahadur Singh v. Emperor.*

34 Cr. L. J. 253 :
141 I. C. 819 : 9 O. W. N. 875 :
8 Luck 156 : I. R. 1933 Oudh 90 :
A. I. R. 1932 Oudh 308.

OFFICIAL REGISTER

See also Penal Code, 1860, S. 176.

OMIT

See also Penal Code, 1860, S. 182.

ONUS OF PROOF

See also Merchandise Marks Act, 1889, S. 7.

OPINION

———*Opinion formed by witness, whether evidence. Witnesses bound to confine their evidence to facts observed.*

A witness is bound to state what he saw and not what he thought. The evidence should be confined to the facts observed. An opinion formed by a witness is not evidence. *Muni Sonar v. Emperor.*

2 Cr. L. J. 176 :
9 C. W. N. 438.

———*Meaning of.*

The word *opinion* in S. 307, Cr. P. C., is used to denote the conclusions and not the reasons or grounds for such conclusions. *Emperor v. Chellan.*

3 Cr. L. J. 371 :
I. L. R. 29 Mad. 91.

OPINION OF ASSESSORS

———*Duty of Court.*

It is imperative for the Judge to take the opinion of the assessors on the charge it is proposed to convict the accused of. *Appaya Bastingappa Honnapur v. Emperor.*

26 Cr. L. J. 394 :
84 I. C. 938 : 25 Bom. L. R. 1318 :
A. I. R. 1924 Bom. 246.

OPIUM ACT (I OF 1878)

See Madras Abkari Act, 1886.

———*Conviction for illegal possession—Possession of substance containing only traces of opium.*

Possession of a black substance containing only traces of opium and hardly more than one per cent. of it and which is unfit to be used as opium is not an offence for which the person possessing it is liable to conviction under the Opium Act as for illegal possession of opium. *Mohammad Kazi v. Emperor.*

17 Cr. L. J. 412 (a) :
35 I. C. 972 : 20 C. W. N. 1206 :
A. I. R. 1917 Cal. 307.

———*Rules framed under S. 5, Rule 4 (iii) (c) —Conviction, legality of—Ultra vires.*

R. 4 (iii) (c) of the Rules framed by the Bombay Government under S. 5, Opium Act, is a rule of evidence as to the fact of possession, and not a rule as to the conditions of possession as contemplated by S. 5, and as such is *ultra vires* of the section. Therefore,

OPIUM ACT (I OF 1878)

a conviction based on the rule is illegal. *Gundalal Murarji v. Emperor.*

16 Cr. L. J. 136 :
27 I. C. 200 : 8 S. L. R. 138 :
A. I. R. 1914 Sind 124.

———*Direction 71 — Fraud — Obtaining opium by personation in excess of amount allowed by Excise Officer.*

Where a person licenced to buy opium obtains from the licenced vendor, by personating a real or imaginary person, more opium than he would have got without such personation, he cannot be said to act dishonestly, as there would have been no wrongful gain or loss had the opium been sold to him. He does, however, act fraudulently, as his intention was to deceive the vendor and thereby obtain an advantage or privilege which, without such deception, could not have been obtained. *Emperor v. Tan Kip Si.*

11 Cr. L. J. 686 :
8 I. C. 596 : 3 Bur. L. T. 11.

———S. 3.

See also Cr. P. C., 1898, S. 39.

———S. 3—*Bondika Bhusa, whether opium — Possession of about a hundred pounds of it held to constitute offence.*

Bondika bhusa can be included in the definition of opium in the Opium Act. The word 'capsule' in the definition of opium in S. 3, Opium Act, includes the shells of the capsules and preparations of them. Where the accused is in possession of about a hundred pounds of *bandika bhusa* and it may safely be presumed that from such a large quantity, the equivalent of more than half a *tola* of standard opium could be extracted, the possession is an offence. *Jagjiwan v. Emperor.*

38 Cr. L. J. 371 :
167 I. C. 353 : 9 R. N. 178 :
I. L. R. 1937 Nag. 141 :
A. I. R. 1936 Nag. 240.

———S. 3—*Investiture of powers—Magistrate—'Specially empowered'—'Generally empowered'—Notification by Government empowering all second class Magistrates to try cases under Opium Act, if amounts to 'specially empowered'.*

The word 'specially' in 'specially empowered' occurring in S. 3, Opium Act, is used in speaking of individuals and in contrast with the word 'generally.' When by a notification of the Government a class of officials is invested with powers to try certain offences, such officials are only 'generally empowered' and not 'specially empowered.' A notification empowering all second class Magistrates to try such offences under the Opium Act is *ultra vires* of the powers given by the Act, as its effect is to enlarge the definition of Magistrate as given therein. *Mahomed Kasim v. Emperor.*

16 Cr. L. J. 268 :
28 I. C. 156 : 2 L. W. 253 :
17 M. L. T. 191 : 1915 M. W. N. 269 :
A. I. R. 1915 Mad. 1159.

———S. 3—*'Opium', meaning of.*

'Opium' does not include *bemsi* and *benchi*. Rule prohibiting possession of these is *ultra*

OPIUM ACT (1 OF 1878)

vires. Possessor though cannot be convicted under S. 9 of this Act, is guilty under S. 10 (b), Dangerous Drugs Act. *Emperor v. Ahkim*.

34 Cr. L. J. 1085 :
145 I. C. 825 : 11 Rang. 436 :
6 R. Rang. 58 : A. I. R. 1933 Rang. 258.

———S. 3—"Special empowering."

A notification of the Local Government empowering second class Magistrates of certain places in the Province, mentioned in the list appended to the notification by virtue of their office to try case under the Opium Act amounts to a "special empowering" within the meaning of S. 3. *Alaga Pillai v. Emperor*.

24 Cr. L. J. 846 :
74 I. C. 958.

———Ss. 3, 9—Opium whether includes morphia.

Though morphia is not a preparation or admixture of opium, yet it is an intoxicating drug prepared from the poppy and as such, fulfils the requirements of the definition of "opium" contained in S. 3, Opium Act. *Emperor v. Robinson*.

23 Cr. L. J. 580 :
68 I. C. 612 : 3 Lah. 230 :
A. I. R. 1922 Lah. 216.

———Ss. 3, 9 (a)—Pyaungchi, whether opium.

Pyaungchi and opium refuse are not "opium" within the meaning of S. 3, Opium Act, as amended by Sch. II, Dangerous Drugs Act, II of 1930. They now come within the definition of "prepared opium" under S. 2 (f) (ii), Dangerous Drugs Act, and possession of prepared opium in contravention of S. 4 (b) of that Act is punishable under S. 10 (b) of that Act and not under S. 9 (a), Opium Act. A registered opium consumer may possess *pyaungchi* or opium refuse, or any other form of prepared opium in any quantity, provided that the preparation of opium has been made from the opium which he has purchased under his ticket. *Emperor v. Maung Tha Tun*.

38 Cr. L. J. 1092 :
171 I. C. 619 : 10 R. Rang. 168 :
A. I. R. 1937 Rang. 346.

———Ss. 3, 9 (d) (f)—Morphia, whether opium—Sale and transport of morphia, whether offence.

Morphia is not included in the term 'opium' as defined in S. 3, Opium Act, not being preparation or admixture of opium or drug prepared from the poppy. The sale or transport of morphia is not, therefore, an offence under S. 9, Opium Act. *Sita Ram v. Emperor*.

22 Cr. L. J. 8 :
59 I. C. 40 : 1 Lah. 443 :
A. I. R. 1920 Lah. 263.

———S. 4—Conviction, illegality of—Right of private defence—Penal Code, S. 353.

An Excise *chaprasi* with the avowed object of seeing if *chandu* was not being manufactured ascended the stairs of accused No. 1's house and looked into the place where the accused No. 1 and his wife were sitting. The accused No. 1 on perceiving him came to the door, and shoved him down the stairs and followed him when accused No. 2 came in and hit him. It

OPIUM ACT (I OF 1878)

was found that the *chaprasi* was not injured in any way. The accused were convicted under S. 353, Penal Code : *Held*, that the conviction was illegal. The accused No. 1 was justified in turning out the *chaprasi* for he was not authorised to enter the premises of the accused. Such power is given under S. 4, Act I of 1878, only to officers of the Excise Department superior in rank to a peon who may be so authorised by Local Government. *Emperor v. Allah Bakhsh*.

1 Cr. L. J. 956 :
5 P. L. R. 390.

———Ss. 4, 9, r. 48—Sale of opium contravening conditions of licensee—Offence.

A sale of opium in contravention of the conditions of a licence is a breach of rule 48 and is punishable under S. 9, Opium Act. *Daulat Ram v. Emperor*.

21 Cr. L. J. 180 (b) :
54 I. C. 884 : 33 P. R. 1919 Cr. :
A. I. R. 1920 Pat. 461.

———Ss. 4, 9 (a)—'Opium water', what is.

The only meaning which can be attached to the words "opium water" in the rules and directions made under the Opium Act, is a mixture of water with capsules of the poppy or with the juice of such capsules of the poppy, or a mixture of such with neutral materials. Where the opium water has been collected from the washing of opium pipes, it is clearly not such opium water as comes under the rules under the Opium Act. It is merely the dross or other residue remaining, after opium is smoked and is, therefore, 'prepared opium' within the definition under the Dangerous Drugs Act, S. 2 (f) (ii). *Emperor v. Kong Kwi*.

38 Cr. L. J. 765 (b) :
169 I. C. 344 : 14 Rang. 694 :
9 R. Rang. 397 : A. I. R. 1937 Rang. 194.

———S. 5—Accounts of daily sale.

Under r. 49 (3) (f) of the rules framed by the Punjab Government under S. 5, Opium Act, the holder of a retail licence for the sale of opium is bound to keep correct accounts of his daily sales. *Emperor v. Munshi Ram*.

20 Cr. L. J. 419 :
51 I. C. 195 : 9 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 116.

———S. 5—Rules framed under—R. 38 (2)—Amendment, effect of—Illegal possession of chandu—Amount of chandu which two persons may have in their possession collectively.

Under the amended r. 38 (2) of the rules framed under the Opium Act, the amount of *chandu* which two or more persons may without a licence at one time have in their possession collectively is limited to one *tola*. This amendment has rendered unnecessary a decision on the conflict of the rulings reported as *Queen Empress v. Salaru*, 13 P. R. 1897 Cr. and *Queen Empress v. Wazir Singh*, 10 P. R. 1901 Cr. *Ram Rakha v. Emperor*.

19 Cr. L. J. 686 :
46 I. C. 46 : 15 P. R. 1918 Cr. :
22 P. W. R. 1918 Cr. : 88 P. L. R. 1918 :
A. I. R. 1918 Lah. 216.

OPIUM ACT (I OF 1878)

—Ss. 5, 8, 9—*Offence under—Rules—Permit—Conditions, breach of—Incorrect account—Penalty.*

While a contravention of the rules framed under Ss. 5 and 8, Opium Act, is declared punishable as an offence under S. 9, a contravention of the conditions of the permit has not been declared to be penal. The only penalty for such contravention is the penalty specified in the permit itself, viz., the cancellation of the licence and the forfeiture of the money paid in pursuance of the licence. There is nothing in any of the rules made under S. 5, Opium Act, which would make the preparation of an incorrect account punishable under S. 9. *Maiku Lal v. Emperor.* 22 Cr. L. J. 743 : 64 I. C. 135 : 24 O. C. 235 : A. I. R. 1921 Oudh 143.

—Ss. 5, 9—*Liability of master for servant's acts—Licence—Breach of condition—Master and servant.*

A licensee under the Opium Act, is reponsible for breaches of the condition of his licence by his servant, though not committed with his knowledge and permission. Where, contrary to the conditions of a licence, the salesman of an opium licensee sells opium to a person under the age of 14 years in the licensee's absence, the licensee is guilty of an offence under S. 9, Opium Act, the mere sale of opium in contravention of the conditions of the licence constituting the offence. It is not a question of intention, *mens rea*, or knowledge. *Babu Lal v. Emperor.* 13 Cr. L. J. 282 : 14 I. C. 666 : 9 A. L. J. 288 : 34 All. 319.

—Ss. 5, 9—*Offence by licensee—Rules of Local Government—Sale of opium—Salesman unauthorised.*

A person who has taken a licence for the sale of opium is guilty of an offence under S. 9 of Act I of 1878, if he allows another person to sell it on his behalf, when that salesman's name is not endorsed on the licence under the rules framed by the Local Government and published in the *N.-W. P. and Oudh Government Gazette*, dated 11th June 1898, Part I, page 562. *Mohammed Yasin v. Emperor.* 1 Cr. L. J. 694 : 1 A. L. J. 245.

—Ss. 5, 9—*Power of Local Government to frame rules Licence in form prescribed by the Commissioner—Breach of.*

S. 5 (f), Opium Act, authorizes the Local Government to frame rules for regulating the sale of opium, and S. 9 makes it an offence to sell opium in contravention of the Act or the rules so framed. The Local Government cannot, however, delegate this power of making the rules to the Commissioner in Sind, and therefore the last words of rule 39 "or in such form as the Commissioner from time to time prescribes" are *ultra vires*. A breach of the terms of a licence which is not in the form E as prescribed by the Act but in the form approved of by the Commissioner in Sind

OPIUM ACT (I OF 1878)

cannot be punished under the Act. *Emperor v. Velji Lakhamasi.* 8 Cr. L. J. 188 : 1 S. L. R. 70.

—Ss. 5, 9 (g)—*Duty of licensee—Rules framed by U. P. Government, rr. 25, 48-A—Conditions of licence, No. 18—Licenced vendor of opium—Licence fee, failure to pay—Notice, absence of, effect of—Failure to write up accounts—Offence.*

A licenced vendor of opium becomes liable to pay the licence fee only on receipt of notice, and in the absence of such notice, he cannot be held criminally liable for failure to pay the licence fee. A licenced vendor of opium who fails to write up the account for a particular day as soon as the transactions for that day have been closed, is guilty of an offence under S. 9 (g), Opium Act. *Hazari v. Emperor.* 26 Cr. L. J. 1306 : 89 I. C. 250 : 12 O. L. J. 283 : 2 O. W. N. 303 : A. I. R. 1925 Oudh 350.

—Ss. 5 (c), 9 and 10—*Presumption—Presumption from the possession of opium.*

Where opium of any kind, and whether or not in excess of the prescribed maximum, is found in the possession of any person, and the legality of such possession is challenged by the Crown, the burden of proving that the possession was lawfully obtained lies on the person with whom the opium is found. *Emperor v. Mussammal Gulbi.* 1 Cr. L. J. 674 : 17 C. P. L. R. 75.

—S. 9.

See also Cr. P. C., 1898, S. 196-A.

—S. 9—*Conviction under, when legal—Mere contemplation of violating a rule, whether punishable.*

A person can be convicted for a breach of the rules framed under S. 9, Opium Act, only when he does some act in contravention of such rule and not merely for contemplating such violation. *In re; P. Venkatachallam Ghetti.* 15 Cr. L. J. 667 (b) : 25 I. C. 995 : A. I. R. 1915 Mad. 29.

—S. 9—*Illegal possession of opium—Possession by licensee at place different from where shop situate.*

The quantity of opium which may be in the possession of any person is determined by the rules issued by Government under the powers conferred by S. 5, Opium Act, and Rule No. 18 covers the case of a retail vendor of opium. The effect of that rule is that a person licensed to sell opium in retail may possess any quantity of opium subject to the conditions of his licence, subject also to the condition that he shall have obtained the opium in a certain specified manner from certain sources. *Emperor v. Lalli.* 18 Cr. L. J. 977 : 42 I. C. 593 : 41 P. R. 1917 Cr. : A. I. R. 1917 Lah. 436.

OPIUM ACT (I OF 1878)

———S. 9—Illicit sale of opium—Presumption.

Several persons were found present in a house, one of whom was smoking *chandu*. On the premises were found three pipes, two iron needles, one pair of tongs, one lamp and one smoking pillow. The quantity of opium found in the house was within the limit allowed by law: *Held*, that the facts of the case were not sufficiently strong to allow a presumption to be drawn that an illicit sale of opium was being carried on in the premises. *Ajuba v. Emperor*.

11 Cr. L. J. 138 :
5 I. C. 450 : 7 A. L. J. 25.

———S. 9—Joint criminal possession—House occupied by three brothers living jointly—Opium found in house—Eldest brother alone held should be convicted.

Several persons may be in joint criminal possession of an excisable article. But each case must be decided on evidence. Where a quantity of opium was recovered from a house occupied by three brothers living jointly: *Held*, that the eldest brother alone should be convicted under S. 9, Opium Act. *Kartara v. Emperor*.

39 Cr. L. J. 486 :
174 I. C. 789 : 40 P. L. R. 12 (2) :
10 R. L. 599 : A. I. R. 1938 Lah. 320.

———S. 9—Joint trial, legality of—Cr. P. C., Ss. 239 and 537—Misjoinder of parties, not mere irregularity.

On a certain day A was arrested and found in possession of a seer of opium alleged to have been purchased by B, A's companion, from C's shop. On A's information D's house was searched on the same day and 6 seers of opium were found there in D's absence. These four persons and D's wife were jointly tried on the following four charges the *first* charging all with having on that day engaged in illicit transport of opium, the *second* and the *third* charging A and B, and his wife, with having been on that day in unlawful possession of one and six seers of opium, respectively, and the *fourth* charging C with having on that day sold opium against the contract terms of the licence: *Held*, that the above joint trial was illegal and contrary to the provisions of S. 239, Cr. P. C., inasmuch as the accused did not commit the same offence or different offences in the same transaction. *Lachchu v. Emperor*.

15 Cr. L. J. 420 :
24 I. C. 156 : 1 O. L. J. 141 :
A. I. R. 1914 Oudh 171.

———S. 9—Joint possession—Illegal possession of opium.

A person found in possession of a quantity of opium in excess of what he can lawfully possess for his own personal use is guilty of an offence under S. 9, Opium Act, and the fact that he used to give opium to the other members of his family to eat, does not make them joint possessors of the opium with him. *Emperor v. Wazir Singh*.

19 Cr. L. J. 364 :
44 I. C. 588 : 3 P. R. 1918 Cr. :
A. I. R. 1918 Lah. 372.

OPIUM ACT (I OF 1878)

———S. 9—Joint possession—Proof—Rules under—Opium—Possession of.

The accused was charged for being in possession of 11½ *tolas* of opium and acquitted on the ground that there were other members of his family who took opium: *Held*, that the order of acquittal was wrong for there was no proof that the accused was in possession of the opium on behalf of other members of the family. *Emperor v. Buta Singh*.

2 Cr. L. J. 713 :
6 P. L. R. 509 : 34 P. R. Cr. 1905.

———S. 9—Liability of wife—Liability for possession of opium jointly with husband.

To make the wife liable for illegal possession of opium jointly with her husband, something more must be proved beyond the fact that the opium was found in the house and that she knew of the existence, such for example, as that she took the slightest part in the disposal of the opium or dealing with it in any manner. It is not always that the wife cannot be held responsible for what she and her husband are found in possession of. *Nga Shwe Toe v. Emperor*.

39 Cr. L. J. 278 (b) :
173 I. C. 27 : 10 R. Rang. 314 :
A. I. R. 1937 Rang. 434.

———S. 9—'Possession,' what constitutes—Illegal possession of opium—Knowledge of possession, necessity of.

A person cannot be convicted under S. 9 (c), Opium Act, for illegal possession of opium in the absence of circumstances from which it could be inferred that he had knowledge of the presence of the opium and that such opium was under his control. Possession implies knowledge on the part of the alleged possessor. *Shwe Kyo v. Emperor*.

30 Cr. L. J. 753 :
117 I. C. 248 : 7 Rang. 11 :
I. R. 1929 Rang. 184 : A. I. R. 1929 Rang. 121.

———S. 9—'Preparation' and 'admixture'—Punjab Excise Manual, r. 37 (d) mixture in process of preparation, possession of—Total weight exceeding prescribed limit—Offence.

The word "preparation" in rule 37 (d), Punjab Excise Manual, designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used. In the same way the word "admixture" refers also to a completed article and can only be applied to a thing after the mixing has been finished, and not earlier. In the intermediate stages of a preparation of opium, an offence is committed only if the amount of opium used in the manufacture is more than that permitted by law. *Hamiri v. Emperor*.

24 Cr. L. J. 668 :
73 I. C. 700 : 4 Lah. 12 :
A. I. R. 1924 Lah. 99.

———S. 9—Presumption.

Opium recovered from search of house—Presumption as to wife's joint possession with husband does not arise. *Nazir v. Emperor*.

36 Cr. L. J. 1437 :
158 I. C. 598 : 8 R. Pesh. 60 (2) :
A. I. R. 1935 Pesh. 68.

OPIUM ACT (I OF 1878)

———S. 9—Sale of Morphia by medical practitioner—Offence.

An approved medical practitioner is entitled under the Bengal Morphia Rules to possess a certain quantity of morphia drugs for use in his practice but not for sale. A medical practitioner who sells morphia, which he has prescribed to one of his patients, without a licence, is liable to conviction under S. 9, Opium Act. *Jogesh Chandra v. Emperor*.

21 Cr. L. J. 497 :
56 I. C. 657 : 24 C. W. N. 343 :
A. I. R. 1920 Cal. 403.

———Ss. 9, 10—Presumption—Illegal possession.

By virtue of the provisions of S. 10, Opium Act, in prosecutions under S. 9, it must be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under the Act. *Emperor v. Munshi Ram*.

20 Cr. L. J. 419 :
51 I. C. 195 : 9 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 116.

———Ss. 9, 10, 11—Possession—Possession of more than five tolas of opium—Rule 4 under the Act—Knowledge unnecessary to constitute offence—Possession and liability of manjhi or master of boat as common carrier—Circumstances justifying confiscation of boat.

According to S. 10, Opium Act, opium in respect of which it is to be presumed that the accused has committed an offence must be opium in the possession of the accused. Such possession need not be to the knowledge of the accused. Where the existence of more than five tolas of opium in a boat is not accounted for satisfactorily, it is to be considered in possession of the person who is in possession of the boat as *manjhi*. It cannot be considered in possession of the crew who are not in possession of the cargo which they presumably have no right to handle except by the *manjhi's* orders, though they may be concerned with the transit thereof. *Chedi Mala v. Emperor*.

1 Cr. L. J. 205 :
8 C. W. N. 349.

———Ss. 9, 14—Illegal search—Whether an illegal search destroys admissibility of evidence obtained thereby.

Where a quantity of opium was discovered on the premises of the petitioner by an unauthorized or illegal search made at midnight : *Held*, that it was immaterial how the opium was discovered. An illegal search does not affect the admissibility of discovery made thereby. *Emperor v. Nabu*.

4 Cr. L. J. 290 :
11 P. R. Cr. 1906.

———S. 9, Cl. (1)—Possession of opium—Possession of a Railway receipt for a parcel, containing opium, with knowledge of its contents.

Where the conduct of the consignee of an undelivered parcel, containing opium, showed that he was aware of the contents of the parcel and that it was sent to him with his

OPIUM ACT (I OF 1878)

full knowledge : *Held*, that the possession of a Railway receipt under these circumstances must be taken as possession of the opium within the meaning of S. 9, Cl. (c), Opium Act. *Kasi Nath Bania v. Emperor*. 2 Cr. L. J. 417 :
9 C. W. N. 719 : I. L. R. 32 Cal. 557.

———S. 9 (a)—Illegal search, effect of—Illegal possession is punishable—That search is illegal does not affect question.

The Opium Act contains no provision directing that a certain presumption shall be drawn on a search being made. It is the mere illegal possession that is punishable, and that possession does not rest on any presumption that the law orders to be drawn. Persons who make a search illegally render themselves liable to be sued for damages but their illegal action does not affect the question whether the person whose property was illegally searched has committed an offence under the Opium Act. *Kyi Yar v. Emperor*.

148 I. C. 1045 (1) :
A. I. R. 1934 Rang. 83.

———S. 9 (a)—Illegal search, effect of.

Persons who make a search illegally render themselves liable to be sued for damages, but their illegal action does not affect the question whether the person whose property was illegally searched has committed an offence under the Opium Act. *Kyi Yar v. Emperor*.

148 I. C. 1045 (1) : A. I. R. 1934 Rang. 83.

———S. 9 (c)—Beinchi—Opium Rules, 1910—Possession of three tolas legal, if bought from licenced vendor.

The Opium Rules, 1910, include *beinchi* in what is there called "defined opium," and allow the possession of such opium by a non-Burman up to three tolas in weight if bought by him from a licenced vendor. *Emperor v. Ah Pein Shok*.

15 Cr. L. J. 532 :
24 I. C. 844 : 2 U. B. R. 1914 :
A. I. R. 1914 U. Bur. 15.

———S. 9 (c)—Conviction of master for servant's possession—Illegal possession of opium—Proof.

In order to justify the conviction of a master under the Opium Act, based entirely upon the possession of another person, who is alleged to be his servant, it is not enough merely to call a witness who says that he is a neighbour of the servant and knows the fact of the service. Such a statement immediately suggests that it is mere hearsay. *Lachmi Prasad v. Emperor*.

18 Cr. L. J. 633 :
39 I. C. 1001 : 3 P. L. W. 344 :
A. I. R. 1917 Pat. 341.

———S. 9 (c)—Conviction under—Illegal possession of opium.

Where one person leaves a locked-up box containing opium in the house of another person, the latter is in illegal possession of opium and his conviction under S. 9 (c) of Act I of 1878 is correct. *In re : Ellore Venkata Vyamma*.

12 Cr. L. J. 185 :
9 I. C. 1019 : 1911, 2 M. W. N. 361.

OPIUM ACT (I OF 1878)

———S. 9 (c)—*Duty of prosecution—Illegal possession.*

To justify a conviction under S. 9 (c), Opium Act, of being in illegal possession of opium, the prosecution must prove that the premises where the opium was found were in the occupation of the accused. *Ma Mi v. Emperor.*

24 Cr. L. J. 934 :
75 I. C. 358 : 2 Bur. L. J. 16 :
A. I. R. 1923 Rang. 152.

———S. 9 (c)—*Exclusive possession—Place used by several persons.*

Where the place in which an article is found is one to which several persons have equal right of access, it cannot be said to be in the possession of any one of them. *Khusiram Maharaj v. Emperor.*

23 Cr. L. J. 264 :
65 I. C. 586 : 3 P. L. T. 13 :
A. I. R. 1922 Pat. 193.

———S. 9 (c)—*Liability of boatman—Contraband opium in possession of passenger by boat.*

The mere fact that a passenger by boat has contraband opium with him, places no liability on the boatman to give any satisfactory account of the opium; more especially where the prosecution evidence shows that it was the passenger who had the opium; the boatman in such a case cannot be convicted under S. 9 (c), Opium Act. *Makbul Ali v. Emperor.*

22 Cr. L. J. 21 :
59 I. C. 133 : A. I. R. 1920 Cal. 741.

———S. 9 (c)—*Liability of master for servant's possession—Rules under the Act—Directions under the Act—Direction 71, how far binding—Possession of servant—Burman servant in possession of three tolas opium for non-Burman master is not guilty of illegal possession.*

The custody of a servant is not such possession as the Opium Act and the rules thereunder contemplate. Direction 71 of the Directions under the Act, so far as it seems to imply that possession by a servant for his master is not legal unless the servant is entitled to possess on his own account, goes beyond the Act and rules and is, therefore, not legally binding. Consequently a Burman servant in possession of three tolas of opium for his master, a non-Burman, is not guilty of illegal possession. *Emperor v. Nga Pya Gyi.*

11 Cr. L. J. 55 :
4 I. C. 823 : U. B. R. 1907-09 : 11 Opium, p. 1.

———S. 9 (c)—*Offence under.*

The accused, a licenced vendor of opium, falsified his sale accounts by showing sales in excess of the actual amount sold and was thus enabled to accumulate a certain amount of opium: *Held*, that the accused was guilty of an offence under S. 9 (c), Opium Act. *Emperor v. Munshi Ram.*

20 Cr. L. J. 419 :
51 I. C. 195 : 9 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 116.

———S. 9 (c)—*Possession—Opium found in accused's house.*

Possession to be punishable must be posses-

OPIUM ACT (I OF 1878)

sion with knowledge and assent. *Nga Pu v. Emperor.*

13 Cr. L. J. 122 :
13 I. C. 778 : 4 Bur. L. T. 270.

———S. 9 (c)—*'Possession', meaning of.*

The word 'possession' as used in S. 9 (c), Opium Act, connotes conscious possession with knowledge and not mere physical or *de facto* possession, and the onus of proving such knowledge is on the prosecution. *Cyril C. Baker v. Emperor.*

32 Cr. L. J. 245 :
129 I. C. 184 : I. R. 1931 Cal. 136 :
A. I. R. 1930 Cal. 668.

———S. 9 (c)—*Possession of contraband opium—Possession of Railway receipt for same.*

Possession of a Railway receipt for contraband opium constitutes possession of the opium so as to be an offence within S. 9, Opium Act. *Ashraf Ali v. Emperor.*

11 Cr. L. J. 29 :
4 I. C. 699 : 36 Cal. 1016.

———S. 9 (c)—*Possession of servant on behalf of master, effect of.*

Where the master is himself not entitled to be in possession of opium, the servant cannot plead possession on behalf of the master to a charge under S. 9 (c), Opium Act. *In re : Mannar Krishna Chetty.*

17 Cr. L. J. 384 :
35 I. C. 816 : 1916, 2 M. W. N. 267 :
4 L. W. 373 : A. I. R. 1917 Mad. 687.

———S. 9 (c)—*Presumption—Illegal possession of opium—Shop owned by two brothers jointly.*

Two brothers were joint owners of a shop in which opium was sold, the licence being in the name of the elder brother. After the expiry of the licence, a quantity of opium was found in the shop: *Held*, that the presumption may safely be made that the possession of opium was that of the elder brother and that the younger brother was not, therefore, guilty of an offence under S. 9 (c), Opium Act. *Nand Lal v. Emperor.*

26 Cr. L. J. 1268 :
88 I. C. 1044 : 6 Lah. 311 :
A. I. R. 1925 Lah. 477.

———S. 9 (c)—*Rules framed under Act, r. (49) (2) (a)—Preparation of adulterated opium pills—Offence.*

The preparation of adulterated opium pills by a licence-holder does not contravene the provisions of r. 49 (2) (a) of the rules framed under the Opium Act and does not, therefore, amount to an offence under S. 9 (c). *Jiwan Ram v. Emperor.*

25 Cr. L. J. 666 :
81 I. C. 154 : 6 L. L. J. 206 :
1 Lah. Cas. 321 : A. I. R. 1924 Lah. 529.

———S. 9, Cl. (c)—*Scope of — Contraband opium—Possession—Owner of boat where opium found—Crew of boat.*

For the purposes of an offence under S. 9, Cl. (c), Opium Act, nothing is necessary beyond possession of contraband opium. There is no particular frame of mind required. If contraband opium is found in a boat, the owner of the boat may be said to be in

OPIUM ACT (I OF 1878)

possession of the opium, but not the crew of the boat. *Government of Eastern Bengal and Assam v. Sraja-ud-Din*. 12 Cr. L. J. 178 : 5 I. C. 555 : 14 C. W. N. 308 : 37 Cal. 25.

——— S. 9 (c)—*Scope of*.

The mere possession of the paraphernalia of opium smoking without any opium, is not in itself an offence under the Opium Act. *Ah Shaung v. Emperor*.

32 Cr. L. J. 506 : 130 I. C. 367 : I. R. 1931 Rang. 111 : A. I. R. 1931 Rang. 11.

——— S. 9 (c)—*Scope of—Two persons found jointly in possession of 9 mashes of chandu—Offence.*

Where under the Excise Law, the total quantity of chandu that a man could legally possess was 6 mashes and two persons were found in joint possession of 9 mashes of chandu; *Held*, that neither of them could be convicted under S. 9 (c), Opium Act. *Zarin Khan v. Emperor*.

31 Cr. L. J. 240 : 121 I. C. 292 : 31 P. L. R. 140 : A. I. R. 1930 Lah. 342.

——— S. 9 (c)—*Subsequent trial for illicit possession—Penal Code (Act XLV of 1860), S. 379—Theft of opium, conviction for.*

A person who has been convicted of theft in respect of a certain quantity of opium, can be subsequently tried for illicit possession of the same opium under S. 9, Opium Act. *Deoki Kocri v. Emperor*.

27 Cr. L. J. 767 : 95 I. C. 287 : 24 A. L. J. 559 : 48 All. 496 : A. I. R. 1926 All. 405.

——— Ss 9 (c), 10—*Presumption—Possession of opium not purchased from Government—Illegal possession of opium.*

The accused was found in possession of three tolas of opium five days after his last purchase of that amount recorded on his consumption slip. The Magistrate presumed that he must have consumed half a tola a day and that therefore the three tolas in his possession could not be opium purchased from Government. The defence was that accused had consumed only opium borrowed from friends in the meanwhile : *Held*, that the Magistrate's presumption was not justified. *Emperor v. Paw Yan*.

9 Cr. L. J. 14 : 4 L. B. R. 314.

——— S. 9 (c), (e)—*Illicit possession of opium—Servant's possession, whether on behalf of master when master and servant in each other's company—Presumption—Burden of proof—Possession with intention of exporting opium, whether amounts to offence of exporting.*

An unlawful possession of opium with the intention of eventually exporting it, does not amount to the offence of 'exporting' opium within the meaning of S. 9 (e), Opium Act. Unlawful possession of opium by a servant will not amount to possession by his master even when they are found in each other's company at the time, so as to render the master liable for conviction under S. 9 (c), of

OPIUM ACT (I OF 1878)

the Act. It is for the prosecution to prove affirmatively and clearly that the possession of the servant was on his master's behalf and with his master's authority. *Emperor v. Nawab*.

17 Cr. L. J. 194 : 34 I. C. 306 : 15 P. R. 1916 Cr. : 46 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 143.

——— S. 9, Cls. (c), (e)—*Importing opium, offence of—Possession of Railway receipt by consignee with knowledge that parcel contains opium, whether amounts to possession of opium.*

A Railway receipt which covered a parcel of opium was traced to be in possession of the accused. There was also found in his possession a letter addressed to him advising him of the despatch of the parcel : *Held*, Per *Richardson, J.*—That as the accused knew that the parcel sent to him contained opium, the possession of the Railway receipt constituted possession of the opium within the meaning of S. 9, Opium Act. Per *Shamsul Huda, J.*—That, although, under the circumstances of the case, it was doubtful whether the accused was guilty of the offence of possessing opium under Cl. (c), he was clearly guilty of importing opium under Cl. (e) of S. 9, Opium Act. *Fong Kun v. Emperor*.

20 Cr. L. J. 629 : 52 I. C. 389 : 23 C. W. N. 671 : 29 C. L. J. 524 : 46 Cal. 820 : A. I. R. 1919 Cal. 777.

——— Ss. 9 (c), (e), 14—*Conviction under—Illegality in exercise of right of search, whether invalidates conviction.*

Mere illegality in the exercise of the right of search under the Opium Act is not in itself a sufficient ground for setting aside a conviction under the Act. *Lalu Pandit v. Emperor*.

20 Cr. L. J. 745 : 53 I. C. 153 : A. I. R. 1919 Pat. 488.

——— S. 9 (c), (f)—*Licensee whether bound to re-weigh—Opium Rules, Rr. 30, 31—Charge for being in possession of opium not covered by licence.*

There is no rule enjoining a duty on a licensee for sale of opium to re-weigh the quantity of opium supplied by the treasury and enter in the stock register the actual weight and not the weight which the treasury has declared, and if he keeps his accounts on the footing of the weights given by the treasury, he cannot be said to have contravened Rr. 30 and 31 of the Rules under the Opium Act. *Narayana Chandra Borah v. Emperor*.

30 Cr. L. J. 37 : 112 I. C. 901 : I. R. 1929 Cal. 57 : A. I. R. 1928 Cal. 324.

——— S. 9 (c), (g)—*Right of authorised agent of licensee—Register of sales, mistake in—Agent, whether liable.*

The authorised agent of a retail licensee of opium, is entitled to possess opium to the extent of his licence. Neither the rules, nor the terms of the licence in the Punjab provide for any penalty against an authorised

OPIUM ACT (I OF 1878)

agent in respect of any mistake in the register of accounts of sales of opium. *Duni Chand v. Emperor*. 23 Cr. L. J. 337 :

66 I. C. 993 : 3 L. L. J. 49 :
A. I. R. 1921 Lah. 169.

—S. 9 (d)—*Offence under — Dangerous Drugs Act (II of 1930), Ss. 19 (a), 21 (1)—Joint trial, whether legal—Cr. P. C., Ss. 233, 239.*

The offence of the sale of opium without a licence is quite dissociable from the offence of importing foreign opium into British India. Opium sold without a licence need not necessarily be imported opium, and opium need not necessarily be imported for sale. The offence of the abetment of the importation of opium into British India, by one accused can form no part of the transaction in respect of which a charge under S. 9 (d), Opium Act, is framed against another for selling half a *tola* of opium to a bogus purchaser. Consequently, these offences are different offences committed in the course of the same transaction, falling within the exception to S. 233, Cr. P. C., laid down in S. 239 (d) of the same Code. Both the accused may be tried jointly in respect of the offence under the Dangerous Drugs Act, but the latter must be tried separately in respect of the offence under S. 9 (d) of the Opium Act. *Ghasiram v. Emperor*.

38 Cr. L. J. 542 :
168 I. C. 450 : 9 R. N. 255 :
A. I. R. 1937 Nag. 188.

—S. 9 (e)—*Exporting of opium—Parcel opened by post-office and sent on for identification of consignee—Attempt to export opium not punishable—Penal Code (Act XLV of 1860), S. 511.*

S. 511, Penal Code, does not apply to the offence of attempting to export opium, which offence is, therefore, not punishable at law. Where the accused tendered a parcel of opium at the Post-Office for despatch to Burma but the parcel was opened by the Postmaster at the place of despatch on account of information received and sent on to Burma by the postal authorities marked "doubtful" with a view to the identification of the consignee: *Held*, that the accused did not commit the offence of exporting opium under S. 9 (e), Opium Act, as the parcel was seized by the authorities before despatch and it ceased to be in the Post-Office on accused's account before it left India for Burma. *Bostan v. Emperor*.

12 Cr. L. J. 116 :
9 I. C. 682 : 2 P. R. 1911 Cr. :
6 P. W. R. 1911 Cr. : 10 P. L. R. 1911.

—S. 9 (e)—*Heavy penalties.*

Magistrates should impose heavy penalties where offence of smuggling opium is clearly proved. *The Superintendent and Remembrancer of Legal Affairs, Bengal v. Ludur Chandra Das*.

33 Cr. L. J. 267 :
136 I. C. 137 : 36 C. W. N. 456 :
59 Cal. 1065 : I. R. 1932 Cal. 185 :
A. I. R. 1932 Cal. 465.

OPIUM ACT (I OF 1878)

—S. 9 (e)—*Importing opium, offences of —Person exporting intending to take delivery himself, whether guilty of importing.*

A person who exports opium from outside British India to a place inside British India intending himself to take delivery in British India is guilty of importing opium into British India within the meaning of S. 9 (e), Opium Act. *Gobind Ram v. Emperor*.

25 Cr. L. J. 612 :
81 I. C. 100 : 46 All. 146 :
A. I. R. 1924 All. 558.

—S. 9 (e)—*Offence under, what constitutes.*

Offence of importing opium is constituted by bringing it into territory in question, when it was before is immaterial. *The Superintendent and Remembrancer of Legal Affairs, Bengal v. Ludur Chandra Das*.

33 Cr. L. J. 267 :
136 I. C. 137 : 36 C. W. N. 456 :
59 Cal. 1065 : I. R. 1932 Cal. 185 :
A. I. R. 1932 Cal. 465.

—S. 9 (e)—*'Possession', what constitutes—Mere temporary custody, whether possession.*

A and B purchased half a *tola* of opium each and B left his share of the opium near A and went to fetch water. A was thereupon arrested for being in possession of more than half a *tola* of opium: *Held*, that A could not, under the circumstances, be held to have been in possession of B's share of the opium, and could not be convicted under S. 9 (e), Opium Act. *Ramlal Lodhi v. Emperor*.

30 Cr. L. J. 727 :
117 I. C. 212 : I. R. 1929 Nag. 196.

—Ss. 9 (f), 10—*Illegal sale of Opium—Accused unable to account satisfactorily for opium—Presumption when to come into play.*

The effect of Ss. 9 and 10, Opium Act, is this, that when once it is proved that an accused person has dealt with opium in any of the ways described in S. 9, the onus of proving that he had a right so to deal with it, is thrown on the accused by S. 10. But the commission of an act which may be an offence must be proved before the presumption comes into play at all, and it cannot, therefore, be used to establish that fact. *Ishwar Chandra Singh v. Emperor*.

11 Cr. L. J. 256 :
6 I. C. 173 : 14 C. W. N. 710 :
12 C. L. J. 19 : 37 Cal. 581.

—S. 10—*Presumption—Onus.*

Accused was tried for illegal possession of opium found on him on the 18th May 1909. He accounted for it by saying that he had purchased it from a licenced vendor. This fact was accepted by the prosecution, but they alleged that the date of his purchase was such that this explanation was not satisfactory: *Held*, that it lay upon the prosecution to prove that date, and only then, upon the accused failing to satisfactorily account for the large quantity of opium still in his possession on the date of his arrest, could any presumption be drawn against him under S. 10, Opium Act. *Emperor v. Pa.*

11 Cr. L. J. 658 :
8 I. C. 461 : 3 Bur. L. T. 82.

OPIUM ACT (I OF 1878)

———S. 11—Confiscation—Conveyance used for carrying opium—Notice to owner, necessity of.

Under S. 11, Opium Act, a conveyance used for the purpose of carrying opium is liable to confiscation, which means that the section leaves it to the discretion of the Tribunal which is trying the case to decide whether having regard to the facts of a particular case, the conveyance used in the carrying of the opium may be confiscated. In a case where there is no improper conduct imputed to the owner of the conveyance, and, where during the course of the case nothing is proved to show improper conduct on the part of the owner, it would be advisable for the Magistrate who is trying the case to give the owner an opportunity of being heard before he comes to the conclusion whether the conveyance should be confiscated. *Mohammad Keshab v. Emperor*. 27 Cr. L. J. 127 : 91 I. C. 703 : 30 C. W. N. 240 : A. I. R. 1925 Cal. 1021.

———S. 11—Confiscation of boat.

S. 11, Opium Act, does not contemplate that every receptacle, such as of a ship or a house or a carriage, in which a small quantity of opium may happen to be found, is liable to confiscation; the liability arises from the owner of such conveyance using the conveyance for the purpose of transporting opium. A person cannot be made liable because his servant makes use of his private carriage as a depositary for his private stock of opium. *Abdul Rahman v. Emperor*. 12 Cr. L. J. 103 : 9 I. C. 587 : 15 C. W. N. 296.

———S. 12 — Confiscation — Notice before confiscation, necessity of—Magistrate, jurisdiction of, under Act, whether limited by Cr. P. C., S. 32.

Before ordering the confiscation of anything under S. 12, Opium Act, the alleged owner of that thing should be given an opportunity of showing cause against its confiscation. The special jurisdiction conferred on a Magistrate under the Opium Act is not in any way, limited by the Code of Criminal Procedure. Under S. 12, Opium Act, a Magistrate who has power to order confiscation, has also power to give the owner of the thing liable to be confiscated, an option to pay, in lieu of confiscation, such fine as he thinks fit to impose, and the amount of the fine may exceed the limit imposed by S. 32, Cr. P. C. *Manghan Dass v. Rahim Bux*. 23 Cr. L. J. 747 : 69 I. C. 635 : 2 P. L. T. 63 : A. I. R. 1921 Pat. 232.

———S. 14.

See also Opium Act, 1878, S. 9.

———S. 14—Investigation under.

Excise Officers investigating offences are virtually Police Officers, and a confession made before an Excise Officer during investigation is, therefore, inadmissible in evidence under

OPIUM ACT (I OF 1878)

S. 25, Evidence Act. *Ibrahim Ahmad v. Emperor*. 32 Cr. L. J. 640 : 131 I. C. 113 : 35 C. W. N. 601 : A. I. R. 1931 Cal. 350.

———S. 14—Procedure.

S. 14, read with S. 20, requires an Excise Inspector to reduce the information received by him in consequence of which search is made, to writing. *Emperor v. Bhopo*. 34 Cr. L. J. 1147 : 146 I. C. 43 : 27 S. L. R. 209 : 6 R. S. 53 : A. I. R. 1933 Sind 174.

———S. 14—Search, illegality of.

Search conducted after entering the premises after sunset is illegal. *Luchmi Narain v. Emperor*. 20 Cr. L. J. 742 : 53 I. C. 150 : A. I. R. 1919 Pat. 452.

———Ss. 14, 15—Search—Cr. P. C., S. 103 —Procedure—Non-compliance with provisions of S. 103, whether vitiates conviction.

The provisions of S. 103, Cr. P. C., are applicable to searches made under S. 14, Opium Act, but where a person is searched in an open place under S. 15 of the Act, compliance with the provisions of S. 103 is not obligatory. *Kali Kumar De v. Emperor*. 28 Cr. L. J. 372 : 100 I. C. 980 : 6 Bur. L. J. 11 : A. I. R. 1927 Rang. 170.

———Ss. 14, 15—Search—Witnesses to search —Failure to comply with law regarding searches —Illegal possession—Conviction—Cr. P. C., Ss. 102, 103—Evidence—Written information—Direct evidence.

A search under Ss. 14 and 15, Opium Act, must be conducted in accordance with the provisions of the Cr. P. C. It is objectionable to be constantly calling the same person to witness searches; and when searches are made under the Opium Act, respectable house-holders near to the house searched should be called as witnesses. But the circumstance that the witnesses to a search may not have been those contemplated by the Opium Act, does not prevent a conviction for illegal possession of opium where such illegal possession is nevertheless proved. *Mi Hauk v. Emperor*. 7 Cr. L. J. 87 : 4 L. B. R. 121 : 14 Bur. L. R. 202.

———Ss. 14, 15 and 16—Search under—Procedure—Search under Opium Act, not made in accordance with provisions of Cr. P. C.—Effect of—Cr. P. C., S. 103.

Under S. 16, Opium Act, it is provided that all searches under Ss. 14 or 15 should be made in accordance with the provisions of the former Cr. P. C. S. 103 of that Code provides that, before making a search, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate, to attend and witness the search and that the search shall be made in their presence and that a list of all things seized and of the places in

OPIUM ACT (I OF 1878)

which they are found shall be prepared by such officer or person and signed by such witnesses. *N. C. Sen v. Emperor*.

1 Cr. L. J. 993 :
10 Bom. L. R. 253.

—Ss. 14, 15, 19—*Authority to enter and search boat for opium—Entry on and search of vessel for opium—"In transit"—Seizure of opium.*

Although opium which is being carried about from place to place is "in transit," within the meaning of S. 15, Opium Act, even when the boat may be temporarily anchored or fastened, the section does not authorise an officer to enter a boat without the permission of the person in charge of it. In order to justify entry and search of a boat between sunset and sunrise against the will of the person in charge or without his permission, an officer must obtain a warrant from another officer who must be authorized under S. 19 of the Act. If an officer who has entered on a boat lawfully sees opium in it, he may seize it if he has reason to believe that it is liable to confiscation. *Emperor v. Nawzu*.

10 Cr. L. J. 85 :
2 I. C. 546 : 5 L. B. R. 56.

—S. 15.

See also (i) Evidence Act, 1872, S. 25.
(ii) Opium Act, 1878, S. 14.

—S. 16—*Applicability of—Seizure of opium in transit.*

S. 16, Opium Act, applies to searches made under Ss. 14 and 15 of the said Act and not to seizures of opium in transit. Seizure of opium in transit need not, therefore, be made in accordance with the rules for searches under the Cr. P. C. When an article to be seized is on the move and has no locale, it may be impossible to get witnesses of the locality to witness its seizure. *Maung San Myin v. Emperor*.

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

—S. 20—*Deposit of opium in police station—Duty of Magistrate.*

The investigating officer should deposit the opium recovered from the premises of the suspected person, in the nearest police station and not keep it with himself. *Lachmi Narain v. Emperor*.

20 Cr. L. J. 742 :
53 I. C. 150 : A. I. R. 1919 Pat. 452.

—S. 20—*Offence under.*

In a prosecution for an offence under S. 20 where the facts proved leave it uncertain whether the accused or some one else was the person who had the knowledge and control necessary to constitute possession of the article seized, the prosecution has failed to prove its case and must fail. *Fernando v. Emperor*.

32 Cr. L. J. 967 :
133 I. C. 1 : 1930 M. W. N. 1103 :
61 M. L. J. 854 : 34 L. W. 660 :
I. R. 1931 Mad. 689 :
A. I. R. 1931 Mad. 490 (2).

ORDINANCE (II OF 1932)

—S. 20—*Wife's liability.*

A wife cannot be held to be in joint possession with her husband of everything found in the house. *Fernando v. Emperor*.

32 Cr. L. J. 967 :
133 I. C. 1 : 1930 M. W. N. 1103 :
61 M. L. J. 854 : 34 L. W. 660 :
I. R. 1931 Mad. 689 :
A. I. R. 1931 Mad. 490 (2).

OPIUM RULES (1894)

—S. 1—*Pyaungchi, whether opium—Beinchi—Pyaungchi—Illegal possession.*

Beinchi or *pyaungchi* is now included in the definition of opium in the rule under the Opium Act, and its possession by a registered opium consumer is, therefore, no longer illegal, provided that the total weight of opium, including *beinchi* in his possession does not exceed 3 tolas. *Emperor v. On Bu*.

7 Cr. L. J. 410 :
4 L. B. R. 132.

ORAL CONFESSION

See also Cr. P. C., 1898, S. 164.

ORDINANCE

See also Government of India Act, 1919, S. 72.

ORDINANCE (XI OF 1931)

—S. 34—*Scope of.*

Charge-sheet framed on 24th November 1931, and Magistrate directing trial to begin on 9th December, 1931—Accused cannot be deemed to be on trial on 1st December at time of promulgation of Ordinance. *Dharani Kanta Chakrabarty v. Emperor*.

35 Cr. L. J. 226 :
146 I. C. 1051 : 57 C. L. J. 57 :
6 R. C. 285 : A. I. R. 1933 Cal. 594.

—S. 34—*Scope of.*

The words 'for which he was being tried' in S. 34, do not include commitment proceedings before the Magistrate. *Sudhindra Kumar Roy v. Emperor*.

34 Cr. L. J. 611 :
143 I. C. 593 : 60 Cal. 643 :
37 C. W. N. 312 :
I. R. 1933 Cal. 450 :
A. I. R. 1933 Cal. 354.

—S. 34—*Trial under.*

Trials which were commenced before the promulgation of the Ordinance but were going on at the date of the direction of the Government making the special procedure applicable, are not excepted. *Sudhindra Kumar Roy v. Emperor*.

34 Cr. L. J. 611 :
143 I. C. 593 : 37 C. W. N. 312 :
60 Cal. 643 : I. R. 1933 Cal. 450 :
A. I. R. 1933 Cal. 354.

ORDINANCE (II OF 1932)

—S. 28—*Conviction under, legality of.*

Conviction under S. 28 is not illegal for want of finding whether act is done in furtherance of movement prejudicial to public

ORDINANCE (X OF 1932)

safety. *Probodh Chandra Chakravarty v. Emperor*.
34 Cr. L. J. 345 :
142 I. C. 351 (2) : 36 C. W. N. 1158 :
60 Cal. 351 : I. R. 1933 Cal. 273 :
A. I. R. 1933 Cal. 186.

ORDINANCE (V OF 1932)

———S. 4—Fine.

A fine imposed on a person above 18 years on conviction under S. 4 cannot be recovered from the property of his father. *Salig Ram v. Emperor*.

34 Cr. L. J. 467 :
142 I. C. 846 : 34 P. L. R. 432 :
I. R. 1933 Lah. 286 (1).

ORDINANCE (VII OF 1932)

———S. 2—Effect of.

The effect of the Ordinance is to bring within S. 4, Press Act, every charge of misconduct by Government, whether such charge is well-founded or not. *In re : Pathan Joseph*. (S. B.)

33 Cr. L. J. 749 :
139 I. C. 262 : 56 Bom. 472 :
34 Bom. L. R. 917 :
I. R. 1932 Bom. 492 :
A. I. R. 1932 Bom. 468.

ORDINANCE (X OF 1932)

———S. 17—Charge after expiry of Ordinance.

After expiry of Ordinance charge under S. 17 is not justifiable. *Emperor v. Bansgopal*. (F. B.)
34 Cr. L. J. 1030 :
145 I. C. 680 : 6 R. A. 141 :
1933 A. L. J. 875 :
A. I. R. 1933 All. 669.

———S. 48—Duty of Special Judge.

It is the duty of Special Judge to make reference to Local Government when question is raised by defence under S. 48. *Amar Chandra v. Emperor*.

34 Cr. L. J. 320 :
142 I. C. 310 : 37 C. W. N. 481 :
60 Cal. 814 : I. R. 1933 Cal. 259 :
A. I. R. 1933 Cal. 364.

———S. 48 (2)—Scope of.

High Court cannot act under S. 48 (2)—Cr. P. C., S. 428 is not applicable. *Amar Chandra v. Emperor*.
34 Cr. L. J. 320 :
142 I. C. 310 : 37 C. W. N. 481 :
60 Cal. 814 : I. R. 1933 Cal. 259 :
A. I. R. 1933 Cal. 364.

———S. 80—Notification.

Notification under Ordinance II of 1932 vesting Magistrate with powers of Special Magistrate operates as notification under Ordinance X. *Ananta Kumar Mukherji v. Emperor*.
35 Cr. L. J. 480 :
147 I. C. 827 : 6 R. C. 368 :
37 C. W. N. 509 :
A. I. R. 1933 Cal. 679.

ORIGINAL JURISDICTION OF LAHORE HIGH COURT

See also Government of India Act, 1919, (9 & 10 Geo. V. C. 101), Ss. 124, 127, 128.

ORISSA TENANCY ACT (II OF 1913)

———S. 67 (3), (8)—Remedy under—Orders under S. 67 (3), by Sub-Divisional Officer—High Court, whether can interfere in their criminal revisional jurisdiction.

Neither the District Magistrate nor the High Court can interfere in their criminal revisional jurisdiction, with orders passed by a Sub-Divisional Officer in proceedings taken under S. 68 (3), Orissa Tenancy Act, as they are the orders passed by a Revenue Officer. The proper remedy for the aggrieved party is to proceed under S. 67 (8). *Sarat Chandra Das Mahapatra v. Emperor*.

38 Cr. L. J. 26 :
165 I. C. 925 : 15 Pat. 350 :
17 P. L. T. 500 : 3 B. R. 96 : 9 R. P. 229 :
A. I. R. 1936 Pat. 607.

OUDH COURTS ACT (IV OF 1925)

———S. 7.

See also Cr. P. C., 1898, S. 195 (3).

———S. 20—Rules under, framed by Oudh Chief Court, Chap. XXIII, rr. 26, 27, 1, 3, Chap. XX, r. 7—Seal of Court, effect of—Represented appeal—Summary dismissal of jail appeal.

There is nothing in rr. 1 and 3, Chap. XXIII, Oudh Courts Act, which makes the provisions of Chap. XX, applicable to criminal cases. The relevant rules relating to the disposal of jail appeals in Chap. XXIII, that is, rr. 26 and 27, do not at all imply the necessity for sealing the judgment after it has been passed by the Judge or Judges concerned. The duty of affixing the seal of the Court to a judgment imposed on the Bench Reader by Chap. XX, r. 7, Oudh Chief Court Rules is not a duty of a quasi-judicial nature but a duty of a purely ministerial nature. It is a ministerial act and its object is not to secure finality which is already present but merely to authenticate the judgment. *Rajkumari v. Emperor*.

41 Cr. L. J. 682 :
188 I. C. 780 : 1940 O. W. N. 520 :
1940 O. L. R. 389 : 13 R. O. 27 :
A. I. R. 1940 Oudh 371.

OUDH CRIMINAL DIGEST

———Para. 49.

See also Cr. P. C., 1898, S. 266.

OUDH CRIMINAL RULES

———R. 14.

See also Cr. P. C., 1898, S. 297.

OUDH LAWS ACT (XVIII OF 1876)

———S. 19.

See also Penal Code, 1860, S. 198.

PARDANASHIN WOMAN

———S. 19—*Language*.

Under S. 19 it is necessary to interpret the evidence recorded in English to a witness who gives his evidence in another language such as Urdu only if he does not understand English, and requests that his deposition be interpreted to him. *Hazari v. Emperor*.

32 Cr. L. J. 851 :
132 I. C. 270 : 8 O. W. N. 685 :
I. R. 1931 Oudh 270 :
A. I. R. 1931 Oudh 385.

OWNER

See also City of Bombay Municipal Act, 1888, S. 3 (m).

P**PALM IMPRESSION**

See also Evidence Act, 1872, S. 45.

PARDA LADY

See Cr. P. C., 1898, S. 205.

PARDANASHIN

———*Mode of taking evidence of—Ghoslin women, examination of—Duty of Court to afford facilities—Examination near Court in house secured by witness—Practice.*

Ghosha women, who are cited by parties as witnesses, need not be compelled to attend Court for the purpose. If the witness secures a house or room near the Court house, their evidence may be recorded there, regard being had to *Ghosha* being preserved. *In re : Man Bhoy*.
12 Cr. L. J. 501 :
12 I. C. 221.

PARDANASHIN ACCUSED

See also Cr. P. C., 1898, S. 353.

PARDANASHIN LADY

———*Mode of taking evidence of.*

Where the examination of *pardanashin* women as witnesses is necessary, the proper course would be for the Magistrate to examine them in Chamber after making provision for maintaining their *parda*. *Imperator v. Mewaram*.

12 Cr. L. J. 398 :
11 I. C. 582 : 4 S. L. R. 257.

PARDANASHIN WITNESSES

———*Evidence of, on Commission.*

Where an application is made for the examination of *pardanashin* witnesses on commission, the Magistrate should consider whether the case is one in which it is necessary to examine the witnesses at all and whether it is a suitable case for the issue of a Commission. *Imperator v. Mewaram*.

12 Cr. L. J. 398 :
11 I. C. 582 : 4 S. L. R. 257.

PARDANASHIN WOMAN

See also Practice.

PARDON

See also Cr. P. C., 1898, Ss. 337, 339.

———*Breach of condition of—What is.*

An approver must be considered to have failed to comply with the conditions of his pardon as soon as it is established that his disclosure is not a true and full one, and that it is not a true and full disclosure becomes apparent as soon as he is shown to have made a statement entirely inconsistent with the one upon the strength of which the pardon was granted. *Ram Nath v. Emperor*.

29 Cr. L. J. 413 :
108 I. C. 514 : 29 P. L. R. 165 :
10 A. I. Cr. R. 76 : 9 Lah. 608 :
A. I. R. 1928 Lah. 320.

PARTNERSHIP

———*Criminal liability of partners—Partners, when liable for criminal acts of managing partner.*

Merely because a person is a partner in a firm, he is not liable for all the criminal acts of the managing partner unless he was aware of them or in some way has connived at them. *Ramchandra Rango Sawkar v. Emperor*.

40 Cr. L. J. 579 :
181 I. C. 870 : 41 Bom. L. R. 98 :
11 R. B. 356 : A. I. R. 1939 Bom. 129.

PARTY INTERESTED

See also Cr. P. C., 1898, S. 526 (3).

PARTY TO PROCEEDING

See also Cr. P. C., 1898, S. 133.

PATNA HIGH COURT

———*Whether bound to follow practice of Calcutta High Court.*

Where there is a general practice sanctioned by concurrent decisions in the Calcutta High Court, the Patna High Court will not depart from it. *Padarath Singh v. Rattan Singh*.

21 Cr. L. J. 145 :
54 I. C. 673 : 5 P. L. J. 23 :
1920 Pat. 140 : 1 P. L. T. 458 :
A. I. R. 1920 Pat. 419.

PATNA HIGH COURT GENERAL RULES

———R. 33.

See also Legal Practitioners Act, 1879, S. 13.

PATNA HIGH COURT GENERAL RULES AND CIRCULARS

———R. 83—*Report under.*

A Magistrate found that the accused were caught in the act of taking away thatching grass which another man had two days earlier cut from his land, and that on his remonstrance, the accused struck him with *lathis*, the Sessions Judge recommended that the order of conviction under S. 379, Penal Code, should be set aside because no offence of theft was established and that the conviction under S. 323, Penal Code, should be set aside as the injuries

PENAL CODE ACT (XLV OF 1860)

caused were trifling : *Held*, that the Magistrate had not committed an error of law in either of his convictions such as would justify a report under r. 83 of Part I of the General Rules and Circular Orders of the Patna High Court. *Kishun Kumar Singh v. Emperor*.

30 Cr. L. J. 842 :

117 I. C. 646 : I. R. 1929 Pat. 454.

PAWN BROKER

———*Pawnbroker—What is.*

A person cannot be held to be a pawnbroker unless it is proved that he habitually carries on the business of lending money on the security of goods pledged with him, and that he holds himself out to lend money on such security. *Emperor v. Kanappa Chetty*.

6 Cr. L. J. 118 :

4 L. B. R. 8 : 13 Bur. L. R. 269.

———*Taking in pawn—What is.*

The law relating to pawning and pawnbrokers in this country is to be found in Chap. IX, Contract Act. Under the provisions of this Chapter, the receipt of goods as security for a loan constitutes a 'taking in pawn' even though no fixed time be agreed on for the repayment of the loan. *Emperor v. Kanappa Chetty*.

6 Cr. L. J. 118 :

4 L. B. R. 8 : 13 Bur. L. R. 269.

PENAL CODE ACT (XLV OF 1860)

See also Cr. P. C., S. 537.

———*Act offence under Penal Code and also Special Act—Effect—Scope.*

A penal enactment in a special Act, e. g., Companies Act, S. 260, is no bar to a prosecution under the Penal Code. The Companies Act, nowhere lays down that there can be no prosecution on a criminal charge otherwise than upon a direction by the Company Judge or Judges. *Emperor v. Bishan Sahai Vidyarthi*.

39 Cr. L. J. 38 :

171 I. C. 994 : 1937 A. L. J. 1073 :

10 R. A. 350 : 1937 A. L. R. 936 :

1937 A. W. R. 748 : I. L. R. 1937 All. 779 :

A. I. R. 1937 All. 714.

———*Scope—Whether overrides Statutes of Parliament.*

Penal Code is an enactment of the Indian Legislature, and cannot, therefore, override any provisions contained in any Statute of the British Parliament applicable to British India. *Faqir Singh v. Ali Mohammad*.

30 Cr. L. J. 460 :

115 I. C. 428 : I. R. 1929 Lah. 380 :

A. I. R. 1929 Lah. 217.

———*Ss. 2, 411—Stolen property retained in Native State—Jurisdiction of British Courts.*

A subject of a Native State who is guilty of retaining stolen property within the Native State is not liable to be punished under the Penal Code. *Gunna v. Emperor*.

27 Cr. L. J. 991 :

96 I. C. 655 : 24 A. L. J. 767 :

48 All. 687 : A. I. R. 1927 All. 80.

PENAL CODE ACT (XLV OF 1860)

———*Ss. 3, 4—Scope—British Indian subject committing offence in State—Jurisdiction of Courts of State.*

Obiter.—Indian Native subjects of His Majesty committing offences in a Native State are amenable to the jurisdiction of the Courts of that State. All that Ss. 3 and 4 of the I. P. C. provide is that such person is also liable to be prosecuted in British India for any offence committed under this Code, in a foreign territory. *Bishen Das v. Emperor*.

11 Cr. L. J. 390 :

6 I. C. 640 : 20 P. W. R. 1910, Cr. :

14 P. R. 1910, Cr.

———*S. 4.*

See also Cr. P. C., 1898, S. 271.

———*S. 4—Jurisdiction—Offence committed on high seas by subject of Native State—Jurisdiction of British Indian Courts.*

British Indian Courts have no jurisdiction to try a subject of a Native Indian State for an offence committed on board a ship belonging to a subject of a Native State outside territorial waters. *Punja Guni v. Emperor*.

19 Cr. L. J. 337 :

44 I. C. 449 : 20 Bom. L. R. 98 :

42 Bom. 234 : A. I. R. 1918 Bom. 249.

———*S. 4—Offence completed in British India by foreigner—Jurisdiction of British Courts.*

When a foreigner resident in England and not coming within the provisions of S. 4, Penal Code, conspires in England with person in British India to commit an offence under the Penal Code, that is to say, starts the train of his crime in foreign territory and perfects and completes his offences within British India, he is triable by a British Court when found within its jurisdiction, the use by him of an innocent agent or a mechanical contrivance, such as post, telegraph or telephone, for the purpose of effecting his purposes being immaterial. When an accused person is in British India and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country under the Fugitive Offenders Act. *Wheeler v. Emperor*.

29 Cr. L. J. 1089 :

112 I. C. 673 : A. I. R. 1928 Sind 161.

———*S. 4—Jurisdiction over foreign subjects.*

Where a foreigner in foreign territory initiates an offence which is completed in British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed. *Emperor v. Chhotatala Babar*.

13 Cr. L. J. 426 :

14 I. C. 970 : 14 Bom. L. R. 147.

———*S. 4—Scope.*

S. 4, Penal Code, confers certain extra-territorial jurisdiction in respect of acts committed outside British India by certain classes of persons including the Indian subjects of His Majesty ; but it does not affect the nature of

PENAL CODE ACT (XLV OF 1860)

the act for which they are liable. The act alleged must amount to an offence punishable under the Code. *In re : Rambharthi Hirabharthi.*

25 Cr. L. J. 333 :

77 I. C. 189 : 47 Bom. 907 :

25 Bom. L. R. 772 :

A. I. R. 1924 Bom. 51.

-----Ss. 4, 14—Scope and application—Application to Native States.

Though the Oaths Act extends to the territories of Native Princes and States in alliance with His Majesty so far as regards the subjects of His Majesty, a Court in a Native State cannot be treated as a Court within the meaning of Ss. 4 and 14 of the Act, in relation to proceedings which were held before that Court entirely under the law of that State, and which had nothing to do with any proceeding in British India or under the law in force in British India. *In re : Rambharthi Hirabharthi.*

25 Cr. L. J. 333 :

77 I. C. 189 : 47 Bom. 907 :

25 Bom. L. R. 772 :

A. I. R. 1924 Bom. 51.

-----S. 5.

See also Salt Act, 1882, S. 9.

-----S. 7—Scope.

S. 2 which provides that every person shall be liable to punishment "under the Code and not otherwise" for every act or omission contrary to the provisions thereof of which he shall be guilty, must be read subject to S. 5, Penal Code, which clearly makes a reservation with regard to offences specified therein. *Tagir Singh v. Ali Mohammad.*

30 Cr. L. J. 460 :

115 I. C. 428 : I. R. 1929 Lah. 380 :

A. I. R. 1929 Lah. 217.

-----S. 12.

See also Penal Code, 1860, S. 278.

-----S. 17.

See also Penal Code, 1860, S. 124-A.

-----S. 19.

See also Cr. P. C., 1898, S. 197.

-----S. 19.

Cr. P. C. (Act V of 1898), S. 197—Madras Local Boards Act (XIV of 1920)—Rules for conduct of Elections, r. 4—President of Union Board, whether 'public servant'—'Legal proceedings,' meaning of—Union Board President rejecting nomination paper on ground of allegation of leprosy of candidate—Complaint of defamation—Sanction of Local Government, whether necessary. *Abboy Naidu, President, Union Board, Tiruvellore v. Kanniappa Chettiar.*

30 Cr. L. J. 365 :

114 I. C. 817 : I. R. 1929 Mad. 337 :

A. I. R. 1929 Mad. 175.

-----S. 19—Judge—Who is.

Under S. 19, Penal Code, "Judge" denotes not only every person who is officially designated as a Judge but also every person who is empowered by law to give in any

PENAL CODE ACT (XLV OF 1860)

legal proceedings, civil or criminal, a definitive judgment or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive. *Abboy Naidu, President, Union Board, Tiruvellore v. Kanniappa Chettiar.*

30 Cr. L. J. 365 :

114 I. C. 817 : I. R. 1929 Mad. 337 :

A. I. R. 1929 Mad. 175.

-----S. 19—Legal proceeding—What is.

"Legal proceeding" in S. 19, Penal Code, means a proceeding regulated or prescribed by law, in which a judicial decision may or must be given. *Abboy Naidu, President, Union Board, Tiruvellore v. Kanniappa Chettiar.*

30 Cr. L. J. 365 :

114 I. C. 817 : I. R. 1929 Mad. 337 :

A. I. R. 1929 Mad. 175.

-----S. 21.

See also (i) Bengal Police Act, 1861.

(ii) C. P. Local Self-Government Act, 1920, Ss. 41, 42, 46, 70.

(iii) Cr. P. C., 1898, S. 200 (aa).

-----S. 21—Chief Minister, if public servant.

The Chief Minister of a Province is covered by the definition of "public servant." *Ramditta Mal-Duni Chand v. Emperor.*

40 Cr. L. J. 847 :

184 I. C. 10 : 12 R. Pesh. 22 :

A. I. R. 1939 Pesh. 38.

-----S. 21—Indian Prisons Act (XI of 1894), S. 23—Convict warders and overseers.

Convict warders and overseers are public servants within the meaning of S. 21, Penal Code. *Emperor v. Muhammad.*

9 Cr. L. J. 90 :

22 P. R. Cr. 1908.

-----S. 21—Interpretation.

"For any secular common purpose of any village, town or District," in S. 21 (10), governs the whole section. *Shridhar Mahadeo Pathak v. Emperor.*

36 Cr. L. J. 532 :

154 I. C. 600 : 36 Bom. L. R. 1133 :

7 R. B. 352 : A. I. R. 1935 Bom. 36.

-----S. 21—Municipal Officer—If public servant.

A Municipal Officer under the Bombay Municipal Act is a public servant under S. 21, Penal Code. *Emperor v. Elias Ezekiel.*

1 Cr. L. J. 23 :

6 Bom. L. R. 54.

-----S. 21—Patwari, if public servant.

Under S. 158, Land Revenue Code, cesses can be collected as if they were land revenue, and as it is within the duties of a *patwari* to collect land revenue and cesses due on land in his village, he is a public servant within the meaning of S. 21, Cl. (10), Penal Code. *Local Government, C. P. v. Madho Patwari.*

23 Cr. L. J. 557 :

68 I. C. 157 : A. I. R. 1923 Nag. 146.

PENAL CODE ACT (XLV OF 1860)

———S. 21 — Public servant—*Candidate peon.*

Per *Courtney-Terrel, O. J. and Agarwala, J. Scroope, J., Contra.*—Candidate peon getting no pay or remuneration entrusted with a service of warrant is a public servant within S. 21 (4) and (6). *Emperor v. Ram Chandra Sahu.*

34 Cr. L. J. 391 :
142 I. C. 588 : 14 P. L. T. 16 :
12 Pat. 184 : I. R. 1933 Pat. 156 :
A. I. R. 1933 Pat. 187.

———S. 21—Public servant—*Chairman, Co-operative Credit Society.*

The Chairman of a Co-operative Credit Society is not a public servant and hence sanction under S. 197, Cr. P. C., is not necessary to his prosecution. *Shridhar Mahadeo Pathak v. Emperor.*

36 Cr. L. J. 532 :
154 I. C. 600 : 36 Bom. L. R. 1133 :
7 R. B. 352 : A. I. R. 1935 Bom. 36.

———S. 21—Public servant—*Jail warder.*

A jail warder is a public servant within the meaning of S. 21 of the Penal Code. *Maula Bakshi v. Emperor.*

30 Cr. L. J. 1103 :
119 I. C. 762 : I. R. 1929 Lah. 938 :
A. I. R. 1929 Lah. 631.

———S. 21—Public servant—*Lambardar.*

A *Lambardar* is a public servant within the meaning of the Penal Code. *Said Muhammad v. Emperor.*

37 Cr. L. J. 283 :
160 I. C. 193 : 8 R. Pesh. 103 :
A. I. R. 1935 Pesh. 189.

———S. 21—Public servant—*Lambardar.*

When a *Lambardar* is engaged in collecting *haq bua* and no other due, he cannot be said to be acting in the execution of his duties as a Government servant. *Said Muhammad v. Emperor.*

37 Cr. L. J. 283 :
160 I. C. 193 : 8 R. Pesh. 103 :
A. I. R. 1935 Pesh. 189.

———S. 21—Public servant, *Municipal Commissioner.*

A Municipal Commissioner, prior to the amendment of S. 45, Bombay District Municipalities Act III of 1901, by Bombay Act XXVI of 1930, was a public servant within the meaning of S. 21. *Suganchand v. Seth Naraindas.*

34 Cr. L. J. 171 :
141 I. C. 530 : I. R. 1933 Sind 60 :
A. I. R. 1932 Sind 177.

———S. 21—Public servant, *officer of Court.*

S. 21, Cl. (4) distinguishes between a person who is an "officer of a Court of Justice" and a person who is not the latter, is not a "public servant". *Emperor v. Ram Chandra Sahu.*

34 Cr. L. J. 391 :
142 I. C. 588 : 12 Pat. 184 :
14 P. L. T. 16 : I. R. 1933 Pat. 156 :
A. I. R. 1933 Pat. 187.

———S. 21—Public servant, *who is.*

A Local Board *sircar* is not a public servant within the meaning of S. 21, Cl. 10, I. P. C. *Addaita Bhuia v. Kali Das De.*

6 Cr. L. J. 393 :
12 C. W. N. 96.

PENAL CODE ACT (XLV OF 1860)

———S. 21—Public servant, *who is—Public officer—Officers of Society for Prevention of Cruelty to Animals.*

Officers of the Society for the Prevention of Cruelty to Animals, appointed under the Bengal Police Act, 1861, are public servants within the meaning of the Penal Code. *Upendra Kumar v. Emperor.*

35 Cr. L. J. 420 :
3 C. L. J. 475 : 10 C. W. N. 727.

———S. 21—P. W. D. *lascar, if public servant.*

The definition of a public servant in S. 21 includes every officer in the service or pay of Government. A P. W. D. *lascar* who is carried on the regular establishment of the Department and whose general duty is to carry out the orders of his superior officer, the local Overseer, and who, in the course of his duties, is carrying out a function of Government, namely, the distribution of water from public channels, is a public servant within S. 21, Penal Code. *Public Prosecutor, Madras v. Kimidi Annam Naidu.*

27 Cr. L. J. 81 :
91 I. C. 385 : 21 L. W. 704 :
49 M. L. J. 192 : 48 Mad. 867 :
A. I. R. 1925 Mad. 1093.

———S. 21 — Vice-Chairman of Local Board, *if public officer.*

Person like Vice-Chairman of a Local Board constituted under the C. P. Local Self-Government Act who has been given authority to discharge certain public functions of a local or Municipal nature is a public officer within S. 21. *Anna Champatrao Deshmukh v. Emperor.*

38 Cr. L. J. 444 :
167 I. C. 752 : 19 N. L. J. 221 :
9 R. N. 211.

———S. 21—Village *Chaukidar, whether public servant.*

A Village *Chaukidar* is not an officer of Government, and is not, therefore, a 'public servant' within the meaning of S. 21 (eighth) of the Penal Code. *Arjan Mal v. Emperor.*

23 Cr. L. J. 709 :
69 I. C. 437 : 3 Lah. 440 :
A. I. R. 1923 Lah. 260.

———S. 21—Villager assisting headman, *if public servant.*

A villager assisting a headman in the discharge of his duties and required to bring an accused person into a Police Station in arrest is not a public servant within the meaning of S. 21, Penal Code. *Nga Paw E v. Emperor.*

18 Cr. L. J. 351 :
38 I. C. 735 : 2 U. B. R. (1916) 122 :
10 Bur. L. T. 170 : A. I. R. 1917 U. Bur. 8.

———S. 21, Expl. 2—*Scope.*

S. 21, Expl. (2) is not confined to mere technical defects but covers a defect occasioned by want of jurisdiction in the appointer to make the appointment. *Satlesh Chandra v. Nehal Chand.*

33 Cr. L. J. 521 :
137 I. C. 812 : 36 C. W. N. 134 :
59 Cal. 234 : I. R. 1932 Cal. 384 :
A. I. R. 1932 Cal. 462.

PENAL CODE ACT (XLV OF 1860)

———Ss. 21 and 99—"Public servant"—
Who is.

A *gorait* is a public servant within the meaning of Ss. 21 and 99, Penal Code. *Emperor v. Sidhu.*

1 Cr. L. J. 342 :
24 A. W. N. 101.

———Ss. 21, 161—*Public servant—Who is.*

An unpaid apprentice of Government is not a public servant within the meaning of S. 21, Penal Code. *Mahendra Prosad v. Emperor.*

12 Cr. L. J. 117 :
9 I. C. 698 : 15 C. W. N. 319.

———Ss. 21, 186—*Public servant—Assessor Panch is public servant.*

The local collecting member of the *chaukidari panchayat* known as the Assessor *Panch* is a public servant within the meaning of S. 21, I. P. C., and when he is executing a warrant to realise arrears of *chaukidari* tax, he is acting in the discharge of his public duties. *Gopal Mahton v. Emperor.*

41 Cr. L. J. 819 :
190 I. C. 98 : 21 P. L. T. 716 :
6 B. R. 914 : 13 R. P. 182 :
A. I. R. 1941 Pat. 161.

———Ss. 21, 186—*Public servant—Clerk in cess-collection department of a District Municipality.*

A clerk in the cess-collection department of a District Municipality constituted under Bombay District Municipalities Act, is a public servant within the meaning of S. 21 (10), I. P. C. To offer any obstruction to him is punishable under S. 186 of the Code. *Emperor v. Babulal.*

8 Cr. L. J. 269 :
1 I. C. 869 : 10 Bom. L. R. 761 :
33 Bom. 213.

———Ss. 21, 353—*Sanitary Inspector of Panchayat Board, if public servant.*

The Sanitary Inspector of a *Panchayat* Board is not a public servant as defined in S. 21, Penal Code, and the fact that the Sanitary Inspector is authorized by the President of the *Panchayat* Board to collect fees or sealing animals before slaughter would not make him a public servant. *V. Subramania Pillai v. G. J. Ponniah.*

40 Cr. L. J. 822 (b) :
183 I. C. 560 : 49 L. W. 546 :
1939, 1 M. L. J. 729 :
1939 M. W. N. 469 : 12 R. M. 330 :
A. I. R. 1939 Mad. 569.

———Ss. 21 (7), 161—*Prisons Act (IX of 1894), S. 42—Convict warder, if "public servant."*

A convict warder in a Jail is a "public servant" within the meaning of the definition contained in S. 21 (7), Penal Code. *Saifin Rasul v. Emperor.*

25 Cr. L. J. 1382 :
83 I. C. 342 : 26 Bom. L. R. 267 :
A. I. R. 1924 Bom. 385.

———S. 21 (8)—"Public servant"—*Madras City Police Act (III of 1888), S. 53—S. P. C. A. Agent appointed as Police Officer, if a public servant.*

An agent of the "Society for the Prevention

PENAL CODE ACT (XLV OF 1860)

of Cruelty to Animals" appointed in respect of offencess under S. 53, Madras City Police Act, III of 1888, as a member of the City Police Force is an officer of Government and a "public servant" within the definition of S. 21 (8), Penal Code. *In re : Nataraja Pillai.*

23 Cr. L. J. 736 :
69 I. C. 464 : 16 L. W. 794 :
31 M. L. T. 369 : 1922 M. W. N. 851 :
A. I. R. 1923 Mad. 188.

———Ss. 21 (ix), 116, 161—*Sub-Inspector of Police belonging to Finger Print Bureau, if Public servant—Bribe.*

A Sub-Inspector of Police belonging to the Finger Print Bureau and in the service and pay of Government, is a public servant within the meaning of S. 21 (ix), Penal Code, even if he is not performing the ordinary duties of a Police Officer. A person who offers a bribe to an expert from the Finger Print Bureau in order to induce the expert to show favour to a particular party in giving evidence before a Court is guilty of an offence under S. 161 read with S. 116, Penal Code. *Karam Chand v. Emperor.*

23 Cr. L. J. 717 :
69 I. C. 445.

———Ss. 21, Cl. (9) and 161—*Public servant, a clerk to a Sub-Registrar.*

A clerk or a *moharir* appointed by a Sub-Registrar and paid out of an allowance given to the Sub-Registrar calculated on the number of documents registered, is not a 'public servant' within the meaning of Cl. (9) of S. 21, Penal Code. *Bhagwati Sahai v. Emperor.*

2 Cr. L. J. 512 :
I. L. R. 32 Cal. 664.

———Ss. 21 (9), 161—'Public servant'—*Quartermaster's clerk—Taking illegal gratification in respect of official act—Offence.*

The mere fact that a person is in the pay or service of Government is not enough to constitute him a public servant within the meaning of S. 21 (ninthly), Penal Code. He must also be an "officer", i. e., holder of some office. The office may be of dignity and importance or it may be humble; but whatever its nature, it is essential that the person holding the office should have in some degree delegated to him certain functions of Government. A Quartermaster's clerk merely as such is not necessarily a public servant within the meaning of S. 21, Penal Code, but a person who is otherwise an officer in the pay or service of Government, does not lose his status as a public servant if, while still such an officer, he is employed as a Quartermaster's clerk. For the purposes of S. 161, Penal Code, it is not necessary that at the time of the bribe-taking the accused person should be actually discharging the functions which constitute him a public servant; it is sufficient that he is a public servant and his act falls under one of the three clauses specified in the section. *Ahad Shah v. Emperor.*

19 Cr. L. J. 486 :
45 I. C. 150 : 18 P. R. 1918 Cr. :
26 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 152.

PENAL CODE ACT (XLV OF 1860)

—Ss. 21 (10)—Public officer—Tax Collector of Municipality.

A person employed by a Municipality for the purpose of collecting taxes is a public officer under S. 21 (10), Penal Code. *Government Advocate, Behar and Orissa v. Ganga Prasad*.

25 Cr. L. J. 31 :
75 I. C. 719 : 3 P. L. T. 559 :
1 Pat. 423 : A. I. R. 1922 Pat. 532.

—S. 22—Movable property—Crops—Village Court, jurisdiction of, to attach crops.

A person who removes growing crops attached by a village Court does not commit an offence under S. 424, Penal Code, inasmuch as crops are not movable property within S. 22, Penal Code, or S. 3, Madras General Clauses Act, and a village Court can only attach movables. *Nallamadani Chettiar v. Emperor*.

31 Cr. L. J. 1196 :
127 I. C. 296 : 58 M. L. J. 509 :
31 L. W. 719 : 1930 M. W. N. 352 :
A. I. R. 1930 Mad. 509.

—S. 23—Seizure and detention of cattle doing damage, if 'wrongful loss'.

A seizure and detention of an animal by a person doing damage to his fields for less than twenty-four hours being authorized by the Cattle Trespass Act, would not amount to causing 'wrongful loss' to the owner of the animal within the meaning of S. 23. *Ramratan v. Emperor*.

23 Cr. L. J. 511 :
68 I. C. 47 : A. I. R. 1923 Nag. 64 (2).

—S. 23—Wrongful loss—What is—Acting fraudulently or dishonestly.

D who was a horse-dealer was entrusted by C with a mare to be disposed of at the best possible price. He received an offer from L which he did not accept. Subsequently D showed L a telegram which purported to have been sent by C, and thereby induced L to give a higher price for the mare. L stated that the price which he paid was the price which he would have paid even if the mare belonged to D : *Held*, that no wrongful loss was caused to L within the meaning of S. 23, Penal Code, by reason of the fact that he was induced to give a higher price of the horse and D could not, under the circumstances, be held to have acted fraudulently. *Dick v. Emperor*.

16 Cr. L. J. 49 :
26 I. C. 641 : 12 A. L. J. 1258 :
A. I. R. 1914 All. 538.

—S. 23—Wrongful loss—What is.

The essential element of the offence of mischief in S. 425, Penal Code, is the causing of "wrongful loss" to another's property, which is defined in S. 28 of the same Code as being loss caused by "unlawful means." *In re : Achi Iyer*.

23 Cr. L. J. 607 :
68 I. C. 831 : 14 L. W. 728.

—Ss. 23, 24, 378, 111 (j), 380—Article given for repairs—Repairs not finished within fixed or reasonable time—Removal by owner—Theft.

Where a certain sum is fixed for the repair of an article and there is nothing to indicate

PENAL CODE ACT (XLV OF 1860)

that the repairer would be entitled to receive remuneration for a part of the repair, he has no right to retain the article until he receives his remuneration for the amount of work done. A person who is entrusted to repair a certain article is not entitled to claim lien or to refuse to part with it after doing a certain amount of work which makes no improvement thereupon, and the owner is entitled to recover it from him without paying for such work. *Jindah v. Emperor*.

90 I. C. 289 : 29 C. W. N. 1011 :
53 Cal. 174 : A. I. R. 1926 Cal. 464.

—Ss. 230 to 254—Offences relating to coins—Rules in Resource Manual, effect of.

The rules prescribed by Government in the Resource Manual, under which Bank Officers are directed to accept or return defaced coins, cannot be understood to take away the effect of the provisions of the sections of the Penal Code in connection with the offences relating to coins, because such rules do not deal with any criminal liability which is provided for in the Penal Code. *Mehrab Rai v. Emperor*.

27 Cr. L. J. 426 :
93 I. C. 154 : 24 A. L. J. 842 :
48 All. 603 : A. I. R. 1926 All. 321.

—S. 24.

See also (i) Cr. P. C., 1898, S. 195 (c).
(ii) Penal Code, 1860, Ss. 464, 477-A.

—S. 24—Acting dishonestly—Meaning of.

A tenant cutting trees standing on his own *jirayati* land and for which he has executed a *kadapa*, which gives the landlord only a claim for compensation for trees so cut, cannot be said to be acting "dishonestly" within the meaning of S. 24, Penal Code, and is not guilty of theft, and the provisions of S. 12, Madras Estates Land Act do not apply. *Reddi Yerranna v. Emperor*.

15 Cr. L. J. 586 :
25 I. C. 338 : 1 L. W. 528 :
A. I. R. 1915 Mad. 270.

—S. 24—Definition—Applicability.

The definition of "dishonestly" in S. 24 applies only to wrongful gain or wrongful loss. *Sanjiv Ratnappa v. Emperor*. 34 Cr. L. J. 357 :
142 I. C. 386 (2) : 34 Bom. L. R. 1090 :
56 Bom. 488 : I. R. 1933 Bom. 237 :
A. I. R. 1932 Bom. 545.

—S. 24—Definition of dishonestly, if exhaustive.

The definition of the word "dishonestly" in S. 24 of the Penal Code is not exhaustive. *Baju Jha v. Emperor*. 30 Cr. L. J. 236 :
113 I. C. 712 : 9 P. L. T. 800 :
I. R. 1929 Pat. 104 : A. I. R. 1929 Pat. 60.

—S. 24—Dishonestly—Meaning of.

A person is said to take dishonestly when he takes with the intention to cause wrongful loss to another person, that is to say, with the intention that such person should be wrongfully kept out of the property. *Ajodhya Nath Parhi v. Emperor*.

21 Cr. L. J. 208 :
54 I. C. 992 : A. I. R. 1920 Pat. 582.

PENAL CODE ACT (XLV OF 1860)

—S. 24—*Dishonestly—Meaning of.*

A person, who by falsely pretending to be winner of a lottery prize dishonestly induces the lottery officials to pay the prize to him, does not cause "wrongful loss" to the rightful winner of the prize, but causes a "wrongful gain" to himself by obtaining by false pretence what he is "not legally entitled" to, and therefore, he acts "dishonestly" within the meaning of S. 24, Penal Code. *Nga Tha Yin v. Emperor.* 15 Cr. L. J. 555 : 24 I. C. 963 : A. I. R. 1914 L. B. 220.

—S. 24—*Dishonestly—Meaning of.*

The mere fact that the judgment-debtor who is entitled to remove his crops which are not validly attached, has removed them, does not prove that he has done so dishonestly. *Sarsar Singh v. Emperor.* 35 Cr. L. J. 1307 : 151 I. C. 366 : 1934 A. L. J. 749 : 3 A. W. R. 682 : 7 R. A. 153 : A. I. R. 1934 All. 711.

—S. 24—"Dishonestly," meaning of.

The word "dishonestly" as defined in S. 24, Penal Code, does not necessarily imply wrongful gain to the accused himself. *Hay v. Emperor.* 26 Cr. L. J. 1217 : 88 I. C. 833 : 2 O. W. N. 469 : 28 O. C. 203 : A. I. R. 1925 Oudh 469.

—S. 24—"Dishonestly," meaning of.

Where a person takes away a thing with the intention of causing wrongful loss to the proprietor who is entitled to it, it cannot be said that his intention was not dishonest within the meaning of the word as used in the Penal Code, though he had no intention to convert it to his own use. *Lal Mohammad v. Emperor.* 32 Cr. L. J. 739 : 131 I. C. 539 : 12 P. L. T. 556 : I. R. 1931 Pat. 219 : A. I. R. 1931 Pat. 337 (2).

—S. 24—*Dishonestly—Meaning of—Wrong entries in Revenue Registers—Fraud or dishonesty, no finding of—Intention—Offence, whether committed.*

Where the accused, a *patwari*, made wrong entries in the Revenue Registers, but where there was no finding that he did so with intent to defraud or dishonestly, within the meaning of S. 24, Penal Code, he did not make a false document as defined in S. 464, nor did he fraudulently alter any book or register within the meaning of S. 477-A, of the Penal Code. *Muhammad Sirdar v. Emperor.* 16 Cr. L. J. 19 : 26 I. C. 323 : 25 P. R. 1914 Cr. : 37 P. W. R. 1915 Cr. : 209 P. L. R. 1915 : A. I. R. 1914 Lah. 586.

—S. 24—Temporary wrongful loss and wrongful gain.

Temporary wrongful loss and temporary wrongful gain are within the meaning of "wrongful loss" and "wrongful gain" contained in S. 24, Penal Code. *Local Government, G. P. v. Madho Patwari.* 23 Cr. L. J. 557 : 68 I. C. 157 : A. I. R. 1923 Nag. 146.

—S. 25.

See also Penal Code, 1860, Ss. 415, 468, 477-A.

PENAL CODE ACT (XLV OF 1860)

—S. 25—"Intent to defraud," meaning of.

The expression "Intent to defraud" in S. 25, I. P. C., means intent to deceive in such a manner as to expose any person to loss or the risk of loss, and loss means not only a deprivation of property but covers the infringement of any right possessed by a person. *Robinson v. Emperor.* 22 Cr. L. J. 681 : 63 I. C. 617.

—S. 27—Presumption, when arises.

To raise the presumption under S. 27, I. P. C., something more than mere possession by the wife or mistress must be proved. *Banwari Lal v. Emperor.* 15 Cr. L. J. 172 : 22 I. C. 748 : 97 P. L. R. 1914 : 25 P. W. R. 1914 Cr. : 20 P. R. 1914 Cr. : A. I. R. 1914 Lah. 455.

—S. 27—Temporary possession.

Under S. 27 the temporary possession of the wife should always be attributed to the husband. *Wazir v. Emperor.* 36 Cr. L. J. 1437 : 158 I. C. 598 : 8 R. Pesh. 60 (2) : A. I. R. 1935 Pesh. 68.

—S. 27—Unlicensed arm in possession of servant—Master, liability of.

A unlicensed pistol was found in the shop of one O who had been absent from his place for some days, leaving the shop in charge of his servant H. There was nothing to show that the pistol was a sort of article that one could reasonably expect to be for sale in that shop. Both the master and the servant were convicted under the Arms Act, the Magistrate holding that the pistol being found in the possession of the servant must be deemed to have been in possession of the master under S. 27, Penal Code : *Held*, that it was proved in this case that the possession of H was on account of O and that, therefore, the conviction of the latter could not be upheld. *Chhotey v. Emperor.* 23 Cr. L. J. 729 : 69 I. C. 457 : 20 A. L. J. 855 : A. I. R. 1923 All. 33.

—S. 28.

See also Penal Code, 1800, Ss. 260, 480.

—S. 28—Counterfeit—Meaning of.

It shall be presumed that the person causing one thing to resemble the other, intended to practice deception or knew it to be likely that deception would thereby be practised. *Abdul Sovan v. Jitendranath Dulla.*

32 Cr. L. J. 1171 : 134 I. C. 446 : I. R. 1931 Cal. 830 : A. I. R. 1931 Cal. 445.

—S. 28—Counterfeiting coins—Person making coins putting them in house of enemy and foisting false case—Such coins, whether "counterfeit" coins within S. 28.

If the intention of a person who makes or causes coins to be made is to use them in order to commit some other offence, such

PENAL CODE ACT (XLV OF 1860)

as giving false information against an enemy, and foisting a false case upon an enemy by putting such coins in his house, that intention *prima facie* is not to practice such deception, and those coins do not come within the definition of "counterfeit coins" within the meaning of S. 28, Penal Code. *Velayudham Pillai v. Emperor*.

39 Cr. L. J. 51 :
171 I. C. 951 : 1937 M. W. N. 551 :
1937, 2 M. L. J. 232 :
46 L. W. 141 : 10 R. M. 416 :
I. L. R. 1939 Mad. 80 :
A. I. R. 1938 Mad. 711.

———S. 28—Counterfeiting stamps, what amounts to.

Accused, a stamp-vendor under the Forest Account Rules, altered some used stamps so as to resemble genuine un-used stamps, and affixed them to licences issued to licensees for grazing cattle : *Held*, that the alteration of the stamps amounted to counterfeiting under S. 28, Penal Code, and that the accused was guilty of an offence under S. 260 of that Code. *Ramlal v. Emperor*.

22 Cr. L. J. 289 :
60 I. C. 785 : A. I. R. 1921 Nag. 80.

———S. 28—"Counterfeiting"—What is—Deception referred to in S. 28, is with regard to nature of coins—Accused planting counterfeited coins in another house—Whether amounts to deception referred to in section—Accused, if can be said to have "counterfeited" coins.

The deception meant in S. 28, Penal Code, is with regard to the nature of the coins. It is deception through the resemblance of the true coin with the false and it means that someone must be led to believe that the false coin is a true one. Where the accused counterfeits coins and introduces them into another's house with the sole object that he should be thought to be the counterfeiter and be prosecuted, he is not guilty of counterfeiting. *Sahebrao v. Emperor*.

39 Cr. L. J. 838 :
176 I. C. 985 : 11 R. N. 102 :
A. I. R. 1938 Nag. 444.

———S. 28—Presumption of guilty intention—When arises.

When the coins counterfeited are such imitations of the genuine coin as might deceive people on account of the resemblance, the presumption referred to in S. 28, Exception 2, Penal Code, arises. *Emperor v. Qadir Bakhsh*.

6 Cr. L. J. 395 :
4 A. L. J. 776 : 27 A. W. N. 289 :
30 All. 93 : 3 M. L. T. 56.

———Ss. 28, 195, 232, 235—Counterfeiting coin—Abetment—Cr. P. C., S. 237 (1)—Charge—Conviction under different sections of I. P. C.

The accused were charged under Ss. 282 and 235, Penal Code, for coining false rupees. It was found that coining at the time of the arrest of the accused was not done for the purpose of making gain by passing false coins off on the public as good ones

PENAL CODE ACT (XLV OF 1860)

but for the purpose of getting them secretly into the house of the enemies of the accused against whom they were making to the Police a false charge of theft accompanied by a request for house search. They were acquitted of the offence under S. 232, Penal Code, on the ground that they were not counterfeiting coin as defined in S. 28, Penal Code, but they were convicted of offence under Ss. 233 and 195/107, Penal Code : *Held*, (1) that S. 235, Penal Code, was inapplicable to the case; (2) that the conviction under S. 195 was permissible although the section was not mentioned in the charge; (3) that the convictions under Ss. 195/107 should be altered to convictions under S. 195 as there was no abetment. *Lal Chand v. Emperor*.

13 Cr. L. J. 252 :
14 I. C. 604 : 43 P. L. R. 1912 :
17 P. W. R. 1912 Cr.

———S. 29—Document—What is—Reserved forest—Letters imprinted on trees, whether "document."

Letters imprinted on a tree which are intended to be evidence of the fact that the tree has been passed by a Forest Officer and so can be removed from the place where it lies in the forest, constitute a "document" within the meaning of S. 29, Penal Code. *Emperor v. Krishappa Khandappa*.

26 Cr. L. J. 1014 :
87 I. C. 838 : 27 Bom. L. R. 599 :
A. I. R. 1925 Bom. 327.

———S. 30.

See also Penal Code, 1860, Ss. 415, 420.

———S. 30—Valuable security—What is.

A decree or an order in execution of a decree directing the delivery of property is not a "valuable security" as defined in S. 30, Penal Code. *Charu Chandra v. Emperor*.

25 Cr. L. J. 1034 :
81 I. C. 810 : 39 C. L. J. 122 :
28 C. W. N. 414 : A. I. R. 1924 Cal. 502.

———S. 30—Valuable security—What is.

A title page of an account book of a firm, containing the names of the several partners, and showing the amount of capital contributed by each, if signed by the partners, may be a valuable security within the meaning of S. 30, I. P. C. *Hari Charan v. Srish Chandra*.

11 Cr. L. J. 525 :
7 I. C. 747.

———S. 30—Valuable security—What is.

An acknowledgment of receipt of an insured parcel is not a "valuable security" within the meaning of S. 30, Penal Code. *Sadhu Lal v. Emperor*.

17 Cr. L. J. 272 :
34 I. C. 992 : A. I. R. 1917 Pat. 699.

———S. 30—Valuable security—What is.

An account paper, which purports to be a document whereby a person acknowledges that he lies, under a legal liability, is a valuable security. *Idu Jolaha v. Emperor*.

19 Cr. L. J. 709 :
46 I. C. 293 : 3 P. L. J. 386 :
A. I. R. 1918 Pat. 274.

PENAL CODE ACT (XLV OF 1860)

—S. 30—*Valuable security—What is—Counterfoil of paying-in-slip of Bank—Using forged counterfoil as genuine—Offence, whether triable by Court of Session.*

A counterfoil of a paying-in-slip which purports to be an acknowledgment of the receipt of a sum of money by a Bank and bears the impression of a stamp put upon it by the Bank Officials stating that the amount mentioned in the counterfoil has been received by the Bank is a valuable security and a person who is charged with an offence under S. 471 of the Code with regard to such a document must, consequently, be tried by the Court of Session. *Turner v. Emperor.*

26 Cr. L. J. 1304 :
89 I. C. 248 : 29 C. W. N. 868 :
A. I. R. 1926 Cal. 425.

—S. 30—*Valuable security—What is.*

Original remaining in Pass Book is valuable security even though only duplicate is meant to be used for actual purpose for which pass was issued. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Daulat Ram Mudi.*

33 Cr. L. J. 685 :
138 I. C. 705 : 59 Cal. 1233 :
36 C. W. N. 505 : 55 C. L. J. 349 :
I. R. 1932 Cal. 504 : A. I. R. 1932 Cal. 390.

—S. 30—*Valuable security—What is.*

Transit Pass under S. 40, Assam Forest Regulation for Transport Produce, is valuable security. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Daulat Ram Mudi.*

33 Cr. L. J. 685 :
138 I. C. 705 : 59 Cal. 1233 :
36 C. W. N. 505 : 55 C. L. J. 349 :
I. R. 1932 Cal. 504 : A. I. R. 1932 Cal. 390.

—Ss. 30, 477—*Valuable security—What is—Invalid document, whether valuable security—Intention to cause damage or loss.*

A document, which upon certain evidence being given, may be held to be invalid, but on the face of it creates or purports to create a right in immovable property, although a decree could not be passed upon it, falls within the purview of the definition of "valuable security" in S. 30, Penal Code. In the absence of an intention to cause damage or injury, a conviction under S. 477, Penal Code, cannot be maintained. *Ram Harakh Pathak v. Emperor.*

26 Cr. L. J. 1617 :
90 I. C. 913 : 23 A. L. J. 990 :
48 All. 140 : A. I. R. 1926 All. 57.

—Ss. 32, 43, 269—*Outbreak of infectious disease—Omission to report—Omission, whether illegal—Offence.*

S. 269, Penal Code, applies to acts of omission as well by virtue of S. 82 of the Code. An omission to report the outbreak of an infectious disease at one's brickfield is not, however, an illegal omission under S. 33, Penal Code; and consequently, does not constitute an offence under S. 269 of the Code. *Emperor v. Rangalal Singh.*

25 Cr. L. J. 586 :
81 I. C. 74 : 2 Bur. L. J. 11 :
A. I. R. 1923 Rang. 140.

PENAL CODE ACT (XLV OF 1860)

—S. 33.

See also Madras District Municipalities Act, 1920, Sch. IV, Appendix A.

—S. 34.

—Applicability.
—Application of.
—Charge.
—Co-accused, liability of.
—Common intention.
—Common object.
—Construction.
—Criminal act done in furtherance of common intention.
—Duty of Court.
—Effect of.
—Liability.
—Mode of trial of offence under.
—Murderous assault - Graded liability.
—Object.
—Principle.
—Scope.
—Scope and construction.
—Scope of.

—S. 34.

See also (i) Abetment.
(ii) Penal Code, 1860, Ss. 148, 147, 297, 299, 300, Excep. 4, 302, 381.

—S. 34—*Applicability—Common intention—Inference from conduct—Use of lathi—Presumption.*

It is not necessary for the application of S. 34 to find that there was a pre-arranged plan of doing something which amounts to an offence. Common intention may be conceived of immediately before or at the time of the assault. In general, the precise intention of several persons acting in concert is a matter of inference from their conduct. Where, therefore, the evidence shows that the accused attacked a person belonging to the opposite faction with *lathis* as soon as they sighted him, and all of them used their *lathis*, it should be inferred that all of them became of one mind when they suddenly saw him and entertained the common intention of beating him with *lathis*. Where each of the assailants was determined to use his *lathi* as effectively as he was capable of and none of them gave the slightest indication to his companions of placing limitations on the use of a weapon which is frequently deadly in its effect, every one of them must have understood that the attack was likely to result in grievous hurt to their victim. Every one is supposed to intend the probable consequences of his act. *Jaimangal v. Emperor.*

37 Cr. L. J. 864 :
163 I. C. 848 : 1936 A. L. J. 462 :
9 R. A. 86 : 1936 A. W. R. 298 :
A. I. R. 1936 All. 437.

—S. 34—*Applicability.*

Common intention only to cause simple hurt
—Grievous hurt caused by one person exceed-

PENAL CODE ACT (XLV OF 1860)

ing common intention—Others are not liable under S. 325. *Sankata Prasad v. Emperor*.

35 Cr. L. J. 410 :
147 I. C. 400 : 11 O. W. N. 86 :
6 R. O. 226 (1).

———S. 34—*Applicability*—Free fight resolving itself into single combats—Absence of common intention.

Where in response to a challenge by A, there was a free fight between A and his brother B on the one side and C and D on the other, which resolved itself into two single combats between A and C, and B and D, respectively, and A was killed in the fight: *Held*, that S. 34, Penal Code, had no application and D was not responsible for the injury inflicted by C which resulted in the death of A, as there was no common intention to kill A but only a single and individual intention on the part of each C and D to fight with his own opponent. *Dhanwant Singh v. Emperor*.

31 Cr. L. J. 1068 :
126 I. C. 568 : A. I. R. 1930 Lah. 485.

———S. 34—*Applicability*.

If two persons fire at a particular individual and a shot hits with the result that an offence is committed, then the case of both would come within the purview of S. 34 provided, there is common intention. *Sharif v. Emperor*.

34 Cr. L. J. 1051 :
145 I. C. 702 : 6 R. L. 123 :
A. I. R. 1933 Lah. 315.

———S. 34—*Applicability*.

It is now a settled law that S. 34, Penal Code, has no application in the construction of S. 397 of the same Code. *Abdullah v. Emperor*.

27 Cr. L. J. 949 :
96 I. C. 501 : 8 L. L. J. 453 :
27 P. L. R. 627.

———S. 34—*Applicability*.

S. 34 is not applicable to acts committed in the course of a sudden quarrel without any common intention amongst the accused. *Lal Chand v. Emperor*.

32 Cr. L. J. 734 :
131 I. C. 382 : I. R. 1931 Lah. 478 :
A. I. R. 1931 Lah. 523 (1) :

———S. 34—*Applicability*.

S. 34 applies equally to those cases in which the criminal act done in furtherance of a common intention of several persons is the act of a single individual. The existence of a common intention is the sole test of the joint responsibility under S. 34. *Irshadullah Khan v. Emperor*.

34 Cr. L. J. 1234 :
146 I. C. 264 : 1933 A. L. J. 1292 :
55 All. 607 : 6 R. A. 281 :
A. I. R. 1933 All. 528.

———S. 34—*Applicability*.

S. 34 applies only when a criminal act is done by several persons of whom the accused charged thereunder was one. *Dastarali v. Emperor*.

32 Cr. L. J. 1004 :
133 I. C. 190 : 58 Cal. 822 :
I. R. 1931 Cal. 654 : A. I. R. 1931 Cal. 625.

PENAL CODE ACT (XLV OF 1860)

———S. 34—*Applicability*.

S. 34 has no application to the provisions of S. 397. *Laludan Sain v. Emperor*.

32 Cr. L. J. 476 (2) :
130 I. C. 267 : I. R. 1931 Pat. 171 :
A. I. R. 1931 Pat. 49.

———S. 34—*Applicability*.

S. 34 of the Penal Code has no application in the construction of S. 398 of the Code. *Emperor v. Nabibuz Karimuz Mulla*.

29 Cr. L. J. 383 :
107 I. C. 705 : 30 Bom. L. R. 88 :
52 Bom. 168 : I. L. T. 40 Bom. 92 :
A. I. R. 1928 Bom. 52.

———S. 34—*Applicability*—Sudden fight.

Where there is a sudden fight between the parties, S. 34 does not apply to the case. *Masti Khan v. Emperor*.

36 Cr. L. J. 800 :
155 I. C. 276 : 7 R. Pesh. 99 :
A. I. R. 1935 Pesh. 41.

———S. 34—*Applicability*—Test.

S. 34 was framed to meet a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them but the section is not restricted to such cases only and it can well be applied and has been applied to cases, in which the offence was committed by only one of two or three persons who all had a common intention. The real test is the common intention. The "common intention" referred to in S. 34 is an intention to commit the crime actually committed. Therefore only those persons can be held liable under S. 34 who had a common intention to commit the crime which was actually committed. *Raja Ram v. Emperor*.

40 Cr. L. J. 14 :
178 I. C. 162 : 11 R. O. 96 :
1938 O. L. R. 469 : 1938 O. W. N. 1057 :
14 Luck. 328 : A. I. R. 1938 Oudh 256.

———S. 34—*Applicability*.

When the murder is pre-arranged, S. 34 will apply to all participants, however many in number. *Khaista Khan v. Emperor*.

36 Cr. L. J. 958 :
156 I. C. 433 : 7 R. Pesh. 126 :
A. I. R. 1935 Pesh. 75.

———S. 34—*Applicability*.

Where it is not established that there was a common intention among the robbers to commit murder, if necessary, then S. 34 does not apply, and such intention cannot be presumed. *Sanlaydo v. Emperor*.

35 Cr. L. J. 262 :
147 I. C. 49 : 6 R. Rang. 142 :
A. I. R. 1933 Rang. 204.

———S. 34—*Applicability*.

Where it was found that the deceased received several injuries from two of the accused, one of which was the cause of death, but it was not found who struck the fatal blow: *Held*, that under the circumstances, S. 34, I. P. C., was not applicable and that the

PENAL CODE ACT (XLV OF 1860)

conviction of the accused should be under S. 326 for grievous hurt. *Gouridas v. Emperor*.

10 Cr. L. J. 186 :

2 I. C. 841 : 13 C. W. N. 680 : 36 Cal. 659.

———S. 34—*Applicability*.

Where the crime committed is held to be murder, it is wrong to convict the accused under S. 326, Penal Code, read with S. 34. *Nga Tha Aye v. Emperor*. 36 Cr. L. J. 1380 : 158 I. C. 441 : 8 R. Rang. 168 : A. I. R. 1935 Rang. 299.

———S. 34—*Applicability of*.

When a number of persons are engaged in the commission of something criminal, all acting in furtherance of a common intention, each is punishable for what he has done as if he had done it by himself. But his liability does not end there, for he is liable not only for the acts he himself does but also for those which he thereby facilitates, provided of course they are done in pursuance of the common intention. *Mangla v. Emperor*. 38 Cr. L. J. 628 : 168 I. C. 748 : 9 R. N. 269.

———S. 34—*Application of*.

When two people attack another armed with *das*, and there is evidence that one of them announced his intention of killing, both these persons are liable for the act committed by one of them under S. 34, Penal Code. Even if S. 34 cannot be brought into play, S. 114 will apply. *Nga Shwe Din v. Emperor*.

34 Cr. L. J. 905 :

149 I. C. 33 : 6 R. Rang. 281 :

A. I. R. 1934 Rang. 98.

———S. 34—*Charge*.

Charge under S. 304 read with S. 149—Conviction under S. 304 read with S. 34 held not illegal. *In re : Rama Boyan*. 36 Cr. L. J. 113 :

152 I. C. 554 : 1934 M. W. N. 241 :

67 M. L. J. 355 : 40 L. W. 476 :

7 R. M. 253 : A. I. R. 1934 Mad. 565.

———S. 34—*Charge—Defect in—If curable under S. 535*.

Accused convicted under S. 325, Penal Code—Court applying S. 34, Penal Code—S. 34 not mentioned in charge-sheet—No failure of justice—Defect, is cured by S. 535, Cr. P. C. *Nura v. Emperor*. 35 Cr. L. J. 1386 :

151 I. C. 741 (2) : 7 R. L. 191 :

A. I. R. 1934 Lah. 227.

———S. 34—*Charge—Particulars of*.

Words of S. 34 need not be incorporated in charge—Common intention alleged against accused and confederates—Desirability of making reference to, pointed out. *Nga Tha Atin v. Emperor*. 36 Cr. L. J. 1393 :

158 I. C. 603 : 8 R. Rang. 188 :

A. I. R. 1935 Rang. 304.

———S. 34 — *Co-accused, liability of—Common intention, necessity of*.

An accused cannot be held guilty of the acts committed by a co-accused, under the provisions of S. 34, Penal Code, where there is no

PENAL CODE ACT (XLV OF 1860)

evidence of a common intention. *Hem Chandra Singha v. Emperor*.

27 Cr. L. J. 1244 :

98 I. C. 60 : A. I. R. 1927 Pat. 89.

———S. 34—*Common intention—Death resulting from blow on head—Author not known—Offence*.

Where a person was killed as a result of fatal injuries inflicted on his head, but the author of the injuries is not known, then unless there is a suggestion that S. 34 applies, each of the accused must be held responsible for his own act and not for that of his co-accused. *Sadhu Singh v. Emperor*. 34 Cr. L. J. 1210 :

146 I. C. 221 (1) : 6 R. L. 187 (2) :

A. I. R. 1933 Lah. 865.

———S. 34—*Common intention*.

Primary object, abduction. Accused armed and knowing that his confederates would be armed—Murder—Common intention to murder, held to be entertained by accused also from the moment of his using the weapon. *A. Plet v. Emperor*. 37 Cr. L. J. 449 :

161 I. C. 297 : 8 R. Rang. 465 :

A. I. R. 1936 Rang. 28.

———S. 34—*Common intention—Proof*.

In the absence of direct evidence of common intention, such an intention can only be ascertained by a consideration of the established facts and circumstances. *Tara Singh v. Emperor*. 33 Cr. L. J. 457 :

137 I. C. 282 : 33 P. L. R. 1 :

I. R. 1932 Lah. 328 : A. I. R. 1932 Lah. 189.

———S. 34—*Common intention—Proof*.

It must be proved what the common intention was, and that the common act was acted upon in furtherance of that common intention. *Suleman v. Emperor*.

34 Cr. L. J. 404 :

142 I. C. 741 : 15 N. L. J. 129 :

I. R. 1933 Nag. 134.

———S. 34—*Common intention—Proof of*.

Joint assault—Inference of common intention can be drawn. *Emperor v. Ebrahim*.

33 Cr. L. J. 360 :

136 I. C. 836 : I. R. 1932 Rang. 91 :

A. I. R. 1931 Rang. 321.

———S. 34—*Common intention, proof of—Joint responsibility*.

Where S. 34, Penal Code, has to be applied, it must be shown that the criminal act for which the accused are to be made responsible was committed in furtherance of their common intention. The words "when a criminal act is done in furtherance of the common intention of all" mean, that all the persons charged must have consented to and contemplated the commission of the particular crime committed. The existence of a common intention is the sole test of joint responsibility, and what the common intention is, must be proved. It is not sufficient to say that such and such an act was likely to occur, it must be found on a consideration of all

PENAL CODE ACT (XLV. OF 1860)

the circumstances available what the common intention was. *Maung Gyi v. Emperor*.

25 Cr. L. J. 241 :
76 I. C. 705 : 2 Bur. L. J. 142 :
1 Rang. 390 : A. I. R. 1923 Rang. 268.

S. 34—Common intention—Proof.

Question whether act done is in furtherance of common intention is one of fact—It can be inferred from circumstances—One of the robbers committing murder—Carrying fire-arms by some to the knowledge of the rest—Use of fire-arms with fatal effect—Presumption regarding common intention as to murder arises. *Emperor v. Nga Aung Thein*.

36 Cr. L. J. 605 :
154 I. C. 881 : 13 Rang. 210 :
7 R. Rang. 325 : A. I. R. 1935 Rang. 89.

S. 34—Common intention—Proof.

The question whether the accused acted with a common intention or not, is a question of fact which depends upon the inference that the Court draws from the evidence adduced at the trial. *Nga Tha Aye v. Emperor*.

36 Cr. L. J. 1380 :
158 I. C. 441 : 8 R. Rang. 168 :
A. I. R. 1935 Rang. 299.

S. 34—Common intention—Proof.

Whether the criminal act complained of in any particular case has been done by one or more accused persons in furtherance of the common intention of all, must depend upon the facts of such case. *Pholo v. Emperor*.

35 Cr. L. J. 357 :
147 I. C. 264 : 27 S. L. R. 269 :
6 R. S. 140 : A. I. R. 1933 Sind 407.

S. 34—Common intention—What is.

Common intention to murder in certain circumstances is not sufficient to justify that accused and his companions had, at the time of actual occurrence, common intention to murder. *Moti Lal Malik v. Emperor*.

36 Cr. L. J. 1220 :
157 I. C. 829 : 39 C. W. N. 199 :
A. I. R. 1935 Cal. 526.

S. 34—Common intention—What is.

The common intention referred to in S. 34 is an intention to commit the crime actually committed and each accused person can be convicted of that crime only if he has participated in the common intention. *Nga E v. Emperor*. (F. B.)

32 Cr. L. J. 495 :
130 I. C. 355 : 8 Rang. 603 :
I. R. 1931 Rang. 99 : A. I. R. 1931 Rang. 1.

S. 34—Common intention—What is.

To render a person liable under S. 34, the common intention must cover the act done by all the several persons. *Nga Tun Baw v. Emperor*.

7 Cr. L. J. 205 :
U. B. R. Cr. 1907 :
1909 Cr. Vol. I, Penal Code, p 5 :
14 Bur. L. R. 264.

S. 34—Common intention—What is.

When two or more persons set on to assault

PENAL CODE ACT (XLV OF 1860)

another armed with hatchets and dangs, it may safely be assumed that their common intention is to give him a thorough beating, and that all are cognizant that the hatchets will be used and that very serious injuries are likely to be inflicted. *Zulfikar v. Emperor*.

34 Cr. L. J. 911 :
144 I. C. 1018 : 34 P. L. R. 801 :
6 R. L. 45 (1) : A. I. R. 1933 Lah. 927.

S. 34—Common intention—What is.

Where several persons go to the house of another, and on a quarrel ensuing there, one of the party call on his companions to beat the latter, and they do so, S. 34, Penal Code, applies to impute common intention to all of them even though the party did not come with the intention of beating the men in the first instance. *Mian Jan v. Emperor*.

24 Cr. L. J. 525 :
73 I. C. 61.

S. 34—Common object—Isolated assaults—No common object—Joint trial, legality of.

During a trial for a political offence, a crowd gathered with a view to make a demonstration, and as a result, a number of Policemen posted to keep order received injuries and the assailants were tried together under S. 332-34, Penal Code, and convicted : *Held*, that their joint trial was illegal and S. 34 did not apply, because the assaults on individual members of the Police force were isolated and the accused were not actuated by any common object. *Fateh Chand v. Emperor*.

23 Cr. L. J. 596 :
68 I. C. 820 : 20 A. L. J. 706 :
A. I. R. 1922 All. 428.

S. 34—Common object—Proof.

The mere presence of a person at the time of the commission of an offence by his confederates is not in itself sufficient to bring his case within the purview of S. 34 unless the community of design is proved against him. *Basharat v. Emperor*.

36 Cr. L. J. 308 :
153 I. C. 222 : 36 P. L. R. 37 :
7 R. L. 407 : A. I. R. 1934 Lah. 813.

S. 34—Construction—Principles.

In interpreting S. 34 the essential question is what was the common intention, and further, the common intention must be to commit the offence actually committed. *Zahid Khan v. King Emperor*.

40 Cr. L. J. 187 :
179 I. C. 338 : 11 R. O. 163 :
1939 O. L. R. 22 : 1939 O. W. N. 7 :
14 Lah. 378 : A. I. R. 1939 Oudh 49.

S. 34—Construction.

The view that S. 34, Penal Code, refers only to the mere simultaneous doing in concert of identical criminal acts is erroneous. *Bhondur Das v. Emperor*.

30 Cr. L. J. 205 :
113 I. C. 676 : 7 Pat. 758 :
I. R. 1929 Pat. 68 : 14 P. L. T. 111 :
A. I. R. 1929 Pat. 11.

PENAL CODE ACT (XLV OF 1860)

———S. 34—Criminal act done in furtherance of common intention.

In order to convict a person for an offence with the aid of the provisions of S. 34, Penal Code, it is not necessary that that person should actually with his own hand commit the criminal act. If several persons have the common intention of doing a particular criminal act and if in furtherance of that common intention all of them join together and aid or abet each other in the commission of the act, then although one of these persons may not actually with his own hand do the act, if he helps by his presence or by other acts in the commission of the act, he would be held to have done that act within the meaning of S. 34. *Harihar Singh v. Emperor*.

26 Cr. L. J. 1498 :
90 I. C. 154 : A. I. R. 1926 Pat. 182.

———S. 34—Duty of Court.

The Court must arrive at a finding as to which of the accused took what part, if any, in furtherance of the common intention. A conviction without such finding is illegal. *Fazoo Khan v. Jatoo Khan*.

33 Cr. L. J. 92 :
134 I. C. 1198 : 35 C. W. N. 463 :
I. R. 1932 Cal. 78 : A. I. R. 1931 Cal. 643.

———S. 34—Effect of.

Person charged with an offence read with S. 34 can be convicted of the same offence. *Dastarali v. Emperor*.

32 Cr. L. J. 1004 :
133 I. C. 190 : 58 Cal. 822 :
I. R. 1931 Cal. 654 : A. I. R. 1931 Cal. 625.

———S. 34—Effect of.

When several persons unite with a common object to commit a crime, all who assist in the accomplishment of that object are guilty of the principal offence, not of abetment. *Emperor v. Pha Laung*.

5 Cr. L. J. 414 :
3 L. B. R. 264.

———S. 34—Liability.

Common intention to commit robbery—Different acts by different persons in furtherance of common intention—Accused absent for a moment having gone to fetch another for carrying out common intention—Shooting down of deceased by other in the meanwhile—Accused also held guilty of murder. *Indar Singh Gurinukh Singh v. Emperor*.

35 Cr. L. J. 72 :
146 I. C. 376 : 34 P. L. R. 1003 :
14 Lah. 814 : 6 R. L. 216 :
A. I. R. 1933 Lah. 819.

———S. 34—Liability.

It was only if the throwing away of the *pindi* could have been shown to have been in furtherance of the common intention of all the accused, that under S. 34, I. P. C., they could all have been held liable for that act. *Amir Hassan v. Emperor*.

41 Cr. L. J. 810 :
189 I. C. 867 : 21 P. L. T. 121 :
6 B. R. 874 : 13 R. P. 174 :
A. I. R. 1940 Pat. 414.

PENAL CODE ACT (XLV OF 1860)

———S. 34—Liability—Joint commission of offence—Absence of finding as to common intention—Conviction of all for substantive offence, legality of.

In a case of murder in the absence of a finding of a common intention on the part of the accused persons, no one of them can be found to be guilty of murder, without finding that he was the man who actually struck the fatal blow. *Nur Khan v. Emperor*.

31 Cr. L. J. 117 :
120 I. C. 520 : 24 S. L. R. 96 :
A. I. R. 1930 Sind 99.

———S. 34—Liability.

Murder—Common intention—Brutal murder—All accused taking part in beating—Mere fact that it is not known by whom fatal wound is caused, is no ground for not awarding death penalty. *Meewa v. Emperor*.

36 Cr. L. J. 1001 :
156 I. C. 786 : 8 R. L. 24 :
A. I. R. 1935 Lah. 337.

———S. 34—Liability.

Two persons attacking another—Absence of proof that one of them struck a blow—He can still be convicted—Absence of charge under S. 34—Conviction under S. 34 held legal. *Khuda Dad v. Emperor*.

34 Cr. L. J. 724 :
144 I. C. 300 : 34 P. L. R. 699 :
I. R. 1933 Lah. 437 : A. I. R. 1933 Lah. 313.

———S. 34—Liability.

Two persons going to commit robbery armed with guns but retreating on coming of villagers—Shots fired while trying to escape—One of the villagers killed from shot fired by one of the persons—Other person also is guilty under S. 302, read with Ss. 34 and 114. *Mukunda Murari Pal v. Emperor*.

36 Cr. L. J. 803 :
155 I. C. 599 : 61 Cal. 190 :
7 R. C. 603 : A. I. R. 1934 Cal. 10.

———S. 34—Liability.

Two persons having common intention to beat the party of which deceased was a member—Deceased dying as a consequence of blows struck in that beating—Offence under Ss. 304, 34, held committed. *Haider v. Emperor*.

36 Cr. L. J. 549 :
154 I. C. 628 : 1935 A. W. R. 336 :
7 R. A. 780 : A. I. R. 1935 All. 504.

———S. 34—Liability.

When one member of the attacking party caused a blow resulting in death, all the members are liable. *Fattch Khan v. Emperor*.

32 Cr. L. J. 342 :
129 I. C. 483 : I. R. 1931 Lah. 195 :
A. I. R. 1930 Lah. 950.

———S. 34—Liability.

Where certain persons are found to be an unlawful assembly for the purpose of taking away grain, each one of the persons is

PENAL CODE ACT (XLV OF 1860)

guilty of the offence committed by any one of them. *Hari Lal v. Emperor*.

36 Cr. L. J. 1026 :
156 I. C. 921 : 14 Pat. 225 :
16 P. L. T. 380 : 8 R. P. 43 :
A. I. R. 1935 Pat. 263.

S. 34—Liability.

Where four persons formed themselves into a body with the common object of beating the complainant, and while two of them assaulted him, the other two stood by ready armed with *lathis* to take part in the assault, if necessary : Held, that the latter two were equally guilty with the others of an offence under S. 323, Penal Code. *Lachho Singh v. Emperor*.

18 Cr. L. J. 382 :
38 I. C. 766 : A. I. R. 1917 Pat. 456.

S. 34—Mode of trial of offence under.

"Transaction" should be interpreted in its ordinary sense—No technical sense should be put upon it—Test is proximity of time, unity of place, community of purpose and continuity of action—Murder of A completed at one place—Subsequent murder of his brother B at different place—Separate trials held proper—But in absence of prejudice to accused, defect held cured by S. 537, Cr. P. C. *Raj Bahadur v. Emperor*.

35 Cr. L. J. 1496 :
152 I. C. 103 : 7 R. O. 182 :
1934 O. L. R. 810 :
11 O. W. N. 1309 :
A. I. R. 1934 Oudh 499.

S. 34—Murderous assault—Graded liability.

Offence of murderous assault, in furtherance of common intention, cannot be so graded as to hold some guilty of murder and others of grievous hurt. *Sullan v. Emperor*.

32 Cr. L. J. 1219 :
134 I. C. 793 : 12 Lah. 442 :
32 P. L. R. 925 :
I. R. 1931 Lah. 1001 :
A. I. R. 1931 Lah. 749.

S. 34—Object.

There is no doubt about the law, and the difficulty lies in determining the extent to which the common intention and the common contemplation of the gravest consequences may have gone. The question, therefore, always resolves itself into one of fact. To overcome these difficulties and obviate a failure of justice in such cases, the law has spread its net wide. A number of provisions have been enacted, and though some of them may, to a certain extent, overlap, they have been designed to prevent loopholes of escape to guilty persons. One of these provisions is S. 34, Penal Code. It applies when there is a common intention to commit a certain act, and when that is clear, there is no difficulty. *Mangta v. Emperor*.

38 Cr. L. J. 628 :
168 I. C. 748 : 9 R. N. 269.

PENAL CODE ACT (XLV OF 1860)

S. 34—Principle.

S. 34, Penal Code, deals with the doing of separate acts similar or diverse by several persons ; if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself. The expressions "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part. *Mian Khan v. Emperor*.

29 Cr. L. J. 474 :
109 I. C. 122 : 10 L. L. J. 366.

S. 34—Scope—Act done by several persons in furtherance of common intention—Principle of liability.

S. 34, Penal Code, merely lays down a principle of liability, and does not create a distinct offence. When two or more persons join actively in an assault on a third person, they are directly responsible for the injuries caused to the extent to which they had a common intention to cause those injuries, and what their common intention was must be gathered from the circumstances. In the matter of : *Paczulla*.

22 Cr. L. J. 394 :
61 I. C. 522 : 25 C. W. N. 24 :
A. I. R. 1921 Cal. 241.

S. 34—Scope—"Act", what is.

The word "act" includes a "series of acts" and S. 34, contemplates, amongst other things, a series of acts done by several persons, some perhaps by one of those persons and some by another, but all in pursuance of a common intention. *Motilal Mallik v. Emperor*.

36 Cr. L. J. 1220 :
157 I. C. 829 : 39 C. W. N. 199 :
A. I. R. 1935 Cal. 526.

S. 34—Scope—Application to offence, under S. 304.

S. 34, Penal Code, refers to cases in which several persons both do an act and intend to do that act ; it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases S. 149 of the Code, may be applicable but S. 34 is not. S. 34, Penal Code, which is based on common intention, cannot possibly be used with the second part of S. 304 of the Code, which expressly excludes intention. *Aniruddha Mana v. Emperor*.

26 Cr. L. J. 827 :
86 I. C. 475 : A. I. R. 1925 Cal. 913.

S. 34—Scope and construction.

Where another person actually killed the deceased, the accused who was stated to have accompanied him and attempted to kill him could not be charged with the murder under S. 34, Penal Code. S. 34, Penal Code, is to be read according to the meaning of its terms without reference to any doctrines derived from the English Common Law. *Emperor v. Nirmal Kanta Roy*.

15 Cr. L. J. 460 :
24 I. C. 340 : 18 C. W. N. 723 :
41 Cal. 1072 : A. I. R. 1914 Cal. 901.

PENAL CODE ACT (XLV OF 1860)

———S. 34—*Scope of.*

S. 34 does not create a new or distinct offence. It merely lays down a principle of liability that where several persons go with a common intention to execute a common object, each and every one of them becomes responsible for the acts of each and every other done in execution and furtherance of their common intention. *Emperor v. Barendra Kumar Ghose*. (F. B.) 25 Cr. L. J. 817 : 81 I. C. 353 : 38 C. L. J. 411 : 28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

———S. 34—*Scope of.*

S. 34, Penal Code, does not create an offence, but merely lays down a rule of law. *Emperor v. Profulla Kumar Mazumdar*.

24 Cr. L. J. 763 :
74 I. C. 267 : 50 Cal. 41 :
A. I. R. 1923 Cal. 453.

———S. 34.

Assault by more persons than one in furtherance of common intention—Death following—All persons are responsible for death. *Mahabir Singh v. Emperor*. 36 Cr. L. J. 146 : 152 I. C. 591 : 15 P. L. T. 819 : 7 R. P. 208 : A. I. R. 1934 Pat. 565.

———S. 34—*Offence committed by two or more persons—Common intention*

If two or more persons join in the commission of an act which amounts to an offence and they have a common intention to do that act, they would all be equally liable for the consequences. *Kunhammad v. Emperor*. 25 Cr. L. J. 572 : 81 I. C. 60 : 18 L. W. 715 : A. I. R. 1924 Mad. 229.

———S. 34—*Principal offence and its abetment—Conviction for both—Legality.*

In some cases where the omission of the offence is abetted by aid and conspiracy, the abettor may be treated as a principal under S. 34, Penal Code. Broadly speaking, however, it would be illogical to hold that a man is guilty of both the principal offence and of its abetment. *Samarendra Kumar Chakravarty v. Emperor*. 38 Cr. L. J. 673 : 169 I. C. 48 : 15 Pat. 817 : 9 R. P. 526 : 3 B. R. 514 : 18 P. L. T. 535 : A. I. R. 1937 Pat. 263.

———Ss. 34, 35, 304—*S. 34, whether applies to S. 304, Part II—Offence under S. 304, Part II, essentials of.*

Although to constitute an offence under S. 304, Part II of the Penal Code, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. S. 34 of the Penal Code can be applied to a case under the second part of S. 304 of the Code. *Adam Ali Taluqdar v. Emperor*. 28 Cr. L. J. 334 : 100 I. C. 718 : 31 C. W. N. 314 : 45 C. L. J. 131 : A. I. R. 1927 Cal. 324.

PENAL CODE ACT (XLV OF 1860)

———Ss. 34, 37—*Distinction.*

The distinction between Ss. 34 and 37, Penal Code, is that while the former requires a common intention for a criminal act done by several persons in which case each actor becomes liable as if that act were done by him alone, S. 37 deals with intentional co-operation in an offence committed by means of several acts, and punishes such co-operation. *Emperor v. Itwa Munda*. (S. B.)

39 Cr. L. J. 554 :
175 I. C. 300 : 10 R. P. 606 :
4 B. R. 568 : 19 P. L. T. 476 :
A. I. R. 1938 Pat. 258.

———Ss. 34, 111—*Applicability—Act committed different from act abetted—Abettor, liability of.*

Where a person instigates another to strike a particular person, and an altogether different person who happens to be close by at the time is struck, the instigator cannot be held responsible, and S. 34, Penal Code, would not apply to the case because the act abetted was different from the act done. *Po Ya v. Emperor*. 21 Cr. L. J. 797 :

58 I. C. 525 : 10 L. Bur. R. 99 :
13 Bur. L. T. 44 : A. I. R. 1919 L. Bur. 20.

———Ss. 34, 111, 394—*Applicability of—Robbery committed by four persons—Abetment—Death caused by one alone, whether probable consequence—Liability of others.*

A robbery was committed by four men : two, one of whom was the accused, went from house to house bullying and ill-treating the inmates and making them give up their valuables, while the other two kept guard on the house tops. Of the latter pair, one was armed with a gun which he fired off several times, and towards the close of the affair when the villagers began to make it unpleasant for the robbers by stone throwing, he aimed at one of the villagers who took a prominent part in stone throwing, and shot and killed him. The accused having been convicted of murder, appealed to the Chief Court : *Held*, (1) that inasmuch as the fatal shot was fired by one man alone, the accused could not be convicted of murder by reason of S. 34, Penal Code; (2) that in order to apply S. 111, Penal Code, it must be found (1) that the appellant was an abettor of the robbery and (2) that the murder was a probable consequence of the abetment and was committed in pursuance of the conspiracy to commit the robbery; (3) that the accused was guilty of an offence under S. 394, Penal Code. *Harnam Singh v. Emperor*. 20 Cr. L. J. 635 :

52 I. C. 395 : 21 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 256.

———Ss. 34, 113, 114, 302—*Causing murder with common object—Assault—Death—Common intention—Murder.*

M and J attacked L with heavy lathis, intending to give L a sound beating. M struck him twice on the head, knocking him senseless to the ground, and J struck him on the back three or four times as he lay. L died of

PENAL CODE ACT (XLV OF 1860)

fracture of the skull caused by the blows dealt him by *M*: *Held*, that *J* shared in the intention with which *M* hit *L* which was to cause such bodily injury as was sufficient in the ordinary course of nature to cause death, and that under S. 34, Penal Code, both were guilty of murder. *Local Government v. Jailal Raut*. 23 Cr. L. J. 54 :

64 I. C. 838 : A. I. R. 1921 Nag. 78.

—Ss. 34, 114—Object and interpretation.

The whole object of Ss. 34 and 114, Penal Code, is to provide for cases in which the exact share of one of several criminals cannot be ascertained, though the moral culpability of each is clear and identical. Neither of these two sections should be so interpreted as to defeat the very object which underlies them. *Jaimangal v. Emperor*. 37 Cr. L. J. 864 :

163 I. C. 848 : 1936 A. L. J. 462 :

9 R. A. 86 : 1935 A. W. R. 298 :

A. I. R. 1936 All. 437.

—Ss. 34, 114—Scope.

S. 34, Penal Code, deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part, because they refer to it. *Barendra Kumar Ghose v. Emperor*.

26 Cr. L. J. 431 :

85 I. C. 47 : 29 C. W. N. 181 :

1925 M. W. N. 26 : 26 P. L. R. 50 :

27 Bom. L. R. 148 : 6 P. L. T. 169 :

41 C. L. J. 240 : 48 M. L. J. 543 :

1 O. W. N. 935 : 3 Pat. L. R. 1 Cr. :

52 Cal. 197 : 52 I. A. 40 P. C. :

23 A. L. J. 314 : A. I. R. 1925 P. C. 1.

—Ss. 34, 114, 307—S. 34, applicability—Charge of substantive offence—Abetment, conviction for, whether legal.

Where several persons conspire to kill another and one of them shoots him down, all the conspirators are guilty under S. 34, Penal Code. *Obiter*.—A man charged with the substantive offence can be rightly convicted of that offence read with S. 114, Penal Code, although not charged with it. *Ranchohod Sursang v. Emperor*. 26 Cr. L. J. 1000 :

87 I. C. 600 : 26 Bom. L. R. 954 :

49 Bom. 84 : A. I. R. 1924 Bom. 502.

—Ss. 34, 114, 326—Grievous hurt, charge of.

The accused would be held liable by reason of S. 34, I. P. C., if it be found that they all joined in the beating, and the specific act which caused the grievous hurt is not brought home to any particular individual. They would be liable under S. 326 read with S. 109, if they aided and abetted or abetted by intentionally aiding the person who himself actually beat. But they cannot be convicted of grievous hurt by reason of conspiracy to commit criminal trespass. *Jamiruddi Biswas v. Emperor*.

13 Cr. L. J. 175 :

16 I. C. 523 : 16 C. W. N. 909.

PENAL CODE ACT (XLV OF 1860)

—Ss. 34, 120-A—Difference between.

There is not much substantial difference between conspiracy as defined in S. 120-A, Penal Code, and acting on a common intention as contemplated in S. 34, Penal Code. While in the former, the gist of the offence is the bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under S. 34, Penal Code, is the commission of a criminal act in furtherance of a common intention of all the offenders, which means that there should be a unity of criminal behaviour resulting in something for which an individual would be punishable if it were all done by himself alone. *Provincial Government, Central Provinces and Berar v. Dina Nath*. 41 Cr. L. J. 27 :

184 I. C. 412 : 1939 N. L. J. 373 :

I. L. R. 1939 Nag. 644 : 12 R. N. 111 :

A. I. R. 1939 Nag. 263.

—Ss. 34, 141—Unlawful assembly—Essence of offence.

The essence of the offence defined in S. 141, Penal Code, is the common unlawful purpose and an accused person cannot be convicted if the common object proved is different from the common object in the charge or for which he was tried. Persons to be tried jointly for an offence under S. 142, Penal Code, must have been associated from the first in the series of acts which form the same transaction. *In re : Lognath Aiyar*. 11 Cr. L. J. 30 :

4 I. C. 700 : 6 M. L. T. 17.

—Ss. 34, 141, 142—Common intention—Inference.

In the absence of evidence or reasons to the contrary, it is permissible to presume that the common object of a riotous mob is that indicated by their conduct, and that they entertained from the beginning the common object indicated by their conduct throughout their proceedings. *In re : Lognath Aiyar*.

11 Cr. L. J. 30 :

4 I. C. 700 : 6 M. L. T. 17.

—Ss. 34, 147, 149, 325, 326—Unlawful assembly—Common object, proof of.

Where the alleged common object of an unlawful assembly fails, the accused cannot be convicted under S. 147 or under S. 325 or 326, Penal Code, with reference to Ss. 34 and 149. They can only be convicted if individual acts of illegality can be proved against each of them individually. In order to sustain a conviction in a case of unlawful assembly the rule is that the common object stated in the charge must agree in essential particulars with the common object established in the evidence. *Ritbaran Singh v. Emperor*.

19 Cr. L. J. 789 :

46 I. C. 709 : 4 P. L. W. 120 :

A. I. R. 1918 Pat. 146.

—Ss. 34, 149—Common object to commit rioting—Liability of persons present at different times.

A Court cannot presume that any and every person who is found to have been present in a

PENAL CODE ACT (XLV OF 1860)

riotous mob at any time or to have joined it at any stage during its activities, is in law guilty of every act committed by it from the beginning to the end. In such cases, the Court should consider, *firstly*, what was the original intention of the mob and which of its offences naturally were inherent or likely to have occurred in the prosecution of that intention and which were not; *secondly*, at what stage of the riot were the accused present and what was the temper, the intention, and the common object of the mob while they were present; *thirdly*, whether if they had left the mob at any stage, they could nevertheless be constructively held guilty of any of the acts committed by the mob after they have left. *Ganapathi Sarma v. Emperor.*

24 Cr. L. J. 531 :

73 I. C. 147 : 17 L. W. 197 :

1923 M. W. N. 104 : A. I. R. 1923 Mad. 369.

———Ss. 34, 149—*Distinction between.*

The language of S. 34, Penal Code, is far more restrictive than that of 149 and the Legislature clearly intended to narrow down the scope of S. 34. To establish guilt under that section, it is necessary to prove a common intention as distinguished from a common object, and it must be shown that the criminal act was committed in furtherance of that intention. *Ritbaran Singh v. Emperor.*

19 Cr. L. J. 789 :

46 I. C. 709 : 4 P. L. W. 120 :

A. I. R. 1918 Pat. 146.

———Ss. 34, 149, 304, 323—*Assault by several persons with common intention.*

Accused, four in number and armed with lathis, came up with the set purpose of making a serious assault on three brothers who were taken by surprise and could offer no resistance. Two of them were killed as the result of blows inflicted upon the head and the third received simple injuries. The accused were charged with offences under Ss. 304 and 323 read with S. 149 and were convicted of offences under Ss. 304 and 323 read with S. 34: *Held*, (1) that the conviction was perfectly justified and it could not be said that the accused persons were prejudiced for the reason that in the charges S. 149 was mentioned instead of S. 34, inasmuch as the former section was wide enough to cover the principle of the latter; (2) that the accused having committed three distinct offences, they were liable to separate sentence for each offence though all three were committed in the course of the same transaction. *Pira v. Emperor.*

27 Cr. L. J. 818 :

95 I. C. 594 : 8 L. L. J. 198 : 27 P. L. R. 347.

———Ss. 34, 149, 325—*Common intention, proof of.*

Where in a case in which the accused are charged under S. 325, read with S. 149, Penal Code, it is not found possible to bring home the offence to the accused with the aid of the provisions of the latter section, *a fortiori* it would be more difficult to bring home the offence to them with the aid of S. 34, Penal Code. In order to bring the accused

PENAL CODE ACT (XLV OF 1860)

within the scope of S. 34, it is necessary to come to a definite finding that the accused were acting in furtherance of the common intention of all. *Bhabataran Mahto v. Emperor.*

26 Cr. L. J. 1601 :

90 I. C. 705 : 1925 Pat. 278 :

7 P. L. T. 388 : A. I. R. 1925 Pat. 106.

———Ss. 34, 149, 325—*Rioting—Charge of grievous hurt by implication under S. 149—Acquittal under rioting—Conviction under substantive offence not allowed.*

Where a Court draws up a charge under S. 325 read with S. 149, Penal Code, it clearly intimates to the accused that they did not cause grievous hurt to anybody themselves but that they are guilty by implication of such offence, inasmuch as somebody else, in prosecution of the common object of the riot in which they were engaged, did cause such grievous hurt. Where these persons are acquitted of rioting, all the offences which they are said to have committed by implication disappear, and they cannot be convicted of the substantive offence under S. 325. S. 34 can only come into operation when there is a substantive charge of causing grievous hurt. The considerations which govern S. 34 are entirely different, and in many respects, the opposite of those which govern S. 149. *Reazuddi v. Emperor.*

13 Cr. L. J. 502 :

15 I. C. 646 : 16 C. W. N. 1077.

———Ss. 34, 149, 326—*Charge under Ss. 326 and 149—Conviction under Ss. 326 and 34—Legality of conviction—Principles relating to conviction on different charge—'Common intention, common object,' meaning of.*

The petitioners with some others were convicted by a Magistrate under S. 326 read with S. 149, Penal Code. The Sessions Judge found that the element of an unlawful common object in the assembly as a whole which is required to convict the accused under S. 326, read with S. 149 was wanting, but as the petitioners had the common intention to cause grievous hurt, he convicted them under S. 326 read with S. 34, Penal Code, without framing a specific charge on those sections: *Held*, that the conviction was not bad. *Bhondu Das v. Emperor.*

30 Cr. L. J. 205 :

113 I. C. 676 : 7 Pat. 758 :

I. R. 1929 Pat. 68 : 11 P. L. T. 111 :

A. I. R. 1929 Pat. 11.

———Ss. 34, 149, 397—*Dacoity—Use of deadly weapon by one member—Other member whether can be punished under S. 397.*

An accused person cannot be convicted under S. 397, Penal Code, where there is no evidence to show that he individually used a deadly weapon or himself did any of the acts which would be necessary to make the section applicable. S. 397 is wholly different in its scope from sections such as S. 34 or S. 149 of the Code. *Danna v. Emperor.*

29 Cr. L. J. 449 :

108 I. C. 689.

PENAL CODE ACT (XLV OF 1860)

—Ss. 34, 299, 300, 325—Number of persons inflicting lathi blows on deceased, some of which being fatal—S. 34 when comes into play.

Under S. 34, Penal Code, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. A common intention is an intention shared by the person who has caused death and by the other assailants who did not themselves cause death. If the act which caused death is neither murder nor culpable homicide because the person who dealt blow did not have such intention as is specified under Ss. 299 or 300 of the Penal Code, but only the knowledge which is specified in either of these two sections, there is no intention which can be shared by all the assailants who did not strike the fatal blow and, therefore, S. 34 cannot apply. The knowledge referred to in S. 299 and 300 is personal knowledge of the person who struck the blow and it cannot be shared by his co-assailants, but in any case, S. 34 is restricted to common intention and does not embrace any knowledge: *Held*, on facts that it was impossible to say whether there was common intention to cause the death of the deceased or whether the person who inflicted the fatal blow committed murder because of his intention or of his knowledge. As it was not known who inflicted the fatal blow and it was not shown that there was a common intent, it was impossible to hold that the convictions under S. 325 were incorrect. Though undoubtedly there was at least a common intent of causing grievous hurt and the convictions under S. 325 were justified. *Sunder Singh v. Emperor*.

40 Cr. L. J. 722 :
182 I. C. 345 : 1939 O. W. N. 576 :
1939 O. L. R. 389 : 12 R. O. 12 :
14 Luck. 660 : A. I. R. 1939 Oudh 207.

—Ss. 34, 300—Common intention to cause injury ordinarily resulting in death—Assault causing death—Joint and several responsibility of assailants.

Per *Lindsay, J. C.*—Where the acts of a combination of persons proved are blows causing severe bodily injury sufficient in the ordinary course of nature to cause death, each of the accused persons taking part in such combination is guilty of murder. *Emperor v. Mahabir*.

14 Cr. L. J. 241 :
19 I. C. 497 : 16 O. C. 19.

—Ss. 34, 300, 325, 304—Common intention to cause grievous hurt.

Case falling within knowledge clause of S. 299—Person cannot be convicted under S. 304 read with S. 34—Similarly in case under S. 302 falling within clause fourthly of S. 300 : *Held*, on facts that offence was not one under S. 302 but under S. 325 read with S. 34. *Zahid Khan v. King Emperor*.

40 Cr. L. J. 187 :
179 I. C. 338 : 11 R. O. 163 :
1939 O. L. R. 22 : 1939 O. W. N. 7 :
14 Luck. 378 : A. I. R. 1939 Oudh 49.

PENAL CODE ACT (XLV OF 1860)

—Ss. 34, 300, Excep. (4), 307—Grave and sudden provocation, plea of, when available—Assault—Accused acting in concert, what amounts to.

The plea of grave and sudden provocation is not open to a person who, merely because his relatives are abused, arms himself with a knife and attacks a defenceless man inflicting severe injuries. The conviction of such a person under S. 307, Penal Code, is not invalid. Where a person commits an assault upon another and a third person joins in committing the assault, it is a fair inference that the two were acting in concert. *Abdul Karim v. Emperor*.

21 Cr. L. J. 734 :
58 I. C. 158 : A. I. R. 1920 All. 184.

—Ss. 34, 302—Attack by several persons—Death caused by cumulative effect of injuries—Offence.

Where certain persons set upon another and inflicted injuries, the cumulative effect of which was to cause his death : *Held*, that the assailants were all guilty of murder under the provisions of S. 34, Penal Code. *Allah Ditta v. Emperor*.

25 Cr. L. J. 547 :
81 I. C. 35 : 4 L. L. J. 276 :
A. I. R. 1922 Lah. 260.

—Ss. 34, 302—Common intention—Inference.

A struck B with hatchet, B fell down whereupon C hit B and B subsequently died : *Held*, that it was not a necessary inference that C had a common intention with A to kill B. *Imperator v. Vahial*.

13 Cr. L. J. 538 :
15 I. C. 810 : 5 S. L. R. 247.

—Ss. 34, 302—Common intention to commit murder—Murder—Abettors present at time of murder, liability of, as principals—Sentence.

Where a person who abets murder is present at the time of the commission of the murder, he is to be deemed a principal offender and must be sentenced either to death or transportation for life. Where a murder is committed by several persons with a common intention, even those who do not take any active part in the affair but merely stand by when the offence is committed, would be guilty of murder. *Emperor v. Sada Singh*.

32 Cr. L. J. 56 :
127 I. C. 855 : 12 L. L. J. 33 :
I. R. 1930 Lah. 887 : A. I. R. 1930 Lah. 338.

—Ss. 34, 302—Common intention, what amounts to.

The presumption of constructive intention must not be too readily applied or pushed too far. The mere fact that a man may think a thing likely to happen is vastly different from his intending that that thing should happen. The latter ingredient is necessary under S. 34, Penal Code, the former by itself is irrelevant to the section. It is only when a Court can with some judicial certitude hold that a particular accused must have preconceived or premeditated the result which ensued, or acted

PENAL CODE ACT (XLV OF 1860)

in concert with others in order to bring about that result, that S. 34 may be applied. *Satrughan Patar v. Emperor*. 20 Cr. L. J. 289 : 50 I. C. 337 : A. I. R. 1919 Pat. 111.

———Ss. 34, 302—*Joint assault—Death of victim—Liability of each accused for murder.*

Where the instruments used in causing the death of a person were dangerous weapons, and all the blows aimed at the head with the result that two fatal injuries were caused and these injuries were not caused by one and the same weapon, and there were only two assailants : *Held*, that each of the assailants must be held responsible for one of the injuries and, therefore, both were guilty under S. 302, Penal Code. *Undria Dhiwar v. Emperor*.

30 Cr. L. J. 870 :
118 I. C. 50 : I. R. 1929 Nag. 242 :
A. I. R. 1929 Nag. 125.

———Ss. 34, 302—*Joint commission of offence—Common intention to rob, and if necessary, to kill—Murder committed by some in furtherance of common intention—Liability of others.*

Four persons went to a house all armed with the common intention to rob, and if necessary, to kill the inmates of the house or any other person who might raise an alarm or obstruct them in carrying out their design, and in furtherance of this common intention, some of them murdered the inmates of the house : *Held*, that all the accused were equally guilty of the offence of murder. *Sher Muhammad v. Emperor*.

28 Cr. L. J. 854 :
104 I. C. 630 : 28 P. L. R. 583 :
A. I. R. 1927 Lah. 765.

———Ss. 34, 302—*Liability of all for one in furtherance of common intention.*

If several persons armed with pistols go to a place with the common intention to rob a person, and, if necessary, to kill him, and if one of them fires a fatal shot in furtherance of their common intention, then all of them are guilty of murder under S. 302, read with S. 34. *Emperor v. Barendra Kumar Ghose*. (F. B.)

25 Cr. L. J. 817 :
81 I. C. 353 : 38 C. L. J. 411 :
28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

———Ss. 34, 302—*Scope—Assault continued by one of them—Murder—Common intention.*

S. 34 deals with the doing of separate acts, similar or diverse, by several persons ; if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself. Appellant and his son, who were armed with a spear and a long bamboo, respectively, assaulted the deceased and after the appellant had desisted from the assault and was standing by, his son picked up a dagger and stabbed the deceased to death : *Held*, that the common intention of the appellant and his son was to cause injury to the deceased sufficient in the ordinary course of nature to cause death and that both of them were, therefore, guilty of the offence of murder under S. 302 read with S. 34. *Maung Twa v. Emperor*.

27 Cr. L. J. 827 :
95 I. C. 603 : 5 Bur. L. J. 12.

PENAL CODE ACT (XLV OF 1860)

———Ss. 34, 302—*Murder in furtherance of common intention—No evidence as to actual culprit—Liability of all.*

A woman who had been declared unchaste or *kari* and who had left for her father's house came into the possession of her husband and three of his relations. The next day she was found dead in a pit in a canal. The tracks of these four men ran to and from the spot where the dead body was found : *Held*, (1) that the onus was heavily on the accused to rebut the presumption of their guilt for abduction and murder of the woman, and if they did not discharge this burden, it was open to the Court to convict them ; (2) that though there was no evidence as to who actually committed the murder, the four persons having taken the woman out with the knowledge and with the purpose that one of them should murder her, the murder was done in furtherance of the common intention of all and all the four were guilty of murder as principals under S. 34, Penal Code. *Bukshan v. Emperor*.

27 Cr. L. J. 1265 :
98 I. C. 113 : A. I. R. 1927 Sind 85.

———Ss. 34, 302—*Murder—Several accused—Doubt as to actual murderer—Procedure—Jury trial—Verdict of Jury partly accepted by Magistrate—Applicability of S. 34.*

A person was waylaid by two men, one of whom stabbed him in the neck with a dagger. They were pursued and one P was seized while the other escaped. P was identified by the deceased as one of the assailants. In consequence of a statement made by P, M was also arrested. The two men were tried under Ss. 302 and 302/34, Penal Code. The Jury unanimously found M not guilty and further said that there was a doubt as to whether P struck the fatal blow. The Sessions Judge accepting the verdict as to M, acquitted him but as to P, while accepting that there was a doubt as to whether he struck the fatal blow, the Judge did not agree that there was any doubt as to the two acting in furtherance of a common object, and holding that P was guilty under S. 302/34, I. P. C., referred the case to the High Court : *Held*, that under the circumstances, it was doubtful whether S. 34, Penal Code, was applicable, and that, instead, P should be tried again under S. 302 read with S. 114 of the Code. *Emperor v. Profulla Kumar Mazumdar*.

24 Cr. L. J. 763 :
74 I. C. 267 : 50 Cal. 41 :
A. I. R. 1923 Cal. 453.

———Ss. 34, 302—*Robbery of camels—Intention to cause death in case of obstruction—Death by shot—Absence of proof as to who shot deceased—Offence—Sentence.*

Two persons armed with guns went to the house of G to commit robbery. It was their intention to use the guns in case obstruction was offered to them. A servant of G happened to come at the time from outside and was fired at and killed. It was not established which of the two accused had shot : *Held*, that both of the accused were guilty of murder but

PENAL CODE ACT (XLV OF 1860)

the proper sentence was transportation for life and not death. *Pakhar Singh v. Emperor.*

31 Cr. L. J. 41 :
120 I. C. 180 : 11 L. L. J. 20 :
A. I. R. 1929 Lah. 292.

———Ss. 34, 302, 323 — *Common intention*
— *Attack with object of giving thrashing—Use*
— *of spear by one—Death caused—Offence.*

The party of the accused, who were three in number, attacked the party of the complainants with the object of giving the latter a thrashing. During the course of the attack, one of the accused used a spear with the result that one member of the complainants' party was killed as a result of a spear thrust. The other members of the complainants' party only received simple hurts. It was found that the other two accused did not anticipate that the third accused would make use of the point of his weapon in the attack: *Held*, (1) that the accused who used the spear was guilty of an offence under S. 302; (2) that the two other accused were guilty of an offence under S. 323. *Ramzan Ali v. Emperor.*

26 Cr. L. J. 710 :
86 I. C. 150 : 12 O. L. J. 54 :
A. I. R. 1925 Oudh 322.

———Ss. 34, 302, 323—*Common intention to*
— *abuse opposite party—Sudden fight resulting*
— *in death—Common intention to commit murder*
— *can be inferred.*

Where from the circumstances it appears that the common intention of a party of accused was merely to abuse the other party for their insulting behaviour and possibly to use fists and accordingly there was an exchange of abuse between the parties and a sudden fight subsequently ensued resulting in death of one of the opposite party, a common intention to commit murder cannot be inferred. The whole affair is one of a sudden fight in which each participant is responsible only for the individual acts, which can be proved against him and the accused in such a case cannot be convicted for any offence other than one under S. 323, Penal Code. *Mian Singh Nand Lal v. Emperor.*

40 Cr. L. J. 84 :
178 I. C. 605 : 11 R. L. 477 :
A. I. R. 1938 Lah. 747.

———Ss. 34, 302, 325—*Causing grievous hurt*
— *with common intention—Beating with dangs—*
— *Death from shock of multiple injuries—No fatal*
— *injury—Offence.*

The accused, three in number, beat the deceased with *dangs*. The medical evidence showed that the deceased died of shock from multiple injuries which included a fracture of five ribs, none of the injuries, in itself, was such as could be called a fatal injury. Further, it was not possible to say that any particular injury was the direct cause of the death, nor was it possible to attribute any particular injury to any particular accused: *Held*, that under the circumstances, the accused could be convicted only under S. 325

PENAL CODE ACT (XLV OF 1860)

read with S. 34 and not under S. 302, Penal Code. *Yara v. Emperor.*

30 Cr. L. J. 368 :
114 I. C. 704 : 30 P. L. R. 171 :
I. R. 1929 Lah. 304 :
A. I. R. 1929 Lah. 456.

———Ss. 34, 302, 325—*Common intention—*
— *Inference.*

Where two persons armed with deadly weapons make an attack upon another, and it is proved that death was caused by a blow inflicted by only one of them, both cannot be convicted of the offence of murder under S. 302, read with S. 34, Penal Code; to make both equally liable for the murder, it ought to be established that both of them struck the deceased. The one who struck the blow is guilty of murder and the other, who must have known that grievous hurt would, in all probability be caused, is guilty of having abetted an offence under S. 325, read with S. 109, Penal Code. *Bahal Singh v. Emperor.*

20 Cr. L. J. 711 :
52 I. C. 791 : 24 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 375.

———Ss. 34, 302, 325—*Common intention to*
— *commit murder.*

The four accused persons in this case armed with *lathis* attacked the deceased who was unarmed and defenceless; they inflicted several blows on his skull resulting in compound fracture thereof; in addition there were other injuries on his body: *Held*, that there was clearly an intention on the part of all the accused to inflict such bodily injury as was likely to cause death, and that the offence which they had committed was murder and not grievous hurt. *Emperor v. Kanji Samal.*

14 Cr. L. J. 609 :
21 I. C. 657 : 15 Bom. L. R. 999 :
38 Bom. 114.

———Ss. 34, 302, 325—*Common intention—*
— *When presumed—Death caused in affray with*
— *phaura—Offence—Murder—Grievous hurt.*

Accused, three in number, came up to where the deceased was ploughing a plot of land and tried to prevent him from doing so. The deceased resisted and thereupon the accused attacked him with sticks and a *phaura*, and caused his death by a blow on the head. It was not clear which of the accused had struck the fatal blow: *Held*, that having regard to the provisions of S. 34, Penal Code, all the accused were guilty of causing grievous hurt. *Raja v. Emperor.*

20 Cr. L. J. 369 :
50 I. C. 977 : 8 P. L. R. 1919 :
A. I. R. 1919 Lah. 136.

———Ss. 34, 302, 326—*Common intention—*
— *Sudden fight.*

Where in a sudden fight a person is stabbed while in a fit of uncontrollable rage and annoyance, and while in all probability, the accused were in liquor and it was not clear which of the accused inflicted the wound, but the two accused were nevertheless sentenced to death: *Held*, altering the conviction for

PENAL CODE ACT (XLV OF 1860)

murder to one under S. 326, that it could not be held that the accused who did not give the stab had the common intention of murder and that these accused must be held to have the common intention to cause grievous hurt. *Nga Po v. Emperor*.

14 Cr. L. J. 396 :
20 I. C. 220 : 6 Bur. L. T. 68.

—Ss. 34, 302, 326—*Common intention to inflict grievous hurt.*

Blow on head given with *chhavi* by one accused causing death—Accused aged 62 and 60 years—Accused held guilty under S. 326/34 and 5 years' rigorous imprisonment held sufficient. *Thakur Singh v. Emperor*.

A. I. R. 1925 Lah. 97.

—Ss. 34, 302, 326—*Common intention—What is—Attack by several persons armed with das—Death caused.*

Where several persons armed with *das* attack another and cause his death, but it is found that their common intention was not to cause death or such bodily injury as would be sufficient in the course of nature to cause death, it may rightly be inferred that their intention was to cause grievous hurt. In the absence of any satisfactory evidence showing which of them caused the fatal wound, it is not permissible to hold that any of them is guilty of murder. *Nga Shwa On v. Emperor*.

21 Cr. L. J. 678 :
57 I. C. 918 : 10 L. B. R. 117 :
13 Bur. L. T. 47 : A. I. R. 1919 L. Bur. 24.

—Ss. 34, 302, 394—*Murder committed in course of robbery—Robbers, some armed with deadly weapons—Liability of others.*

Certain persons, some of whom were armed with fire-arms, proceeded to commit a robbery, and in the course of the robbery, death was caused by a shot fired by one of the robbers : *Held*, that the robbers, whether armed with deadly weapons or not, were guilty of murder by virtue of the provisions of S. 34, Penal Code. *Said Nur v. Emperor*.

26 Cr. L. J. 1407 :
89 I. C. 719 : 1 Lah. Cas. 531 :
A. I. R. 1926 Lah. 140.

—Ss. 34, 302, 394—*Murder committed in course of robbery—Robbers, some armed with deadly weapons—Liability of others.*

Four persons, three of whom were armed with deadly weapons, went to commit robbery fully prepared to commit murder in the event of resistance. Two of them actually committed murder in order to facilitate the commission of robbery : *Held*, that all of them were guilty of the offence of murder by virtue of the provisions contained in S. 34, Penal Code. *Said Nur v. Emperor*.

26 Cr. L. J. 1406 :
89 I. C. 718 : 1 Lah. Cas. 536 :
A. I. R. 1926 Lah. 63.

—Ss. 34, 303, 400—*Common intention—What is—Abetment—Gang robber—Murder by convict sentenced to 20 years' imprisonment—Unlawful assembly.*

PENAL CODE ACT (XLV OF 1860)

Where an accused, who had been sentenced to 20 years' imprisonment by a British Court and who was one of those persons that had been extradited to a Native State and there fled from custody with arms and ammunition while under trial for dacoity with murder, and since committed many dacoities and had numerous encounters with the police of different States; in the last encounter that took place on their resisting arrest and in which some policemen were killed and wounded, loaded guns for the others and also himself fired at some period : *Held*, that the gang having clearly shown their intention to kill anybody who sought to arrest or interfere with them, it was incumbent on the police, in their turn, to resort to adequate measures, which might lawfully extend to causing their death; that each killing done by them was an act of murder for which each and all were severally responsible (S. 34, I. P. C.), as the common intention of all was to evade arrest by overawing and repelling the police, that it mattered not whether he fired the shots which killed the policemen, the shots being criminal acts in furtherance of the object and intention he shared with the others; that he was, therefore, personally responsible to an equal extent with the man firing the shots for the wilful murder of the policemen. *Emperor v. Kala Nanji*.

1 Cr. L. J. 920.

—Ss. 34, 304—*Original intention not unlawful—Subsequent action by one likely to bring about death—Liability of others.*

If a man joins with another to assault a third, even though the original intention may be merely to inflict relatively harmless injuries, and he sees his companion in a course of action which may reasonably be expected to bring about the death of the deceased and takes no steps to interfere with that action or to assist the deceased, such an act is an act or omission which renders him liable under S. 304, Penal Code, read with S. 34. *Bhagwat Singh v. Emperor*.

30 Cr. L. J. 276 :
114 I. C. 222 : 9 P. L. T. 826 :
I. R. 1929 Pat. 142 : A. I. R. 1929 Pat. 65.

—Ss. 34, 304, 325—*Common intention—One blow on head resulting in death—Attacker not known—Offence.*

Where a man receives only one blow on the head and dies, and there is no evidence to show which of the two persons attacking him gave that blow, neither of the two will be convicted under S. 304, but both of them can be convicted of an offence under S. 325, Penal Code. *Agra v. Emperor*.

16 Cr. L. J. 209 :
27 I. C. 833 : 219 P. L. R. 1915 :
37 P. R. 1914 Cr. : A. I. R. 1914 Lah. 579.

—Ss. 34, 304, 325—*Joint attack by accused with lathis—Fracture of skull resulting in death—Offence.*

When the accused in furtherance of a common intention beat a person with *lathis* and one of the blows causes fracture of the skull which results in death, the accused are guilty of an

PENAL CODE ACT (XLV OF 1860)

offence under S. 304, and not S. 325, even though it may not be ascertainable as to who dealt the fatal blow. *Chandan v. Emperor*.

27 Cr. L. J. 619 :
94 I. C. 363.

———Ss. 34, 304-A—Liability.

Where two persons were practising at target shooting at a place by the side of a public road and they fired at it without the least circumspection with regard to the safety of others, and a man was wounded (resulting in his death) by a bullet fired by one of those two persons: *Held*, that both were guilty under S. 304-A, Penal Code. *Emperor v. Morgan*.

9 Cr. L. J. 393 :
1 I. C. 814 : 13 C. W. N. 362 :
9 C. L. J. 204 : 36 Cal. 302.

———Ss. 34, 323—Applicability—Incllement to beat—Common responsibility.

When on a quarrel starting up, one person calls upon his companions to beat his opponent, and they cause hurt to him, the person at whose instance the beating is started is, under S. 34, equally guilty of an offence under S. 323 of the Code, along with those who give the actual beating. *Mian Jan v. Emperor*.

26 Cr. L. J. 67 :
83 I. C. 627 : A. I. R. 1924 Oudh 248.

———Ss. 34, 323, 325—Common intention—What is—Conspiracy—Several persons taking part in an offence—Conviction of all for same offence.

For the application of S. 34, Penal Code, the furtherance of a common design is a condition precedent for convicting each of the persons who take part in the crime. The mere fact that several persons took part in a crime in the absence of a common intention is not sufficient to convict all of them of the crime. Where several persons join together in striking another and grievous hurt is caused but there is no evidence to show that the common intention of all was to cause grievous hurt, all of them cannot be convicted of the offence of causing grievous hurt. *Dhian Singh v. Emperor*.

13 Cr. L. J. 265 :
14 I. C. 649 : 9 A. L. J. 180.

———Ss. 34, 323, 325, 326, 392—Grievous hurt caused during robbery—Identification of offender, absence of—Separate charge against each accused without specification of common intent to cause grievous hurt—Offence.

Accused Nos. 1, 2 and 3 were charged with having entered the complainant's house, and removed his ear-rings. The right ear was cut off with the ear-ring and the left ear was torn. The accused were charged separately and there was no specification of a common intention to inflict grievous hurt. The 1st accused was convicted under Ss. 326 and 392, the 2nd under Ss. 326, 325 and 109 and the 3rd under Ss. 325 and 392, Penal Code. In appeal, the Sessions Judge substituted convictions under Ss. 325 and 392 with S. 109 as regards 1st accused: *Held*, that as the identification of the person who inflicted the grievous injury was not made out, and as there was an

PENAL CODE ACT (XLV OF 1860)

absence of common intent, the conviction under S. 325 was bad, for which must be substituted convictions under S. 323. *In re : Savarajulu Najuda*.

19 Cr. L. J. 929 :
47 I. C. 445 : A. I. R. 1919 Mad. 770.

———Ss. 34, 325—Assault with lathis—Common intention—Grievous hurt.

The causing of grievous hurt must be regarded as the intention of those who use lathis for the purposes of S. 34, Penal Code. *Sheo Shankar v. Emperor*.

27 Cr. L. J. 62 :
91 I. C. 238 : 2 O. W. N. 862 :
A. I. R. 1926 Oudh 148.

———Ss. 34, 325—Common intention to cause grievous hurt—Attempt to abduct by persons armed with dangerous weapons—Grievous hurt caused to persons resisting attempt.

Accused, four in number, joined together to forcibly carry off a girl while she was sleeping in her own house and proceeded to do so armed with dangs and chhavis, and in the course of the attempt to carry off the girl, grievous hurt was caused to the friends and relatives of the girl: *Held*, that by virtue of S. 34, Penal Code, all the accused were guilty of the offence of voluntarily causing grievous hurt. *Allah Rakha v. Emperor*.

26 Cr. L. J. 1105 :
88 I. C. 273 : 2 L. C. 34 :
A. I. R. 1925 Lah. 565.

———Ss. 34, 325—Common intention to cause grievous hurt, proof of.

Where two persons are charged with having caused grievous hurt to the complainant but the evidence does not show which of them dealt the blow which caused grievous hurt, they cannot both be convicted of an offence under S. 325 unless they had a common intention of causing grievous hurt. *Nur Shah v. Emperor*.

25 Cr. L. J. 566 :
81 I. C. 48 : A. I. R. 1923 Lah. 35.

———Ss. 34, 325—Common object to cause grievous hurt.

Deceased was one of a large number of persons who ran out of a village followed by a number of villagers armed with sticks whose intention was to beat the former. The three accused beat the deceased, two of them hitting him over the head and causing grievous hurt, as the result of which he died: *Held*, that the common intention of the accused was to cause grievous hurt and all of them were guilty of an offence under S. 325. *Maung Gyi v. Emperor*.

25 Cr. L. J. 241 :
76 I. C. 705 : 2 Bur. L. J. 142 :
1 Rang. 390 : A. I. R. 1923 Rang. 268.

———Ss. 34, 325—Common intention—Striking with lathis—Grievous hurt.

When a man has been struck on the head and a fracture caused, to surround him and beat him with lathis is to cause hurt which endangers life, punishable under S. 325, Penal Code. An accused must be judged to have the intention that is indicated by his proved acts. *Parbhu Dusadh v. Emperor*.

28 Cr. L. J. 868 :
104 I. C. 708 : A. I. R. 1928 Pat. 46.

PENAL CODE ACT (XLV OF 1860)

———Ss. 34, 325, 302—*Causing grievous hurt with common intention.*

Held, there was no right of private defence—Common intention to commit offence was formed on spot—Offence held came under S. 325-34 and not under S. 302 *Muhammad Zaman v. Emperor.* 39 Cr. L. J. 627 :

174 I. C. 678 : 10 R. Pesh. 71 :
A. I. R. 1938 Pesh. 18.

———Ss. 34, 325, 326—*Causing grievous hurt—Several persons jointly inflicting injuries—Grievous hurt—Liability of all.*

Where several persons join together in inflicting injuries upon another and grievous hurt is caused in furtherance of the common intention of all, S. 34 can be applied and all held guilty under S. 325. Where, however, the injury attributable to the blow caused by an accused is not serious and the grievous hurt is caused as the result of the cumulative injuries inflicted by all the assailants, the accused cannot be held guilty under S. 326. *In re : Sanna Reddi.* 30 Cr. L. J. 157 (b) :

113 I. C. 455 : I. R. 1929 Mad. 135.

———Ss. 34, 326—*Assault with deadly weapons—Common intention.*

In a quarrel over a turn of water, four persons armed with *chhivis* made an assault upon another man in which injuries were caused to the latter resulting in his death. Out of all the injuries, there was only one that was fatal and it was uncertain by whom the same had been caused. The assailants were convicted under S. 326, Penal Code, read with S. 34 and given equal punishment. On appeal: *Held*, that considering the nature of the assault and the nature of the weapons used, it could not be said with regard to any one of the accused that he did not intend to cause serious injuries and that S. 34, Penal Code, had rightly been applied in the case. *Inder Singh v. Emperor.* 24 Cr. L. J. 401 :

72 I. C. 513 : A. I. R. 1924 Lah. 216.

———Ss. 34, 326—*Common intention—Accused acting with one purpose—Grievous injuries—Author not known—Constructive liability of all.*

Where a number of persons acting together with one purpose beat the complainants and inflict on them many severe injuries, several of them being the result of a cutting weapon, even if it is not proved who used the weapon, all of them must be held constructively guilty of causing grievous hurt unless they can prove that their action was in the circumstances legitimate. *Lal v. Emperor.*

28 Cr. L. J. 58 :

99 I. C. 90 : A. I. R. 1927 Lah. 831.

———Ss. 34, 326—*Common intention to cause grievous hurt.*

The appellant and his companions went together to strike the deceased. The appellant was found to have inflicted only one injury out of three, all of which were contused wounds caused by blunt weapons. One was on the left eye and was slight; the second on the nose and dangerous to life but could be cured; and the third on

PENAL CODE ACT (XLV OF 1860)

the parietal bone which fractured the skull was necessarily fatal. The appellant stated that he inflicted one blow with a light cane: *Held*, that it would not be safe to assume that the common act intended by all the assailants was more than to cause grievous hurt. *Nga Ba E. v. Emperor.*

15 Cr. L. J. 484 :

24 I. C. 572 : A. I. R. 1914 L. Bur. 152.

———Ss. 34, 397—*Common intention to commit robbery with attempt to cause death or grievous hurt—Form of charge—Acts done by several persons in pursuance of common intention—Accused, liability of.*

S. 397, Penal Code, does not create any distinct substantive offence. It is merely a supplement to Ss. 392 and 395, which create the substantive offences for which S. 397 provides a minimum punishment. There can be no charge or conviction under S. 397 standing by itself, as that section creates no separate offence. The charge as well as conviction should be under S. 392 or 395, as the case may be, read with S. 397. The higher punishment provided by S. 397 can be inflicted only on the offender who actually uses a deadly weapon, or causes or attempts to cause death or grievous hurt, and S. 34 cannot be applied to the other offenders to make them liable to enhanced punishment under S. 397. The charge and conviction as against them should be one under S. 392 or 395, as the case may be. *Myuing v. Emperor.*

22 Cr. L. J. 593 :

62 I. C. 865 : 10 L. B. R. 269 :

13 Bur. L. T. 158 :

A. I. R. 1920 L. Bur. 116.

———Ss. 34, 397—*Dacoity—Some dacoits armed with deadly weapons—Liability of other dacoits—Dang whether deadly weapon.*

S. 34 does not apply to S. 397, so that if one in a party of dacoits carries a deadly weapon, it cannot be said that it would increase the gravity of the offence in the case of his associates who were not similarly armed. *Bachna v. Emperor.*

28 Cr. L. J. 17 :

99 I. C. 49 : A. I. R. 1927 Lah. 149.

———Ss. 34, 397—*Dacoity—Use of deadly weapons—Conviction.*

Where several persons join in committing a dacoity and some of them use deadly weapons, all of them are liable to be punished under S. 397, Penal Code. The provisions of S. 34 are applicable to such a case. *Dangar Khan v. Emperor.*

23 Cr. L. J. 593 :

68 I. C. 817 : A. I. R. 1923 Lah. 104.

———S. 37.

See also Penal Code, 1860, S. 34.

———S. 37—*Co-operation by doing one or several acts constituting offence—Culpable homicide—Murder—Issue—Proof—Practice—Trial by Sessions Court—Murder committed in concert—Liability of each person co-operating.*

Where culpable homicide has been commit-

PENAL CODE ACT (XLV OF 1860)

ted, *prima facie* the principal issue is:—Whether that culpable homicide does not amount to murder. In ordinary cases, that issue ought to be tried, and ought to be prejudged, by an authority less than the authority of a Court of Session. *A* and *B* attacked *C* acting in concert in the sense that their attack was a single indivisible thing. *A* struck *C* savagely on the head with a heavy stick and *B* smashed *C* in his skull by a blow dealt with a heavy stone held firmly in the hand. *C* died in consequence of the injuries. There was no general flight of any gravity before the attack: *Held*, (1) that *A* and *B* were both guilty of murder; (2) that S. 37, Penal Code, made them both liable for the murder which was the result of their attack. *Subbappa Ghannappa v. Emperor*. 14 Cr. L. J. 235 : 19 I. C. 331 : 15 Bom. L. R. 303.

—S. 37—Murder—Concerted assault with lathis by several persons—Liability of each for murder.

Three persons acting in concert and armed with lathis attacked a fourth and injured him so severely, that as a result of the injuries inflicted, he died; the Sessions Judge convicted two of the assailants under S. 304, Penal Code, and acquitted the third though he found that he was present and took part in the assault. On appeal by Government against the acquittal: *Held*, that each of the assailants was guilty of murder. All of them must be taken to have intended to cause death or to have had every reason to know that the probable result of their joint action would be death. *Emperor v. Ram Nawaaz*. 14 Cr. L. J. 615 : 21 I. C. 663 : 35 All. 506 : 11 A. L. J. 804.

—S. 38—Scope.

Different punishments for different offences can be given to persons under S. 38. *Sultan v. Emperor*. 32 Cr. L. J. 1219 : 134 I. C. 793 : 12 Lah. 442 : 32 P. L. R. 925 : I. R. 1931 Lah. 1001 : A. I. R. 1931 Lah. 749.

—Ss. 39, 94—Voluntarily—Meaning of—Accomplice in murder case—Doing an act under threat of death—Voluntary—Accomplice's evidence—Corroboration.

A person, who by threats of death is induced to do an act in order to facilitate the commission of a murder, cannot claim the benefit of S. 94, Penal Code. That section does not apply to cases of murder and the person is an accomplice, his action being voluntary under S. 39 of the Penal Code. *Killikyalara Bomma v. Emperor*. 14 Cr. L. J. 207 : 19 I. C. 207 : 1912 M. W. N. 1108.

—Ss. 39, 94, 302—Murder—Two men striking another with dangerous weapons and killing him—Offence—One committing offence in pursuance of threat—Whether mitigating circumstance.

Where two or more persons unite together

PENAL CODE ACT (XLV OF 1860)

and strike a series of blows with dangerous weapons on the body of the deceased, that it is impossible to identify any one of the wounds with any one of the assailants and nevertheless if the deceased dies as a result of the injuries received, each of the assailants is guilty of the offence of murder. Where one assailant commits the offence by yielding to the threats of other, it is no mitigation of the circumstances. S. 94, Penal Code, is clear that the threat does not affect his liability, and his assault is not only intentional (as distinguished from accidental) but also voluntary within the meaning of S. 30. *Emperor v. Itwa Munda*. (S. B.) 39 Cr. L. J. 554 : 175 I. C. 300 : 10 R. P. 606 : 4 B. R. 568 : 19 P. L. T. 476 : A. I. R. 1938 Pat. 258.

—S. 40.

See also (i) Cr. P. C., 1898, S. 195.
(ii) Penal Code, 1860, S. 441.

—S. 40—Applicability—Abetment of offence under Calcutta Municipal Act.

The Calcutta Municipal Act is a Local and Special Law and S. 40, Penal Code, applies to the abetment of an offence which is thereby made punishable. *Probodh Chandra v. Corporation of Calcutta*. 21 Cr. L. J. 173 : 54 I. C. 781 : 24 C. W. N. 196 : 47 Cal. 547 : A. I. R. 1920 Cal. 321.

—S. 40—Interpretation.

Per Din Mohammad, J.—The term "special law" refers only to a law dealing with those matters which had not been dealt with in the I. P. C., i. e., a law creating offences not contemplated by the Code. *Hakam Khuda Yar v. Emperor*. (F. B.) 41 Cr. L. J. 591 : 188 I. C. 498 : I. L. R. 1940 Lah. 242 : 13 R. L. 1 : A. I. R. 1940 Lah. 129.

—S. 40—Offence—What is—Local law declaring punishable breach of rule framed thereunder.

Where a local law declares a breach of the rules made under its authority to be punishable, then a breach of such rules might constitute an offence within the meaning of S. 40, Penal Code. *Bux Soa Meah Chowdhry v. The King*. 39 Cr. L. J. 985 : 178 I. C. 121 : 11 R. Rang. 201 : A. I. R. 1938 Rang. 350.

—S. 40—Offence under special or local law—Offence under rules of special or local law, whether included.

Obiter.—Whether an offence is punishable by virtue of the provisions of a Special or Local Act or under the rules framed under the powers conferred by such Act for imposing penalty, it is an offence punishable under the Act within S. 40, Penal Code. *Pandu Vithu Savant v. Emperor*. 26 Cr. L. J. 250 : 84 I. C. 250 : 26 Bom. L. R. 971 : A. I. R. 1924 Bom. 489.

PENAL CODE ACT (XLV OF 1860)

———Ss. 40, 41—Scope.

The special laws contemplated by Ss. 40 and 41, Penal Code, are only laws, such as the Excise, Opium and Cattle Trespass Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the general Penal Code. *Emperor v. Po Han*. 15 Cr. L. J. 3 :

22 I. C. 147 : 7 L. B. R. 63 :
7 Bur. L. T. 99 : A. I. R. 1914 L. Bur. 145.

———Ss. 40, 41.

'Special law', meaning of. *Hukam Khuda Yar v. Emperor*. (F. B.) 41 Cr. L. J. 591 :
188 I. C. 498 : I. L. R. 1940 Lah. 242 :
13 R. L. 1 : A. I. R. 1940 Lah. 129.

———Ss. 40, 109—Abetment of breach of bye-law framed by Municipal Council, whether offence—'Local law,' 'offence', meaning of—*Burma Rural Self-Government Act (IX of 1921)*, S. 80 (2)—Rules framed under Act, rr. 7, 12.

The abetment of a breach of the bye-laws framed by a District Council under the authority of the Burma Rural Self-Government Act is not an abetment of an 'offence' within the meaning of S. 109, Penal Code, and is not, therefore, punishable under the said section. A local law within the meaning of S. 40, Penal Code, does not necessarily include a rule made under the provisions of a local law. *Ma Khwet Kyi v. Emperor*. 30 Cr. L. J. 509 :

115 I. C. 664 : 6 Rang. 791 :
I. R. 1929 Rang. 120 : A. I. R. 1929 Rang. 75.

———Ss. 40, 109—Applicability—*Madras District Municipalities Act (Mad. V of 1920)*, S. 55—Double voting, abetment of, whether offence.

An abetment of the offence of double voting under S. 55 (1), Madras District Municipalities Act, is an offence under S. 109, Penal Code, read with S. 40 thereof and is chargeable and punishable thereunder. *Sesha Aiyar v. Venkatasubba Chetty*. 25 Cr. L. J. 442 :

77 I. C. 730 : 19 L. W. 201 :
1924 M. W. N. 268 : A. I. R. 1924 Mad. 487.

———S. 41—Interpretation.

The expression "special law" as defined in S. 40, I. P. C., cannot be taken to mean only enactments which create fresh offences not made punishable under the I. P. C. *Hakam Khuda Yar v. Emperor*. (F. B.)

41 Cr. L. J. 591 :
188 I. C. 498 : I. L. R. 1940 Lah. 242 :
13 R. L. 1 : A. I. R. 1940 Lah. 129.

———S. 43.

See also Cr. P. C., 1898, Ss. 179, 181 (2).

———S. 43—Scope.

S. 43 covers a breach of contract and not merely a tort. The breach of contract, however, must be one which furnishes ground for a civil action, that is to say, in respect of which damages could be obtained under S. 78, Con-

PENAL CODE ACT (XLV OF 1860)

tract Act, or which could be enforced specifically. *Ganpat Subrao Kashyapi v. Emperor*.

35 Cr. L. J. 1429 :
151 I. C. 867 : 36 Bom. L. R. 373 :
58 Bom. 401 : 7 R. B. 85 :
A. I. R. 1934 Bom. 202.

———S. 43—Written in provoking style and defamatory, publication of, illegal—Distribution of pamphlet—Riot, likelihood of, being committed—Offence.

The publication of a pamphlet (the subject-matter of which leaves no doubt as to the identity of the persons against whom the writing is directed) written in a very provocative style, defamatory of certain persons, furnishing to them ground for a civil action, would be illegal according to S. 43, Penal Code, and as the natural and probable result of reading such a pamphlet would be to give provocation to the readers, the person connected with the pamphlet may properly be said to have intended that such provocation would cause the offence of rioting to be committed, and the distribution of the pamphlet would render the person concerned liable to punishment under S. 153, Penal Code. *Rahimallli Mahomed Ali v. Emperor*.

22 Cr. L. J. 513 :
62 I. C. 401 : 22 Bom. L. R. 166.

———S. 44—Injury—What is.

Injury has been held to include every tortious act. Obtaining money against the will of a person on threat of loss of appointment, may be extortion. *Shamu Mal v. R. A. Gordon*.

37 Cr. L. J. 457 :
161 I. C. 295 : 8 R. S. 135 :
A. I. R. 1936 Sind 29.

———S. 44—Injury—What is.

"Injury" includes only such harm as may be caused illegally to a person's mind, body, reputation, or property. *In re : Mantripragada Mattapalli Narasimha Rao*. 19 Cr. L. J. 445 :
44 I. C. 973 : A. I. R. 1919 Mad. 954.

———S. 44—Injury—What is—Threat to report suspected case of smuggling liquor, whether extortion—'Injury', meaning of—Joint trial of charges of wrongful restraint, attempt at extortion and causing hurt in attempt, legality of.

Accused, who was the proprietor of a certain estate, stopped complainant, a coolie, whom he suspected of smuggling arrack from the Nizam's Dominions into British Territory, on the way, took and kept his liquor jar for the night and threatened to report the matter to the Police unless he paid something. He was charged with wrongful restraint, threat of injury to commit extortion and causing simple hurt in the course of the attempted extortion and was sentenced to a single fine of Rs. 100 for the three offences : Held, that the conviction under S. 385 was bad, as complainant was not put in fear of any injury within the meaning of S. 44, Penal Code, and the accused only threatened to do what he was bound by law to do. *In re : Mantripragada Mattapalli Narasimha Rao*. 19 Cr. L. J. 445 :
44 I. C. 973 : A. I. R. 1919 Mad. 954.

PENAL CODE ACT (XLV OF 1860)

—S. 44—*Injury—What is.*

Where a person without any right takes away the cattle belonging to another and declines to return them until he receives a certain sum, and it is on receipt of that sum that he returns them, he does put the complainant in fear of injury to his property, within the meaning of S. 44 of the Penal Code and thereby commits the offence of extortion. *Habibul Razzay v. Emperor.* 25 Cr. L. J. 961 :

81 I. C. 609 : 21 A. L. J. 850 : 46 All. 81 : A. I. R. 1924 All. 197.

—Ss. 47, 448—*Offences under.*

Where a Hindu husband in company of several associates forcibly entered the house of a third person and took away by force his married wife from there against her will: *Held*, that the husband and his associates were guilty of offences under Ss. 47 and 448, Penal Code. *Emperor v. Ram Lo.* 19 Cr. L. J. 955 :

47 I. C. 807 : 12 S. L. R. 29 : A. I. R. 1918 Sind 69.

—S. 52.

See also Penal Code, 1860, Ss. 220, 353.

—S. 52—*Due care and attention.*

The phrase 'due care and attention' in S. 52 implies genuine effort to reach the truth and not the ready acceptance of an ill-natured belief. *Gaya Din v. Emperor.* 35 Cr. L. J. 804 :

148 I. C. 870 : 11 O. W. N. 337 : 6 R. O. 448 : A. I. R. 1934 Oudh 124.

—S. 52—*Due care and attention.*

What is due care and attention depends on the position in which a man finds himself, and varies in different cases. *Po Mye v. The King.* 41 Cr. L. J. 634 : 184 I. C. 578 : 1940 Rang. 109 : 13 R. Rang. 5 : A. I. R. 1940 Rang. 129.

—S. 52—*Good faith—Meaning of.*

It does not constitute 'good faith' necessarily that the person making the imputation believed it to be true. 'Due care and attention' implies genuine effort to reach the truth and not the ready acceptance of an ill-natured belief. *Anandrao Balkrishna v. Emperor.* 16 Cr. L. J. 177 :

27 I. C. 657 : 17 Bom. L. R. 82 : A. I. R. 1915 Bom. 28.

—S. 52—*Good faith—Meaning of.*

Per Davar, J.—That as the *Mamlatdar* by his previous conduct had given ample reasons to the accused for believing rightly or wrongly that he was acting with personal ill-will against him, the imputation was made in good faith. *Anandrao Balkrishna v. Emperor.* 16 Cr. L. J. 177 :

27 I. C. 657 : 17 Bom. L. R. 82 : A. I. R. 1915 Bom. 28.

—S. 52—*Good faith—Meaning of.*

Per Shah, J.—The care and attention required by law must have relation to the

PENAL CODE ACT (XLV OF 1860)

occasion and the circumstances and the question as to what would be due care and attention must be determined with reference thereto. *Anandrao Balkrishna v. Emperor.* 16 Cr. L. J. 177 :

27 I. C. 657 : 17 Bom. L. R. 82 : A. I. R. 1915 Bom. 28.

—S. 52—*Good faith—What is.*

Where the question is whether a public servant was justified in doing a certain thing, his justification must have a better foundation than his mere private belief. *Gaya Din v. Emperor.* 35 Cr. L. J. 804 :

148 I. C. 870 : 11 O. W. N. 337 : 6 R. O. 448 : A. I. R. 1934 Oudh 124.

—S. 53.

See also Cr. P. C., 1898, S. 340.

—S. 53—*Breach of peace—Punishment.*

A breach of the peace, even if involving an assault on a public officer of a mild character, unless there be some elements of criminality in it, should not ordinarily be punished by sentence of imprisonment. *Ananda Parhi v. Emperor.* 32 Cr. L. J. 1166 :

134 I. C. 432 : 12 P. L. T. 791 : I. R. 1931 Pat. 464 : A. I. R. 1931 Pat. 342.

—S. 53—*Order passed under S. 25, Burma Prevention of Crime (Young Offenders) Act, if punishment.*

Per Ba U, J.—(In order of reference) An order passed under S. 25, Burma Prevention of Crime (Young Offenders) Act, is a punishment within the meaning of S. 53. *The King v. Kyaw Aye.* 187 I. C. 405 : 1939 Rang. 744 :

12 R. Rang. 332 : A. I. R. 1940 Rang. 81.

—S. 53—*Scope.*

The list of punishments given in S. 53 is not exhaustive. *Garanand Singh v. Emperor.* 35 Cr. L. J. 116 :

146 I. C. 545 (2) : 6 R. Rang. 103 : A. I. R. 1933 Rang. 329.

—Ss. 54, 221, 383—*Offence—Village chowkidar, whether public servant or Police Officer—Chowkidar of another village releasing thief on taking bribe—Offence—Extortion—Dereliction from duty.*

Where a thief was caught in the act of committing theft in a certain village by a *chowkidar* of another village and the latter induced the thief to pay him a certain sum of money as a condition for his release and for forbearing to report him to the Police: *Held*, (1) that the *chowkidar* was not guilty under S. 221, Penal Code, as he was not under any legal duty to arrest or detain the thief; (2) that he was, however, guilty of the offence of extortion under S. 383 of the Code. A village *chowkidar* is not a Police Officer within the meaning of S. 54, Penal Code, but he is a public servant. *Bhagwan Din v. Emperor.* 31 Cr. L. J. 12 :

120 I. C. 205 : 1930 A. L. J. 242 : 52 All. 23 : A. I. R. 1929 All. 935.

PENAL CODE ACT (XLV OF 1860)

———S. 59.

See also Sentence.

———S. 59—Sentence—Transportation for life—Period.

Where an offence is punishable with transportation for life or imprisonment for a term of years, S. 59, Penal Code, does not authorise a sentence of transportation for a term of years exceeding the maximum term of imprisonment to which the offender is liable. *Sayyapureddi Chinnayya Dhora v. Emperor.*

22 Cr. L. J. 174 :
59 I. C. 926 : 19 A. L. J. 164 :
40 M. L. J. 194 : 13 L. W. 223 :
1921 M. W. N. 26 : 33 C. L. J. 222 :
25 C. W. N. 514 : 3 U. P. L. R. P. C. 10 :
44 Mad. 297 : 23 Bom. L. R. 705 :
30 M. L. T. 192 : A. I. R. 1921 P. C. 24 P. C.

———S. 59—Transportation instead of imprisonment—Legality of.

A sentence of transportation for seven years in lieu of two sentences of imprisonment amounting when combined, to seven years is not legal. *Nga Meik v. Emperor.*

2 Cr. L. J. 473 :
U. B. R. 1905 I. P. C. 11.

———S. 59—Transportation instead of imprisonment—Period of.

When an offence is punishable with transportation for life or imprisonment for a term of ten years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment, namely, ten years. *Alla-ud-Din v. Emperor.*

20 Cr. L. J. 561 :
52 I. C. 49 : A. I. R. 1919 All. 327.

———S. 59—Transportation—Period of.

The Penal Code in no instance specifically provides transportation for any term short of life as a punishment, and S. 59 is the only authority for passing sentences of transportation for shorter periods. The term of transportation under that section cannot exceed the term of imprisonment provided by the section under which a conviction is had. *Arura v. Emperor.*

1 Cr. L. J. 89 :
5 P. L. R. 41 : 31 P. R. Cr. of 1903.

———Ss. 59, 304—Culpable homicide not amounting to murder—Transportation instead of imprisonment—Period of.

The appellants were convicted by a Sessions Judge of culpable homicide not amounting to murder under S. 304 (1), Penal Code, and sentenced to three years' rigorous imprisonment. On an application for enhancement of sentence, the High Court enhanced the sentence to transportation for 14 years. Held, that ten years being the maximum term (short of life) for which the appellants could be sentenced to transportation, the case should be remitted to the High Court with

PENAL CODE ACT (XLV OF 1860)

instructions to pass sentence according to law. *Sayyapureddi Chinnayya Dhora v. Emperor.*

22 Cr. L. J. 174 (P. C.) :
59 I. C. 926 : 19 A. L. J. 164 :
40 M. L. J. 194 : 13 L. W. 223 :
1921 M. W. N. 26 : 33 C. L. J. 222 :
25 C. W. N. 514 : 44 Mad. 297 :
3 U. P. L. R. (P. C.) 10 :
23 Bom. L. R. 705 : 30 M. L. T. 192 :
A. I. R. 1921 P. C. 24.

———S. 62—Forfeiture of property, when allowed.

Sentence of forfeiture of the property of a criminal, under S. 62, is not advisable in cases of private crime and is justifiable only in cases in which offences committed are of a political nature against the State or affecting the safety of the public or some section of it. [But S. 62 has since been repealed.] *Maghir Singh v. Emperor.*

7 Cr. L. J. 349 :
3 P. W. R. Cr. 26 : 7 P. R. Cr. 1908 :
9 P. L. R. 444.

———S. 62—Forfeiture of property, when allowed.

The special sentence provided for by S. 62, Penal Code, is a sentence which should only be inflicted in rare cases, those in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. [S. 62 has since been repealed.] *Emperor v. Amrit Lal.*

4 Cr. L. J. 371 :
26 A. W. N. 259 : 3 A. L. J. 772 :
I. L. R. 29 All. 25.

———S. 62—Forfeiture of property, when allowed.

Under S. 62, Penal Code, an order of forfeiture of the convict's property should ordinarily be passed in cases of crimes against the State of affecting the safety of the public generally. [This section has since been repealed.] *Gaya Prasad v. Emperor.*

15 Cr. L. J. 606 :
25 I. C. 518 : 12 A. L. J. 760 :
36 All. 395 : A. I. R. 1914 All. 402.

———Ss. 62, 302—Murder—Forfeiture of property, when allowed.

An order under S. 62, Penal Code, directing the forfeiture of the property of a person sentenced to death for murder, is appropriate only when theft forms part of the motive for the murder. [S. 62 has since been repealed.] *Manna Singh v. Emperor.*

21 Cr. L. J. 401 :
56 I. C. 49 : 18 A. L. J. 375 :
A. I. R. 1920 All. 19.

———S. 63—Fine—Poor accused—Imposition of fine in addition to imprisonment, not desirable.

Where the accused are men of a very humble walk of life, it is not desirable to impose a sentence of fine in addition to substantial sentence of imprisonment. *Janu v. Emperor.*

30 Cr. L. J. 838 :
117 I. C. 802 : 30 P. L. R. 125 :
11 L. L. J. 230 : I. R. 1929 Lah. 690.

PENAL CODE ACT (XLV OF 1860)

————S. 64.

See also (i) Bombay Village Police Act, 1807, S. 15.

(ii) Cr. P. C., 1898, Ss. 35, 123.

————S. 64—Imprisonment in default of fine if can be concurrent with other imprisonment.

Courts should not ordinarily order a sentence of imprisonment in default of fine to run concurrently with any other sentence of imprisonment whatever the order in which the sentences may have been passed. *Emperor v. Ebrahim*. 32 Cr. L. J. 637 : 131 I. C. 61 : I. R. 1931 Rang. 125 : A. I. R. 1931 Rang. 51 (1).

————S. 64—Imprisonment in default of payment of fine—Breach of Village Sanitation Regulation.

The accused was charged under the Mysore Village Sanitation Regulation and sentenced to pay a fine and, in default, to be imprisoned. On a reference by the District Magistrate as to whether the special procedure in S. 64, Penal Code, applied to the breach of the Village Sanitation Regulation, and whether the sentence was not illegal: *Held*, that under S. 6 of the Regulation (I of 1904) amending Penal Code, it was not illegal. *In re : Pillayya*. 7 Cr. L. J. 180 : 12 M. C. C. R. 51.

————Ss. 64, 67—Imprisonment in default of fine—Police Patil's jurisdiction to award.

S. 64 not being made applicable by the Bombay General Clauses Act to proceedings under the Bombay Village Police Act, a village Police Patil has no jurisdiction to award confinement in default of payment of fine. *Emperor v. Puna Laxman Bhil*.

1 Cr. L. J. 327 : 6 Bom. L. R. 357.

————S. 65.

See Penal Code, 1860, S. 143.

————S. 65—Imprisonment in default of fine—Extent.

A sentence of five months' rigorous imprisonment in default of payment of fine for an offence punishable with one year's imprisonment is illegal by reason of the provisions of S. 65, Penal Code. *Nur-ud-Din v. Emperor*.

25 Cr. L. J. 1161 : 81 I. C. 985 : A. I. R. 1925 Oudh 109.

————S. 67.

See also Bombay Village Police Act, 1807, S. 15.

————S. 70.

See also Criminal trial.

————S. 70—Recovery of fine.

The fact of a Magistrate having written off a fine as irrecoverable is no bar to the realization thereof at any time within the period allowed by law, if it subsequently appears that the person from whom the fine was due has

PENAL CODE ACT (XLV OF 1860)

acquired the means of paying it. *Latif-ul-Hasan v. Mumtaz Ali Khan*. 4 Cr. L. J. 404 : 26 A. W. N. 275 : 3 A. L. J. 818.

————S. 71.

See also (i) Burma Gambling Act, 1890.

(ii) Cr. P. C., 1898, Ss. 35, 103.

(iii) Joinder of Charges.

(iv) Penal Code, 1860, Ss. 114, 147, 148, 303.

(v) Whipping Act, 1900.

————S. 71—Applicability—If applies to offences under Ss. 225 and 353—Separate sentences, if can be passed for such offences.

The provisions of S. 71 do not apply to the offences under Ss. 358 and 225 as they are separate offences. They are not an offence made up of parts nor are they an offence falling under two separate definitions of the law but they are actually separate offences. One can contemplate a case in which a person assaults a Police Officer without rescuing a person from his custody, and one can also contemplate a case in which a person rescues a man from Police custody without assaulting the Police Officer. The two acts are quite separate. These two offences must be treated on the same lines as given in Ill. (b) to S. 71, I. P. C., therefore, separate sentences can be passed for those offences. *Zarkhan Nurkhan v. Emperor*. 41 Cr. L. J. 543 : 188 I. C. 78 : 12 R. Pesh. 37 : A. I. R. 1940 Pesh. 10.

————S. 71—Applicability.

S. 71 does not apply to conspiracy, as defined in S. 120-B. *Balu Huddar v. Emperor*.

35 Cr. L. J. 594 :

148 I. C. 157 : 6 R. N. 167 :

A. I. R. 1933 Nag. 252.

————S. 71—Applicability.

S. 71, Penal Code, applies only to a case of simple assault which is stated as the common object of an unlawful assembly in the charge framed in the case. But if in the prosecution of the common object "to commit assault" more than mere violence or assault, such as grievous hurt or death is caused, that section will not apply and separate sentences passed under Ss. 148 and 324, and S. 320/449, Penal Code, would not be illegal. *Mathura Rai v. Emperor*.

22 Cr. L. J. 702 :

63 I. C. 830 : 2 P. L. T. 316 :

A. I. R. 1921 Pat. 323.

————S. 71—Applicability.

Two offences, though committed by means of the same pamphlet, are as distinct as two libels on the different persons contained in one book. They do not come within the provisions of S. 71, I. P. C. *Emperor v. Virumal*.

11 Cr. L. J. 583 :

8 I. C. 203 : 4 S. L. R. 55.

————S. 71—Conviction for several offences—Extent of punishment.

A Second Class Magistrate convicted the accused for offences under S. 147 and S. 325, Penal Code, read with S. 149 and sentenced

PENAL CODE ACT (XLV OF 1860)

him on each count for different terms which together amounted to nine months: *Held*, that the sentence was not illegal. *Dharam Das v. Emperor*. 11 Cr. L. J. 480 : 7 I. C. 412 : 7 A. L. J. 910.

————S. 71—Double punishment for same offence—*Legality of*.

Where the accused was convicted and sentenced for the offences under Ss. 354 and 506, Penal Code, to three months' rigorous imprisonment for each offence: *Held*, that the intimidation by throwing a knife formed part of the assault in this case, consequently the sentence under S. 506 was illegal and must be set aside. *Emperor v. Nga Lu Nyun*. 12 Cr. L. J. 242 : 10 I. C. 771 : 4 Bur. L. T. 67.

————S. 71—Scope.

S. 71 of the Penal Code contemplates separate punishments for an offence against the same law and not under different laws. *Sukhnandan Rai v. Emperor*. 19 Cr. L. J. 157 : 43 I. C. 445 : A. I. R. 1918 Pat. 649.

————S. 71—Separate conviction for distinct offences—*Propriety of—Excise Act (XII of 1896), Ss. 45, 51—Separate convictions for distilling and possessing spirits legal but not desirable*.

Distilling spirit and possessing the spirit obtained by such distillation are not distinct offences within the meaning of S. 35, Cr. P. C., and a double sentence is prohibited by S. 71, Penal Code. *Emperor v. Nga Po Kyaw*. 1 Cr. L. J. 552 : 4 B. R. 1904, 1st Qr. P. C. 3.

————S. 71—Separate offences—*Abetment, conviction for, of each offence separately, legality of*.

Two carters were entrusted with certain goods for carriage. While on the journey, they drove the carts to a godown for the purpose of having some of the goods extracted where the petitioner was directing operations. Separate cases were instituted against each of the carters, and in each case petitioner was joined as an accessory and was convicted and sentenced in each case separately: *Held*, that petitioner having abetted the offence of each carter separately, his conviction and sentence in respect of each offence separately was not illegal. *Babujan v. Emperor*. 25 Cr. L. J. 219 : 76 I. C. 651 : A. I. R. 1923 Cal. 403.

————S. 71—Separate sentences for distilling spirit and possessing such spirit, *legality*.

Distilling spirit and possessing such spirit are not distinct offences within the meaning of S. 35, Cr. P. C., and a double sentence is prohibited by S. 71. *Emperor v. Nga San Dun*. 1 Cr. L. J. 552 : 4 B. R. 1904, 1st Qr. P. C. 1.

————S. 71—Separate sentences, *legality of*.

Counterfeiting a trademark is not an offence which is made up of parts of possessing the mould for counterfeiting and the act of

PENAL CODE ACT (XLV OF 1860)

counterfeiting. Such a case comes under the latter portion of the section, *Abdul Sovan v. Jitendranath Dutta*. 32 Cr. L. J. 1171 : 134 I. C. 446 : I. R. 1931 Cal. 830 : A. I. R. 1931 Cal. 445.

————S. 71—*Separate sentences, legality of*.

Persons charged under S. 147 and as a consequence of that under S. 304—Case comes within S. 71 and separate sentences are forbidden on each of two charges. *Kilabdi v. Emperor*. 32 Cr. L. J. 890 : 132 I. C. 247 : 35 C. W. N. 184 : I. R. 1931 Cal. 567 : A. I. R. 1931 Cal. 450.

————S. 71—*Separate sentences, legality of*.

Picketing foreign cloth shop—Charge under S. 17 (1), Criminal Law Amendment Act and S. 4, Ordinance V of 1932—Conviction under both—Separate sentences in respect of each is illegal. *In re : P. S. Ananta Narayanan*. 34 Cr. L. J. 277 : 142 I. C. 21 : 37 L. W. 476 : 64 M. L. J. 351 : 1933 M. W. N. 546 : I. R. 1933 Mad. 184 : A. I. R. 1933 Mad. 337.

————S. 71—*Separate sentences, legality of*.

The accused was charged with importing Madras Ganja from Hosur in contravention of the Mysore Excise Regulation and the Rules thereunder and was convicted both under S. 55 (a) and S. 58 and awarded eight days' imprisonment under each of the above sections on a reference by the District Magistrate: *Held*, that the second eight days' imprisonment was illegal, the breach of both sections constituting only one offence. *In re : Thimmappa*. 7 Cr. L. J. 181 : 12 M. C. C. R. 52.

————S. 71—*Separate sentences, legality of*.

Under S. 71, Penal Code, it is not legal to pass a separate sentence when the accused is charged both under S. 147 and also under S. 325 read with S. 149. *Harendra Barman v. Emperor*. 33 Cr. L. J. 1 : 134 I. C. 1041 : 35 C. W. N. 345 : I. R. 1932 Cal. 1 : A. I. R. 1931 Cal. 606.

————S. 71—*Separate sentences, legality of*.

Where a person is convicted for offences under Ss. 147 and 323, Penal Code, he can be awarded separate sentences for each of the offences. *Sothavalam v. Rama Kore*. 34 Cr. L. J. 273 : 142 I. C. 31 : 37 L. W. 250 : 1933 M. W. N. 254 : 64 M. L. J. 314 : 56 Mad. 481 : I. R. 1933 Mad. 180 : A. I. R. 1933 Mad. 338.

————S. 71—*Separate sentences, legality of*.

Where an accused person is convicted at one trial for two or more offences, the proper course for the Court to follow is to pass a separate sentence for each of the offences. *Emperor v. Dharamdas*. 34 Cr. L. J. 143 : 141 I. C. 280 : 26 S. L. R. 416 : I. R. 1933 Sind 46 : A. I. R. 1933 Sind 9.

————Ss. 71, 97—*Distinct offences*.

The accused who was a guard in charge of a goods train, stole almonds and walnuts belonging to separate owners and contained in

PENAL CODE ACT (XLV OF 1860)

separate bags loaded in a truck in the train and was convicted on two separate counts of stealing: *Held*, that the accused committed only one offence and his conviction on one of the counts must be set aside. *Har Dial v. Emperor*. 2 Cr. L. J. 708 : 6 P. L. R. 503.

—Ss. 71, 124-A, 153-A.

Distinct offences—Distinct passages contained in one pamphlet—Conviction under both sections—Advertisement of *Sundeshi* goods—Sanction to prosecute, essentials of Cr. P. C. (Act V of 1898), S. 196—Omission to specify sections in order—Punishment. *Emperor v. Virumal*. 11 Cr. L. J. 583 : 8 I. C. 203 : 4 S. L. R. 55.

—Ss. 71, 143—Cattle Trespass Act (I of 1871), S. 24—Forceful rescue of cattle—Punishment under two laws, legality of.

The accused were tried for forcibly rescuing their cattle seized by the complainant with a view to take them to the pound, as they were causing damage to the earthwork newly thrown on an embankment of the complainant's master, and were convicted and separately punished for offences under S. 24, Cattle Trespass Act, and S. 143, Penal Code: *Held*, that separate punishments under the Penal Code as well as under the Cattle Trespass Act were illegal. *Sukhanandan Rai v. Emperor*. 19 Cr. L. J. 157 : 43 I. C. 445 : A. I. R. 1918 Pat. 649.

—Ss. 71, 147, 149—Separate sentences for rioting and causing hurt—Legality of.

An unlawful assembly becomes guilty of rioting when violence is used. The members of it cannot be convicted and sentenced separately for rioting and causing hurt. *Hardit Singh v. Emperor*. 12 Cr. L. J. 236 : 10 I. C. 278 : 161 P. L. R. 1911.

—Ss. 71, 147, 149, 323, 325—Rioting and grievous hurt—Separate convictions when proper.

For an offence under S. 147, Penal Code, all that is necessary is, that the members of the unlawful assembly should use force or violence, and the use of the least amount of force is sufficient. An unlawful assembly may have a common object of committing hurt or grievous hurt, and when such an assembly uses force or violence of the least amount, the members thereof are guilty of rioting and punishable under S. 147. If, however, their common object is accomplished by causing hurt or grievous hurt, they would be liable to conviction for the further offence under Ss. 323 or 325, as the case may be. *Nemdhari Singh v. Emperor*. 22 Cr. L. J. 449 : 61 I. C. 833 : 2 P. L. T. 91 : A. I. R. 1921 Pat. 432.

—Ss. 71, 147, 149, 325—Convictions under S. 147 and S. 325 read with S. 149—Separate sentences.

In a case where an accused is convicted of an offence under S. 147, Penal Code, and also under S. 325 read with S. 149, Penal Code, it is not illegal to inflict on him separate sentences

PENAL CODE ACT (XLV OF 1860)

for the two offences. *Raghubar v. King Emperor*. 40 Cr. L. J. 217 :

179 I. C. 461 : 1939 O. W. N. 27 : 1939 O. L. R. 40 : 11 R. O. 177 : A. I. R. 1939 Oudh 91.

—Ss. 71, 147, 149, 325—Rioting—Grievous hurt—Separate sentences, legality of.

When a person who is guilty of rioting is also held guilty of causing constructive grievous hurt under S. 325 read with S. 149, I. P. C., it is illegal under para. 1 of S. 71, to pass on him separate sentences in respect of the offence under S. 147 and the offence under S. 325 read with S. 149. *Kcamuddi Karikar v. Emperor*. 25 Cr. L. J. 945 : 81 I. C. 593 : 51 Cal. 79 :

28 C. W. N. 347 : A. I. R. 1924 Cal. 771.

—Ss. 71, 147, 149, 325—Separate sentences under S. 147 and S. 325 with S. 149, legality of.

Separate sentences under S. 147 and S. 325 read with S. 149, Penal Code, are illegal in view of the provisions of S. 71, Penal Code. *Basir-ud-Din v. Emperor*. 28 Cr. L. J. 484 :

101 I. C. 660 : 31 C. W. N. 532 : A. I. R. 1927 Cal. 931.

—Ss. 71, 147, 149, 342—Rioting and wrongful confinement—Separate sentences, legality of.

Members of an unlawful assembly who attack a person and then take him and confine him in a house, cannot be given separate sentences under S. 147, and S. 342 read with S. 149, Penal Code, by virtue of S. 71 of the Code. *Amir-ud-Din v. Emperor*. 27 Cr. L. J. 232 :

92 I. C. 216 : 40 C. L. J. 306 : A. I. R. 1925 Cal. 217.

—Ss. 71, 147, 323—Cattle Trespass Act (I of 1871), S. 24—Hurt committed in rioting or rescuing cattle—Separate sentences, legality of.

Although the use of criminal force is an ingredient of the offence of rioting and the use of force may be an ingredient in the offence of rescuing cattle, yet the force necessary to constitute these offences may fall short of 'causing bodily pain', and if further force is used which does cause bodily pain, the offences which involve and are complete by mere use of criminal force have been exceeded and that excess constitutes another offence, namely, the offence of causing hurt or causing whatever more serious form of bodily hurt has been the result, for which a separate sentence may legally be passed. *Anthoni Udayar v. Royappudayar*. 28 Cr. L. J. 982 :

105 I. C. 806 : 53 M. L. J. 653 : 1927 M. W. N. 850 : 39 M. L. T. 543 : A. I. R. 1928 Mad. 18.

—Ss. 71, 147, 323—Rioting and causing hurt—Joinder of charges, legality of.

Where the members of an unlawful assembly cause hurt to one person and by a separate

PENAL CODE ACT (XLV OF 1960)

act hurt is caused to another person, the offences of rioting and causing hurt under Ss. 147 and 323, Penal Code, are not distinct offences and can be tried jointly. *Katwaru Rai v. Emperor*.

18 Cr. L. J. 788 :
41 I. C. 308 : 15 A. L. J. 594 :
39 All. 623 : A. I. R. 1917 All. 11.

—Ss. 71, 147, 323—*Separate sentences for rioting and causing hurt, whether legal.*

The imposition of separate sentences for the offences of rioting and causing hurt is illegal where the causing of the hurt is itself the particular form of the force or violence which contributed to the offence of rioting. *In re : Kannamal Mayan*.

28 Cr. L. J. 1004 :
105 I. C. 828 : 53 M. L. J. 656 :
A. I. R. 1927 Mad. 970.

—Ss. 71, 147, 324—*Unlawful assembly and hurt—Separate sentences, legality of.*

Where the common object of an unlawful assembly was to cause the very hurt which is caused, the case comes within the mischief of S. 71, Penal Code, and separate sentences under Ss. 147 and 324, Penal Code, cannot be passed. Whether two separate sentences in the circumstances of such an encounter are illegal depends upon the facts of the case. *Ramdarsan Mahton v. Emperor*.

30 Cr. L. J. 634 :
116 I. C. 523 : 10 P. L. T. 136 :
I. R. 1929 Pat. 299 :
A. I. R. 1929 Pat. 206.

—Ss. 71, 147, 342—*Separate sentences for wrongful confinement and rioting, legality of.*

Where wrongful confinement was the common object of an unlawful assembly, and that was the essential ingredient in the constitution of an offence under S. 147, Penal Code: *Held*, that having regard to the provisions of S. 71, Penal Code, a separate sentence for wrongful confinement is illegal. *Alim Sheikh v. Shahazada Singh Burkundaz*.

1 Cr. L. J. 365 :
8 C. W. N. 483.

—Ss. 71, 147, 353, 225—*S. 71, applicability of, to offences under Ss. 147 and 353.*

The provisions of S. 71, I. P. C., are applicable to the offences under Ss. 147 and 353, I. P. C., and hence the accused cannot be punished with a more severe punishment than the Court could award for any one of them. *Zarkhan Nurkhan v. Emperor*.

41 Cr. L. J. 543 :
188 I. C. 78 : 12 R. Pesh. 37 :
A. I. R. 1940 Pesh. 10.

—Ss. 71, 148, 149, 326—*Separate sentences for rioting and hurt, legality of.*

Where hurt is caused during a riot, separate sentences under Ss. 148 and 326 read with S. 149, Penal Code, are illegal notwithstanding the amendment of S. 35, Cr. P. C. *Bajo Singh v. Emperor*.

31 Cr. L. J. 83 :
120 I. C. 311 : 10 P. L. T. 353 :
8 Pat. 274 : A. I. R. 1929 Pat. 263.

PENAL CODE ACT (XLV OF 1860)

—Ss. 71, 160, 323—*Separate convictions for affray and hurt.*

The conviction of an accused person under S. 160, Penal Code, is no bar to his trial and conviction again under S. 323 of the Code. S. 71, Penal Code, has no application to a case where the offences charged are distinct. *Ram Sukh v. Emperor*.

26 Cr. L. J. 688 :
86 I. C. 64 : 23 A. L. J. 8 : 47 All. 284 :
A. I. R. 1925 All. 299.

—Ss. 71, 232 and 235—*Counterfeiting King's coin—Possessing instruments for counterfeiting—Separate sentences—Legality of.*

Separate sentences cannot be passed on an accused person for offences under Ss. 232 and 233, Penal Code, for counterfeiting King's coin and having in his possession instruments used for counterfeiting such coin. *Hayat v. Emperor*.

1 Cr. L. J. 946 :
5 P. L. R. 404 : 14 P. R. Cr. of 1904.

—Ss. 71, 326, 397—*Conviction for dacoity and grievous hurt, if legal.*

In a conviction for the offence of dacoity, the grievous hurt should not be made the subject of a separate charge and a separate punishment should not be inflicted for it as provided in S. 71, Cl. (2), Penal Code. *In re : Kotaigadu*.

16 Cr. L. J. 615 :
30 I. C. 439 : 1915 M. W. N. 544 :
A. I. R. 1916 Mad. 582.

—Ss. 71, 342, 352—*Separate sentences, legality of.*

Where the petitioners are convicted under Ss. 352 and 342, I. P. C., and sentenced separately for each of the offences, the acts found against them being that they seized, dragged and pushed the complainant to a certain place in order to punish him: *Held*, that what the petitioners have been punished for is the whole series of acts, and that series of acts comes within the definition both of wrongful confinement and of using criminal force, and accordingly, the case falls within the second paragraph of S. 71, I. P. C.; *Held further*, that the infliction of separate punishments is not in violation of the law, provided that the aggregate punishment awarded is not in excess of what the Court can inflict for either of the offences. *Fakir Khan v. Emperor*.

4 Cr. L. J. 69 :
4 C. L. J. 90.

—Ss. 71, 364, 365, 387—*Abduction in order to extort money—Relatives put in fear of death of abducted person in order to extort money.—Separate sentences.*

Where a person is abducted in order that money may be extorted from his relatives, a conviction under S. 365, Penal Code, would be justifiable, because though the main object was to extort money, yet it necessarily followed that the abductor had the intent

PENAL CODE ACT (XLV OF 1860)

to secretly and wrongfully confine him. S. 364 Penal Code, would not apply, as it does not follow as a matter of course that the abducted person was in danger of being murdered. And if, in order to compel the relatives of the abducted person to ransom him, they are put in fear of death of the victim, the provisions of S. 387, Penal Code, would be applicable. But, regard being had to the first part of S. 71, Penal Code, separate sentences cannot be passed under both Ss. 365 and 387 of the Code. *Po Lan v. Emperor*.

14 Cr. L. J. 167 :
19 I. C. 167 : 6 L. B. R. 160 :
6 Bur. L. T. 77.

—Ss. 71, 366, 346—*Kidnapping and rape—Separate sentences, legality of.*

Where an accused is convicted under Ss. 360 and 370, Penal Code, it is not illegal to pass separate sentences for each of the offences inasmuch as the offences are separate and the charge under S. 360 involves elements and questions of fact different from a charge under S. 370. *Ghulam Muhammad v. Emperor*.

28 Cr. L. J. 136 :
99 I. C. 344 : 7 Lah. 484 :
27 P. L. R. 802 :
A. I. R. 1927 Lah. 88.

—Ss. 71, 380, 457—*House-breaking with intent to commit theft—Theft—Separate sentences.*

Whether a person is convicted at one trial of the offence of house-breaking with intent to commit theft and of the commission of theft after such house-breaking, he can be sentenced to separate sentences in respect of each of those offences. *Kanchan Mola v. Emperor*.

26 Cr. L. J. 1253 :
88 I. C. 997 : 41 C. L. J. 563 :
A. I. R. 1925 Cal. 1015.

—Ss. 71, 394, 397—*Conviction under two sections on same facts—Consecutive sentences, illegal.*

Where convictions under Ss. 394 and 397, Penal Code, are based on the same set of facts, consecutive sentences are illegal. *Mumrez v. Emperor*.

26 Cr. L. J. 1350 :
89 I. C. 390 : 1 Lah. Cas. 371 :
A. I. R. 1926 Lah. 47.

—Ss. 71, 399, 402—*Preparation for committing dacoity—Assembling for committing dacoity—Distinct offences—Separate sentences.*

The act of making preparation for committing dacoity, and the act of assembling for the purpose of committing dacoity, when done at different times and on different occasions are distinct offences under the Penal Code, and separate sentences can be awarded for each of those offences, but as a matter of practice, the sentences should be directed to run concurrently and not consecutively. *Ghulam Rasul v. Emperor*.

25 Cr. L. J. 680 :
81 I. C. 168 : 1 Lah. Cas. 25 :
A. I. R. 1925 Lah. 119.

—S. 72.

See also Penal Code, 1860, S. 802.

PENAL CODE ACT (XLV OF 1860)

—Ss. 72, 302, 204—*Conviction in the alternative.*

When an accused person is convicted in the alternative, one of the offences of which he might be guilty being murder, punishable under S. 302, Penal Code, S. 72 so far overrides S. 302 as to admit in such a case of a less punishment than transportation for life being inflicted. *Emperor v. Sahel Singh*.

3 Cr. L. J. 364 :
26 A. W. N. 93.

—S. 73—*Solitary confinement, concurrent sentences of, legality.*

Under S. 73, Penal Code, solitary confinement must be a portion of the substantive sentence of rigorous imprisonment, and where the substantive sentences are two periods of rigorous imprisonment including solitary confinement, it is illegal to direct that the periods of rigorous imprisonment should run consecutively, but that those of solitary confinement be concurrent. A cumulative sentence of solitary confinement is contrary to the intention of S. 73, Penal Code. *Emperor v. Nga Shin Po*.

25 Cr. L. J. 85 :
76 I. C. 21 : 2 Bur. L. J. 92 :
1 Rang. 306 : A. I. R. 1923 Rang. 197.

—S. 73—*Solitary confinement, when can be awarded—Conviction under Arms Act.*

Under the provision contained in S. 73, Penal Code, sentence of solitary confinement can be inflicted only for offences under that Code and cannot be awarded for offences under Special or Local Acts such as the Arms Act. *Emperor v. Nazir Singh*.

25 Cr. L. J. 120 :
76 I. C. 184 : A. I. R. 1924 Lah. 667.

—S. 73—*Solitary confinement, when can be ordered.*

Under S. 73, Penal Code, there is no authority for imposing a sentence of solitary confinement when a person is convicted under some other Criminal Act such as Criminal Tribes Act. *Emperor v. Bidha*.

25 Cr. L. J. 654 :
81 I. C. 142 : 21 A. L. J. 914 : 46 All. 114 :
A. I. R. 1924 All. 319.

—S. 73—Cr. P. C. (Act V of 1898), S. 110—*Order to execute bond for good behaviour—Non-compliance—Punishment—Solitary confinement when can be imposed.*

A Magistrate has no jurisdiction to impose solitary confinement for non-compliance with an order under S. 110, Cr. P. C. The power to impose solitary confinement is confined to cases where a person has been convicted of an offence under the Penal Code and is not applicable to conviction under other laws, unless expressly made so. *Emperor v. Phakkar*.

28 Cr. L. J. 534 :
102 I. C. 342 : A. I. R. 1927 All. 472.

—S. 75.

—Applicability.

—Conviction by a Native State Court.

—Court in British India.

—Duty of Court.

PENAL CODE ACT (XLV OF 1860)

- Duty of Magistrate.
- Enhanced punishment.
- Enhanced sentence.
- Evidence of previous conviction.
- Formal charge, necessity of.
- Heavy sentence, propriety of.
- One previous conviction.
- Power of Magistrate.
- Previous conviction.
- Procedure.
- Proof of previous offences, necessity of.
- Scope of.
- Sentence.
- Severe sentence, impropriety of.
- Trivial offence.

-----S. 75.

- See also (i) Cr. P. C., 1898, S. 439 (1).
 (ii) Criminal Trial.
 (iii) Criminal Tribes Act, 1924, S. 23.
 (iv) Penal Code, 1860, S. 94.

-----S. 75—Applicability.

A conviction under the Punjab Frontier Crimes Regulation is not a conviction under the Penal Code, and the provisions of S. 75, Penal Code, cannot be applied with reference to such a conviction. *Emperor v. Khan Mahommed*. 1 Cr. L. J. 1061 : 5 P. L. R. 441 : 17 P. R. Cr. of 1904.

-----S. 75—Applicability.

A mere attempt to commit an offence falling under Chap. XII or Chap. XVII, Penal Code, is not sufficient to bring into operation the penal provisions of S. 75. S. 75 being a penal section must be construed strictly. *Emperor v. Ramzan Ghulam Hyder*. 40 Cr. L. J. 816 (b) : 183 I. C. 602 (2) : 12 R. S. 61 : 1939 Kar. 676 : A. I. R. 1939 Sind 207.

-----S. 75—Applicability.

A person convicted by a District Magistrate of an offence punishable under Chap. XII or XVII, Penal Code, on a trial held under the provisions of the Sind Frontier Regulation, 1892, is liable to enhanced punishment under S. 75, Penal Code, on conviction of a second offence under either of the above Chapters by any Court in British India. *Mazar v. Emperor*. 18 Cr. L. J. 909 : 42 I. C. 141 : 11 S. L. R. 46 : A. I. R. 1917 Sind 17.

-----S. 75—Applicability.

A previous convict entered an open thorned enclosure in which goats and sheep were kept, but on the owner being disturbed, he fled and was arrested near by. He was convicted under Ss. 457/75 of the Penal Code, and sentenced to transportation for life: *Held*, on appeal that the only offence of which he could be convicted was one of attempted theft under Ss. 379/511, Penal Code, and that as S. 75 did not apply to attempted offences, an enhanced sentence could not be inflicted upon him. *Ghasita v. Emperor*, 20 Cr. L. J. 492 (b) : 51 I. C. 476 : 13 P. R. 1919 Cr. : 73 P. L. R. 1919 : A. I. R. 1919 Lah. 163.

PENAL CODE ACT (XLV OF 1860)

-----S. 75—Applicability.

An accused renders himself liable to enhanced punishment under S. 75, Penal Code, only if there was a previous conviction against him before he committed the offence with which he stands charged. But where the previous conviction was subsequent to the commission of the offence charged, S. 75, Penal Code, has no application. *Po So v. Emperor*.

19 Cr. L. J. 47 :
 42 I. C. 1007 : 9 L. B. R. 77 :
 11 Bur. L. T. 107 : A. I. R. 1918 L. Bur. 132.

-----S. 75—Applicability.

An offence committed by an accused subsequent to the one he is being charged with but before conviction for the same, cannot be taken into consideration for awarding an enhanced sentence under S. 75, Penal Code. *Emperor v. Abdul Sayad Imam*.

27 Cr. L. J. 726 :
 95 I. C. 54 : 28 Bom. L. R. 484 :
 A. I. R. 1926 Bom. 305.

-----S. 75—Applicability—Conviction under S. 511.

S. 75, Penal Code, is not applicable to convictions under S. 511 of the Code. *Emperor v. Banne*.

22 Cr. L. J. 750 (a) :
 64 I. C. 142 : 24 O. C. 260 :
 A. I. R. 1921 Oudh 156.

-----S. 75—Applicability.

Previous conviction before Court-Martial cannot be considered for enhancement under S. 75. *Emperor v. Private T. B. A. W. Johnson, K. O. Y. L. I.* 141 I. C. 445 : A. I. R. 1933 Pesh. 6.

-----S. 75—Applicability—Previous conviction old.

A previous conviction which took place a considerable time before a subsequent offence, does not warrant the application of S. 75, Penal Code. *Kunj Lal v. Emperor*.

30 Cr. L. J. 376 :
 114 I. C. 719 : 30 P. L. R. 52 :
 I. R. 1929 Lah. 319 : A. I. R. 1929 Lah. 278.

-----S. 75—Applicability—Previous conviction, very old.

An enhanced sentence under S. 75, Penal Code, should not be passed where the previous conviction took place as much as 12 years before the subsequent one and there is only one previous offence. *Allah Din v. Emperor*.

29 Cr. L. J. 32 :
 106 I. C. 448 : 29 P. L. R. 59.

-----S. 75—Applicability.

S. 75, Penal Code, applies to cases where it is intended to pass sentences more severe than those provided in the Penal Code for the particular offences charged. But that does not involve a complete exclusion from consideration of previous convictions in cases where it is not

PENAL CODE ACT (XLV OF 1860)

intended or possible to exceed the limits fixed by the Penal Code. *In re : Suban Sahib.*

30 Cr. L. J. 471 :
115 I. C. 483 : 29 L. W. 194 :
I. R. 1929 Mad. 435 : 52 Mad. 358 :
56 M. L. J. 595 : 1929 M. W. N. 393 :
A. I. R. 1929 Mad. 306.

—S. 75—*Applicability.*

S. 75, Penal Code, does not apply to the case of a person with previous convictions under Chap. XVII of the Code, who is found guilty of an offence under S. 403. *Chandaria v. Emperor.*

12 Cr. L. J. 439 :
11 I. C. 623 : 36 P. W. R. 1911 Cr. :
235 P. L. R. 1911.

—S. 75—Conviction by a Native State Court—*Whether previous conviction.*

In awarding enhanced punishment under S. 75, Penal Code, previous conviction of the accused by Court of a Native State cannot be taken into consideration unless it is shown that the said Court was acting under the general or special authority of the Governor-General-in-Council or of any Local Government. *Bahawal v. Emperor.*

14 Cr. L. J. 527 :
21 I. C. 1007 : 17 P. R. 1913 Cr. :
42 P. W. R. 1913 Cr. :
329 P. L. R. 1913.

—S. 75—Court in British India.

Previous conviction by Court-Martial cannot be taken into account for enhancing sentence. *Emperor v. Private Johnson.*

141 I. C. 445 :
A. I. R. 1933 Pesh. 6.

—S. 75—'Court in British India'—*What is.*

A Council of Elders under the Sind Frontier Regulation, 1802, is a Court within the meaning of S. 75, I. P. C. A District Magistrate who convicts an accused on a finding by a Council of Elders under S. 8 (2) of the Regulation is a Court in British India, as the function he performs is judicial and not ministerial. *Mazar v. Emperor.*

18 Cr. L. J. 909 :
42 I. C. 141 : 11 S. L. R. 46 :
A. I. R. 1917 Sind 17.

—S. 75—Duty of Court.

It is essential for the Court when invoking S. 75, Penal Code, to set out in its judgment with precision the dates and particulars of each previous conviction which is relied upon for the purpose of applying that section. *Daya Ram v. Emperor.*

30 Cr. L. J. 1082 :
119 I. C. 429 : 30 P. L. R. 530 :
I. R. 1929 Lah. 893 :
A. I. R. 1929 Lah. 768.

—S. 75—Duty of Magistrate—*Previous convictions—Duty to try with care.*

An accused person, though he has several convictions behind him, is entitled to have his case tried without any presumption of his guilt, and in a case where S. 75, Penal Code, is to be applied, a great deal more care should be given to the enquiry and trial than is usually given to them. *Goli v. Emperor.*

31 Cr. L. J. 8 :
120 I. C. 202 : 1930 A. L. J. 82 :
A. I. R. 1930 All. 17.

PENAL CODE ACT (XLV OF 1860)

—S. 75—Enhanced punishment—*Discretion of Court.*

The powers given to a Court by S. 75, Penal Code, must be exercised with a certain amount of discretion. The Court should take care to make the penalty fit the crime and the practice of committing petty offenders to the Sessions Court after three or four convictions should cease. Even if such persons are committed, there is no necessity for the Sessions Judge to inflict a vindictive sentence. *Gala Mana v. Emperor.*

26 Cr. L. J. 759 :
86 I. C. 343 : 26 Bom. L. R. 434 :
A. I. R. 1924 Bom. 453.

—S. 75—Enhanced punishment—*Legality of.*

On 21st June, accused was charged before a Magistrate with having committed offences punishable under Ss. 380 and 457, Penal Code. On 18th July, witnesses were examined to prove a previous conviction of the accused, and a charge was framed that he was liable to enhanced punishment under S. 75, Penal Code, in consequence of the previous conviction: *Held*, that there was no illegality or irregularity in the procedure adopted by the Magistrate. *Delhi Sonar v. Emperor.*

25 Cr. L. J. 527 :
77 I. C. 991 : 50 Cal. 367 :
A. I. R. 1923 Cal. 707.

—S. 75—Enhanced punishment for attempt to commit an offence—*Previous conviction of complete offence, not of attempt.*

S. 75, Penal Code, does not apply to cases in which the previous conviction was of a complete offence, not of an attempt, and the subsequent charge on which the prisoner is tried is of an attempt punishable under S. 511, I. P. C. *Jhannan Lal v. Emperor.*

5 Cr. L. J. 85 :
14 P. R. Cr. 1906 : 8 P. L. R. 39 :
2 P. W. R. Cr. 49.

—S. 75—Enhanced punishment, propriety of.

For an offence, trivial in itself, greatly enhanced punishment should not be inflicted merely because there have been previous convictions against the offender. *Harnam Das v. Emperor.*

32 Cr. L. J. 582 :
130 I. C. 646 : 31 P. L. R. 333 :
I. R. 1931 Lah. 326 :
A. I. R. 1930 Lah. 100 (1).

—S. 75—Enhanced sentence, grounds for—*Previous convictions, very old—Enhancement of sentence—Prior security proceedings—Duty of Judge.*

A conviction which is at least 18 years old cannot by itself form a good ground for a heavy sentence. It is not proper to rely upon Police papers showing that the accused had been sent up as a *badmash*, for enhancement of sentence, without questioning the accused about those proceedings. *Murido v. Emperor.*

31 Cr. L. J. 763 :
125 I. C. 46 : A. I. R. 1930 Sind 58.

PENAL CODE ACT (XLV OF 1860)

———S. 75—*Enhanced sentence—What is.*

An alteration of a sentence of simple imprisonment for one month, to a sentence of simple imprisonment for three weeks and a fine of Rs. 50, and further imprisonment for one week in default of payment of fine, is an enhancement of the sentence. *Shamlay v. Emperor.*

6 Cr. L. J. 100 :
3 N. L. R. 90.

———S. 75—*Enhanced sentence, when to be passed.*

S. 75, Penal Code, enables a Court to pass a sentence commensurate with the nature of the offence on the accused person; it does not empower a Court to pass a sentence disproportionate to the nature of the actual offence. Recourse should not be had to the provisions of S. 75 if the punishment provided for the offence is sufficient. *Sheikh Chamman v. Emperor.*

21 Cr. L. J. 143 :
54 I. C. 623 : 1919 Pat. 463 :
1 P. L. T. 11 : 2 U. P. L. R. Pat. 24 :
A. I. R. 1920 Pat. 526.

———S. 75—*Evidence of previous conviction—Belonging to gang of thieves.*

A previous conviction of theft or an order to give security on the ground of being a habitual thief is admissible against a person who is charged under S. 401, Penal Code, of the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery. In a case of cattle theft although there is no objection to Police Officers being called to prove the existence of a gang of cattle-lifters and the frequency of thefts in the area where that gang operated, the reports made to them from time to time or brought to their notice showing the names of particular suspects are inadmissible as being hearsay and should be excluded. *Baksho v. Emperor.*

31 Cr. L. J. 1046 :
126 I. C. 468 : 24 S. L. R. 252 :
A. I. R. 1930 Sind 211.

———S. 75—*Formal charge, necessity of.*

Although accused admits previous conviction, formal charge under S. 75 is necessary. *Mangloo v. Emperor.*

32 Cr. L. J. 301 :
129 I. C. 300 (1) : 31 P. L. R. 731 :
I. R. 1931 Lah. 188 : A. I. R. 1930 Lah. 544.

———S. 75—*Heavy sentence, propriety of.*

It is not proper for a Court to impose a heavy sentence by invoking the aid of S. 75, Penal Code, for a trivial offence even in the case of a habitual offender. *Maulu v. Emperor.*

31 Cr. L. J. 264 :
121 I. C. 419 : 31 P. L. R. 217 : 11 Lah. 115 :
A. I. R. 1929 Lah. 787.

———S. 75—*One previous conviction—Enhanced sentence.*

One previous conviction does not necessarily mean that the convict is a habitual criminal, though a subsequent offence, shortly upon the release from Jail, is certainly a

PENAL CODE ACT (XLV OF 1860)

matter which entitles the trial Court to impose a more severe sentence than would be the case if there has been no other conviction. *Labh Singh v. Emperor.*

27 Cr. L. J. 621 :
94 I. C. 365 : 8 L. L. J. 146 :
27 P. L. R. 267 : A. I. R. 1926 Lah. 336.

———S. 75—*Power of Magistrate.*

Previous convictions outside British India cannot be made the basis of a charge under S. 75, and a Magistrate is not bound to consider such convictions in determining the sentence even though it is open to him to do so. *Emperor v. Muthuswami.*

36 Cr. L. J. 793 :
155 I. C. 438 : 1934 M. W. N. 1355 :
68 M. L. J. 176 : 41 L. W. 184 :
58 Mad. 707 : 7 R. M. 581.
A. I. R. 1935 Mad. 198.

———S. 75—*Previous conviction—Abetment—Subsequent offence.*

A previous conviction of an accused for an offence, cannot be taken into consideration at a subsequent conviction for abetment, for the purposes of enhancing punishment under S. 75, Penal Code. *Emperor v. Kashla Antoo.*

7 Cr. L. J. 32 :
10 Bom. L. R. 26 : 3 M. L. T. 122.

———S. 75—*Previous conviction—Duty of prosecution to bring previous convictions to notice of Court—Old convictions are no ground for enhancement.*

The duty of the trial Magistrate to see that all material evidence is, if possible, before the Court, is a general duty, and that duty will not relieve the prosecution of their primary duty to see that matters, such as the existence of previous convictions, are brought definitely to the notice of the Court at the proper time. A previous conviction does not call for enhancement of sentence where such conviction is not a recent one and there is nothing against the accused during the period that has intervened. *Emperor v. Prem.*

30 Cr. L. J. 529 :
115 I. C. 868 : I. R. 1929 All. 468 :
1929 A. L. J. 397 : A. I. R. 1929 All. 270.

———S. 75—*Procedure—Previous convictions—Duty of prosecution to bring previous convictions to notice of Court—Omission to do so—Interference—Revision.*

In a case where the previous convictions of the accused were within the knowledge of the prosecution before the conclusion of the trial and were not brought by the negligence of the prosecution to the notice of the trial Court, the High Court will not interfere in revision and direct further proceedings against the accused for enhancement of sentence. *Emperor v. Bashir.*

30 Cr. L. J. 505 :
115 I. C. 614 : I. R. 1929 All. 390 :
A. I. R. 1929 All. 267.

PENAL CODE ACT (XLV OF 1860)

—S. 75—*Previous conviction—Enhanced sentence—Legality of.*

Taking into consideration a similar previous conviction of the accused and referring to S. 75, a Magistrate of the first class convicted and sentenced the accused for an offence under S. 447, I. P. C., to one month's rigorous imprisonment: *Held*, that reference to S. 75, Penal Code, was meaningless; no Magistrate acting under the Magisterial powers conferred by S. 32, Cr. P. C., can pass a sentence enhanced under S. 75. *Emperor v. David Narsu.* 1 Cr. L. J. 607 : 6 Bom. L. R. 548.

—S. 75—*Previous conviction—Meaning of.*

District Magistrate passing sentence under the Frontier Province Regulation for offences under Chap. 12 or Chap. 17—Such punishment can be considered for S. 75. *Emperor v. Private T. B. A. W. Johnson, K. O. Y. L. I.* 141 I. C. 445 : A. I. R. 1933 Pesh. 6.

—S. 75—*Previous conviction—Mode of proof—Subsequent conviction trivial—Sentence of transportation for life, propriety of.*

The Court should, as a rule, prove a previous conviction when it is relied upon for the purposes of applying S. 75, Penal Code, by one of the methods laid down in S. 511, Cr. P. C. When an accused person has had a certain number of convictions against him, it is not in accordance with enlightened ideas of the administration of criminal justice to sentence him to transportation for life for the commission of a subsequent offence which is trivial in itself. *Daya Ram v. Emperor.*

30 Cr. L. J. 1082 :
117 I. C. 429 : 30 P. L. R. 530 :
I. R. 1929 Lah. 893 :
A. I. R. 1929 Lah. 768.

—S. 75—*Previous conviction—Mode of proving.*

When an accused is charged under the provisions of S. 75, Penal Code, it is absolutely essential that the previous conviction in question should be clearly and legally proved. The proper way to prove such a conviction is either (1) by an extract certified under the hand of the officer in whose custody are the records of the Court which convicted, or (2) by a certificate under the hand of the officer in charge of the Jail in which the punishment or any part thereof was undergone, or else by production of the actual warrant of commitment under which the punishment was suffered. In every case there must be evidence as to the identity of the accused person so convicted. *Feroze Khan v. Emperor.*

28 Cr. L. J. 961 :
105 I. C. 673 : 26 P. L. R. 843 :
A. I. R. 1928 Lah. 107.

—S. 75—*Previous conviction in foreign territory—Effect of—Cr. P. C., Ss. 32, 34, 565—Whipping Act, Ss. 3, 4.*

I. P. C. cannot, as such, be in force in a Feudatory State. Where any such State enforces as its own law provisions identical with those of the I. P. C., a previous conviction

PENAL CODE ACT (XLV OF 1860)

suffered in that State under one of those provisions may be taken into account by a Magistrate in British India when awarding punishment under I. P. C. But the sentence passed must not differ in kind from what is permitted by the section applicable to the offence or exceed the limits imposed by that section and by S. 32 or S. 34, Cr. P. C. In such a case it would be illegal to apply S. 75, I. P. C., or S. 3 or 4 of the Whipping Act, or S. 565, Cr. P. C., upon the strength of the foreign conviction. *Ghastia Teli v. Emperor.* 2 Cr. L. J. 749 : 1 N. L. R. 137.

—S. 75—*Previous conviction in Native State, effect of.*

A previous conviction in a Native State is outside the scope of S. 75. Where, therefore, a person admits such a previous conviction, it ought not to be considered. *Bhanwar v. Emperor.* 21 Cr. L. J. 144 :

54 I. C. 624 : 1 U. P. L. R. All. 172 :
18 A. L. J. 58 : 42 All. 136 :
A. I. R. 1919 All. 63.

—S. 75—*Previous conviction, not recent—Enhanced punishment.*

A Court may decline to order enhanced punishment under S. 75, Penal Code, where a long period has elapsed since the previous conviction. *Khushdil v. Emperor.*

28 Cr. L. J. 160 :
99 I. C. 416 : A. I. R. 1927 Lah. 647.

—S. 75—*Previous conviction old—Enhanced sentence.*

S. 75 should not be applied mechanically in a case where the previous convictions for petty offences are 10 years old and the subsequent one is also for a very similar offence, the convict has adopted regular work for earning his livelihood since his release from jail, is of advanced age and a large family depends upon him for support. Sentence of seven years' transportation for life reduced to one year's rigorous imprisonment. *Kasim Ali v. Emperor.*

7 Cr. L. J. 293 :
3 P. W. R. Cr. 23.

—S. 75—*Previous conviction, proof of.*

The proof of a previous conviction, not contemplated by S. 75, I. P. C., may be adduced, provided the previous conviction is relevant under the Evidence Act. Where the previous conviction of an accused is relevant with reference to the question whether the provisions of S. 562, Cr. P. C., would apply to his case and where it is also relevant on question of punishment, a Court is justified in taking it into consideration in deciding the question of punishment after the accused is found guilty. *Ismail Alibhai v. Emperor.*

16 Cr. L. J. 83 :
26 I. C. 995 : 16 Bom. L. R. 934 :
39 Bom. 326 : A. I. R. 1914 Bom. 216.

PENAL CODE ACT (XLV OF 1860)

—S. 75—*Previous conviction 12 years back—Service in Mesopotamia during great War—Enhanced sentence.*

Where the accused, who was convicted 12 years ago, was released after serving six months of his term to join the army and served the army in Mesopotamia for 8½ years, it is not proper to use his previous conviction for an enhanced sentence under S. 75, Penal Code. *Ishar Singh v. Emperor.*

27 Cr. L. J. 944 :
96 I. C. 400 : A. I. R. 1926 Lah. 647.

—S. 75—*Procedure.*

In order to prove the previous convictions standing against an accused person for S. 75, Penal Code, it is necessary that the provisions of law as contained in S. 511, Cr. P. C., should be observed. *Said Ali v. Emperor.*

35 Cr. L. J. 1387 :
151 I. C. 719 : 36 P. L. R. 7 :
7 R. L. 197.

—S. 75—*Proof of previous offences, necessity of—Enhanced punishment as old offender.*

An accused person cannot be sentenced to enhanced punishment as an old offender until there is some proof of an admission by him before the Court that he is the person who committed the previous offences. *Emperor v. Abdul Malik.*

31 Cr. L. J. 329 :
121 I. C. 762 : 30 L. W. 180 :
57 M. L. J. 470 : 52 Mad. 795 :
1930 M. W. N. 192 :
A. I. R. 1929 Mad. 744.

—S. 75—*Scope of.*

An order under S. 110, Cr. P. C., cannot be used in order to bring an offender within the ambit of S. 75. *Jumo Indris v. Emperor.*

36 Cr. L. J. 326 :
153 I. C. 316 : 28 S. L. R. 199 :
7 R. S. 127 : A. I. R. 1934 Sind 195.

—S. 75—*Scope of.*

Attempts do not come within the purview of S. 75. *Nanhun v. Emperor.*

34 Cr. L. J. 1181 :
146 I. C. 20 (1) : 34 P. L. R. 906 :
6 R. L. 162 : A. I. R. 1933 Lah. 433 (1).

—S. 75—*Scope of—Cr. P. C., S. 110—Enhancement of sentence for theft—Previous convictions for criminal misappropriation and security for good behaviour.*

A security order under S. 110, Cr. P. C., is irrelevant for purposes of awarding enhanced sentence under S. 75, Penal Code. In awarding enhanced sentence under S. 75, Penal Code, for an offence under S. 379, a previous conviction under S. 408, Penal Code, cannot be taken into consideration. *Khanu v. Emperor.*

29 Cr. L. J. 772 :
110 I. C. 804.

—S. 75—*Scope of.*

In the case of an ex-convict charged with an offence under S. 392, read with S. 75, a sentence of seven years' rigorous imprisonment

PENAL CODE ACT (XLV OF 1860)

is by no means too severe. *Shubrati v. Emperor.*

35 Cr. L. J. 566 :
147 I. C. 1176 : 11 O. W. N. 202 :
6 R. O. 366 : A. I. R. 1934 Oudh 122 (1).

—S. 75—*Scope of.*

S. 75 deals only with previous convictions under specified chapters of the Code, and a conviction under some other law would not attract the operation of the section. *Emperor v. Chhotan Hasmat Ali.*

36 Cr. L. J. 1376 :
158 I. C. 378 (b) : 37 Bom. L. R. 182 :
59 Bom. 514 : 8 R. B. 122 :
A. I. R. 1935 Bom. 188.

—S. 75—*Scope of—S. 75, whether applies to attempts—House trespass, what constitutes—Entry, necessity of.*

The accused with intent to commit house-breaking, stepped on the platform in front of a door, but were disturbed and captured as soon as they had opened the door, before they had effected an entry : *Held*, that the accused were not guilty of house-breaking but only of an attempt to commit house-breaking. S. 75, Penal Code, does not apply to attempts punishable under S. 511 of the Code. *Mohammad Hussain v. Emperor.*

29 Cr. L. J. 4 :
106 I. C. 340 : 29 P. L. R. 54.

—S. 75—*Scope of.*

S. 75 should not be used in a case in which there is not on record to the discredit of the offender anything more than one previous conviction, and that already ten years old. *Jumo Indris v. Emperor.*

36 Cr. L. J. 326 :
153 I. C. 316 : 28 S. L. R. 199 :
7 R. S. 127 : A. I. R. 1934 Sind 195.

—S. 75—*Sentence—Transportation for life or for ten years.*

Under S. 75, Penal Code, the Court, if it awards a sentence of transportation, must sentence the convict to transportation for life. In lieu, however of such sentence, it may sentence the convict to imprisonment of either description for a term which may extend to ten years, and under the provisions of S. 59 of the Code, it may, in every case in which the offender is punishable with imprisonment for a term of seven years or upwards, instead of awarding the sentence of imprisonment, sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which under the Code such offender is liable to imprisonment. *Muhammad Sharif v. Emperor.*

16 Cr. L. J. 554 :
29 I. C. 826 : 14 P. R. 1915 Cr. :
29 P. W. R. 1915 Cr. : A. I. R. 1915 Lah. 76.

—S. 75—*Severe sentence, impropriety of.*

While sentences imposed on a criminal should be adequate to the offence, they should not be excessive. Apart from the injustice to the offender which an excessive sentence entails, such a sentence tends to undermine public confidence in the administration of criminal justice. Where for stealing a cow worth about Rs. 50, the offender was sentenced to

PENAL CODE ACT (XLV OF 1860)

six years' rigorous imprisonment on the ground that the accused had been previously sentenced to five years' rigorous imprisonment: *Held*, that the sentence was far too severe. *In re: Abdul Gani Sahib*. 37 Cr. L. J. 1150:

165 I. C. 387 : 1936 M. W. N. 985 :

71 M. L. J. 536 : 44 L. W. 558 :

9 R. M. 236 : 59 Mad. 995.

———S. 75.

Trivial offence of theft—Previous conviction under S. 457—Sentence of five years and fine: *Held*, sentence should not be reduced substantially. *Ujagar Singh v. Emperor*.

34 Cr. L. J. 1153 :

145 I. C. 1002 : 34 P. L. R. 903 :

6 R. L. 152 : A. I. R. 1933 Lah. 147.

———S. 75.

Accused bound down under S. 110, Cr. P. C.—No ground for enhanced punishment. The fact that an accused had been bound down under S. 110, Cr. P. C., does not render him liable to enhanced punishment. *Jaimal Singh v. Emperor*. A. I. R. 1923 Lah. 294.

———Ss. 75, 379—Sentence.

In the case of men with previous convictions, regard should be had to their career and to the time that has elapsed between the convictions passed upon them. Ss. 75, Penal Code, and S. 221, Cr. P. C., were not intended for the purpose of automatically enhancing by a kind of geometrical progression the sentence to be passed after a previous conviction. The reason for passing a more severe sentence in the case of a criminal with a previous conviction is primarily to protect society from the predations and offences committed by an habitual rogue, who has shown no signs of repentance. A Magistrate or Judge should make some enquiry into the repute and antecedent behaviour of a man whom he proposes to sentence severely. *Nyein v. Emperor*.

19 Cr. L. J. 655 :

45 I. C. 847 : 9 L. B. R. 167 :

11 Bur. L. T. 205 : A. I. R. 1918 L. Bur. 60.

———Ss. 75, 379—Previous conviction—Sentence—Theft—Offence only technical.

The accused was convicted of theft, and the Magistrate taking into consideration his previous convictions, sentenced him to seven years' rigorous imprisonment, to be followed by Police surveillance for five years under S. 505, Cr. P. C. It appeared that the offence was only technically committed and the whole affair arose out of some squabble between the complainant and the accused in connection with the latter's mistress: *Held*, that the offence could not be treated more seriously with reference to S. 75, Penal Code, and that the conviction for a trifling offence should not be made the occasion for a long period of Police surveillance. The sentence was reduced to one of six months' rigorous imprisonment. *Joxahir Singh v. Emperor*.

15 Cr. L. J. 183 :

22 I. C. 759 : 4 P. L. R. 1914 :

3 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 476.

PENAL CODE ACT (XLV OF 1860)

———Ss. 75, 379, 419—Previous conviction for theft—Subsequent conviction for false personation.

It is anomalous to take into account previous convictions for theft and burglary for enhancing the sentence, under S. 75, Penal Code, where the subsequent offence committed by the accused is cheating by personation falling under S. 410, Penal Code. *Qaimi v. Emperor*.

28 Cr. L. J. 312 :

100 I. C. 536 : A. I. R. 1927 Lah. 220.

———Ss. 75, 511—Conviction for attempt to commit offence—Enhanced punishment, whether can be inflicted.

Under S. 75, Penal Code, it is only when an accused person is convicted of an offence under Ch. XII or Ch. XVII of the Penal Code, that he is liable to enhanced punishment. An accused person convicted of an attempt to commit an offence cannot be made liable to enhanced punishment under that section. *Brij Behari Lal v. Emperor*. 26 Cr. L. J. 1204 :

88 I. C. 724 : 23 A. L. J. 926 :

A. I. R. 1926 All. 44.

———S. 76.

See also Penal Code, 1860, Ss. 342, 301.

———S. 76—Act done under order of superior—Convict warder torturing convicts under orders of superior.

A convict jail warder must be knowing that the merciless beating of the convicts is contrary to law. S. 76 does not afford any defence to him where he has beaten and tortured convicts under orders of superior officers. When an officer in control of helpless prisoners beats and tortures them, the severest sentence known to the law should be inflicted. In addition, an example must be made in order to show conclusively to others, who may be similarly inclined to ill-treat those in their custody, that the Courts cannot tolerate such cruelties. *Chaman Lal v. Emperor*.

41 Cr. L. J. 639 :

188 I. C. 440 : 13 R. L. 41 :

I. L. R. 1940 Lah. 521 :

A. I. R. 1940 Lah. 210.

———S. 76—Scope of—Police Officer executing warrant—Arrest of wrong person—Mistake—Offence.

Accused, a Head Constable of Police, was deputed to execute a warrant of arrest. He made inquiries concerning the person mentioned in the warrant, and as the result of those inquiries and on the basis of a reasonable suspicion, he arrested the complainant, who was not, however, the person mentioned in the warrant: *Held*, that the act of the accused was covered by S. 76, Penal Code, and he was not, therefore, guilty of an offence under S. 342, Penal Code. *Gopalra Kallaiya v. Emperor*. 25 Cr. L. J. 797 :

81 I. C. 317 : 26 Bom. L. R. 138 :

A. I. R. 1924 Bom. 333.

PENAL CODE ACT (XLV OF 1860)

———Ss. 76, 79—*Mistake of fact—Cr. P. C., S. 342—Mistake of fact—Police Officer acting under invalid order, whether entitled to protection—Revision.*

An order by the Commissioner of Police of Calcutta regarding the treatment while under suspension of members of the Calcutta Police Force was published in the *Calcutta Police Gazette*. After the order had been in force for some considerable time, it was discovered that the approbation of the Local Government had not been obtained within the meaning of S. 9, Calcutta Police Act, but before this was discovered, a Deputy Commissioner of Police, acting under the order, made an order for the confinement of a Head Constable, who filed a complaint against the Deputy Commissioner for wrongful confinement. The trial Court acquitted the Deputy Commissioner on the ground that he was labouring under a mistake of fact that the order under which he acted was a legal order and he was, therefore, protected by the provisions of Ss. 76 and 79, Penal Code: *Held*, that the Deputy Commissioner had been rightly acquitted. *Pramatha Nath v. P. C. Lahiri*.

22 Cr. L. J. 5 :
59 I. C. 37 : 47 Cal. 818 :
A. I. R. 1920 Cal. 725.

———Ss. 76, 79—*Proclaimed offender—Question of fact.*

A question whether a man is or is not a proclaimed offender is one of fact within the meaning of Ss. 76 and 79, Penal Code. A sharp distinction must be drawn between the provisions of S. 42 and S. 59, Cr. P. C. In S. 59 is included a proclaimed offender, but in order that a man may be a proclaimed offender, it is not sufficient for a Sub-Inspector to say or write that he is a proclaimed offender. Where a Sub-Inspector gives a written authority, which in itself contains mis-statements to a *zamindar* to arrest a man, whom he states to be a proclaimed offender, but who in fact is not so, and the *zamindar* arrests such person and brings him bound to the Police after having injured him, the action is illegal and cannot be justified under S. 42, Cr. P. C. *Emperor v. Murid Dood*.

38 Cr. L. J. 1101 :
171 I. C. 672 : 10 R. S. 116 :
A. I. R. 1937 Sind 254.

———Ss. 76, 364—*Honest belief—Seduction—Honest belief that girl was above 16 years, whether good defence—'Seduction', meaning of—Previous intimacy, effect of.*

An honest belief that the girl enticed was over 16 years of age is not a good defence to a charge under S. 361, Penal Code. Because a man may have induced a girl to surrender her chastity to him once, it cannot be held that he does not commit an offence under S. 361, Penal Code, when he subsequently persuades her to leave her parents and follow him to have illicit intercourse with him. *Krishna Maharana v. Emperor*.

31 Cr. L. J. 306 :
121 I. C. 477 : 9 Pat. 647 :
A. I. R. 1929 Pat. 651.

PENAL CODE ACT (XLV OF 1860)

———S. 77.

See also Penal Code, 1860, S. 220.

———S. 77—*Scope—Prima facie defamatory words.*

Where the words complained of are themselves *prima facie* defamatory and do not bear directly on the matter in hand, there is a *prima facie* case and the complaint should be admitted even if S. 77 were held to apply. *Kamla Patel v. Bhagwandas*.

35 Cr. L. J. 947 :
149 I. C. 140 : 17 N. L. J. 43 :
30 N. L. R. 234 : 6 R. N. 220 :
A. I. R. 1934 Nag. 123.

———S. 77—*Scope of.*

There is no distinction in respect of the protection afforded by S. 77 between a written judgment and remarks made in the course of a judgment delivered orally. *Kamla Patel v. Bhagwandas*.

35 Cr. L. J. 947 :
149 I. C. 140 : 17 N. L. J. 43 :
30 N. L. R. 234 : 6 R. N. 220 :
A. I. R. 1934 Nag. 123.

———S. 78—*Mistake of law—Custody of civil prisoner—Commitment of civil prisoner to jail—Wrongful confinement—Oral order of Judge—Mistake of fact—C. P. C., Ss. 478, 481.*

A was arrested under S. 478, Cr. P. C. On his being brought before the Court, the Judge orally ordered the bailiff to keep him in custody. The bailiff in turn orally ordered a process-server to take charge of him and this was done. The bailiff and process-server were subsequently prosecuted and convicted under S. 344, Penal Code, of wrongful confinement: *Held*, that S. 78, Penal Code, does not extend to the oral order of a Judge, that as S. 481 C. P. C. only authorises a Judge to commit persons to jail, the mistake of the bailiff and the process-server, in believing that their oral orders justified their action, was purely a mistake of law and not of fact, and that therefore they were rightly convicted. *Maung Pu v. Emperor*.

8 Cr. L. J. 68 :
4 L. B. R. 253.

———S. 79.

See also (i) Cr. P. C., 1898, Ss. 182, 190.
(ii) Madras Forest Act, 1882, S. 21.

(iii) Penal Code, 1860, Ss. 78, 342.

———S. 79—*Applicability.*

Advocate writing letter to Magistrate demanding return of money paid as bribe and to hush up matter in case of compliance—Advocate cannot shelter himself behind alleged instructions of his client—Ss. 76 and 79 are not applicable. *U San Urin v. U Hla*.

32 Cr. L. J. 934 :
132 I. C. 553 : I. R. 1931 Rang. 185 :
A. I. R. 1931 Rang. 83.

PENAL CODE ACT (XLV OF 1860)

—S. 79—Good faith—Dedication of a girl to a temple—Disposal for purpose of prostitution.

It may be regarded as settled law that the dedication of a minor girl to a temple in order that she might serve the temple as a dancing girl amounts to disposal of the minor for the purpose of prostitution, especially when there is evidence of the kind of life that girls so dedicated have led. Nothing can be said to have been done in good faith which is done without due care and attention. *Public Prosecutor v. Rajamal*.

12 Cr. L. J. 566 :
12 I. C. 654 : 1911, 2 M. W. N. 479 :
10 M. L. T. 501.

—S. 79—Good faith, meaning of—Person allowing coolies to work outside his licensed area.

Absence of good faith means simply carelessness or negligence. A person who permits his coolies to work in an area which is outside the licensed area at a considerable distance, cannot be said to be acting in good faith, i. e., with proper care and attention as distinguished from dishonestly or fraudulently. *Buz Soo Meah Chowdry v. The King*.

39 Cr. L. J. 985 :
178 I. C. 121 : 11 R. Rang. 201 :
A. I. R. 1938 Rang. 350.

—S. 79—Mistake of fact—Act done in good faith—Mistake of fact, subsequent, whether protected.

Where a person does a thing in good faith but subsequently commits a mistake of fact, he is entitled to the protection afforded by S. 79, Penal Code. *Raghunath Dass v. Emperor*.

21 Cr. L. J. 213 :
64 I. C. 997 : 1 P. L. T. 60 :
1920 Pat. 76 : 5 P. L. J. 129 :
2 U. P. L. R. Pat. 70 : A. I. R. 1920 Pat. 502.

—S. 79—Mistake of fact—Bona fide belief that murdered person was a ghost—Criminal liability.

Where a person believing in good faith that the object of his assault was not a human being but a ghost, caused fatal injuries on another which resulted in the death of the latter: *Held*, that in view of the provisions of S. 79, Penal Code, the accused was not guilty of murder or culpable homicide or even of an offence under S. 304-A, Penal Code. *Waryam Singh v. Emperor*.

28 Cr. L. J. 39 :
99 I. C. 71 : A. I. R. 1926 Lah. 554.

—S. 79—Mistake of fact.

The accused struck his wife a blow on the head with a ploughshare, which rendered her senseless. He believed her to be dead and in order to lay the foundation for a false defence of suicide by hanging, which he afterwards set up, proceeded to hang her from a beam by rope, which resulted in her death by asphyxiation: *Held*, that the accused could not be convicted of culpable homicide or of murder, though he was guilty of causing grievous hurt. *In re: Piani Goundan*.

20 Cr. L. J. 404 :
51 I. C. 164 : 37 M. L. J. 17 :
1919 M. W. N. 340 : 42 Mad. 547 :
10 L. W. 45 : 26 M. L. T. 68 :
A. I. R. 1920 Mad. 862.

PENAL CODE ACT (XLV OF 1860)

—S. 79—Mistake of fact by process-server—Protection.

A process-server was charged by H, a judgment-debtor, under S. 342 and S. 342 read with S. 114, I. P. C., with causing wrongful confinement to H. A warrant for H's arrest was issued and the bailiff endorsed it for service to the process-server. H was arrested but was released by the Judge under S. 185, C. P. C. The process-server had returned the warrant the same day to the bailiff without any endorsement on it, and the bailiff believing that it was executed, merely returned the warrant to the process-server for want of his report, as he had made no report of execution. On this the process-server, instead of endorsing execution on the warrant, re-arrested H next day: *Held*, that the second arrest was illegal. When the judgment-debtor was arrested and brought before the Court, the process had been executed: *Held*, further that the offence was not a serious one, for, it did not appear that the process-server was actuated by malice. It was possible that he made a genuine mistake of fact and thought that the process was being returned to him for re-execution and was thus protected under S. 79, I. P. C. *Maung Htwe v. Ba Thant*.

41 Cr. L. J. 567 :
188 I. C. 303 : 1940 Rang. 253 :
12 R. Rang. 364 : A. I. R. 1940 Rang. 112.

—S. 79—Protection under, when available—Cr. P. C., S. 59—Arrest by private person—Unlawful detention—Offence, nature of.

S. 59, Cr. P. C., makes it compulsory for a person arresting another person to take him to a Police Officer and to make him over to such Police Officer or, in the absence of a Police Officer, to take him to the nearest Police Station. Where, therefore, a person arresting another person instead of taking him to a Police Officer or to the nearest Police Station, keeps him unnecessarily in his own custody without making any effort to hand him over to the Police, he is guilty of an offence under S. 342, Penal Code, and is not protected by the provisions of S. 79 of the Code. *Anant Prasad Ray v. Emperor*.

27 Cr. L. J. 1378 :
98 I. C. 594 : 8 P. L. T. 204.

—S. 79—Scope—Good faith, necessity of.

S. 79 requires that the party pleading exemption should have acted in good faith and the definition of good faith involves due care and attention. *Jwala Prasad v. Emperor*.

35 Cr. L. J. 677 (2) :
148 I. C. 351 : 6 R. A. 693 :
A. I. R. 1934 All. 331.

—S. 79—Scope of—Husband, right of, to use force to compel wife to live with him—Restitution of conjugal rights, suit for.

Both under the English and Indian Law, although it is the duty of a wife to reside and cohabit with her husband, the husband has no right to use force or violence to enforce this right even when the wife's refusal to live with him is without any reasonable cause. There is nothing in Hindu or Muhammadan Law to justify a husband

PENAL CODE ACT (XLV OF 1860)

in using force or restraint to compel his wife to live with him, instead of having resort to a Civil Court for restitution of conjugal rights. Nor can such action be justified under S. 79 of the Penal Code. *Emperor v. Ram Lo.*

19 Cr. L. J. 955 :
47 I. C. 807 : 12 S. L. R. 29 :
A. I. R. 1918 Sind 69.

—S. 79—Scope of—*Madras Forest Act (V of 1882), S. 21—Principle, not applicable.*

The principle of S. 79, Penal Code, does not apply to an offence created by S. 21, Forest Act. *Lewis, K. R. v. Emperor.*

15 Cr. L. J. 171 :
22 I. C. 747 : 15 M. L. T. 124 :
1 L. W. 132 : A. I. R. 1914 Mad. 277.

—S. 79—Scope of.

S. 79, Penal Code, is one of the general exceptions in the Code and the onus of showing that the section applies in his case is on the person who seeks to take advantage of it. *Nirmal Kumar Bhowmik v. Emperor.*

39 Cr. L. J. 835 :
171 I. C. 29 : 42 C. W. N. 896 :
11 R. C. 209 : A. I. R. 1938 Cal. 551.

—Ss. 79, 88, 89—Schoolmaster punishing pupil—Offence.

A schoolmaster may, for purposes of discipline, inflict moderate punishment, and such punishment may be inflicted for offences committed not only within the school limits but also outside the school walls except when the school is closed for any length of time for a period of regular holidays. *Emperor v. Maung Ba Thaung.*

27 Cr. L. J. 636 :
94 I. C. 412 : 3 Rang. 661 :
A. I. R. 1926 Rang. 107.

—Ss. 79, 96—Public servant acting under colour of office.

Where a constable effects an arrest under colour of his office, there is no right of private defence against him even though the arrest is not strictly justified by law. *Munshi Singh v. Emperor.*

29 Cr. L. J. 69 :
106 I. C. 581.

—S. 80.

See also Cr. P. C., 1898, Ss. 289, 342.

—S. 80—Accident, defence of—Burden of proof—Motive.

If the accused puts forward a substantive defence of accident within the purview of S. 80, Penal Code, it is incumbent upon him to prove it. If the evidence as to the deed done is sufficiently convincing, it is immaterial to consider with what motive it was done. When a theory of accident is set up, the Court is entitled to a full and, so far as possible, detailed account of what happened. *Emperor v. Dwijendra Chandra.*

16 Cr. L. J. 724 :
31 I. C. 164 : 19 C. W. N. 1043 :
A. I. R. 1916 Cal. 633.

—Ss. 80, 304, 304-A, 325—Accident—

PENAL CODE ACT (XLV OF 1860)

Exemption, killing child while beating wife—Offence.

Accused was beating a person with his fists when the latter's wife with a baby on her shoulder interfered. Accused hit at the woman but the blow accidentally struck the baby and two days later, it died from the effects of the blow: *Held*, (1) that, although the child was hit by accident the accused's act was not covered by the exception contained in S. 80, Penal Code, inasmuch as he was not at the time, doing a lawful act in a lawful manner by lawful means; (2) that the accused's act being in its nature criminal, was not covered by the provisions of S. 304-A, Penal Code; (3) that when wanting to hit the woman, the accused did not intend or knew himself to be likely to cause death and that he could not, therefore, be convicted under S. 304, Penal Code: (4) that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt. *Jageshar v. Emperor.*

24 Cr. L. J. 789 :
74 I. C. 533 : A. I. R. 1924 Oudh 228.

—Ss. 80, 337—Accident.

Shooting pigs—Shot striking one of the beaters: *Held* case was one of accident and conviction under S. 337 was illegal. *Shakir Khan v. Emperor.*

32 Cr. L. J. 587 :
130 I. C. 654 : 31 P. L. R. 955 :
I. R. 1931 Lah. 334 :
A. I. R. 1931 Lah. 54.

—S. 81.

See also Penal Code, 1860, S. 279.

—S. 82.

See also Penal Code, 1860, S. 225-B.

—S. 82—Scope of—Cr. P. C., S. 54—Arrest by Police of boy less than 7 years old—Obstruction—Offence.

As S. 82, Penal Code, exempts a child under 7 years of age from any criminal liabilities, it is illegal for a Police Officer to arrest a boy less than 7 years of age for the offence of theft, and an obstruction offered to such arrest, is not an offence under S. 225-B, Penal Code. *In re : Santa Cruz Morais.*

16 Cr. L. J. 602 :
30 I. C. 154 : 1915 M. W. N. 543 :
A. I. R. 1916 Mad. 642.

—Ss. 82, 40—Conviction of child under, legality of.

S. 40, Penal Code, governs S. 82, and S. 40 says that in Chap. IV, Penal Code, the word "offence" denotes a thing punishable under the Penal Code, or under any special or local law. A motor bus was found not fit to ply and so a "fit pass" was not issued to the owner which meant that registration was refused. Nevertheless, the bus was found plying for hire without being registered, so, the owner who was only 5 years old had been found guilty of plying it for hire with-

PENAL CODE ACT (XLV OF 1860)

out a licence under S. 7 of Burma Hired Motor Vehicles Rules: *Held*, that the conviction was bad. *The King v. Ba Ba Sein*.

40 Cr. L. J. 80 :

178 I. C. 508 : 1938 Rang. 227 :

11 R. Rang. 239 : A. I. R. 1938 Rang. 400.

—Ss. 82, 83, 354, 376—*Presumption—Rape by boy of tender age.*

The presumption of English Law against the possibility of the commission of the offence of rape by a boy under the age of 14 years has no application in India. Such a question is a question of fact only. *Emperor v. Paras Ram Dube*.

16 Cr. L. J. 322 :

28 I. C. 658 : 13 A. L. J. 254 :

37 All. 187 : A. I. R. 1915 All. 134.

—S. 83.

See also Calcutta High Court Rules and Circular Orders (Civil) Chap. I, R. 93.

—S. 83—Immature understanding, plea of—*Right of accused—Functions of Judge and Jury.*

An accused person cannot be debarred from the defence allowed him by S. 83, Penal Code, because of his ignorance of Court procedure. The question whether the accused was or was not capable of understanding the nature of his act can only be decided by the Jury, and the Judge cannot exclude this consideration from the Jury. If he does so, his summing-up amounts to a misdirection. Once a plea that the accused was of immature understanding is placed before the Jury, it is for them to decide whether the accused had guilty knowledge. *Emperor v. Ali Raza*.

26 Cr. L. J. 310 :

84 I. C. 454 : 28 O. C. 69 :

A. I. R. 1925 Oudh 311.

—S. 83—Conviction of a child between 7 and 12 years—*Presumption of guilt.*

A child between 7 and 12 years of age cannot be convicted of any offence unless it is expressly found that the child has attained sufficient maturity of understanding to judge of the nature and consequences of the acts done. *In re : Marimuthu*.

9 Cr. L. J. 392 :

1 I. C. 807 : 5 M. L. T. 296.

—S. 84.

—Applicability of.

—Burden of proof.

—Delusion, murder under.

—Epilepsy fit, murder under.

—Exemption from liability, when available.

—Exemption under.

—Insane delusion, plea of.

—Insanity.

—Legal insanity.

—Mental derangement.

—Plea of insanity.

—Scope of.

—Statement of lunatic.

—Unsoundness of mind.

PENAL CODE ACT (XLV OF 1860)

—S. 84.

See also (i) Insanity.

(ii) Patna High Court General Rules and Circulars, R. 83.

(iii) Penal Code, 1860, Ss. 302, 406.

—S. 84—Applicability.

To attract the application of S. 84 it is not enough to establish a doubt as to the soundness of the mind of the accused at the time of the commission of the crime. This is not a kind of doubt of which the accused may be given the benefit. To entitle the accused to the benefit of the section, the accused must satisfy the Court that his condition of mind was such that he was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. *Emperor v. Bahadur*.

29 Cr. L. J. 204 :

106 I. C. 796 : 9 Lah. 371 :

A. I. R. 1928 Lah. 796.

—S. 84—Applicability of.

Where an accused charged with murder alleges that she committed murder by reason of being possessed by evil spirit and in pursuance of its bidding, on pain of being herself killed by that spirit, S. 84 does not apply. *Sukni Chamain v. Emperor*.

37 Cr. L. J. 513 :

162 I. C. 25 : 2 B. R. 410 :

8 R. P. 506 : A. I. R. 1936 Pat. 245.

—S. 84—Applicability of—*Whether covers cases of intoxication or of inherent defects.*

S. 84, Penal Code, applies only to cases of intoxication and does not cover a case where what is alleged is an inherent defect or infirmity of mind, which is of greater significance because such infirmity or disease of mind is more likely to prevent the formation of that intention which is required by the law to be established as a part of the offence charged. Similarly, there is no justification for attributing to the person the same intent which he would have had if he had not been intoxicated, though the same knowledge can be imported to him under the section. *In re : G. J. Joseph*.

40 Cr. L. J. 642 :

182 I. C. 228 : 49 L. W. 160 :

1939 M. W. N. 126 : 1939, 1 M. L. J. 255 :

I. L. R. 1939 Mad. 353 : 12 R. M. 25 :

A. I. R. 1939 Mad. 407.

—S. 84—Applicability of, conditions for absence of evidence as to state of mind—*Proof as to accused suffering from grave mental depression, etc.—Absence of motive.*

S. 84, Penal Code, requires it to be proved that at the time when the offence was committed, the offender by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. It would be obviously very difficult ordinarily to prove the precise state of an offender's mind at the time of the commission of an offence, but some indication thereof is often furnished by the

PENAL CODE ACT (XLV OF 1860)

words or the conduct of the offender while committing it, or immediately before or after the commission of the offence. Where no such evidence is available and the evidence establishes beyond doubt that the accused's mind had been unhinged by the death of his son, that he was suffering from grave mental depression and insomnia, was subject to delusions and occasionally became violent, and the accused had no motive whatever for committing the offence of murdering his wife and daughter and of attempting to murder another daughter, the conclusion is irresistible that he must have committed the offences without realizing the nature of his act. *Dewa Ram v. Emperor*.

38 Cr. L. J. 893 :
170 I. C. 431 : 10 R. L. 113 :
A. I. R. 1937 Lah. 486.

————S. 84—Burden of proof—Evidence of insanity.

Where an accused person relies upon S. 84, Penal Code, to escape the legal consequences of his act, the onus is upon him to prove that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing its nature or that what he was doing was either wrong or contrary to law. That onus may be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental conditions, his family history and so forth. If contemporaneous acts of his are proved to have been of such a nature as to indicate that he was quite incapable of forming rational views, that would be a strong element to show that at the time of the crime in question he was not capable of knowing that it was a wrongful act. *Emperor v. Bahadur*.

29 Cr. L. J. 204 :
106 I. C. 796 : 9 Lah. 371 :
A. I. R. 1928 Lah. 796.

————S. 84—Burden of proof.

The onus of proving the exception enacted by S. 84 is on the accused person. *Emperor v. Sujjan Singh*.

32 Cr. L. J. 816 :
131 I. C. 746 : I. R. 1931 Lah. 506.

————S. 84—Delusion, Murder under—Applicability of S. 84—Insanity, essentials of.

The accused had a dream in which the goddess *Kali* appeared before him and told him that his father was a descendant of *Kali* and that if he (the accused) did not kill his father, his father would kill him. The accused honestly believed this and cut off his father's head the next day and was coolly proceeding with it to the Court with the object of producing the head before the Court when he was arrested. The medical evidence showed that the accused was under a definite delusion: *Held*, that the accused must, under the circumstances be to have been incapable at the time of the doing of the act, by reason of unsoundness of mind, of knowing the nature of the act and that he could not be convicted of murder. *Karma Uring v. Emperor*.

30 Cr. L. J. 247 :
114 I. C. 159 : 32 C. W. N. 342 :
I. R. 1929 Cal. 223 : A. I. R. 1928 Cal. 238.

PENAL CODE ACT (XLV OF 1860)

————S. 84—Epilepsy fit—Murder under—No enmity or cause—Whether can be charged with murder.

An accused murdered his mother and wounded his step-father in a fit of epilepsy without any apparent cause. There was no enmity between him and his mother. After the murder, the accused himself hid in a ravine. The medical evidence showed that the accused was subject to epileptic fits and he used to be completely unconscious during such time: *Held*, that the evidence of this unprovoked attack upon his mother and step-father, with whom he had no quarrel or trouble, and his hiding in the ravine were certainly consistent with the attack upon the deceased having taken place during or whilst recovering from an epileptic fit, and that any other theory of the events was really untenable. *Nga Ant Bwe v. Emperor*.

38 Cr. L. J. 667 :
168 I. C. 863 : 9 R. Rang. 379 :
A. I. R. 1937 Rang. 99.

————S. 84—Exemption from liability, when available.

Exemption from criminal liability can be allowed only where the person claiming to be insane is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. *Sardar Bakhs v. Emperor*.

35 Cr. L. J. 1398 :
151 I. C. 672 : 35 P. L. R. 703 :
7 R. L. 179.

————S. 84—Exemption under.

Person committing two murders though eccentric but not considered unfit for work cannot be held to be insane and cannot be acquitted on ground of unsoundness of mind. *Mohammad Islam v. Emperor*.

32 Cr. L. J. 327 :
129 I. C. 323 : 7 O. W. N. 1100 :
I. R. 1931 Oudh 99 : A. I. R. 1931 Oudh 77.

————S. 84—Insane delusion, plea of—Murder committed deliberately but under superstition.

The fact that the accused, while committing the crime with which he is charged, was under some insane delusion is not *per se* sufficient to exempt him from criminal liability for his wrongful act, unless the impulse was such as to render him unconscious of what he was doing, or to make him ignorant of the fact that the act which he was about to commit was wrong. Where a man commits murder deliberately, the fact that he acts under a superstitious belief and under some insane delusion is not sufficient to exempt him from punishment. *Seal Ali v. Emperor*.

18 Cr. L. J. 766 :
41 I. C. 142 : 3 P. L. W. 356 :
A. I. R. 1917 Pat. 503.

————S. 84—Insanity—Accused understanding nature of act.

Where a person otherwise sane but labouring under the influence of an insane delusion, commits an act of revenge for some supposed grievance or injury, he is nevertheless punishable according to the nature of the crime committed, if at the time he understood that

PENAL CODE ACT (XLV OF 1860)

he was committing a wrong and unlawful act. In other words, he must be considered in the same situation as to responsibility as a sane person would be if the facts with regard to which the delusion exists were true.

Ghunia Uraon v. Emperor. 19 Cr. L. J. 135 :

43 I. C. 423 : 4 P. L. W. 14 :

1918 Pat. 57 : 3 P. L. J. 291 :

A. I. R. 1918 Pat. 179.

—S. 84—Insanity—Alternation of lunacy and insanity—Death during lunacy—Conviction and sentence.

Accused murdered a man during a fit of insanity, knowing that what he was doing was wrong and contrary to law. At the time of his trial, he recovered his sanity, but there was no apprehension that he was subject to alternate periods of lunacy and sanity: *Held*, (1) that the accused was not entitled to the benefit of S. 84, Penal Code, and was guilty of an offence under S. 302 of the Code; (2) that the proper course would be to sentence the accused to transportation for life and report the case to the Local Government for special consideration. *Lachhman v. Emperor.*

25 Cr. L. J. 683 :

81 I. C. 171 : 22 A. L. J. 116 :

46 All. 243 : A. I. R. 1924 All. 413.

—S. 84—Insanity—Burden of proof—Evidence.

The onus of proof where the plea of insanity is taken on behalf of the accused lies on him and it must be proved affirmatively that the accused was insane at the time when he committed the act in question. Uncontrollable impulse co-existing with the full possession of the reasoning powers is no defence in law, nor is moral insanity, i.e., existence of delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, any defence in law. If there is evidence of premeditation and design or evidence that the prisoner after the act in question tried to resist arrest, the plea of insanity may be negatived. *Bazlar Rahman v. Emperor.*

30 Cr. L. J. 494 :

115 I. C. 561 : 48 C. L. J. 307 :

33 C. W. N. 136 : I. R. 1929 Cal. 385 :

A. I. R. 1929 Cal. 1.

—S. 84—Insanity—Burden of proof.

Onus is on defence. Mere fact that accused's mind was partially deranged or he was subject to some uncontrollable impulse due to insanity is not enough. *Pancha v. Emperor.*

33 Cr. L. J. 714 :

139 I. C. 147 : I. R. 1932 All. 536 :

A. I. R. 1932 All. 233.

—S. 84—Insanity—Burden of proof.

The burden of proving that an accused person was of unsound mind when he committed the offences with which he is charged, is upon the accused. *Onkar Datt Nigam v. Emperor.*

36 Cr. L. J. 392 (2) :

153 I. C. 780 : 1935 O. W. N. 53 :

7 R. O. 386 : A. I. R. 1935 Oudh 143.

—S. 84—Insanity—Condition subsequent

PENAL CODE ACT (XLV OF 1860)

and antecedent to commission of act, relevancy of.

To entitle an accused to exemption from criminal liability on the ground of insanity, it must be proved that at the time of committing the act he was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or as not to know that what he was doing was wrong. The condition of the accused's mind antecedent and subsequent to the commission of the crime is relevant only in so far as it might assist the Court in coming to a conclusion as to his mental capacity at the time he struck the fatal blow. The mere fact that on former occasions the accused had been occasionally subject to insane delusions or had suffered from derangement of the mind or that subsequently he had at times behaved like a mentally deficient person is *per se* insufficient to bring the case within the exemption. The fact that the physical and mental ailments from which a man suffered had rendered his intellect weak and had affected his emotions and will is insufficient to bring his case within S. 84. The question is whether his cognitive faculties had been impaired to the degree described in the last part of the section. It is not every kind of frantic humour or something unaccountable in man's actions that points him out to be such a mad man as is to be exempted from punishment; it must be a man that is totally deprived of his understanding and memory and does not know what he is doing, no more than an infant, than a brute or a wild beast. *Tola Ram v. Emperor.*

28 Cr. L. J. 598 :

102 I. C. 774 : 29 P. L. R. 104 :

8 Lah. 684 : A. I. R. 1927 Lah. 674.

—S. 84—Insanity—Delusion—Proof.

On the morning of Sunday, the 9th October 1910, the wife of the accused was found lying murdered in her house. Going out of the house, the accused met a Police constable and told him what had happened. The latter took him to the Police Station where he made a report in which he said:—"To-day in the morning I asked my wife to give me water.....She did not give it to me. I abused her and she also abused me. I got enraged and struck her with a *gandasa* and a knife. She died. The *gandasa* and the knife are at the house." The same day, a Magistrate recorded the statement of the accused in which he added that his wife had an amour with his father, that on Friday or Thursday at night, he saw his father lying with his wife and that he kept peace at the time, but his angry passions continued all along. Five days after the occurrence, the accused was examined by the Civil Surgeon who kept him under medical observation from 14th October to 8th November 1910, and came to the conclusion that he was insane and incapable of making his defence. Since then, the accused, on the recommendation of the Civil Surgeon, was confined in a lunatic asylum for about a

PENAL CODE ACT (XLV OF 1860)

year and 8 months prior to his trial. The accused's statement about his wife's amour with his father was obviously untrue as the father was 70 or 75 years old and the wife was 8 months advanced in pregnancy. It was also established that for 3 or 3½ years prior to the occurrence, the accused had suffered at intervals from fits of mental unsoundness in the course of which he was subject to delusions: *Held*, (1) on the evidence, that the accused had failed to establish that he had acted under a *bona fide* delusion existing at the time of the commission of the offence or that his mental unsoundness was such that he did not know at the time that he was doing what was contrary to law; (2) that the fact that the accused was of unsound mind on the date of occurrence was not sufficient to entitle him to a verdict of acquittal. *Muhammad Husain v. Emperor*.

14 Cr. L. J. 81 :
18 I. C. 641 : 15 O. C. 321.

S. 84—Insanity—Evidence.

To establish a defence on the ground of insanity, it must be shown that the mental condition referred to in S. 84 existed at the time when the act was committed. *Bagga v. Emperor*.

32 Cr. L. J. 1230 :
134 I. C. 773 : 32 P. L. R. 331 :
I. R. 1931 Lah. 981 :
A. I. R. 1931 Lah. 276.

S. 84—Insanity—Function of Jury.

It is for the Jury to determine whether the prisoner, when he committed the offence with which he stood charged, was incapable of distinguishing right from wrong or under the influence of any delusion which rendered his mind at the moment insensible of the nature of the act he was about to commit—Since in that case he would not be legally responsible for his conduct. On the other hand, provided the Jury should be of opinion that when he committed the offence, he was capable of distinguishing right from wrong and not under the influence of such a delusion as disabled him from discerning that he was doing a wrong act or one contrary to law, he would be amenable and held guilty in the eye of the law. *Bazlar Rahman v. Emperor*.

30 Cr. L. J. 494 :
115 I. C. 561 : 48 C. L. J. 307 :
33 C. W. N. 136 : I. R. 1929 Cal. 385 ;
A. I. R. 1929 Cal. 1.

S. 84—Insanity—Inference—Want of motive.

Although the fact that a murder has been committed in a particularly brutal and purposeless way for no motive whatsoever, is a circumstance which may be taken into consideration together with other material to enable a Court to decide whether or not the crime in question was committed at a time when the accused person was in such a state of mind that he was incapable of knowing the nature of his act, yet in the absence of other evidence mere want of motive for the crime is not sufficient to base an inference of unsoundness of mind for the

PENAL CODE ACT (XLV OF 1860)

purposes of defence under S. 84, Penal Code. *Emperor v. Bahadur*.

29 Cr. L. J. 204 :
106 I. C. 796 : 9 Lah. 371 :
A. I. R. 1928 Lah. 796.

S. 84—Insanity—Onus.

Where an accused charged with murder alleges that due to unsoundness of mind he did not know the nature of the Act, the onus is cast on the defence to prove that the accused was in fact, at the time of commission of the offence, insane. In the absence of such proof, the only course open to the Court is to convict the accused of murder. *Nga San Pe v. Emperor*.

38 Cr. L. J. 397 :
167 I. C. 395 : 9 R. Rang. 313 :
A. I. R. 1937 Rang. 33.

S. 84—Insanity—Onus of proof.

The burden of proving the existence of circumstances bringing a case within the provisions of S. 84, I. P. C., must, always under S. 105, Evidence Act, lie upon the accused. *Mahomed Ashraf Ghulam Mahomed v. Emperor*.

41 Cr. L. J. 942 :
190 I. C. 562 : 13 R. S. 85 :
A. I. R. 1940 Sind 166.

S. 84—Insanity—Onus of proof.

The onus of establishing the plea of insanity rests on the accused as contemplated by S. 84. *Sardar Bakhsh v. Emperor*.

35 Cr. L. J. 1398 :
151 I. C. 672 : 35 P. L. R. 703 :
7 R. L. 179.

S. 84—Insanity—Plea of—Duty of Court.

Where the accused person pleads insanity, what the Court has to consider is whether the accused was at the time when he committed the offence, incapable, by reason of unsoundness of mind, of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. *Ram Adhin v. Emperor*.

33 Cr. L. J. 163 :
135 I. C. 384 : 8 O. W. N. 1221 :
I. R. 1932 Oudh 32 :
A. I. R. 1932 Oudh 18.

S. 84—Insanity, plea of—When avails—Nature of proof required.

Insanity affects not only the cognitive faculties of the mind which guide human actions, but also the emotions which prompt the actions and the will by which actions are performed. It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. *Emperor v. Gedka Goala*.

38 Cr. L. J. 846 :
170 I. C. 74 : 18 P. L. T. 294 :
16 Pat. 333 : 10 R. P. 66 : 3 B. R. 650 :
A. I. R. 1937 Pat. 363.

PENAL CODE ACT (XLV OF 1860)

———S. 84—*Insanity, plea of—Procedure.*

Under S. 465, Cr. P. C., the question whether accused is of unsound mind and consequently incapable of making his defence, should be tried by the Court with the aid of assessors and a conviction cannot be sustained in the absence of a proper trial and finding as to the question of the accused's capacity to make his defence under this section. *Ram Nath v. Emperor.* 31 Cr. L. J. 899 : 125 I. C. 767 : A. I. R. 1930 All. 450.

———S. 84—*Insanity, plea of—Unaccountable conduct—Absence of motive—Effect—Acquittal—Procedure—Cr. P. C., S. 471.*

The accused on one evening followed two persons who were returning from their work with two stones in his hand and attacked them and struck one of them on the head with those stones and inflicted serious wounds on him, with the result that he died. It appeared that just before the offence was committed, the accused was behaving in an extraordinary manner and had been muttering something to himself that some persons had ruined him. No apparent sane motive could be alleged for the attack which was really unaccountable. The accused was in normal condition at the time of trial: *Held*, (1) that at the time when the accused attacked the two persons, he was really suffering from an impulse of *homicidal mania* and the case fell under S. 84; (2) that as the accused was no longer suffering from insanity, he should be detained in the jail where he already was, not as a convict, but in safe custody under S. 471, Cr. P. C., pending further action by Government. *In re: Vode Subbigadu.* 27 Cr. L. J. 46 : 91 I. C. 78 : 1925 M. W. N. 649 : 22 L. W. 550 : 49 M. L. J. 598 : A. I. R. 1925 Mad. 1238.

———S. 84—*Insanity—Proof.*

Evidence that accused was insane prior and subsequent to the event—In trial lunacy urged—Enquiry made—Majority of assessors finding accused lunatic—Accused sent to Mental Hospital—Superintendent writing that insanity was feigned—Successor of Sessions Judge convicting accused relying on letter—Superintendent not examined—Letter not proved—Accused held insane at the time of murder under S. 84. *Ibrahim v. Emperor.*

35 Cr. L. J. 869 :
148 I. C. 987 : 6 R. L. 619 :
A. I. R. 1934 Lah. 123.

———S. 84—*Insanity—Proof.*

Motiveless murderous attack on strangers—Absence of attempt at concealment—No premeditation—Expert opinion that accused was insane corroborated by text-books and previous history of accused: *Held*, accused was entitled to acquittal on ground of insanity. *Onkar Datt Nigam v. Emperor.*

36 Cr. L. J. 392 (2) :
153 I. C. 780 : 7 R. O. 386 :
1935 O. W. N. 53 :
A. I. R. 1935 Oudh 143.

PENAL CODE ACT (XLV OF 1860)

———S. 84—*Insanity, signs and indicia of—Melancholic homicidal mania—Incapability of knowing illegal nature of act.*

The prisoner who was charged with committing murder, was a young man of weak intellect, and the motive actuating the offence was trivial and inadequate. As soon as he had killed his uncle by hacking him on the head and neck with a sword, the prisoner, rushed about, brandishing his weapon and shouting "Victory to Kali." He attempted to strike other persons, including his own father. When the paroxysm had passed off, during the Police enquiry, the prisoner appeared to be rational, but immediately afterwards he developed *aphasia*, attempted to commit suicide and was undoubtedly insane from that time for a period of five years: *Held*, that the above are the signs and indicia of insanity as expressed in works on the subject of Medical Jurisprudence, and that the prisoner was suffering from a fit of melancholic homicidal mania at the time he hacked the deceased with the sword and was, by reason of unsoundness of mind, incapable of knowing that he was doing an act which was wrong or contrary to law, and therefore he was not guilty of murder. *Shibo Koeri v. Emperor.*

3 Cr. L. J. 469 :
10 C. W. N. 725.

———S. 84—*Insanity—Test.*

To ascertain whether a person was incapable of knowing the nature of the act, a very common test is to ask whether the man would have committed the act if a Policeman would have been at his elbow. *Onkar Datt Nigam v. Emperor.*

36 Cr. L. J. 392 (2) :
153 I. C. 780 : 7 R. O. 386 :
1935 O. W. N. 53 :
A. I. R. 1935 Oudh 143.

———S. 84—*Insanity, what amounts to—After murder accused washing his hands, and on approach of witnesses, concealing himself—Accused whether insane.*

If the accused is conscious that the act was one which he ought not to do, and if the act is contrary to the law of land, he is punishable. His liability would not be diminished if he does the act under the influence of insane delusion for redressing or revenging some supposed grievance, if he knows that he is acting contrary to law. After the murder the accused attempted to conceal the evidence of the murder by washing his hands in the sand, and on the approach of witnesses, he ran away and concealed himself and shut himself up in his *katha* in an attempt to prevent his arrest. The accused was medically certified as insane: *Held*, that the facts showed that the accused knew that he had done something wrong, and it did not matter how insane he might be from the medical point of view and that he could not be exonerated under S. 84, Penal Code. *Ghungar Mal Ghania Lal v. Emperor.*

40 Cr. L. J. 907 :
184 I. C. 307 : 41 P. L. R. 429 :
12 R. L. 202 : I. L. R. 1939 Lah. 128 :
A. I. R. 1939 Lah. 355.

PENAL CODE ACT (XLV OF 1860)

———S. 84—*Insanity, what amounts to.*

It is not every kind of frantic humour or something unaccountable in a man's actions that points him out to be a mad man to be exempted from punishment, it must be a man who is totally deprived of his understanding and memory and does not know what he is doing. The circumstance of the accused having acted under an irresistible influence to the commission of the offence is no defence if, at the time he committed the act, he knew he was doing what was wrong. *Sardara v. Emperor.*

29 Cr. L. J. 827 :
111 I. C. 331.

———S. 84—*Insanity, what amounts to.*

The mere fact of detention in a mental institution is not sufficient to establish the necessary degree of insanity. *Mahomed Ashraf Ghulam Mahomed v. Emperor.*

41 Cr. L. J. 942 :
190 I. C. 562 : 13 R. S. 85 :
A. I. R. 1940 Sind 161.

———S. 84—*Insanity, what amounts to.*

Where all that is established is that the accused was moody, irritable, conceited and peculiar and it is not shown that at any time he suffered from insanity of such a nature or degree as to disable him from knowing the nature of his acts or to obscure the distinction between right and wrong, he cannot be said to be insane. *Umar Khan v. Emperor.*

33 Cr. L. J. 186 :
135 I. C. 666 : 32 P. L. R. 804 :
I. R. 1932 Lah. 122 : A. I. R. 1932 Lah. 11.

———S. 84—*Insanity—What is.*

If a person is capable of knowing the nature of the act or of realizing that the act is wrong or contrary to law, he must be held to be guilty. His liability will not be diminished simply because he did the act under the influence of some delusion, or in order to redress or avenge some real or supposed grievance. *Emperor v. Sajjan Singh.*

32 Cr. L. J. 816 :
131 I. C. 746 : I. R. 1931 Lah. 506.

———S. 84—*Insanity, what is—Evidence.*

In considering a plea of insanity, the Court is concerned solely with the state of mind of the accused at the time of the act. The antecedent and subsequent conduct of the man are relevant only to show what was the state of his mind at the time the act was committed. An accused cannot be held to be of unsound mind within the purview of S. 84, where the evidence does not go to the length of showing that he could not have been conscious of the nature of the act he was doing at the time of the occurrence but merely shows that he was in a bewildered state of mind a day or two before the date of the occurrence. *John Dowlat Moon v. Emperor.*

29 Cr. L. J. 393 :
108 I. C. 424 : A. I. R. 1928 Pat. 363.

———S. 84—*Insanity—What is.*

In order to claim exemption from criminal liability, it is not enough to show that the

PENAL CODE ACT (XLV OF 1860)

accused is a "a little weak-minded." *Ismail v. Emperor.*

29 Cr. L. J. 540 :
109 I. C. 364.

———S. 84—*Insanity—What is.*

It is not every form of insanity or madness that is recognised by law as a sufficient excuse. *Pancha v. Emperor.*

33 Cr. L. J. 714 :
139 I. C. 147 : I. R. 1932 All. 536 :
A. I. R. 1932 All. 233.

———S. 84—*Insanity—What is.*

Under S. 84 it is not every mental derangement that exempts an accused person from criminal responsibility for his acts, but that derangement must be shown to be one which impairs the cognitive faculties of the accused, i. e., the faculty of understanding the nature of his act in its bearing on the victim or in relation to himself, i. e., his own responsibility for it. *Dhani Bux v. Emperor.*

17 Cr. L. J. 79 :
32 I. C. 671 : 9 S. L. R. 171 :
A. I. R. 1916 Sind 1.

———S. 84—*Insanity, when good defence.*

A person accused of an offence is not entitled to the benefit of S. 84 from the mere fact that he had an attack of insanity before the occurrence and another attack in jail during the period between the enquiry in the Committing Magistrate's Court and the trial in the Sessions Court. *Nabi Ahmad Khan v. Emperor.*

33 Cr. L. J. 542 :
137 I. C. 800 (2) : 9 O. W. N. 355 :
I. R. 1932 Oudh 283 :
A. I. R. 1932 Oudh 190.

———S. 84—*Insanity, when good defence.*

So long as the man was not so insane as to make it impossible for him to know the nature of the act or to realise that his act was wrong or contrary to law, he would be guilty of the offence committed by him. *Pancha v. Emperor.*

33 Cr. L. J. 714 :
139 I. C. 147 : I. R. 1932 All. 536 :
A. I. R. 1932 All. 233.

———S. 84—*Insanity, when ground for exemption—Burden of proof.*

Where it is proved that an accused person has committed the offence of murder, the onus lies upon him to show that he is exempted from criminal responsibility by reason of such unsoundness of mind as made him incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. It is not every form of unsoundness of mind that would exempt a person from criminal responsibility; it is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of such exemption. *Mantajali v. Emperor.*

21 Cr. L. J. 317 :
55 I. C. 477 : A. I. R. 1920 Cal. 39.

———S. 84—*Legal insanity.*

There is a distinction between "medical insanity" and "legal insanity" and the Courts are only concerned with the legal and

PENAL CODE ACT (XLV OF 1860)

not with the medical view of the question.
Bagga v. Emperor. 32 Cr. L. J. 1230 :

134 I. C. 773 : 32 P. L. R. 331 :
I. R. 1931 Lah. 981 :
A. I. R. 1931 Lah. 276.

————S. 84—Mental derangement—Proof
—Absence of motive.

Inadequacy of motive is not a matter which is conclusive evidence of insanity, and although in a case of doubt it may perhaps assist in turning the scale one way or the other, by itself it does not afford any strong evidence of mental derangement. *Nga San Pe v. Emperor.* 38 Cr. L. J. 397 :

167 I. C. 395 : 9 R. Rang. 313 :
A. I. R. 1937 Rang. 33.

————S. 84—Mental derangement—Proof.

For a father to kill his three young children is a most unnatural act, but where no clear motive can be shown, some mental derangement should be inferred. *Local Government v. Sitrya.* 34 Cr. L. J. 1168 :

146 I. C. 118 : 30 N. L. R. 9 :
6 R. N. 72 : A. I. R. 1933 Nag. 307.

————S. 84—Plea of insanity—Burden of proof—Ganja smoker setting fire to building—Exemption.

The onus of proving the defence of insanity afforded by S. 84, Penal Code, rests upon the accused. An inveterate ganja smoker set fire to the thatched building of a school, by taking a torch from a kitchen and putting it to the thatch, and after throwing the torch on the roof of the kitchen ran away. It was found that as a result of the vicious habit of ganja smoking he was in the habit of beating his wife and children and refusing to take food, but the Medical Officer pronounced that the case was not one of insanity. It also appeared that the accused who was a teacher in the school had some ground for annoyance in connection with his service : *Held*, (1) that the facts of the case were not strong enough to give him exemption from the criminality of his conduct under S. 84, Penal Code. *Public Prosecutor v. Budipilli Devasikamani.* 29 Cr. L. J. 63 :

106 I. C. 559 : 27 L. W. 77 :
55 M. L. J. 228 : A. I. R. 1928 Mad. 196.

————S. 84—Plea of insanity—Evidence requisite.

It is a mistake to suppose that in order to satisfy a Jury that the plea of insanity is well-founded, scientific evidence must be adduced. If the existence of facts is such as to indicate an unsound state of mind, that is quite sufficient. The want of motive for the commission of a crime and its being committed under circumstances which render detection inevitable are, no doubt, important points to be taken into consideration coupled with the other evidence on record on the question of insanity. But the fact that a horrible murder has been committed with no apparent motive, does not lead to the inference that the per-

PENAL CODE ACT (XLV OF 1860)

petrator of the deed must have been mad at the time. *Bazlar Rahaman v. Emperor.*

30 Cr. L. J. 494 :
115 I. C. 561 : 48 C. L. J. 307 :
33 C. W. N. 136 : I. R. 1929 Cal. 385 :
A. I. R. 1929 Cal. 1.

————S. 84—Scope of.

A finding that the accused was of unsound mind at the time of committing the crime is *per se* insufficient to bring his case within the provisions of S. 84. But when the offence is proved to be committed whilst the accused is in an unsound state of mind, the extreme penalty of the law is not called for. *Nga Kan Tha v. Emperor.* 34 Cr. L. J. 791 :

144 I. C. 437 : I. R. 1933 Rang. 111 :
A. I. R. 1933 Rang. 144.

————S. 84—Scope of—Desperation.

Mere fact that accused murdered her child owing to desperation on account of starvation does not entitle her to claim exemption under S. 84. *In the matter of : Mahajjan Bibi.*

33 Cr. L. J. 476 :
137 I. C. 511 : I. R. 1932 Cal. 339 :
A. I. R. 1932 Cal. 658.

————S. 84—Scope of.

Murder of his own children by accused—Mind unsound but accused not ignorant that his act was harmful. Case does not come within S. 84—Absence of provocation—Capital sentence not to be imposed as mind of accused was not normal. *Mitha v. Emperor.*

34 Cr. L. J. 909 :
145 I. C. 119 : 34 P. L. R. 1044 :
6 R. L. 54 (2) : A. I. R. 1933 Lah. 123.

————S. 84—Scope of.

To establish successfully the plea of insanity, acts of insanity in the past are not enough—It must be shown that he was incapable of knowing the nature of his act at the time when the offence was committed. *Chandgi v. Emperor.* 33 Cr. L. J. 634 (2) :

138 I. C. 532 : 33 P. L. R. 211 :
I. R. 1932 Lah. 508 : A. I. R. 1932 Lah. 260.

————S. 84—Scope of—Insanity.

Where all that is proved is that a person who has committed a murder is conceited, odd, irascible and that his brain is not quite all right, is insufficient to establish that the accused was incapable of knowing that what he was doing was wrong, and the provisions of S. 84 are not applicable to his case. *Abdul Rashid v. Emperor.* 28 Cr. L. J. 635 :

103 I. C. 59 : A. I. R. 1927 Lah. 567.

————S. 84—Statement of lunatic, value of.

The statements of a man who has been a lunatic, as to the exact nature of his delusions do not afford conclusive proof thereof even after he has recovered from insanity and is fit to stand his trial. *Zurab Gul v. Emperor.*

38 Cr. L. J. 533 :
168 I. C. 373 : 9 R. Pesh. 123 :
A. I. R. 1937 Pesh. 38.

PENAL CODE ACT (XLV OF 1860)

—S. 84—Unsoundness of mind, meaning of—Want of motive and signs of hallucination, effect of.

A man may be suffering from some form of insanity in the sense in which the words would be used by an alienist but may not be suffering from unsoundness of mind as defined in S. 84, Penal Code. The law recognises nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing he must always be presumed to intend the consequences of the action he takes. Mere want of motive and the fact that accused showed some signs that he suffered from a certain hallucination are not sufficient to attract the application of S. 84, Penal Code. *Jalal v. Emperor*. 30 Cr. L. J. 1024 : 119 I. C. 270 : I. R. 1929 Lah. 862.

—S. 84—Unsoundness of mind—Medical and legal points of view—Test.

The medical and legal standards of sanity are not identical. From the medical point of view every man at the time when he commits a murder is insane, that is, he is not in a sound, healthy normal condition, but from the legal point of view, a man must be held to be sane so long as he is able to distinguish between right and wrong, so long as he knows that the offence he is committing is a wrong thing to do, so long as he has a guilty mind. A person who is in a highly excited and unbalanced condition, but is nevertheless conscious that what he is doing is wrong and a crime cannot be said to be of unsound mind. *Sher Singh v. Emperor*.

25 Cr. L. J. 395 : 77 I. C. 443 : A. I. R. 1923 Lah. 508.

—S. 84—Unsoundness of mind—Mental derangement falling short of unsoundness—Murder—Lesser penalty—Youth as extenuating circumstance.

The law requires that a man shall be held responsible for his acts although he may be suffering from mental derangement in cases where that mental derangement falls short of the unsoundness of mind described in S. 84, Penal Code. On proof of such mental derangement in a murderer, the lesser sentence may be passed. Ordinarily youth is itself an extenuating circumstance, but it does not mean that in every case of murder, where the accused is under a certain age, the lesser penalty must be awarded. *Nga Kan Hla v. Emperor*.

16 Cr. L. J. 95 : 26 I. C. 1007 : U. B. R. 1914 II, 28 : A. I. R. 1914 U. Bur. 31.

—S. 84—Unsoundness of mind—Prior and subsequent conduct of accused.

In order to bring a case within the purview of S. 84, the accused must satisfy the Court that his unsoundness of mind is of such a nature and degree that by reason thereof he is incapable of knowing the nature of the act or of knowing that he is doing what is either wrong or contrary to law. In a case where an accused sets up the plea of insanity, the

PENAL CODE ACT (XLV OF 1860)

Court can judge only by inference to be derived from the prior and subsequent conduct of the prisoner as to the state of his mind at the time of the commission of the offence. *Bhagwati Prasad v. Emperor*.

24 Cr. L. J. 741 : 74 I. C. 69 : A. I. R. 1924 Oudh 190.

—S. 84—Unsoundness of mind—Proof—Criminal liability—Burden of proof.

Where unsoundness of mind is set up as a defence to a criminal charge, the burden of proving unsoundness of mind rests on the accused. The accused killed his wife and his infant daughter by striking them with a *dah*. There was no apparent motive to explain the double murder and the accused admitted without reservation what he had done and made no attempt at concealment or escape. There was some evidence that the accused had not been quite himself, that he had been disturbed and distressed by the shortage of cloth, rice and fodder; but there was no reliable evidence that his intellect was deranged. There was some vague evidence that his natural father had been mad: *Held*, that the evidence was not sufficient to prove that the cognitive faculties of the accused were so impaired that he did not know the nature of his act or that he was doing what was wrong or contrary to law, so that he was not exempt from criminal liability for the act. *Ram Sunder Das v. Emperor*.

20 Cr. L. J. 383 : 50 I. C. 991 : 29 C. L. J. 209 : 23 C. W. N. 621 : A. I. R. 1919 Cal. 248.

—S. 84—Unsoundness of mind—Proof—Evidence.

The accused was convicted for an offence under S. 307, Penal Code. It was found from the evidence for the prosecution that he was known as "Mad Nga Pyan"; that immediately before he committed the offence, he was noticed by persons to be in one of his mad fits, that he was under a delusion that the Phongyi whom he attacked was keeping his sisters and daughters in the monastery, that he confessed to the investigating officer and the headman, that he discontinued the attack when he was asked to do so and that the act was utterly unprovoked and motiveless: *Held*, that under these circumstances, the accused was at the time of committing the offence incapable, by reason of unsoundness of mind, of knowing the nature of the act or that it was wrong or contrary to law. *Nga Pyan v. Emperor*.

13 Cr. L. J. 49 : 13 I. C. 385 : 4 Bur. L. T. 267.

—S. 84—Unsoundness of mind—Proof—Exemption, extent of.

The policy of the law is to control not only the sane, but, so far as is possible, also the insane. Therefore it is not every person mentally diseased who *ipso facto* is exempted from criminal responsibility. Such exemption is allowed only to the limited extent stated in S. 84, Penal Code,

PENAL CODE ACT (XLV OF 1860)

which concisely reproduces the English Law as to non-punishable insanity. A claim for relief under S. 84 aforesaid, must necessarily be a plea in defence against an admitted or assumed act, which, in the absence of legal insanity, would amount to an offence. The onus of establishing the plea rests on the accused. No accused person can therefore be discharged merely upon the ground that when or if he committed the act, he was insane. The proper procedure is laid down in Ss. 469, 470 and 471, Cr. P. C. *Emperor v. Katyā Kishen*. 1 Cr. L. J. 854 : 17 C. P. L. R. 113.

———S. 84—Unsoundness of mind.

The plea of insanity being of the nature of a general exception, an accused person relying on it must establish it. *Chandu Lal v. Emperor*. 25 Cr. L. J. 348 : 77 I. C. 236 : 21 A. L. J. 776 : A. I. R. 1924 All. 186.

———S. 84—Unsoundness of mind—What is.

The mere co-existence of the five circumstances namely, (1) the absence of any motive, (2) absence of secrecy, (3) multiple murders, (4) want of pre-arrangement, and (5) want of accomplices, is not sufficient by itself to prove unsoundness of mind. The law requires proof of incapacity to realise the nature of the act, and presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes. A man may be suffering from insanity in the sense in which the words would be used by an alienist but may not be suffering from unsoundness of mind within the meaning of S. 84, Penal Code. *Mani Ram v. Emperor*. 28 Cr. L. J. 120 : 99 I. C. 328 : 8 L. L. J. 566 : 27 P. L. R. 823 : 8 Lah. 114 : A. I. R. 1927 Lah. 52.

———S. 84—Unsoundness of mind—What is.

The term 'unsoundness of mind', as used in S. 84 cannot be construed so widely as to cover the loss of self-control following a hostile blow on the head, which is already inflamed with alcohol and has been exposed to the sun afterwards. *Maung Gyi v. Emperor*. 14 Cr. L. J. 427 : 20 I. C. 411 : 7 L. B. R. 13.

———S. 84—Unsoundness of mind, what is—Offence committed under impulse.

Under S. 84 a person is exempt from criminal liability only if by reason of unsoundness of mind he is incapable of knowing the nature of the act done by him or that he is doing what is either wrong or contrary to law. It must, in other words, be shown that the cognitive faculties of the accused had been impaired by the unsoundness of his mind. *Ramzan v. Emperor*. 20 Cr. L. J. 1 : 48 I. C. 492 : 30 P. R. 1918 Cr. : A. I. R. 1919 Lah. 470.

PENAL CODE ACT (XLV OF 1860)

———Ss. 84, 85, 86—Applicability of.

Where there was absolutely no motive for murder and the accused was a habitual ganja smoker and did not plead unsoundness of mind and the death of the child was caused by being dashed on the ground several times: *Held*, the case was covered by S. 86 and transportation for life was a proper sentence. Recommendation was made to Local Government under S. 401, Cr. P. C. *Emperor v. Tincomi Dhopi*. 39 C. L. J. 34 : 27 C. W. N. 290 : A. I. R. 1923 Cal. 460.

———Ss. 84, 85, 86—Intoxication resulting from ganja, if good plea—Absence of motive, effect of.

If a person is of unsound mind, he is to be judged by the ordinary rules in regard to insanity, no matter whether the insanity arose from disease of the brain or from persistent indulgence in intoxicating drugs or liquor. But intoxication resembling a temporary form of insanity, resulting from one bout or repeated bouts of drinking or ganja smoking, which is of such a temporary nature as to pass off a few hours after the consumption of the liquor or drug, must be distinguished from unsoundness of mind. Such intoxication should be dealt with according to the provisions of law contained in Ss. 85, 88. Therefore, the fact that a person commits a crime while under the influence of such intoxication caused by a bout of ganja smoking, affords no excuse to the prisoner unless the intoxication be involuntary. *Vithoo v. Emperor*. 13 Cr. L. J. 164 : 13 I. C. 916 : 7 N. L. R. 185.

———Ss. 84, 302—Absence of motive—Insanity, presumption of.

There can be no presumption of insanity so as to give an accused person the benefit of S. 84 simply because there is evidence to show that the accused was ailing for some time before the commission of the offence and had not taken food for some days, and there is no motive for the crime of killing; but these circumstances may be taken into consideration in awarding punishment to him. *Mahommed Sarwar v. Emperor*. 31 Cr. L. J. 164 : 120 I. C. 733 : A. I. R. 1930 Nag. 63.

———Ss. 84, 302—Insanity due to drugs.

A person who, though of unsound mind, knows that in killing another he is committing a wrongful act, is not entitled to the benefit of S. 84, Penal Code. Persons who are in fact insane, whether they have become so from persistent indulgence in intoxicating drugs or from brain disease must be judged by the ordinary rules of law affecting insane persons. *Emperor v. Harka*. 4 Cr. L. J. 83 : 26 A. W. N. 198.

PENAL CODE ACT (XLV OF 1860)

———Ss. 84, 302—*Insanity—Murder, commission of, by person subject to insane fits—Knowledge of nature of act, absence of, not proved—Conviction—Procedure—Practice—Cr. P. C., S. 401.*

The accused was charged with having stabbed his wife with a knife as a result of which she died. It was proved that sometime before the occurrence he was subject to insane fits, but there was no proof that when he committed the murder he did not know the nature or the consequences of his act. The accused was convicted and sentenced to transportation for life : *Held*, that the conviction was right, but that the papers should be submitted to the Government under S. 401, Cr. P. C., for such action as it might think fit to take. *In re : Muthusawmi Asari.* 20 Cr. L. J. 828 :

53 I. C. 828 : 10 L. W. 377 :
1919 M. W. N. 796 : 26 M. L. T. 361 :
A. I. R. 1919 Mad. 128.

———Ss. 84, 406—*Unsoundness of mind, plea of—Criminal breach of trust—Case not falling under S. 84.*

Where a Court trying a person for an offence of criminal breach of trust, finds that the case is not covered by S. 84, Penal Code, it should consider another aspect of the case, namely whether even if S. 84 did not cover the case, the state of mind in which the accused was, did not exclude the existence of a dishonest intention which is an essential ingredient of the offence of criminal breach of trust. Unsoundness of mind may be such that in respect of certain acts the person committing them is incapable of knowing the nature of what he is doing, while in the case of other acts, he might have knowledge of their character. Consequently where in the case of an accused tried for criminal breach of trust, the evidence relating to his state of mind at the time of the commission of the crime clearly shows that due to particular kind of unsoundness of mind he must have been unable to form the criminal intention of causing wrongful loss or gain, he cannot be held guilty of the offence with which he is charged. *In re : G. J. Joseph.*

40 Cr. L. J. 642 :
182 I. C. 228 : 49 L. W. 160 :
1939 M. W. N. 126 : 1939, 1 M. L. J. 255 :
I. L. R. 1939 Mad. 353 : 12 R. M. 25 :
A. I. R. 1939 Mad. 407.

———S. 85—*Delusion under Ganja—Criminal liability—Sentence.*

Where a murderer shortly after the offence, made a full confession of his guilt naming the persons present before a Chief, but before the Committing Magistrate he said he had no clear recollection of what took place and contradicted parts of his confession, pleading that he had been smoking *ganja* that day : *Held*, that such an intoxication was no defence to this charge, but that the facts of his being an opium eater and seeming excited when he gave himself up to the Chief and of the motive being not strong enough for such a revenge, might be pleaded in his favour in awarding punishment. *Emperor v. Mauji Talshi.*

1 Cr. L. J. 495.

PENAL CODE ACT (XLV OF 1860)

———S. 85 — *Drunkenness — Intention, effect on.*

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act. *Bishan Singh v. Emperor.*

30 Cr. L. J. 662 :
116 I. C. 707 : 30 P. L. R. 357 :
I. R. 1929 Lah. 563 : A. I. R. 1929 Lah. 637.

———S. 85 — *Voluntary drunkenness, effect of.*

The fact that the accused was in an excited state as the result of having partaken of liquor in his house, in itself is no excuse for crime but it may be taken into consideration when the question of sentence is being considered, especially when the quarrel was started by the deceased himself. *Nga Chit So v. The King.*

39 Cr. L. J. 117 :
172 I. C. 197 : 10 R. Rang. 233 :
A. I. R. 1937 Rang. 467.

———Ss. 85, 86—*Drunkenness as ground of exemption—Knowledge—Intention.*

Voluntary drunkenness is never an excuse for crime. The fact that a man was drunk makes no difference, *per se*, to the question of his criminal liability. Involuntary drunkenness, as a ground of exemption is treated in just the same way as insanity. In order that Involuntary drunkenness may be accepted as a ground of exemption, it must be shown that the accused was so drunk that he did not know (1) the nature of the act, or (2) that it was wrong, or (3) that it was contrary to law. A man is assumed to intend the natural or necessary consequences of his act, and, in the majority of cases, the question of intention is merely the question of knowledge. S. 86 of the Penal Code only provides that, where intent is to be inferred from an act, a man voluntarily drunk is treated in the same way as a man sober. Although neither voluntary drunkenness, nor involuntary drunkenness, which does not involve one or other of the three states of mind mentioned in S. 85, can excuse crimes committed under its influence, yet the fact of drunkenness may alter the nature of the *legal offence* committed in cases where an essential of the crime is the presence of *some particular knowledge or intention.* *Waris Ali v. Emperor.*

13 Cr. L. J. 167 :
13 I. C. 919 : 7 N. L. R. 180.

———Ss. 85, 86—*Drunkenness—Intention, effect on.*

The drunkenness of an accused person at the time that he committed the act charged as an offence may be and should be taken into consideration on the question whether he did the act with the intention necessary to constitute the offence charged. S. 86, Penal Code, gives the drunken man the knowledge of the sober man when judging of his action but does not give him the same intention, it does not render

PENAL CODE ACT (XLV OF 1860)

him liable to be dealt with as if he had the same intent. *Nga Tun Baw v. Emperor*. (F. B.)

13 Cr. L. J. 864 :
17 I. C. 800 : 5 Bur. L. T. 193.

———Ss. 85, 86—*Drunkenness—Intention.*

Where an act done is not an offence unless done with a particular intention, it is permissible to consider voluntary drunkenness in determining whether the accused had that intention, and in doing so, regard must be had to the distinction between cases in which intention is presumed in law and those in which it is to be found as a fact and is not to be assumed. *J. M. v. Emperor*.

11 Cr. L. J. 659 :
8 I. C. 469 : 1910, 1 U. B. R. 17.

———S. 86.

See also Penal Code, 1860, Ss. 85, 95, 96, 302.

———S. 86—*Drunkenness, effect of.*

Drunkenness falling short of a proved incapacity to form the necessary intent may be taken into consideration as an extenuating circumstance in inflicting the sentence. *Nga Sein Gale v. Emperor*.

36 Cr. L. J. 228 :
152 I. C. 1054 : 12 Rang. 445 :
7 R. Rang. 188 : A. I. R. 1934 Rang. 361.

———S. 86—*Drunkenness, effect of.*

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intention necessary to constitute the crime does not rebut the presumption that a man intends the natural consequences of his acts. *Nga Sein Gale v. Emperor*.

36 Cr. L. J. 228 :
152 I. C. 1054 : 12 Rang. 445 :
7 R. Rang. 188 : A. I. R. 1934 Rang. 361.

———S. 86—*Intoxication—Sentence.*

Intoxication is no excuse for the commission of a crime, but may, in some cases, be taken into consideration when awarding punishment for a crime committed in a state of drunkenness. *Jaimal Singh v. Emperor*.

A. I. R. 1923 Lah. 294.

———S. 86—*Scope of—Intoxicated person—Knowledge—Intent.*

Under S. 86 ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them. S. 86 does not lay down that an intoxicated person shall be dealt with as if he had the same intent as he would have had if he had not been intoxicated. *In re : Mandru Gadaba*.

16 Cr. L. J. 627 :
30 I. C. 451 : 38 Mad. 479 :
A. I. R. 1916 Mad. 489.

———S. 86—*Sentence—Drunkenness.*

Although S. 86 attributes to a drunken man the knowledge of a sober man when judging of his action, it does not give him the same intention, and, therefore, drunkenness or a state of intoxication affords a sufficient excuse

PENAL CODE ACT (XLV OF 1860)

for not exacting the extreme penalty of the law. *Pal Singh v. Emperor*.

18 Cr. L. J. 868 :
41 I. C. 980 : 28 P. R. 1917 Cr. :
35 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 226.

———S. 86—*Voluntary drunkenness.*

Accused setting out to kill supposed enemy—Meeting deceased on the way who opposed his purpose—Accused resenting it and deliberately following deceased and killing him : *Held*, that accused must be imputed the same knowledge as he would have had, had he been sober, and was outside the pale of judicial mercy and that drunkenness was no extenuating circumstance. *Nga Sein Gale v. Emperor*.

36 Cr. L. J. 228 :
152 I. C. 1054 : 7 R. Rang. 188 :
12 Rang. 445 : A. I. R. 1934 Rang. 361.

———Ss. 86, 300, 302—*Drunkenness, when excuse—Striking with knife at throat—Offence—Presumption of knowledge.*

A man who strikes another man with a knife in the throat must know that the blow is so imminently dangerous that it must, in all probability, cause death, and is guilty of murder. Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts and is no excuse for the commission of an offence. Although drunkenness, by itself, does not excuse the commission of an offence, this along with other circumstances may well be taken into account in considering the nature of the penalty to be inflicted. *Judagi Mallah v. Emperor*.

31 Cr. L. J. 243 :
121 I. C. 452 : 8 Pat. 911 :
A. I. R. 1930 Pat. 168.

———Ss. 87, 90, 304—*Intention, absence of—Death caused by consent under misconception of fact—Intention or knowledge of accused.*

The deceased, a middle-aged man, believed himself to have been rendered *da*-proof by charms and asked the accused to try a *da* on his right arm. The accused believed in the pretence of the deceased and inflicted a blow with a *da* with moderate force, with the result that deceased bled to death : *Held*, setting aside the conviction under S. 304, I. P. C., that the case was governed by Ss. 87 and 90 of the Code and that the accused had no intention of causing death, or grievous hurt. *Ngwa Shwe Kin v. Emperor*.

16 Cr. L. J. 581 :
30 I. C. 133 : 8 Bur. L. T. 242 :
A. I. R. 1915 L. Bur. 101.

———Ss. 88, 92—*Scope of—Chaining up insane person—Good faith.*

Where a person of education and wealth and living in a town, where medical attendance can easily be procured, chains up his occasionally insane brother in an unnecessarily cruel way for over 3 months and apparently would have

PENAL CODE ACT (XLV OF 1860)

continued so to confine him indefinitely if the District Judge had not interfered, he cannot be said to have acted in good faith, *i. e.*, with due care and attention and cannot be given the benefit of Ss. 88 and 92. *Shimbu Narain v. Emperor.* 24 Cr. L. J. 638 :

73 I. C. 526 : 21 A. L. J. 391 :
45 All 495 : A. I. R. 1923 All. 546.

———S. 89—Scope of.

For benefit of exception, act must be shown to have been for benefit of minor. Husband desiring possession of minor wife who has not attained puberty for sexual connection is not entitled to benefit as act is not for her benefit. *Nanku v. Emperor.* 37 Cr. L. J. 35 :

159 I. C. 183 : 1935 A. W. R. 1081 :
1935 A. L. J. 1096 : 8 R. A. 400 :
A. I. R. 1935 All. 916.

———S. 90.

See also Cr. P. C., 1898, S. 235.

———S. 90 —“Under misconception of fact” meaning of—Consent by misrepresentation—Intention.

The expression “under a misconception of fact” in S. 90 is broad enough to include all cases where the consent is obtained by misrepresentation, and the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. A misrepresentation as to the intention of a person in stating the object for which consent is asked is a misrepresentation of fact. Consent obtained by misrepresentation or fraud cannot be availed of to justify what otherwise would be an offence. *In re : N. Jaladu.* 15 Cr. L. J. 24 :

22 I. C. 168 : 36 Mad. 453 :
A. I. R. 1914 Mad. 49.

———S. 91—Conviction under, propriety of—Accused making two conflicting statements on oath as witness in criminal case—No charge framed in the alternative under S. 236, Cr. P. C.—Magistrate on statements of accused himself deciding that one of them was false.

An accused who was a witness in a criminal case made two conflicting statements on oath, one of which was admittedly false. He was convicted under S. 191, Penal Code. The Magistrate framed no charge in the alternative under S. 236, Cr. P. C. He came to the conclusion that one of the statements was false, on the statements of the accused himself, who, in his opinion, was a liar. Besides the statement of the accused himself there was no other evidence to show as to which of the statements was true : *Held*, that in the circumstances of the case, the accused could not be convicted. *Gharandas Kanayalal v. Emperor.*

40 Cr. L. J. 707 :
182 I. C. 914 : 1939 Kar. 280 :
12 R. S. 35 : A. I. R. 1939 Sind 170.

———S. 94.

See also Penal Code, 1860, Ss. 108, 121.

PENAL CODE ACT (XLV OF 1860)

———S. 94—‘Compulsion’, whether defence for charge under S. 121.

In view of the provisions of S. 94, “compulsion” is not a defence in British India to a charge under S. 121, though it may and ought to operate in mitigation of punishment in most though not in all cases. *Aung Mya v. Emperor.* (S. B.) 33 Cr. L. J. 205 :

135 I. C. 849 : 9 Rang. 404 :
I. R. 1932 Rang. 65 :
A. I. R. 1931 Rang. 235.

———S. 94 — Exemption under — When available—Robbery—Previous conviction and its admission by prisoner—Consideration of punishment already awarded.

A relative of a gang robber was commissioned by the police with a *parwana* for certain months to endeavour to secure his arrest, but he did not return until a notice was issued. He was subsequently identified as having taken an active part in the crimes committed by the robber. In defence, he only alleged that he was acting as an agent for the police : *Held*, that, as he never sent any news of the whereabouts of the robber, either during his presence with him or on his return, he could not be acquitted; that he could not claim exemption under S. 94, Penal Code, as the small gang could not have compelled him, an armed man, to continue with them. *Emperor v. Ismail Hasam.* 1 Cr. L. J. 282.

———S. 94—Murder—If includes abetment of murder.

The word “murder” in S. 94 does not include abetment of murder punishable under S. 109, Penal Code. *Unadasi Dasi v. Emperor.*

26 Cr. L. J. 11 :
83 I. C. 491 : 40 C. L. J. 143 :
28 C. W. N. 1046 : 52 Cal. 112 :
A. I. R. 1924 Cal. 1031.

———S. 94—Scope of.

Where the accused, of his own accord, placed himself in a situation by which he became subject to the threats of another person, whatever threats may have been used towards him, the provisions of S. 94 avail him nothing. *Sanlaydo v. Emperor.*

35 Cr. L. J. 262 :
147 I. C. 49 : 6 R. Rang. 142 :
A. I. R. 1933 Rang. 204.

———Ss. 94, 201, 302—Exemption from liability—Offence under S. 201—Intention to screen offender, necessity of—Acts done under fear and compulsion.

A who was a thoroughbred profligate and ruffian, brought a woman B against her will to his house. The matter was discovered and the *chaukidar* forced A, B and C (A's wife) to proceed to the Police Station. On the way A gave a blow upon the *chaukidar's* skull which smashed the skull to pieces. The *chaukidar* fell down. B and C pressed the *chaukidar's* mouth under A's orders while A dug a pit to bury the *chaukidar*. A, B and C then dragged the *chaukidar* to the pit and A buried him. B was charged under Ss. 302

PENAL CODE ACT (XLV OF 1860)

and 201, Penal Code: *Held*, (1) that there was no warrant upon the evidence for convicting *B* under S. 302, I. P. C.; (2) that *B* was not guilty under S. 201, I. P. C., as her acts were not voluntary nor done with the intention of screening the offender from punishment. *Bakhtawari v. Emperor*.

31 Cr. L. J. 37 :
120 I. C. 268 : A. I. R. 1930 All. 45.

—S. 95.

See also Penal Code, 1860, S. 504.

—S. 95—Applicability.

S. 95 has no application where the act charged against the accused person amounts to an offence irrespective of whether he thereby caused, intended to cause or knew himself to be likely to cause harm—e. g., when the accused was in a state of intoxication at a railway station. *Emperor v. John Scott*.

2 Cr. L. J. 751 :
1 N. L. R. 139.

—S. 95—Scope—Insult.

An insult which under ordinary circumstances, would be likely to provoke the person insulted to cause a breach of the peace is within the provisions of the section although the person insulted may have been reduced to a state of abject terror so as to render improbable that he would commit a breach of the peace. If the insult is not of such a character that a person of ordinary temperament would not complain of it, it may come within the terms of S. 95, Penal Code. *Silvester Vaz v. Louis Dias*.

31 Cr. L. J. 846 :
125 I. C. 434 : 32 Bom. L. R. 103 :
A. I. R. 1930 Bom. 120.

—S. 95—Scope—Preparing and selling Jhatka meat.

A person who kills a goat by the *Jhatka* process and exposes its flesh for sale in the presence of Muhammadans, commits no offence. *Kirpa Singh v. Emperor*.

13 Cr. L. J. 601 :
16 I. C. 169 : 26 P. W. R. 1912 Cr.

—Ss. 95, 499—Scope of—Kulabrashta—How defamatory—Trivial offence.

The term *Kulabrashta*, i. e., the son of a prostitute, used in a book is *prima facie* defamatory and does not fall under S. 95, Penal Code. *Ramanuja Chariar v. Prathivati Bayan Karam*.

12 Cr. L. J. 497 :
12 I. C. 217 : 1911, 2 M. W. N. 8 :
10 M. L. T. 96.

—S. 95—Trivial offence—Defamation—Complaint based on trivial remark.

A criminal complaint of defamation based upon a mere trivial remark, no harm being suffered by the complainant by the remark, should not be entertained, as the matter is one falling properly within S. 95. *Sharif Ahmad v. Qabul Singh*.

22 Cr. L. J. 715 :
63 I. C. 875 : 19 A. L. J. 425 :
3 U. P. L. R. All. 77 : 43 All. 497 :
A. I. R. 1921 All. 30.

PENAL CODE ACT (XLV OF 1860)

—S. 95—Trivial offence—Slight harm—Deadly weapon—Latki—Trumpety quarrel.

A *latki* in itself is not a deadly weapon, unless and until it is used on the head or on some vital part of a person. Two parties collected outside their respective houses and apparently challenged each other, but nothing happened: *Held*, that this was a trumpety quarrel covered by S. 95, Penal Code. *Parma Singh v. Emperor*.

12 Cr. L. J. 103 :
9 I. C. 586.

—S. 95, 290—Nuisance.

The accused reared a single pig and allowed it to stray in the public street: *Held*, this was not an offence under S. 290, Penal Code, and that the conviction was illegal. *In the matter of: Sidda*.

9 Cr. L. J. 338 :
12 M. C. C. R. 104.

—Ss. 95, 352, 504—Protection under S. 95, —Causing slight harm—Using abusive language on provocation—Trespasser in Pleaders' room—Turning out without violence—Assault.

A who was not a Pleader, entered the Pleaders' room attached to a District Court in order to see a Pleader. *B*, a Pleader, objected to his presence and caused his attention to be directed to a rule to the effect that the room was reserved for Pleaders and that if an outsider entered the room and his presence was objected to, it was incumbent upon such person to withdraw. *A* refused to leave the room. *B* thereupon put him out of the room. Afterwards, *A* again returned to the room and on this occasion *B* abused him but very shortly after he apologised. On these facts, *B* was convicted of offences under Ss. 352 and 504, Penal Code: *Held*, (1) that the Pleaders' room was a private room and *A* was not entitled to persist in remaining there after his presence had been objected to; (2) that the intention of *A* in persisting in the room was to annoy *B* (3) that *B* did not exceed his rights in putting *A* out of the room and, therefore, no offence under S. 351 was committed; (4) that, as regards the charge under S. 504, *B* was within the protection allowed by S. 95, Penal Code, having regard to the circumstances of provocation in which the abusive words were uttered and to the frank and sincere apology which immediately followed their use. *Moro Balwant Marathe v. Emperor*.

15 Cr. L. J. 14 :
22 I. C. 158 : 15 Bom. L. R. 1039 :
A. I. R. 1914 Bom. 126.

—Ss. 95, 499, Expl. IV—Imputation of loss of caste—Summary dismissal of complaint as trivial, legality of—Words *per se* defamatory—Expl. IV, applicability of.

The question whether the character of a person defamed was lowered in the estimation of others within the meaning of Expl. IV, to S. 499, Penal Code, does not arise for consideration where the words used and forming basis of the charge are *per se* defamatory. An imputation of loss of caste against a Hindu cannot be treated to be a trivial matter and a complaint for defamation on such an allega-

PENAL CODE ACT (XLV OF 1860)

tion cannot be dismissed summarily under S. 95, Penal Code. *Mohan Lal v. Ram Charan*.

29 Cr. L. J. 451 ;
108 I. C. 690 : 26 A. L. J. 36 :
A. I. R. 1928 All. 213.

———Ss. 95, 500—*Trivial offence—Defamatory words used at spur of moment—Expression more akin to abuse—Defamation, action for.*

Where in a prosecution under S. 500, I. P. C., it was found that the alleged defamatory words were used at the spur of the moment without premeditation and at a time when apparently the accused was annoyed at what he considered to be an improper suggestion by the complainant himself and the words used were more akin to an abuse or an insult than to defamation of character and the matter was of a very trivial nature: *Held*, that it was not proper to convict the accused under S. 500, I. P. C. *Jas Raj Jagga v. Emperor*.

30 Cr. L. J. 379 :
115 I. C. 72 : I. R. 1929 Lah. 328 :
A. I. R. 1929 Lah. 234.

———Ss. 95, 504—*Scope of—Insult, when criminally punishable—Breach of peace, effect of.*

It is not every intentional insult which is criminally punishable under S. 504, Penal Code, it must be shown that the accused intended, or knew it to be likely, that provocation would cause the person insulted to break the public peace or to commit some other offence. Where the accused were convicted under S. 505, Penal Code, for having said in an insolent tone to a Deputy Magistrate upon his expressing an unfavourable opinion at a local inquiry held by him into an application made by them and other residents of a village for funds to enable them to dig a well, "then, why do you make an enquiry, go away quietly:" *Held*, that in the particular circumstances of the case, the conviction was bad in law and that the provisions of S. 95, Penal Code, completely covered the case. *Jaykrishna Samanta v. Emperor*.

18 Cr. L. J. 17 :
36 I. C. 849 : 24 C. L. J. 137 :
21 C. W. N. 95 : A. I. R. 1917 Cal. 570.

———S. 96.

See also Penal Code, 1860, S. 143.

———S. 96—*Burden of proof—Right of private defence, accused's duty to plead—Charge to Jury.*

A Judge is not bound to explain to the Jury the law of the right of private defence, where the accused themselves have never pleaded that they acted in the exercise of the right of private defence. If a person raises the defence that he acted in the exercise of the right of private defence, he must prove it. He must set forth the exact circumstances in which he acted to show that he was justified in what he did. *Adam Ali Taluqdar v. Emperor*.

28 Cr. L. J. 334 :
100 I. C. 718 : 31 C. W. N. 314 :
45 C. L. J. 131 : A. I. R. 1927 Cal. 324.

PENAL CODE ACT (XLV OF 1860)

———S. 96—*Right of private defence—Duty of Court.*

Even if an accused person does not plead self-defence, it is open to the Court to consider such plea if the prosecution evidence supports it. *In re : Jogali Bhaiga Naiks*.

27 Cr. L. J. 1198 :
97 I. C. 958 : A. I. R. 1927 Mad. 97.

———S. 96—*Right of private defence—Mode of exercise.*

The Penal Code puts no restriction either upon the weapon, or upon the mode of using it, in those particular cases in which it provided that the voluntary causing of death is justified when acting in exercise of the right of private defence of the body, but of course, all the circumstances of the case must be considered together. *Nga Chit Tin v. The King*.

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

———S. 96—*Right of private defence, principle of.*

The law does not require a citizen, however law-abiding he may be, to behave like a rank coward on any occasion. The right of self-defence as defined by law must be fostered in the citizens of every free country and if a man is attacked, he need not run away and he would be perfectly justified in the eye of law if he holds his ground and delivers a counter-attack to his assailants provided always, that the injury which he inflicts in self-defence is not out of proportion to the injury with which he was threatened. *Mahandi v. Emperor*.

31 Cr. L. J. 654 ;
124 I. C. 316 : 31 P. L. R. 621 :
A. I. R. 1930 Lah. 93.

———S. 96—*Right of private defence, question as to, when arises.*

No question as to the exercise of the right of private defence can arise unless and until the prosecution has proved what would, but for the exercise of this right, be an offence. If and when the prosecution have established that, then and then only the question of the right of private defence will arise. *Nga Chit Tin v. The King*.

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

———S. 96—*Right of self-defence—Extent.*

Where in a *marpit* brought about by the illegal act of the dead person himself, the accused while resisting the attack of the deceased happens to hit him on the head, rather harder than perhaps he intended to have done and thus kills him, he cannot be said to be exceeding his right of self-defence and should not be convicted. *Chhattar v. Emperor*.

A. I. R. 1929 All. 897.

———S. 96—*Scope of.*

Both parties determined to vindicate their right to property by unlawful force—*Rioting*—No question of self-defence arises. They can succeed only on proof that they were

PENAL CODE ACT (XLV OF 1860)

owners in peaceful possession and were not aggressors. *Ali Mohammad Jumo v. Emperor*.

35 Cr. L. J. 257 :
147 I. C. 70 : 27 S. L. R. 433 :
6 R. S. 119 : A. I. R. 1933 Sind 386.

—S. 96—Scope of.

Tenant believing to have right to cultivate and engaged in cutting crops—Accused interfering, claiming title—Fight—Accused are not entitled to right of private defence. *Ram Singh v. Emperor*.

36 Cr. L. J. 1052 :
156 I. C. 961 : 8 R. A. 69 (2).

—S. 96—Scope of.

Where the members of both the unlawful assemblies fight together, there can be no question of the right of private defence and everybody who is proved to have taken part in the fight is guilty of the offence committed by him. *Manna v. Emperor*.

35 Cr. L. J. 1462 :
151 I. C. 980 : 7 R. L. 233 :
A. I. R. 1934 Lah. 209.

—Ss. 96, 97—Illegal removal of property—Person taking back such property commits no offence.

Removal of attached movables by an attaching officer without giving an option to the judgment-debtor of having the attached property kept on his premises or at some other place of safe custody as required by r. 93 of Chap. I of the General Rules and Circular Orders (Civil) of the Calcutta High Court, is illegal and a person who takes back the property so illegally removed, does not commit an offence. *Ahmad Sheikh v. Emperor*.

30 Cr. L. J. 199 :
113 I. C. 572 : 48 C. L. J. 288 :
33 C. W. N. 174 : 56 Cal. 460 :
I. R. 1929 Cal. 140 :
A. I. R. 1928 Cal. 815.

—Ss. 96, 97—Right of private defence.

An act done in exercise of the right of private defence is not an offence and S. 97 does not, therefore, give rise to any right of private defence in return. *Gouri Shanker v. Sheikh Sultan*.

18 Cr. L. J. 864 :
41 I. C. 832 : A. I. R. 1917 L. Bur. 12.

—Ss. 96, 97—Right of private defence, case of abduction.

If it can be established that a woman was being forcibly abducted, then undoubtedly her relations would have the right to rescue her, and they would be entitled to claim the benefit of the exercise of the right of private defence, and in this aspect, there will be no question of an unlawful assembly. If the right of private defence is exceeded, then only the person or persons so exceeding that right would be individually guilty. *Mustqim Jagga v. Emperor*.

40 Cr. L. J. 874 :
184 I. C. 208 : 12 R. L. 180 (2) :
A. I. R. 1939 Lah. 416.

PENAL CODE ACT (XLV OF 1860)

—Ss. 96, 97, 99, 100, 304—Right of private defence.

Where an attack was made by the deceased and his party with *lathis* on the accused and his party, and a blow was struck on the head of the accused which felled him to the ground, and as the accused rose, he used his *lathi* and inflicted on the deceased a blow which resulted in his death: *Held*, that a man in such a predicament cannot be expected to judge too nicely, and that having regard to all the circumstances, the assault on the accused was such as reasonably caused the apprehension that grievous hurt would, but for his action, have been the consequence of the attack that was being made upon him, and that the accused exercised a right of self-defence within the limits allowed by law. *Bhut Nath Dome v. Emperor*.

10 Cr. L. J. 391 :
3 I. C. 867 : 13 C. W. N. 1180.

—Ss. 96, 97, 99, 141—Right of private defence—Extent of right—Force to be used—Unlawful assembly.

The accused, who were in peaceful possession of their land apprehended from their past experience that at some time or another the complainant's party would make an attempt to seize the land by force. Therefore, when they went to plough their land, they took the precaution to take with them their *lathis* to protect themselves as well as their property, as they were fewer in number than the complainant's party. One day, when they were engaged in ploughing their land, they were suddenly set upon by the complainant's party, who attacked them with *lathis* causing injuries to all of them. A large number of the complainant's party got hurt in the fight: *Held*, that the accused were protected by both clauses of S. 97, Penal Code, as they had a right to defend their persons as well as their property against the complainants, who committed or attempted to commit the offence of criminal trespass. *Hira v. Emperor*.

24 Cr. L. J. 189 :
71 I. C. 605 : 45 All. 250 :
A. I. R. 1923 All. 194.

—Ss. 96, 97, 102, 105, 340—Right of private defence—Apprehension of commission of offence.

Under S. 340, Penal Code, the arrest of any person who has not been guilty of any offence for which arrest without warrant is permitted, is *prima facie* wrongful confinement of the person but Ss. 96 and 97, give a right to every person to defend his own body and the body of every other person and the property of himself and every other person against certain offences, and this right of private defence commences under Ss. 102 and 105 of the Code, when a reasonable apprehension of danger to the person or property commences. Therefore, a person who has a genuine and reasonable apprehension that to allow another to remain at large will endanger the person

PENAL CODE ACT (XLV OF 1860)

and property of others is entitled to arrest or confine that other. *In re : Gopal Naidu.*

24 Cr. L. J. 599 :
73 I. C. 343 : 17 L. W. 592 :
44 M. L. J. 655 : 32 M. L. T. 352 :
1923 M. W. N. 425 : 46 Mad. 605 :
A. I. R. 1923 Mad. 523.

———Ss. 96, 97, 141, 447—*Right of private defence, in cases of trespass.*

The right of private defence against an act of trespass on one's property is not lost by reason of the omission to send word to a Police Station which is at some distance from the place of occurrence. Persons who exercise their right of resisting an unlawful trespass on their property do not become members of an unlawful assembly by repelling attacks made on them or by exceeding their right of private defence. *Penumesa Thirmalraju v. Emperor.*

19 Cr. L. J. 248 :
44 I. C. 40 : A. I. R. 1919 Mad 885.

———Ss. 96, 97, 147, 148, 149, 302, 326—*Conviction for unlawful assembly and murder, legality of.*

A small river flowed by the side of villages K and S. The people of K raised a *bandh* in the bed of the river in K. The people of S applied to the Sub-Divisional Officer to take action against the people of K under S. 114, Cr. P. C. and to direct them to remove the *bandh*. The Sub-Divisional Officer passed an order which ran as follows : 'The report shows that the villagers of K have erected a new *bandh*. Issue Notice under S. 144, Cr. P. C., restraining the second party from obstructing the flow of water into the canal by erecting a *bandh*. Send a copy of the order to the Police who will see that there is no breach of the peace.' This order was interpreted by the Police, and the people of S to mean that the *bandh* was to be removed. The people of K refused to remove the *bandh* and in spite of the warnings of the Police, the people of S proceeded to cut the *bandh*. A free fight ensued and one of the villagers of S was killed and others injured. The accused who belonged to village K were convicted of offences under S. 302 and Ss. 147 to 149, Penal Code: *Held*, (i) that the villagers of S had no right to cut the *bandh* under the circumstances mentioned and when they actually proceeded to destroy it, the people of K had a right to prevent them from doing so and the accused could not, therefore, be convicted under Ss. 147, 148 and 149 ; (ii) that in view of the fact that injuries were caused to the deceased in a free fight and in the exercise of private defence of person as well as property and many persons other than the accused had caused severe injuries to the deceased, the conviction under S. 302, could not be sustained but the accused was guilty of an offence under S. 326, Penal Code, as he had exceeded the right of private defence. *Tilak Kohar v. Emperor.*

31 Cr. L. J. 967 :
126 I. C. 153 : A. I. R. 1929 Pat. 523.

———Ss. 96, 99—*Right of private defence—Complainant provoking fight and receiving injuries—Offence.*

PENAL CODE ACT (XLV OF 1860)

An attaching party went to the house of the judgment-debtor and began looking for the property when S assaulted them. The consequence was a fight in which S received slight injuries : *Held*, that as the fight was provoked by S and no very grievous injuries were inflicted upon him, the attaching party could not be said to have exceeded their right of private defence and were, therefore, not guilty of any offence. *Devi Das v. Emperor.*

19 Cr. L. J. 635 ;
45 I. C. 683 : 20 P. W. R. 1918 Cr. ;
36 P. L. R. 1918 : A. I. R. 1918 Lah. 308.

———Ss. 96, 99 (4), 304—*Right of private defence, extent of—Inflicting more harm than is necessary—Offence.*

One G was being chased by the village headman and his party when he was met by the accused who tried to stop him. G hit him on the head with a bamboo, and the accused in return gave G a fatal blow on the neck, which severed his carotid artery and caused his death : *Held*, that the accused had exceeded his right of private defence, and was liable to conviction under the first part of S. 304, but not under the second part. *Nga Tun Nyein v. Emperor.*

18 Cr. L. J. 284 :
38 I. C. 316 : A. I. R. 1917 L. Bur. 28.

———Ss. 96, 100, 103—*Right of private defence—Burden of proof—Both parties prepared for fight, effect of.*

On the plea of private defence of property the burden of proof is on the accused. If he asserts that he caused injuries to the opposite side in the defence of his property, he must show that it was his property. In the case of a free fight for which both sides have come prepared, there can be no right of private defence either on one side or the other, and it makes no difference who was the attacking party. *Farman Khan v. Emperor.*

27 Cr. L. J. 1322 :
98 I. C. 394 : 5 Pat. 520 :
A. I. R. 1926 Pat. 433.

———Ss. 96, 100, 103—*Right of private defence in case of robbery—Extent of right.*

The brother of the accused was a lessee of a certain island which produced a sort of thatching grass. A number of *Ahirs* of a neighbouring village had gone with boats to this island, had cut a quantity of the grass and were taking it back to their village. The accused party came in their own boat in pursuit and tried to seize the bundles of grass. The *Ahirs* resisted and there was a free fight between the parties. The accused party took to their boat. The *Ahirs*, however, advanced through water towards the boat armed with *lathis* and the assault on the party of the accused had not ceased but continued in form of pelting with brickbats and was likely to assume the form of physical seizure of the boat and further attack with *lathis*. The *Ahirs* were about 25 feet from the accused's boat. The accused fired three shots with a shot gun as a result of which one person received a simple hurt, other a grievous hurt and the third one died of injuries : *Held*, that in view of the fact that injuries on two of the accused party were

PENAL CODE ACT (XLV OF 1860)

grievous, there was a right of private defence of property which under S. 103, Penal Code, extended to the causing of death to the wrong-doers, the offence being not merely theft but robbery within the definition in S. 390 because the offenders in carrying away property obtained by theft for that end had voluntarily caused hurt. There was, likewise, a right of private defence of the person which under S. 100 extended to the voluntary causing of death, the assault being such as caused the grievous hurt. *Ajab Narain Singh v. Emperor*.

40 Cr. L. J. 611 :
181 I. C. 811 : 5 B. R. 679 :
11 R. P. 641 : 21 P. L. T. 86 :
A. I. R. 1939 Pat. 575.

———Ss. 96 to 106, 147—*Right of private defence—Rioting—Accused in actual possession of land—Trespassers erecting huts on land—Accused coming on land fully armed to drive off trespassers—Recourse to public authorities—Injuries slight.*

The accused were in peaceful occupation of certain land. The complainant party began to erect some huts on the land stealthily in the darkness of the night. At day-break the accused, on coming to know what was happening, came to the place fully armed in order to drive off the trespassers. The result was that there was a free fight between the parties in which both sides were wounded: *Held*, that, as the accused were in actual physical possession of the property in question, they took the earliest opportunity to exercise the right of private defence. *Chandulla Sheikh v. Emperor*.

15 Cr. L. J. 209 :
22 I. C. 293 : 18 C. W. N. 275 :
A. I. R. 1914 Cal. 623.

———Ss. 96 to 106, 147, 325/149—*Right of private defence—Rioting—Attack by a large body of armed men prepared to fight.*

The complainant's party, consisting of twelve or thirteen persons, went with *kodalis* to a *bund* erected on the land of the master of the accused in order to cut it, as it obstructed the flow of water from their lands and destroyed their crops. The accused hearing of this at once assembled to the number of 50 or 60, armed themselves with *lathis* and proceeded to the *bund*. At this time the complainant's party had either finished the cutting or ceased to do so, when they saw the accused approaching. The latter attacked the complainant's party and drove them to their village. One or more of the assailants also beat a man, who was present there, but was not connected with the cutting of the *bund*, both in the first attack and when they returned from the chase, and fractured his skull, in consequence of which he died shortly after: *Held*, that the accused were members of an unlawful assembly from the beginning and had no right of private defence, when the opposite party had ceased cutting the *bund*. *Emperor v. Ambika Lal*.

8 Cr. L. J. 54 :
35 Cal. 443.

———Ss. 96 to 106, 333—*Right of private defence, when commences—Public servant, assault upon—Offence—Proof.*

PENAL CODE ACT (XLV OF 1860)

In order to set up the right of private defence, it is incumbent upon the accused to begin by showing that at the time of their interference an offence affecting the human body was being committed on the person on whose behalf they interfered. A public servant does not cease to be a private citizen, and the law will take cognizance of an assault committed upon him, independently altogether of his position as a public servant. If, however, it is desired to invoke on his behalf the provisions of S. 333, Penal Code, and other similar sections, it is for the prosecution to satisfy the Court that the facts of the case were such as to fulfil the requirements of those sections. *Sampal v. Emperor*.

18 Cr. L. J. 803 :
41 I. C. 323 : 15 A. L. J. 565 :
A. I. R. 1917 All. 54.

———Ss. 96, 141, 143, 147, 148, 326/149—*Right to defend property—Unlawful assembly—Using necessary force for protection of master's property—No offence.*

The complainants, tenants, held their land on the *batai* system, and the crops, when cut, should have been taken to the village K, but the complainants armed with *lathis* went to the field with the avowed intention of carrying away the crops which had been cut to their own houses, and actually began making bundles of the harvested crops. The accused, the landlord's people protested. Thereupon a fight took place and persons on both sides were injured. There was no intention of the accused to use more force than was necessary: *Held*, that the accused were not guilty of rioting as they were justified in protecting their master's property and in using such force as was necessary to prevent the tenants from carrying away the crops. *Ram Khelawan Singh v. Emperor*.

10 Cr. L. J. 245 :
3 I. C. 96 : 13 C. W. N. 827.

———Ss. 96, 302, 304—*Right of private defence, extent of.*

In the course of a family quarrel between a brother and sister, as to possession of a store room, the sister was roughly handled, and on hearing her cry out for help, the husband who was working near about turned up and finding the wife being assaulted by her brother and another and her hands cut and bruised, struck the brother one deadly blow with an *arnaval* and on himself being attacked by the other man, dealt another fatal blow to him also: *Held*, that the accused had reason to suppose that his wife might be severely injured and the blows struck by him on both the men were in exercise of the right of defence of his wife and himself. *Bernu Chetty v. Emperor*.

27 Cr. L. J. 617 :
94 I. C. 361 : 1926 M. W. N. 212.

———S. 97.

See also (i) Criminal trial.

(ii) Penal Code, 1860, Ss. 71, 90, 800.

———S. 97—*Exceeding right of self-defence—Effect.*

If a person, while acting in self-defence, uses

PENAL CODE ACT (XLV OF 1860)

greater resistance than he is entitled to use, he makes himself liable to punishment. *Baqri v. Emperor*.

17 Cr. L. J. 450 :
36 I. C. 130 : 107 P. L. R. 1916 :
43 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 215.

—S. 97—Extent of right of private defence—Person bound to arrest offender—Offender trying to escape.

If an offender resists arrest and attempts to escape, a person who is bound by law to assist in arresting the offender and in preventing his escape, is entitled to use all means necessary to effect the arrest short of causing death. Even drunken men are entitled to the protection of the law but if they break the law and attack either the person or the property of the people, any member of the public is entitled to exercise the right of private defence provided that he does no more harm than the necessities of private defence require. *Mani Karki v. Emperor*.

28 Cr. L. J. 445 :
101 I. C. 477 : 5 Bur. L. J. 223 :
A. I. R. 1927 Rang. 121.

—S. 97—Plea of right of private defence.

Whether can be pleaded alternatively with *alibi*—Accused not specifically pleading private defence—Right cannot be denied to him—Stranger has right to defend person and property of another. *Janki Mahlo v. Emperor*.

35 Cr. L. J. 92 :
146 I. C. 533 : 6 R. P. 271 :
A. I. R. 1933 Pat. 568.

—S. 97—Extent of right under.

Deceased losing temper with accused and threatening accused with scythe—Blow aimed at deceased in self-defence—Death—Right of private defence, held not exceeded. *Afa Mohammad v. Emperor*.

36 Cr. L. J. 415 :
153 I. C. 622 : 7 R. L. 448 :
A. I. R. 1934 Lah. 995.

—S. 97—Extent of right under.

Police Officer *bona fide* believing a person to be a proclaimed offender—Attack by the person—Firing by Police Officer—Death—Right of private defence, held extends to causing death of the person. *Nawazali Ghulam Mahomed v. Emperor*.

34 Cr. L. J. 751 :
144 I. C. 328 : 27 S. L. R. 24 :
I. R. 1932 Sind 177 :
A. I. R. 1933 Sind 193.

—S. 97—Private defence of property, plea of, when available.

Before an accused can set up a plea of private defence of property, he must prove that the property was his property and that he was actually in peaceful possession of it. A mere right to have possession restored by a Civil Court does not justify an individual in taking the law into his own hands and rely on a plea of private defence of property. *Emperor v. Sulleman Khan*.

27 Cr. L. J. 1347 :
98 I. C. 467 : A. I. R. 1927 Sind 92.

PENAL CODE ACT (XLV OF 1860)

—S. 97—Private defence, right of—Voluntary and deliberate fight.

The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. Where, therefore, it appeared that a fight took place in a public street and both sides voluntarily engaged in it: *Held*, that it was not open to the members of either party to claim the right of private defence. *Bechar Anop v. Emperor*.

16 Cr. L. J. 772 :
31 I. C. 372 : 17 Bom. L. R. 888 :
40 Bom. 105 : A. I. R. 1915 Bom. 213.

—S. 97—Right of private defence against forcible employment.

A person is perfectly justified, under S. 97, Penal Code, in offering resistance to his being taken away against his will with the object of being impressed for service or employment. *Pancham v. Emperor*.

20 Cr. L. J. 727 (a) :
52 I. C. 887 : 6 O. L. J. 327 :
A. I. R. 1919 Oudh 360.

—S. 97—Right of private defence, exercise of.

Amin proceeding to attach property under invalid warrant—*Amin* honestly believing that warrant is valid—Owner of property cannot exercise right of private defence. *Emperor v. Shih Lal*.

147 I. C. 809 : 1933 A. L. J. 917 :
55 All. 617 : 6 R. A. 567 :
A. I. R. 1933 All. 620.

—S. 97—Right of private defence—Extent of.

Under S. 97, Penal Code, every person has a right to defend property against theft or criminal trespass or an attempt to commit either of these offences. The right of private defence extends to the voluntary causing of death, if the offence is theft under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if the right of private defence is not exercised (S. 103). In other cases of theft, the right does not extend to the voluntary causing of death, but to the voluntary causing of any harm other than death (S. 104). In no case does the right extend to the infliction of more harm than is necessary to inflict for the purpose of defence (S. 99). *Emperor v. Kyaw Zam Hla*.

1 Cr. L. J. 997 :
10 Bur. L. R. 263.

—S. 97—Right of private defence, extent of.

When a question of the right of private defence arises, the question to be asked is not what a perfectly cool by-stander would think absolutely necessary, but whether there was reasonable apprehension of danger to life or property on the part of the

PENAL CODE ACT (XLV OF 1860)

accused having regard to all the circumstances, and allowance should be made for one who with the instinct of self-preservation strong upon him, pursues his defence a little further than might appear to be absolutely necessary to a cool bystander. *Kuppusamier v. Emperor*. 31 Cr. L. J. 452 :

122 I. C. 651 : 1929 M. W. N. 511 :
A. I. R. 1929 Mad. 748.

———S. 97—*Right of private defence, extent of.*

Every attempt or threat to commit an offence would not, however, entitle a man to take up arms. He must pause and reflect whether the threat is entitled to be put into execution immediately, because there are many threats, which people use as a form of abuse, but which are never intended to be taken seriously, and, still others, which the persons saying them have not the capacity to put into immediate execution; for it is only against a danger, present and imminent, that the right of private defence avails. The right of private defence, however, is a very limited right. It cannot be converted into a right of reprisal and would not exonerate an accused person from punishment if he inflicts more harm than is necessary, even though such harm is caused under provocation. *Sitarani v. Emperor*. 26 Cr. L. J. 587 :

85 I. C. 731 : A. I. R. 1925 Nag. 260.

———S. 97—*Right of private defence in case of free fight.*

When both parties arm themselves for a free fight to enforce their right or supposed right and deliberately engage themselves in large numbers in a pitched fight resulting in the death of some and hurt to others, no question of the right of private defence arises. *Iqbal Hussain v. Emperor*.

31 Cr. L. J. 835 :
125 I. C. 395 : 7 O. W. N. 449 :
A. I. R. 1930 Oudh 252.

———S. 97—*Right of private defence of person of another, extent of.*

The deceased B. W. was on a cart when the accused K. D. came up near it. He said to K. D. "Is that you" and on K. D. replying "Yes" he began using abuse and kicked K. D. The latter then called out to the accused P. S. who came running up with a bottle in his hand evidently with the intention to strike the deceased with it and he admitted that he did strike him. Then B. W. slashed at K. D. with his *dahi* first and then turned on P. S. and slashed at him with it. He hit K. D. on the forearm and the injury caused did not turn out to be very serious and this must be because K. D. lifted his arm to ward off the blow. But the result of the blow which hit P. S. was that three of his fingers were cut off. Then it was that K. D. took a knife from somewhere about his person and stabbed B. W. with it in a vital part of the body causing B. W.'s death. K. D.'s plea was that his act was justified by the right of self-

PENAL CODE ACT (XLV OF 1860)

defence: *Held*, that the Judge overlooked the provisions of the first case given in S. 97, Penal Code, and that although the deceased had turned upon P. S. K. D. had the right to cause death to the deceased, if he might reasonably apprehend at the time that P. S.'s life was in danger owing to the conduct of the deceased: that under the circumstances, the act of K. D. in taking out the knife and stabbing the deceased is covered by S. 100, Penal Code, and that K. D. did not exceed the right of self-defence. *Nga Kyaw Dun v. Crown*.

1 Cr. L. J. 380 :
10 Bur. L. R. 99.

———S. 97—*Right of private defence of property against abhikar of Court.*

Where an *amin* having negligently failed to observe that the duration of a warrant had expired, proceeded to attach certain property believing that he was entitled to do so, and the accused struck the constable who accompanied the *amin* when he advanced to seize his cattle: *Held*, that the *amin* could not be treated as a robber as he had no intention to commit theft, and that the accused, the owner of the property, could not inflict grievous hurt on him in justifiable exercise of the right of private defence. *Emperor v. Shib Lal*.

147 I. C. 809 : 1933 A. L. J. 917 :
55 All. 617 : 6 R. A. 567 :
A. I. R. 1933 All. 620.

———S. 97—*Right of private defence of property, exercise of.*

Where possession is undisputed or where there is no time to seek the aid of the authorities, there is no obligation upon a person entitled to exercise the right of private defence and to defend his person or his property, to retire from the field merely because his assailant threatens him with violence. *Lalji Singh v. Emperor*.

25 Cr. L. J. 1228 :
82 I. C. 156 : 2 Pat. 595 :
6 P. L. J. 87 : A. I. R. 1924 Pat. 388.

———S. 97—*Right of private defence of property when exists.*

The right of private defence of property can only exist in favour of the person who possesses a clear title to that property, and not in cases where no such title has been determined and the parties chose to refer the determination of their rights to the arbitration of their own arms. *Jatpal v. Emperor*.

17 Cr. L. J. 180 :
33 I. C. 820 : 3 O. L. J. 14 :
19 O. C. 18 : A. I. R. 1916 Oudh 345.

———S. 97—*Right of private defence—Use of spear.*

Where *lathi* blows are being showered upon a person, he is justified in striking his adversary with a spear and he cannot be said to have exceeded the right of private defence simply because he inflicted several injuries which resulted in the death of the adversary. *Surain Singh v. Emperor*.

29 Cr. L. J. 755 :
110 I. C. 787 : A. I. R. 1928 Lah. 900.

PENAL CODE ACT (XLV OF 1860)

————S. 97—*Right of private defence, when avails.*

If the act of mischief has already begun, there is more than an apprehension of danger to the property and the right of private defence has come into existence. It is not expected that a person entitled to exercise it should have recourse to the permission of the public authorities. *Abdul Hadi v. Emperor.*

35 Cr. L. J. 730 :
148 I. C. 649 : 1934 A. L. J. 689 :
6 R. A. 755 : 4 A. W. R. 271 :
A. I. R. 1934 All. 829 (2).

————S. 97—*Right of private defence, when can be availed of.*

The right of private defence cannot be availed of where there is time to have recourse to the public authorities to prevent the commission of an offence against the person or property of the person concerned. *Rajmal v. Emperor.*

26 Cr. L. J. 1069 :
88 I. C. 13 : A. I. R. 1925 Nag. 372.

————S. 97—*Right of private defence, when exists.*

The right of private defence only exists against acts amounting to an offence. Where a peon who comes to collect toll is beaten, the fact that the Municipality had no right to collect the same, does not justify the beating. *Sawal Seth v. Emperor.*

34 Cr. L. J. 726 (2) :
144 I. C. 178 : I. R. 1933 Pat. 221 (1) :
A. I. R. 1933 Pat. 144.

————S. 97—*Right to defend other persons.*

Under S. 97 a person has the right not only to defend his own body but to defend the body of any other person, and under S. 102 of the Code, this right can be exercised as soon as a reasonable apprehension of danger to the body arises. *Nga Than v. Emperor.*

34 Cr. L. J. 1248 :
146 I. C. 212 : 6 R. Rang. 82 :
A. I. R. 1933 Rang. 273.

————S. 97—*Right to defend other's property—Attempt to commit offence.*

Under S. 97, Penal Code, the right of private defence of property extends not only to one's own property but also to the property of any other person, and it is not necessary that one of the offences enumerated in the section should have been actually committed, it is enough if there is an attempt to commit any of those offences. *Dalgañjan v. Emperor.*

25 Cr. L. J. 481 :
77 I. C. 881 : 22 A. L. J. 81 :
A. I. R. 1924 All. 696.

————S. 97—*Right to defend property—Execution of decree—Possession delivered to decree-holder—Judgment-debtor allowed to collect crops—Entry by decree-holder.*

Where in execution of a decree for possession of land, possession is given to the decree-holder, but the judgment-debtor is not actually ejected from the land by reason of the fact that his crops are standing on the land and he is allowed to collect the crops when they mature, the decree-holder is entitled to enter upon the land after the crops have been

PENAL CODE ACT (XLV OF 1860)

collected, and if such entry is resisted by the judgment-debtor, it cannot be held that the decree-holder was an aggressor and that the judgment-debtor had any right of private defence of property against the action of the decree-holder. *Lajja v. Emperor.*

28 Cr. L. J. 264 :
100 I. C. 232 : 9 L. L. J. 209 :
28 P. L. R. 273 : A. I. R. 1927 Lah. 193.

————S. 97—*Right to defend property—Reasonable force to defend possession.*

No person can take the law into his own hands and forcibly recover possession. But the law allows every person to use reasonable force to defend his possessions from a trespasser. Where *A*, as owner of cattle, is in possession of the cattle and *B* endeavours to dispossess him by trying to seize the cattle, the right of private defence exercised by *A* in such a case is in reality a right of private defence of the body, though exercised with the object of defending property. *Emperor v. Gulshah.*

13 Cr. L. J. 766 :
17 I. C. 78 : 6 S. L. R. 121.

————S. 97—*Right to defend property, scope of—Possession, retaking of.*

The fact that a person has title to a plot of land, does not give him the right to forcibly eject a trespasser in peaceful possession of the same. His remedy is to eject him by civil process. The right of private defence of property does not cover a case of taking or retaking possession by means of criminal force or show of criminal force. *Jasuram Marwari v. Emperor.*

24 Cr. L. J. 745 :
74 I. C. 73 : 2 P. L. R. 13 Cr. :
A. I. R. 1924 Pat. 143.

————S. 97 — *Right under, when can be claimed.*

The right of private defence of person or property cannot be claimed by either of the parties to a very determined fight between the parties. *Mata Din v. Emperor.*

34 Cr. L. J. 1016 :
145 I. C. 637 : 10 O. W. N. 383 :
6 R. O. 62.

————S. 97—*Scope of.*

Co-sharer in constructive possession of joint land digging part of it amounts to mischief — Right to prevent digging — Right of private defence of property exists. *Abdul Hadi v. Emperor.*

35 Cr. L. J. 730 :
148 I. C. 649 : 1934 A. L. J. 689 :
6 R. A. 755 : 4 A. W. R. 271 :
A. I. R. 1934 All. 829 (2).

————S. 97—*Scope of.*

If the right of private defence given by S. 97, Penal Code, is subject to the restrictions contained in S. 99. *Abdul Hadi v. Emperor.*

35 Cr. L. J. 730 :
148 I. C. 649 : 1934 A. L. J. 689 :
6 R. A. 755 : 4 A. W. R. 271 :
A. I. R. 1934 All. 829 (2).

PENAL CODE ACT (XLV OF 1960)

—S. 97—*Scope of—Private defence—Recourse to authorities.*

There is no right of private defence of property where the loss threatened is not serious and there is ample time to have recourse to the authorities. *Ujagar Singh v. Emperor.*

28 Cr. L. J. 593 :

102 I. C. 769 : A. I. R. 1927 Lah. 740.

—S. 97—*Scope of—Right of private defence of property, when arises.*

In order to establish the right of private defence of property, it is not necessary for the accused to prove his possession affirmatively; he can rely on the presumption of continuance of possession arising in his favour from the circumstances of the case. *Jainath v. Emperor.*

28 Cr. L. J. 303 :

100 I. C. 383 : A. I. R. 1927 Pat. 181.

—S. 97—*Scope of.*

Rioting—Accused out-numbering opponents—Use of excessive violence—Right of private defence which they supposed they had lost. *Ajodhia v. Emperor.*

34 Cr. L. J. 387 :

142 I. C. 665 : 9 O. W. N. 997 :

I. R. 1933 Oudh 121 : A. I. R. 1933 Oudh 11.

—S. 97—*Scope of.*

S. 97, which gives a right of private defence of person and property, is subject to the restrictions contained in S. 99. *Raja Ram Tewari v. Emperor.*

35 Cr. L. J. 185 :

146 I. C. 888 : 10 O. W. N. 835 :

6 R. O. 188 : A. I. R. 1933 Oudh 399.

—Ss. 97, 99—*Exceeding right of self-defence—Accused assaulted with clod of earth—Apprehension of hurt—Accused striking violent blow with hatchet.*

Where the deceased assaulted the accused and was about to hit him with a clod of earth when the latter struck him two violent blows with a hatchet resulting in death, it must be said that the accused had a reasonable apprehension of hurt, though not of grievous one, being caused to him and that he had exceeded his right of private defence. *Ghulam Rasul v. Emperor.*

27 Cr. L. J. 756 :

95 I. C. 276 : 8 L. L. J. 455 :

27 P. L. R. 430.

—Ss. 97, 99—*Right of private defence, extent of—Importance of the plea—Magistrate, duty of.*

In the excitement and confusion of the moment it is not to be expected that an average man would weigh the means that he intends to adopt at the spur of the moment for self-defence in golden scales, though the counter-attack should not be out of all proportion to the force employed in the original attack. A Magistrate should not in his zeal to suppress crimes of violence overlook the importance of the provisions of law as regards the right of private defence. *Ahmad Din v. Emperor.*

28 Cr. L. J. 252 :

100 I. C. 124 : A. I. R. 1927 Lah. 194.

—Ss. 97, 99—*Right to defend property—Search of accused's house.*

PENAL CODE ACT (XLV OF 1860)

Every person has a right, subject to the restrictions contained in S. 99, Penal Code, to defend property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling within the definition of criminal trespass. *Prankhang v. Emperor.*

13 Cr. L. J. 764 :

17 I. C. 76 : 16 C. W. N. 1078.

—Ss. 97, 99, 103, 104—*Right of private defence, exceeding of—Duty of Magistrate.*

The facts were as follows: Thieves had entered and stolen the sugar-canes in the accused's plantation. He waited and watched one night from sunset, and heard the footsteps of a thief who had entered the plantation by cutting away the fencing with a *da*. He then heard the sounds of sugar-cane being cut; and he aimed with a cross-bow in the direction of the sound and shot. The bolt hit the thief in the side and caused his death: *Held*, that the question whether the accused acted in the lawful exercise of the right of private defence, and whether he exceeded the limits of his right, was one of much difficulty which the Magistrate should have left for the decision of a Superior Court. *Emperor v. Kyaw Zam Hla.*

1 Cr. L. J. 997 :

10 Bur. L. R. 263.

—Ss. 97, 99, 103, 300, Excep. (2)—*Right to defend property, extent of.*

Accused, who were armed with *chhavis* and *dangs*, attacked two persons who were cutting the former's rice crop, one of whom was killed on the spot as a result of the repeated blows dealt to him on the head by the accused: *Held*, (1) that the accused had exceeded their right of defence of property; (2) that in causing violence to the deceased, they were not acting in good faith; (3) that they intended to cause more harm than was necessary; (4) that they intended to cause such bodily injury as was likely to result in death or of a kind sufficient in the ordinary course of nature to cause death; (5) that, therefore, they were guilty of murder. *Mammun v. Emperor.*

18 Cr. L. J. 367 :

38 I. C. 751 : 35 P. R. 1916 Cr. :

A. I. R. 1917 Lah. 347.

—Ss. 97, 99, 141—*Extent of right of private defence—Unlawful assembly—Rioting.*

The right of private defence extends to S. 141, and subsequent sections of the Penal Code just as much as it extends to any other offence punishable under the Penal Code. Where a person in possession of property sees an actual invasion of his rights to that property, if that invasion amounts to an offence under the Code, he is entitled to resist it by force and to collect for that purpose such numbers and such arms as may be absolutely necessary for this purpose, provided only that there is no time to have recourse to the protection of the Police authorities. *Fouzdar Rai v. Emperor.*

19 Cr. L. J. 241 :

44 I. C. 33 : 4 P. L. W. 111 :

3 P. L. J. 419 : 1918 Pat. 254 :

A. I. R. 1918 Pat. 193.

PENAL CODE ACT (XLV OF 1860)

———Ss. 97, 99 (4)—*Extent of right of private defence—Hurt, infliction of.*

If two persons invade another's house in anger, the occupier is entitled forthwith to eject them and to use reasonable force for the purpose. He is not bound to leave them in his house and go off and complain to the authorities. His right of private defence extends to the causing of any harm other than death, subject to the restriction in S. 99, Penal Code, which provides that only such harm should be inflicted as is necessary for purpose of defence. *Gorie Sanker v. Emperor.*

18 Cr. L. J. 862 :

41 I. C. 830 : A. I. R. 1917 L. Bur. 11.

———Ss. 97, 100—*Private defence—Rioting—One of attacking party dying, right of private defence not exceeded.*

The accused who were for a long time in possession of the land were ploughing it, which they had right to do. They were attacked by a number of men, one of whom was R, the deceased. At least three men of the side of the accused were assaulted and one of their assailants was armed with some such weapon as a sword stick. One of the accused, S, struck R with a *bhala* as a result of which he died subsequently : *Held*, that in the circumstances of the case when the accused retaliated, they were justified by the right of private defence. When S struck R with a *bhala* he did not exceed the right of private defence. *Sakaldip Rai v. Emperor.*

41 Cr. L. J. 939 :

190 I. C. 540 : 7 B. R. 82 :

13 R. P. 236 : A. I. R. 1941 Pat. 32.

———Ss. 97, 100—*Right of private defence, extent of—Quarrel picked by accused—Attack with lathis—Death caused by lathi blow—Offence.*

Accused picked a quarrel with another and tried to hit him but was set upon by his opponent and the deceased and tried to run away. After running some distance he found that he could not make his escape ; he then turned round and hit a blow on the deceased which resulted in his death : *Held*, that the accused had acted in the exercise of the right of private defence and was not guilty of any offence. An attack with lathis is likely to create a reasonable fear of grievous hurt being caused, and the person attacked is justified in striking with a lathi in self-defence to the extent of causing grievous hurt or even death under S 100, Penal Code. *Ram Sewak v. Emperor.*

26 Cr. L. J. 542 :

85 I. C. 382 : 23 A. L. J. 131 :

A. I. R. 1925 All. 313.

———Ss. 97, 100—*Right to defend body, extent of—Attack by stick—Death caused by lathi blow in defence—Offence.*

In the heat of the moment and while defending oneself from a man armed with a stick, it is practically impossible to calculate with accuracy the exact force which one is entitled to employ in self-defence. Accused insulted the deceased and the deceased struck him with a stick. Accused retaliated by

PENAL CODE ACT (XLV OF 1860)

striking deceased on the head with a lathi, fractured his skull and killed him : *Held*, that the accused had acted in the exercise of the right of private defence and could not be held to have exceeded that right. *Imam Din v. Emperor.*

26 Cr. L. J. 730 :

86 I. C. 218 : 26 P. L. R. 14 :

A. I. R. 1925 Lah. 514.

———Ss. 97, 101—*Right of private defence.*

A person, who sees a woman being assaulted in the manner described in Ss. 97 and 101, Penal Code, is justified in going to her assistance and even in cutting another person with a *da* if the latter interferes to prevent him. *Mi Hla So v. Nga Than.*

13 Cr. L. J. 53 :

13 I. C. 389 : 4 Bur. L. T. 268.

———Ss. 97, 105—*Right of private defence in cases of cattle trespass.*

Several heads of cattle belonging to the party of the complainant trespassed into a maize field belonging to the party of the accused. The members of the latter party captured the cattle and began to drive them towards the cattle pound, whereupon the members of the opposite party, armed with lathis, etc., set upon them and rescued the cattle. Upon this there was a serious fight which resulted in the death of several men on both sides. The fight took place in a field belonging to the party of the accused : *Held*, (1) that as the rescue of the cattle amounted to theft under the Penal Code, apart from an offence under the Cattle Trespass Act, the right of private defence was available to the party of the accused ; (2) that if the men of the party of complainant entered upon the field, belonging to the party of the accused, with the object of committing an assault, they were guilty of the offence of criminal trespass and the members of the party of the accused had the right to eject them by such force as was necessary. *Lalji Singh v. Emperor.*

25 Cr. L. J. 1228 :

82 I. C. 156 : 2 Pat. 595 : 6 P. L. J. 87 :

A. I. R. 1924 Pat. 388.

———Ss. 97, 147—*Plea of self-defence—Unlawful assembly—Rioting.*

Where an assembly is not an unlawful one from the very beginning but the causing of hurt by some of the members of the assembly converts it into an unlawful assembly, separate sentences for rioting and causing hurt are not justifiable. *Hazura Singh v. Emperor.*

28 Cr. L. J. 838 :

104 I. C. 454 : A. I. R. 1927 Lah. 786.

———Ss. 97, 147—*Right of private defence—Rioting.*

A plot of land forming part of the accused's holding was under water, and the landlord leased the right of fishing therein to the complainant, who wanted to catch fish but was opposed by the accused : *Held*, that the accused being in possession, he had a right of private defence as against the complainant and he and his party could not,

PENAL CODE ACT (XLV OF 1860)

therefore, be convicted of rioting if that right had not been exceeded. *Bindeswari Prasad Singh v. Emperor*.

19 Cr. L. J. 733 :
46 I. C. 413 : 5 P. L. W. 101 :
A. I. R. 1918 Pat. 239.

———Ss. 97, 149—*Private defence, plea of, in premeditated riots—Omission to state name of accused in first statement, importance of.*

There can be no right of private defence in the case of a riot premeditated on both sides unless the object of the assembly is shown to have been to repel forcible and criminal aggression. When a riot has been committed, it is easy to add among the names of accused, persons against whom the informant or any particular witness has a grudge, and failure to name a particular accused in the first statements made before the Police or Magistrate without having the opportunity of consultation or preparation, seriously affects the truth of the prosecution story. *Ramphal Das v. Emperor*.

31 Cr. L. J. 468 :
123 I. C. 75 : A. I. R. 1929 Pat. 705.

———Ss. 97, 149, 325—*Right to defend property, extent of—Right exceeded—Unlawful assembly—Grievous hurt.*

Accused, six in number, caused grievous hurt to a person, while acting in the exercise of the right of private defence of property. It was found that they had exceeded that right: *Held*, (1) that it could not be held that all the accused constituted an unlawful assembly; (2) that the only person who could be convicted was the one who actually caused the grievous hurt. *Ahmad v. Emperor*.

23 Cr. L. J. 249 :
66 I. C. 185 : 1 L. L. J. 245 :
26 P. W. R. 1919 Cr. :
97 P. L. R. 1919 :
A. I. R. 1919 Lah. 458.

———Ss. 97, 300, 302—*Right of self-defence—Provocation—Blow inflicted by deceased in self-defence—Intention.*

A, B and C had been drinking together and were all more or less intoxicated. A pressed C to drink more and on his refusing A got angry and drew a clasp knife on C. B, the deceased, interfered and, after vainly remonstrating with A, hit him with a branch of a tree on the head. Getting incensed at this, A inflicted on B a fatal blow: *Held*, that as the deceased hit the appellant with the sole object of preventing him from stabbing C, in exercise of the right of private defence as laid down in S. 97, Penal Code, this provocation will not bring the appellant's act under the 1st exception to S. 300. But as the effect of the blow given by B, on a man already inflamed with drink, would be to deprive him of self-control, this circumstance may properly be taken into account in awarding punishment under S. 302. *Nyo Hla Aung v. Emperor*.

12 Cr. L. J. 477 :
12 I. C. 85 : 4 Bur. L. T. 221.

PENAL CODE ACT (XLV OF 1860)

———Ss. 97, 302, 304-II—*Excess of right—Private defence, right of, in cases of mischief and trespass—Aiming blow with weapon causing fracture of skull—Offence committed.*

In the case of mischief or criminal trespass on the property of a person, the owner is justified in repelling the act of the intruder by the use of violence to the extent, if necessary, of causing grievous hurt. But if he aims a blow with a formidable weapon, e.g., a rafter or *balla*, with such violence as to fracture the skull thereby causing the death of the trespasser, he exceeds his right of private defence and is guilty of an offence under S. 304-II, Penal Code. *Natha Singh v. Emperor*.

28 Cr. L. J. 487 :
101 I. C. 663 : 28 P. L. R. 279 :
A. I. R. 1927 Lah. 730.

———Ss. 97, 323, 325—*Right of private defence in cattle trespass cases.*

Cattle belonging to the complainant trespassed on to the land of the accused. The latter seized the cattle and were driving them to the pound when the complainant's party arrived and attempted to rescue the cattle from the accused. In doing so the complainant's party used violence and succeeded in rescuing some of the cattle. The accused resisted the action of the complainant's party and in attempting to defend themselves against the violence used by the complainant's party, caused injuries to several members of that party, some of which amounted to grievous hurt: *Held*, that the accused were legally entitled to take the cattle to the pound and that the action of the complainant's party in attempting to rescue cattle was unlawful and that the accused had, therefore, the right of private defence. *Udit Singh v. Emperor*.

26 Cr. L. J. 924 :
86 I. C. 988 : 6 P. L. T. 838 :
A. I. R. 1925 Pat. 762.

———Ss. 97, 324, 334—*Plea of private defence—Inflicting wound with sharp weapon on grave and sudden provocation.*

Accused was coming along the road on his bicycle when he was set upon and assaulted by the complainant. He fell off the bicycle on to the ground with the complainant on top of him. In the struggle which ensued, the accused wounded the complainant in the breast with a sharp knife: *Held*, that the accused was guilty of an offence under S. 34, Penal Code, inasmuch as he acted under grave and sudden provocation. *Yusuf Husain v. Emperor*.

19 Cr. L. J. 371 :
44 I. C. 675 : 16 A. L. J. 169 :
40 All. 284 : A. I. R. 1918 All. 189.

———S. 98—*Right to defend property—Owner entering upon tenant's land to remove fallen tree—Assault.*

When a tree is blown down in the wind, the *malguzar*, who is the owner of it, becomes entitled to remove it, and for this purpose, he has a right of ingress over the tenant's

PENAL CODE ACT (XLV OF 1860)

land and a right of private defence of property in the fallen tree. *Pusu v. Emperor*.

15 Cr. L. J. 352 :
23 I. C. 704 : 10 N. L. R. 38 :
A. I. R. 1914 Nag. 7.

———Ss. 98, 106, 326, 332, 333—*Plea of private defence—Kathiawar Police Law, S. 42 (b) corresponding to Bombay [Act IV of 1890, S. 51 (b)]*.

If a plea of right of private defence is put forward, it should be placed before the Court, not by a pleader's ingenuity of mere argument, but by a straightforward account of the accused himself, and the burden of proving it is on him. If police constables going under their superior's directions to escort a party and to prevent a breach of the peace under S. 42 (b), Kathiawar Police Law corresponding to Bombay Act [IV of 1890, S. 51 (b)] are in ordinary clothes and have no uniform on, their assailants could not safely be considered to have defied their authority as public servants. Though Ss. 332, 333, I. P. C., are silent as to "knowing or having reason to believe," this qualification must apply when police constables ordinarily wearing uniform on duty, do not proclaim their authority or do not wear the prescribed uniform. *Emperor v. Gagji Nath*.

10 Cr. L. J. 102.

———S. 99.

- Applicability of.
- Assault on public servant, if offence.
- Duty of Court.
- Extent of right of private defence.
- Extent of right to defend body.
- Mutual fight, right of private defence, if avails.
- Plea of private defence.
- Principles of.
- "Public servant acting in good faith under colour of his office, etc."
- Reasonable apprehension.
- Right of private defence.
- Right of self-defence.
- Right to defend body.
- Right to defend person, extent of.
- Right under, when available.
- Scope of.
- Self-defence—Extent of right.
- Vakil if gives rise to right of private defence to accused.
- Warrant, illegal.
- S. 99.

See also (i) Cr. P. C., 1898, S. 195.

(ii) Income Tax Act, 1922, S. 22 (4).

(iii) Penal Code, 1860, Ss. 21, 97, 147, 186, 300, 353, 415.

———S. 99—Applicability of—*Income Tax Act, S. 22 (4)—Notice to produce accounts, failure to comply with—Criminal trespass*.

Under S. 22 (4), Income Tax Act, an Income Tax Officer is empowered to serve the proprietors of a firm with a notice to produce their accounts, but there is no provision of

PENAL CODE ACT (XLV OF 1860)

law by which he can insist on their producing the accounts if they decline to comply with the notice, nor has he any authority under the Act to enter the firm's premises in order to inspect the accounts or to remain on the premises for that purpose, against the will of the proprietors. If he does so, his act amounts to criminal trespass and the proprietors are justified in turning him out if he refuses to leave. *Achhru Ram v. Emperor*.

27 Cr. L. J. 772 :
95 I. C. 308 : 7 Lah. 104 :
27 P. L. R. 298 : A. I. R. 1926 Lah. 326.

———S. 99—Applicability of—Public servant acting without jurisdiction—Right of private defence—Assault on public servant—Grievous hurt.

S. 99, Penal Code, has no application to a case where the initial proceeding and the power under which a public servant purports to act are altogether without jurisdiction and entirely *ultra vires*. A Police Officer noticing one *H* going about at night time armed with a long handled hatchet asked him to hand over the hatchet, but *H* refused to give it up whereupon the Police Officer laid his hands on the hatchet in order to snatch it from *H*. The latter resented this and shouted out, on which certain persons came up to his assistance and assaulted the Police Officer causing grievous hurt to him. *H* and his companions were tried and convicted of an offence under S. 325, Penal Code : *Held*, (1) that the act of the Police Officer in trying to snatch away the hatchet from *H* was wholly without jurisdiction and S. 99 was not applicable; (2) that the accused had no right to assault the Police Officer, and that they had been rightly convicted. *Haq Dad v. Emperor*. 26 Cr. L. J. 1631 : 90 I. C. 927 : 6 Lah. 392 : A. I. R. 1926 Lah. 19.

———S. 99—Assault on public servant, if offence—Right of private defence of property.

A *Tahsildar* deputed his peon by a written order to procure some camels for the camp of the Settlement Officer. When the peon attempted to seize the petitioner's camels, the latter assaulted the former and prevented him from seizing the camels : *Held*, that the petitioner committed no offence. *Asa v. Emperor*.

14 Cr. L. J. 512 :
20 I. C. 992 : 38 P. W. R. 1913 Cr. :
325 P. L. R. 1913.

———S. 99—Duty of Court—Right of private defence of property.

A Court ought not to set up for the accused the defence that he acted in the exercise of the right of private defence of property, when the accused himself has not set up such defence. *Emperor v. Gullu*.

1 Cr. L. J. 427 :
24 A. W. N. 113.

———S. 99—Extent of right of private defence.

When exercising the right of private defence, it is difficult to expect the person to weigh

PENAL CODE ACT (XLV OF 1860)

"with golden scales" what maximum amount of force is necessary to keep within that right. *Radhey v. Emperor*.

24 Cr. L. J. 735 :
73 I. C. 975 : A. I. R. 1923 All. 357.

—S. 99—Extent of right to defend body.

Under S. 99, Penal Code, the right of private defence against an injury apprehended to be done by a public servant, extends only to those cases in which there is a reasonable cause of apprehension of death or of grievous hurt being caused by the act of such public servant. *Ranjha Mal v. Emperor*.

28 Cr. L. J. 993 :
105 I. C. 817 : 9 L. L. J. 424 :
29 P. L. R. 284 : A. I. R. 1927 Lah. 706.

—S. 99—Mutual fight—Right of private defence, if avails.

Where there is a mutual fight, neither of the parties is entitled to a right of private defence. Moreover, in such a fight, it is immaterial as to who gave the first blow. *Muhammad v. Emperor*.

36 Cr. L. J. 411 :
153 I. C. 474 : 35 P. L. R. 673 :
7 R. L. 443 : A. I. R. 1934 Lah. 740.

—Ss. 99—Plea of private defence, whether can be raised in Appellate Court—Right, when can be exercised.

It is open to an accused person to raise the plea of private defence in the Appellate Court even though it was not taken before the Trying Court where he altogether denied the offence, but the plea cannot help him when his object in causing the injury was not to save himself but to beat his assailant and when it was not necessary for the purpose of self-defence to have inflicted the injury actually caused. *Rahimanshah v. Emperor*.

26 Cr. L. J. 1552 :
90 I. C. 400 : A. I. R. 1926 Nag. 202.

—S. 99—Principles of.

The sections of the Penal Code dealing with the right of self-defence are very valuable in that they lay down general principles for the guidance of Courts, but they are principles which are only intended to afford a guide to the Courts as to what is to be held reasonable and what is to be held unreasonable and punishable by law. The test in each case is whether the action of the accused was unreasonable and unjustified. That is to say, whether his acts were acts which in ordinary parlance he had no right to commit. *Emperor v. Param Sukh*.

27 Cr. L. J. 11 :
91 I. C. 43 : 23 A. L. J. 1037 :
A. I. R. 1926 All. 147.

—S. 99—"Public servant acting in good faith under colour of his office, etc," meaning of.

The words "public servant acting in good faith, under colour of his office, though that act may not be strictly justifiable by law" in S. 99, Penal Code, have no application to a case where the initial proceedings and the power under which a public servant purports

PENAL CODE ACT (XLV OF 1860)

to act are altogether without jurisdiction and are *ultra vires*. *Asa v. Emperor*.

14 Cr. L. J. 512 :
20 I. C. 992 : 38 P. W. R. 1913 Cr. :
325 P. L. R. 1913.

—S. 99—Reasonable apprehension.

If a person is armed with a hatchet and disables his adversary by the infliction of one blow on his head, it cannot be urged that he has any reasonable apprehension left that if he did not repeat his blow, grievous hurt will be the consequence. *Abu Zar v. Emperor*.

36 Cr. L. J. 283 (2) :
153 I. C. 113 : 35 P. L. R. 783 :
7 R. L. 384 : A. I. R. 1934 Lah. 748.

—S. 99—Right of private defence—Assault on peon.

Obiter.—When an assault is committed on Court peon, no right of private defence of property can be pleaded under S. 99. *Badri Gope v. Emperor*.

27 Cr. L. J. 418 :
93 I. C. 146 : 7 P. L. T. 30 :
5 Pat. 216 : A. I. R. 1926 Pat. 237.

—S. 99—Right of private defence.

Complainant in peaceful possession by right—Stranger putting furniture in house—Complainant has right to resist trespassers by force—Right of private defence is not available to trespasser. *Ram Sumer Ahir v. Emperor*.

35 Cr. L. J. 1313 :
151 I. C. 409 : 38 C. W. N. 77 :
7 R. C. 111 : A. I. R. 1934 Cal. 273.

—S. 99—Right of private defence not pleaded—Duty of Court—Public servant acting in good faith—Private defence, right of, whether exists.

There is no right of private defence against an act of a public servant acting in good faith and under colour of his office, although that act may not be strictly justifiable in law. The right of private defence against property continues, where robbery is attempted, only so long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues. *Kishen Lal v. Emperor*.

26 Cr. L. J. 501 :
85 I. C. 245 : 22 A. L. J. 501 :
A. I. R. 1924 All. 645.

—S. 99—Right of private defence of property.

A party in possession of a property is entitled to resist by force an attack made on his property, provided there is no time to have recourse to the public authorities for protection. *Subedar Singh v. Emperor*.

34 Cr. L. J. 1075 :
145 I. C. 794 : 14 P. L. T. 228 :
6 R. P. 203 : A. I. R. 1933 Pat. 434.

—S. 99—Right of private defence.

Unless a right of private defence is established, a claim (even *bona fide*) of title or possession will avail nothing. *Ghlyasuddin Ahmad v. Emperor*.

33 Cr. L. J. 864 :
139 I. C. 616 : 13 P. L. T. 288 : 11 Pat. 523 :
I. R. 1932 Pat. 251 : A. I. R. 1932 Pat. 215.

PENAL CODE ACT (XLV OF 1860)

———S. 99—*Right of private defence, when arises.*

A person has a right to defend his property every time an attack is intended against it, and the right is not excluded by the fact that since the previous attack the owner of the property has had ample opportunity of having recourse to the authorities. *Umrao v. Emperor.*

25 Cr. L. J. 693 :
81 I. C. 181 : A. I. R. 1924 All. 441.

———S. 99—*Right of private defence, when avails—Cr. P. C. (Act V of 1898), S. 144—Order under S. 144, illegal.*

Where in a proceeding under S. 144, the Magistrate makes an order which is illegal and *ultra vires*, the person against whom the order is directed would be justified in resisting its enforcement, as in such a case, he would not be deprived of his right of private defence by reason of S. 99, Penal Code. *Moinuddin v. Emperor.*

22 Cr. L. J. 442 :
61 I. C. 794 : 2 P. L. T. 455 :
A. I. R. 1921 Pat. 415.

———S. 99—*Right of private defence, when avails.*

Warrant of attachment—Warrant signed by Deputy Collector and not by Collector—Objection not raised before attachment—*Kurk Amin* effecting attachment in good faith under colour of office—Accused forming into unlawful assembly and resisting attachment—No apprehension of death or grievous hurt in mind of accused—Right of private defence is not available to accused. *Sundar Lal v. Emperor.*

34 Cr. L. J. 732 :
144 I. C. 256 : 10 O. W. N. 671 :
I. R. 1933 Oudh 222 :
A. I. R. 1933 Oudh 226.

———S. 99—*Right of private defence, who can claim.*

The right of private defence cannot be claimed by an aggressor; in fact it is the person aggressed upon who is on the defensive. The assailant cannot say that although he had begun the attack, he should be protected if the opposite party uses force in repelling it. *Z. D. Samuel v. Emperor.*

38 Cr. L. J. 477 :
167 I. C. 564 : 9 R. Pesh. 92 :
A. I. R. 1937 Pesh. 23.

———S. 99—*Right of self-defence.*

Dangerous weapons used by one party—Other party is entitled to defend themselves with similar weapons. *Subedar Singh v. Emperor.*

34 Cr. L. J. 1075 :
145 I. C. 794 : 14 P. L. T. 228 :
6 R. P. 203 : A. I. R. 1933 Pat. 434.

———S. 99—*Right to defend body, extent of.*

The view that a person could have escaped further injury by resorting to less violence or running away, places a greater restriction on the right of private defence of the body than the law requires. The principle is that a man who is assaulted is not bound to modulate his defence step by step according to the attack, before there is reason to believe the attack is

PENAL CODE ACT (XLV OF 1860)

over. He is entitled to secure his victory, as long as the contest is continued. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger. The question in such cases is not whether there was an actually continuing danger, but whether there was a reasonable apprehension of danger. *Alingal Kunhinayan v. Emperor.*

3 Cr. L. J. 43 :
I. L. R. 28 Mad. 454.

———S. 99—*Right to defend person, extent of—Person in imminent danger of attack from loaded weapon, position of.*

Persons who go out on a perfectly peaceful and lawful mission with the fear and certainty of being interfered with by a person with a loaded weapon, with imminent risk to themselves, and who arm themselves in order to defend themselves in case of attack, cannot be regarded as rioters at all, and if they are actually put in danger of being attacked and use their weapons to forestall the attack and to defend themselves, they cannot be held to be guilty of any offence. *Ramzani v. Emperor.*

26 Cr. L. J. 669 :
86 I. C. 45 : 23 A. L. J. 68 :
A. I. R. 1925 All. 319.

———S. 99—*Right under, when available—Bailiff entering house of judgment-debtor to attach grain—Lock of kothi broken open—Arrangement to resist attachment—Act of public servant in good faith—Right of private defence.*

Where a bailiff and his party entered the hut of the judgment-debtor to attach grain and broke open the lock of the *kothi* and there was reason for believing that arrangements were made to defeat attachment; *Held*, that the act of the bailiff was an act done by a public servant or under the direction of a public servant in good faith under colour of his office though that act might not be strictly justifiable by law and hence the party of the judgment-debtor had no right of private defence. *Ghulam v. Emperor.*

38 Cr. L. J. 186 :
166 I. C. 190 : 38 P. L. R. 298 :
9 R. L. 352 : A. I. R. 1936 Lah. 851.

———S. 99—*Scope of.*

Complainant's party in large numbers, aggressors—Accused have right to defend their property against aggressors: *Held*, accused did not exceed the right. *Asmatullah v. Emperor.*

35 Cr. L. J. 236 :
146 I. C. 914 : 1933 A. L. J. 1119 :
6 R. A. 380 : A. I. R. 1933 All. 896.

———S. 99—*Scope of—Public servant acting without authority.*

If a constable goes for search without any written authority, he does not under S. 195 (3), Cr. P. C., lawfully exercise the power of a public servant. To such a case, S. 99, Penal Code, has no application. That section contemplates certain acts against which there is no right of private defence. *Idu Mandal v. Emperor.*

6 Cr. L. J. 439 :
6 C. L. J. 753.

PENAL CODE ACT (XLV OF 1860)

—S. 99—Scope of.

Ss 225-B and 353—Notice and warrant of arrest issued simultaneously—Apprehension by executing person is lawful and resistance cannot be justified. *Panna Mahton v. Emperor*.

34 Cr. L. J. 269 :
142 I. C. 160 : 13 P. L. T. 502 :
11 Pat. 743 : I. R. 1933 Pat. 125 :
A. I. R. 1932 Pat. 315.

—S. 99—Scope of.

The provisions of S. 99 are inapplicable, where the act is not done by a public servant in good faith. *Ramji Lal v. Emperor*.

36 Cr. L. J. 1501 :
158 I. C. 1049 : 1935 A. L. J. 950 (2) :
1935 A. W. R. 935 : L. R. 16 All. 86 Cr. :
8 R. A. 365 : A. I. R. 1935 All. 913.

—S. 99—Scope of.

The right of private defence is not available against acts done or directed by public servants acting in good faith under colour of their office. *Abdul Aziz v. Emperor*.

35 Cr. L. J. 725 :
148 I. C. 574 : 14 P. L. T. 464 :
6 R. P. 490 : A. I. R. 1933 Pat. 508.

—S. 99—Scope of.

Under S. 99 there is no right of private defence in a case where a Police Officer was acting bona fide under colour of his office. *Mohammed Ismail v. Emperor*.

37 Cr. L. J. 462 :
161 I. C. 459 : 8 R. Rang. 480 :
13 Rang. 754 : A. I. R. 1936 Rang. 119.

—S. 99—Scope of.

Warrant of arrest—No defect in authority issuing it—Right of private defence to resist execution does not exist. *Panna Mahton v. Emperor*.

34 Cr. L. J. 269 :
142 I. C. 160 : 13 P. L. T. 502 :
11 Pat. 743 : I. R. 1933 Pat. 125 :
A. I. R. 1932 Pat. 315.

—S. 99—Scope of.

When there is a free fight between two persons, no right of private defence accrues to either of them. *Parnmeshri Das v. Emperor*.

35 Cr. L. J. 1319 :
151 I. C. 469 : 7 R. L. 141 :
A. I. R. 1934 Lah. 332.

—S. 99—Self-defence—Extent of right.

The right of private defence of the body of a person's wife extends to the voluntary causing of death if the offence which occasioned the exercise of the right was an assault with the intention of committing rape. *Mohammad Shafi v. Emperor*.

36 Cr. L. J. 281 :
153 I. C. 19 (1) : 35 P. L. R. 659 :
7 R. L. 372 : A. I. R. 1934 Lah. 620.

—S. 99—Vakil, if gives rise to right of private defence to accused.

Court employing a Vakil to secure attachment—Vakil, held a public servant—Quarrel and attack on Vakil's party—Omission to record reasons in order appointing Vakil

PENAL CODE ACT (XLV OF 1860)

does not give rise to right of private defence to accused. *Tarj Singh v. Emperor*.

36 Cr. L. J. 545 :
154 I. C. 631 : 1935 A. W. R. 206 :
1935 A. L. J. 367 : 7 R. A. 778 :
A. I. R. 1935 All. 490.

—S. 99—Warrant, illegal—Obstruction to execution—Offence.

Where on the complaint of one G that his wife was wrongfully confined by his father-in-law, a warrant was issued under S. 96, Cr. P. C., and the Police attempting to execute this warrant at the house of the father-in-law, was obstructed by him and seven others who also used criminal force: Held, that the accused were justified in doing what they did in the exercise of the right of private defence. That as the warrant issued was wholly illegal and must be treated as a nullity, the accused were not deprived of the right of private defence under S. 99, I. P. C. "Not strictly justifiable by law" in S. 99, I. P. C., explained. *Bisu Haldar v. Emperor*.

6 Cr. L. J. 38 :
11 C. W. N. 836 : 6 C. L. J. 127.

—Ss. 99, 100—Repelling attacks when exempt from liability—Plea need not be set up when shown by circumstances—Persons aiding in such defence, whether commit offence.

Where danger to the person of the accused was imminent and where the evidence shows that he had no time to seek the aid of the public authorities: Held, that he was entitled to use all force necessary to repel the attack, even to the extent of firing a gun at his assailants. *In re: Pachai Gounden*.

15 Cr. L. J. 710 :
26 I. C. 158 : A. I. R. 1915 Mad. 532.

—Ss. 99, 100—Right of private defence, if exists—Attack, previous knowledge of.

Where a party of men become aware that they are about to be attacked and they know that they can avoid the attack by dispersing or running away, it is their duty to get out of the way of their enemies until the anger and resentment of the latter have subsided. If, however, they have a reasonable belief that if they separate, they will be pursued and attacked individually, they have every right to keep together or to come together and to repel the attack when it is made with every means in their power. *Ajodhia Prasad v. Emperor*.

26 Cr. L. J. 997 :
87 I. C. 597 : A. I. R. 1925 All. 664.

—Ss. 99, 100—Right of private defence, limits of.

No person has the right to take the law into his own hands for the protection of his person or property, if there is a reasonable opportunity of redress by recourse to the public authorities. The right of self-help when it causes or is likely to cause damage to the person or property of another person must be restricted and recourse to public authori-

PENAL CODE ACT (XLV OF 1860)

ties must be insisted on. *Kabiruddin v. Emperor*.
7 Cr. L. J. 256 :

12 C. W. N. 384 : 35 Cal. 368 :

7 C. L. J. 359 : 3 M. L. T. 385.

———Ss. 99, 100—*Right of private defence, when avails.*

Under S. 100, Penal Code, the right of private defence of the body extends, subject to the restrictions contained in S. 99 to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right is such an assault as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. *Muhammad Akbar v. Emperor*.
24 Cr. L. J. 403 :

72 I. C. 520 : A. I. R. 1924 Lah. 227.

———Ss. 99, 100, 101, 102, 147—*Right of private defence—Rioting.*

Where L and others made an assault upon P and others, who stood against L and others to fight and were consequently convicted of rioting: *Held*, that P and others committed no offence as they acted in the exercise of the right of private defence. *Pokhar v. Emperor*.
5 Cr. L. J. 218 :

2 P. W. R. Cr. 22.

———Ss. 99, 100, 101, 148—*Right of private defence, of property—Accused attacked when recovering their stolen property.*

The accused grew certain crops which the complainant's party cut, carried away and stacked in a neighbouring field belonging to another person. The accused, forty or fifty in number, then arrived armed with *lathis*, merely to take away their crops and not to use any force unless they were opposed or attacked. While they were removing the crops, they were attacked by the complainant's party first by clods of earth and then, with spears. This resulted in a free fight and persons of both parties were more or less injured: *Held*, that the accused were acting within their rights in collecting their own crops with a view to taking them away, and they had the right to defend their persons. *Ram Raul v. Emperor*.
14 Cr. L. J. 295 :

19 I. C. 951 : 17 C. L. J. 394.

———Ss. 99, 100, 304—*Right of private defence of person and property when arises—Party in possession—Attempt to dispossess—Use of force.*

Where the right of private defence of property exists, it is difficult to distinguish between the right of private defence of property and the right of private defence of the person in case where the prosecution party comes upon the land in possession of the accused not only to deprive them of their property but also to violently attack them if they tried to defend their possession by force. Where, therefore, the prosecution party comes with the war cries of 'Kobali' and 'Konu' and armed with sticks capable of causing grievous hurts, the right of private defence of person arises almost simultaneously with the right of private defence of property and the accused party is

PENAL CODE ACT (XLV OF 1860)

justified even in causing the death of the members of their opponents' party till the latter party gives up the fight. *In re : Ponthala Narisi Reddi*.
15 Cr. L. J. 447 :

24 I. C. 327 : A. I. R. 1915 Mad. 250.

———Ss. 99, 100, 333—*Right of private defence—Arrest by Police Officer under illegal order—Resistance—Apprehension of hurt.*

Where an order of arrest by a Superintendent of Police is illegal, S. 99, Penal Code, does not apply and a resistance to arrest sought to be effected by a Sub-Inspector under such order is no offence under S. 333, Penal Code. Where a person sought to be arrested by a Police Officer under an illegal order has a reasonable apprehension of hurt at the hands of such officer, he has a right of private defence. *Gaman v. Emperor*.
31 Cr. L. J. 294 :

121 I. C. 734 : 31 P. L. R. 285 :

A. I. R. 1930 Lah. 348.

———Ss. 99, 101, 302—*Right of private defence of other persons—Police Officer conducting search—Assault on member of household—Defence—Death caused by blows from stick—Intention—Offence.*

Deceased who was a Sub-Inspector of Police while proceeding to make a search assaulted and insulted a female member of the household who occupied the house to be searched. Accused, who was a male member of the household, remonstrated with the deceased, the deceased resenting the conduct of the accused struck him with a cane whereupon the accused grappled with the deceased. A constable who was present thereupon struck the accused with a stick which he was carrying and two other constables also ran up to the spot. The accused snatched the stick from the hands of the constable who had struck him and delivered two blows with it on the Sub-Inspector's head which caused a fracture of his skull and resulted in his death: *Held*, that the accused had a right to defend a female member of his household from assault and when he was subsequently assaulted himself both by the Sub-Inspector and by the constable, he had a right to defend himself; that the accused having acted in the exercise of the right of private defence and not having exceeded it, was not guilty of any offence. *Emperor v. Param Sukh*.
27 Cr. L. J. 11 :

91 I. C. 43 : 23 A. L. J. 1037 :

A. I. R. 1926 All. 147.

———Ss. 99, 103—*Right of private defence of property—Robbery—Right of causing death.*

Where in a case of robbery the owner of the property causes the death of one of the robbers, the causing of death may, according to the Penal Code, be justified as an act done in reasonable and necessary self-defence under certain circumstances and conditions, but in such cases the measure of self-defence must always be relevant and proportionate to the *quantum* of force used and which it is necessary to repel. The Penal Code, however, does not provide that in every case where a robbery is committed, the person attacked is entitled to cause death. It means no

PENAL CODE ACT (XLV OF 1860)

more than this, that robbery by violence may be resisted by violence sufficient to overcome the force employed by the attacker, and that if in the exercise of that right death is caused, it may be justified if it is reasonably and properly asserted in defence of property. *Ramprasad Mahlon v. Emperor*.

20 Cr. L. J. 375 :

50 I. C. 983 : 4 P. L. J. 289 :

1919 Pat. 262 : A. I. R. 1919 Pat. 534.

———Ss. 99, 103, 104, 135, 147, 441—*Right of private defence of property, extent of—Criminal trespass.*

Against criminal trespass the person in possession of the property has the right of private defence of property so long as the trespass continues, and this right extends to causing to the trespassers any harm other than death subject to the restrictions mentioned in S. 99, Penal Code, namely, that no more harm should be inflicted than is necessary for the purposes of defence, and that there is no time to have recourse to the protection of the authorities. *Dukhit Sha v. Emperor*.

22 Cr. L. J. 177 :

60 I. C. 33 : A. I. R. 1920 Pat. 752.

———Ss. 99, 104—*Right of private defence—Right of way, and its abandonment—Criminal trespass—Mischief—Excessive injuries inflicted in private defence.*

A right of way leading through a field to another, that was allotted between two branches of certain Girassias, was proposed to abandon, and a report was sent by an Agency Surveyor stating that an order was necessary because the branch owning the field through which the way lay, would not allow a passage through his crops. Before any definite order was given, a fight took place with swords, while the members of the other branch were passing. The Magistrate discharged the owner, and convicted the trespassers, who were, however, acquitted on appeal, and they applied in revision to re-try the other branch : *Held*, that, if there was no abandonment of the right of way, there was no offence of mischief, since there would not be necessary element of wrongful loss ; that the Magistrate should therefore repay the owner and his party and in any case decide whether the injuries inflicted were excessive. *Devising Visabhai v. Hadabhai Rajabbhai*.

4 Cr. L. J. 94 :

———Ss. 99, 104—*Right of private defence, when avails—Man uprooting another's trees—Attack by owner on such person—Latter, if has right of private defence of person.*

If a man is uprooting another man's trees, he would not be going to the Police Station for help because by the time he comes back all the trees would be gone. In normal conditions, he would be well advised to protect his property by using all force necessary to stop the uprooting of the plants. In defending his property he can under S. 104, I. P. C., cause any harm short of death. He is, therefore, justified in attacking the man uprooting his trees with his *gurzu* and the fact that he did so does not give the person attacked a

PENAL CODE ACT (XLV OF 1860)

right of private defence of person. *Gulla Din Sharaf Din v. Emperor*.

41 Cr. L. J. 561 :

188 I. C. 296 : 12 R. Pesh. 44 :

A. I. R. 1940 Pesh. 6.

———Ss. 99, 104, 149, 325—*Right of private defence, if available—Unlawful assembly—Determination to enforce right by violence—Rioting—Grievous hurt.*

M and R were throwing earth upon a narrow path of the *shamilat*, and in so doing, threw earth upon certain fences with which the accused had formed an enclosure upon the *shamilat*. The accused, eight in number, thereupon made a combined attack upon M and R causing several injuries to them, one of which was inflicted on the head of M and proved fatal, the remaining being trifling : *Held*, that all the accused were guilty of an offence under S. 325 and read with S. 149, Penal Code, with regard to the fatal injury inflicted upon M and of an offence under S. 323 and read with S. 149 of the Code with regard to the injuries inflicted upon R. *Data Ram v. Emperor*.

27 Cr. L. J. 7 :

91 I. C. 39 : A. I. R. 1926 Lah. 516.

———Ss. 99, 105, 147, 378—*Right of private defence, continuance of—Orderly of Deputy Commissioner, chaprasis, etc., forcible seizure of bullocks by, not bona fide act of public servant as such—Theft—Bullocks, seizure and recovery of.*

Some country carts containing the camp-luggage of a Deputy Commissioner were on their way in charge of an orderly, a constable and some *chaprasis*. While on their way one of the carts struck in a rut and the orderly and the *chaprasis* took hold of the bullocks of the accused against their will, yoked them to the cart and dragged it out of the rut, the accused then forcibly unyoked their bullocks and took them away. They were convicted and sentenced under S. 147, Penal Code : *Held*, that the orderly and his companions could not be regarded under S. 99, Penal Code, as public servants acting in good faith under the colour of their office and the accused were justified in their action by the right of private defence : *Held*, also, that the act of the orderly and his companions technically amounted to theft under S. 378, Penal Code. *Ram Harakh v. Emperor*.

15 Cr. L. J. 436 :

24 I. C. 172 : 1 O. L. J. 238.

———Ss. 99, 141, 147—*Right of private defence—Theft of crop—Unlawful assembly—Right of private defence exceeded by some—Others knowingly aiding or abetting them—All responsible.*

Where the accused are justified in resisting the theft of their crops, they cannot be considered as members of an unlawful assembly on the common object of asserting a right on the land in dispute, because some members of that assembly may have exceeded the right of private defence. But if some of them having become aware that the right of private defence has been exceeded by other members of the assembly, continue it and aid and abet those

PENAL CODE ACT (XLV OF 1860)

who exceeded that right, they should be held guilty. *Baij Nath Dhanuk v. Emperor.*

9 Cr. L. J. 443 :
1 I. C. 973 : 36 Cal. 296 :
13 C. W. N. 677.

———Ss. 99, 141, 149—*Right to defend, immovable property—Person in possession, whether can use force—Test of criminality—Resistance to aggressor, right of.*

Every person has a right, subject to the restrictions contained in S. 99, Penal Code, to defend his immovable property. Once a man is in possession of his own property, he is entitled to use force to defend it. In cases where a free fight has taken place for the possession of certain property between two parties, the test of criminality is, was accused in possession or not in possession at the time when the alleged offence was committed. It is no offence under S. 149, Penal Code, to resist an aggressor unless the aggression be in execution of the law or of some legal process. Where the accused and his party were entitled to enter upon certain land and to reap the crop and the complainant with his party came upon the scene to remonstrate and to prevent them from reaping the crop and a fight took place in which persons on both sides were injured: *Held*, that the accused were not guilty of committing any criminal offence by the mere entry on the land or by defending the accused's property against aggression. *Lashkari Khan v. Emperor.*

16 Cr. L. J. 536 :
29 I. C. 664 : 8 S. L. R. 343 :
A. I. R. 1914 Sind 152.

———Ss. 99, 147—*Aggressive action—Right of private defence—Police executing a Magistrate's order not strictly lawful—Attachment of crops.*

Where a Magistrate, acting under S. 145, Cr. P. C., ordered the Police to take charge of certain disputed crops and the head constable and his party going to the spot simply announced the orders they had received; but the accused having recourse to armed violence seized several men of the Police party and carried them off into confinement: *Held*, that the action of the accused was intended to be violently aggressive and not merely self-protective. *Bhola Malho v. Emperor.*

2 Cr. L. J. 13 :
9 C. W. N. 125.

———Ss. 99, 147, 148—*Right of private defence, when available—Considerations in determining whether action of accused is covered by right of private defence.*

In appropriate cases, the right of private defence is an answer to a charge of rioting. The right of private defence can be exercised only in special circumstances and with the restrictions imposed by S. 99, Penal Code. The important considerations are, firstly what is the nature of the apprehended danger, and secondly, whether there was time to have recourse to the Police authorities. It is certainly open to the Courts to go into the question of title incidentally in order to decide whether they could believe the evidence of

PENAL CODE ACT (XLV OF 1860)

possession and in order to see which of the parties was really acting in exercise of his right or whether he was making out a pretence to engage in a pitched battle. *Satnarain Das v. Emperor.*

39 Cr. L. J. 785 :
176 I. C. 740 : 19 P. L. T. 504 :
4 B. R. 763 : 11 R. P. 103 :
17 Pat. 607 : A. I. R. 1938 Pat. 518.

———Ss. 99, 147, 332—*Right to resist illegal search—Beating—Police acting in good faith under colour of their office—Right of private defence.*

Where in the course of a search conducted beyond the limits of a Police Officer's station, a riot broke out with the object of resisting the search and the Police party were beaten: *Held*, (1) that the search was illegal; (2) that the resistance to an illegal search did not constitute an offence under S. 382, Penal Code; (3) that the accused had no right of private defence, as the Police were acting in good faith under colour of their office. *Mir Shah Nawaz Khan v. Emperor.*

16 Cr. L. J. 15 :
26 I. C. 319 : 8 S. L. R. 1 :
A. I. R. 1914 Sind 160.

———Ss. 99, 186, 434—*Survey and Boundary Marks Act (IV of 1897), S. 17 (a)—Removal of land marks—Non-inclusion of estate surveyed in Government Notification.*

Where a surveyor, empowered to survey an estate under S. 17 (a) of Act IV of 1897, put up boundary marks *bona fide* on land that he was not authorised by the notification to survey and was engaged in taking measurements on what he thought was the estate land, and the accused, after asking who he was, told him not to measure and removed the marks already set up: *Held*, (1) that the accused was liable to conviction under S. 434, Penal Code, as that section deals with all marks fixed by the authority of a public servant without distinction between those fixed correctly and those fixed incorrectly and without reference to the propriety of his exercise of his authority in the particular case, (2) that an offence under S. 186, Penal Code, was committed if the surveyor *bona fide* believed he was discharging public functions even though he was acting illegally. The words "under colour of his office" in S. 99, Penal Code, simply mean that the public servant must be acting in good faith, that is, with due care and caution. *Public Prosecutor v. Madhava Bhonjo Santo.*

17 Cr. L. J. 481 :
36 I. C. 161 : 31 M. L. J. 305 :
1916, 2 M. W. N. 183 : 4 L. W. 377 :
A. I. R. 1917 Mad. 889.

———Ss. 99, 304—*Right of private defence, limits of.*

The inmates of a house have the right, in the exercise of the right of private defence of property, of causing even the death of an offender who commits burglary or house-breaking in their house, but this right of killing an offender who commits burglary is subject to the provisions of S. 99, Indian Penal Code, which lays down very clearly

PENAL CODE ACT (XLV OF 1860)

that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence *Mahabir v. Emperor*.

32 Cr. L. J. 44 :
127 I. C. 875 : 7 O. W. N. 797 :
1. R. 1930 Oudh 491 : A. I. R. 1930 Oudh 408.

—Ss. 99, 323, 332—*Right of private defence, scope of.*

Where certain Police Officers in the execution of a warrant under S. 88, Cr. P. C. attempted to remove the door-frames and doors of the house of the accused, by digging the walls, and the accused resisted and blows were exchanged: *Held*, (1) that the action of the Police Officers in digging the walls to remove the doors and door-frames was illegal and the accused was not, therefore, guilty of an offence under S. 332, Penal Code; (2) that the accused was, however, guilty of an offence under S. 323, Penal Code, and was not protected by S. 99, Penal Code. *Ramji Ahir v. Emperor*.

31 Cr. L. J. 937 :
125 I. C. 784 : A. I. R. 1930 Pat. 387.

—Ss. 99, 323, 353—*Right of defence against Court official—Warrant of attachment illegal—Beating public servant executing warrant—Offence.*

There is no right of private defence against an act, which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law. A person is not, therefore, justified in beating a public servant entrusted with the duty of executing a warrant of attachment even if the warrant is illegal. *Thaba Singh v. Emperor*.

28 Cr. L. J. 972 :
105 I. C. 684 : 28 P. L. R. 290 :
A. I. R. 1927 Lah. 851.

—Ss. 99, 332, 333—*Right of private defence, when avails—Arrest of offender—Use of more force than necessary—Right of private defence, extent of—Causing grievous hurt to public servant in discharge of duty.*

Accused, who was in illegal possession of opium was ordered by an Excise Inspector to stop, and the latter fired two shots to frighten him. The accused thereupon turned round and wounded the Excise Inspector with his sword. He was then caught, and while a peon was proceeding to disarm him, the accused wounded the peon also with his sword: *Held*, (1) that he was not, however, justified in causing death in effecting the arrest under S. 46 (3), Cr. P. C.; (2) that inasmuch as apprehension of death had been caused to the accused, he had a right of private defence against the Inspector which had not been exceeded; (3) that the accused had no right of private defence against the peon after he had been caught and that, therefore, he was guilty of causing grievous hurt to a

PENAL CODE ACT (XLV OF 1860)

public servant in the discharge of his duty. *Nga Nan Da v. Emperor*, 21 Cr. L. J. 97 :
54 I. C. 577 : 3 U. B. R. (1919) 176 :
A. I. R. 1920 U. Bur. 35.

—Ss. 99, 353—*Right of private defence—Assaulting public servant in the execution of his duty—Vaccinator attempting to vaccinate a child forcibly.*

A vaccinator attempted against the wishes of the child's father to vaccinate a child, the son of one Bahal. Bahal and some of his relations intervened and assaulted the vaccinator, but did not do him any particular harm: *Held*, that the child's father and other relations were perfectly justified in interfering, and under the circumstances, could not be said to have acted in excess of their right of private defence. *Emperor v. Bahal*, 3 Cr. L. J. 368 :
26 A. W. N. 98 : 3 A. L. J. 327.

—Ss. 99, 353—*Right of private defence of property against Court official—Resistance in good faith—Sentence of fine—Vindication of law.*

A direction was given in a writ of delivery of possession of a certain share in a tank to give delivery of possession by catching fish in the tank. The complainant and a peon of the Court went to the tank with the writ and some fishermen, who were ordered by the peon to cast their nets in the tank and catch fish. The accused, petitioner, on behalf of his co-sharer objected, and when his protest was not listened to, he rushed into water and with a knife cut some of the nets. But when the official status of the peon was disclosed to him, he subsided into a peaceful attitude and offered resistance no more: *Held*, (1) that whatever mistake there might be in the procedure of the Civil Court, if there was any at all, by giving the direction to the peon to catch fish for the decree-holder, the accused had no right of private defence against the peon who was acting under the colour of his office and in good faith, though the act might not be strictly justifiable by law and that the conviction was right, and (2) that a sentence of fine of fifty rupees was sufficient to vindicate the law for the technical offence of an assault on a public servant. *Preo Lal Mukherjee v. Emperor*, 15 Cr. L. J. 427 :
24 I. C. 163 : 18 C. W. N. 548 :
A. I. R. 1914 Cal. 908.

—S. 99, Chaps. XIX, XXI—*Scope of—Bullock carts, forcible seizure of, by Tahsil peons, how far valid—Private defence, right of, when exercisable.*

Where certain Tahsil peons forcibly seized for military purposes a bullock cart not let on hire, and a scuffle ensued and one of the peons was hurt by the cartman: *Held*, that the latter acted in the exercise of his right of private defence, because the peons had no legal authority to take the cart in their charge by criminal force

PENAL CODE ACT (XLV OF 1860)

and without his consent, and thus their act being one not done under colour of their office, S. 99, Penal Code, could be of no avail to them. *Parshadi Pasi v. Baljit Singh*.

14 Cr. L. J. 449 :
20 I. C. 233.

———Ss. 99, Cl. (3), 105, Cl. (4), 141—*Right to defend property—Waterway in exclusive possession of accused—Construction of bund by complainant—Cutting of bund by accused—Resistance by complainant—Criminal trespass—Time for recourse to authorities.*

Across a waterway exclusively belonging to the accused, the complainant's party constructed, without the permission of the accused, a bund or dam for their own purpose. The complainant's party had been restrained by an injunction from interfering with the accused in their use and occupation of the pyne in question. The accused in attempting to cut the bund were opposed by the complainant's party, two of whom were struck by the accused. The accused though armed had behaved at first with politeness towards the complainant's party, whom they requested to remove the obstruction, and it was not till a *lathi* was raised by one of the complainant's party to strike the accused that the latter retaliated: *Held*, (1), that the accused by attempting to cut the bund did not enforce but maintain a right; (2) that the act of the complainant's party was such a criminal trespass as to entitle the accused to a right of private defence. *Ram Nandan v. Emperor*.

14 Cr. L. J. 463 :
20 I. C. 623 : 17 C. W. N. 1132.

———Ss. 99, Thirdly, 148, 149, 302—*Rioting—Parties engaging deliberately in fight—Right of private defence.*

There is no right of private defence where two parties arm themselves for a fight and deliberately engage in one. A dispute arose over the possession of a plot of land between two parties of villagers. After an altercation each party retired to their own well and armed themselves with spears, hatchets and *dangs*. One party then advanced to attack the other and the latter came out to meet the attack. In the fight which ensued, one man on each side was killed and others received injuries. The *thana* was only a mile away and each party had ample time to send word to the Police and claim the protection of the Police authorities but neither of them did so: *Held*, that the members of each party were guilty of offences under S. 302, Penal Code, inasmuch as the common object of each party was to cause injury and hurt. *Sikandar v. Emperor*.

20 Cr. L. J. 83 :
48 I. C. 883 : 36 P. R. 1918 Cr. :
A. I. R. 1919 Lah. 466.

———S. 100.

———Apprehension of assault.

———Both parties wanting fight—Right of self-defence.

———Burden of proof.

PENAL CODE ACT (XLV OF 1860)

———Deceased unarmed, accused if can claim right.

———Duty of Court.

———Exercise of right under.

———Extent of right under.

———Mutual fight.

———Plea of self-defence.

———Private defence.

———Protection under, when avails.

———Right of private defence.

———Right of self-defence.

———Right under.

———Scope of.

———Use of force to maintain right, effect of.

———S. 100.

See also Penal Code, 1860, Ss. 96, 99, 300, Excep. 4.

———S. 100—Apprehension of assault—*Murderous attack—Right of private defence, extent of—Death caused—Offence.*

A party of men who arm themselves in order to be ready to defend themselves against an attack, if necessary, are not, in the event of an attack, deprived of the right of private defence merely because they had come armed to the place of occurrence. A man who is assaulted is not bound to modulate his defence step by step, according to the attack, before there is reason to believe the attack is over. He is entitled to secure his victory as long as the contest is continued. Where the assault has once assumed a dangerous form, every allowance should be made for one, who with the instinct of self-preservation strong upon him, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. The question in such cases will be, not whether there was an actually continuing danger but whether there was a reasonable apprehension of such danger. *Dalip Singh v. Emperor*.

25 Cr. L. J. 676 :
81 I. C. 164 : A. I. R. 1923 Lah. 155.

———S. 100—Both parties wanting fight—*Right of self-defence.*

Where in a scuffle it is impossible to determine which side attacked first and where both parties wanted a fight and they had it, the question as to who were the aggressors and which party acted in self-defence does not arise. *Ghulam Haider v. Emperor*.

35 Cr. L. J. 1393 :
151 I. C. 237 : 35 P. L. R. 381 :
7 R. L. 182 (2) : A. I. R. 1934 Lah. 512.

———S. 100—Burden of proof.

Burden of proving right of private defence and that the case comes within some of the exceptions in the Penal Code is on accused pleading them. *Rameshwar v. Emperor*.

36 Cr. L. J. 534 :
154 I. C. 697 : 1935 O. W. N. 311 :
7 R. O. 488 : A. I. R. 1935 Oudh 281.

———S. 100—Burden of proof—*Right of private defence.*

The law lays upon an accused person who

PENAL CODE ACT (XLV OF 1860)

pleads the benefit of the provisions of the Penal Code regarding the right of private defence, the burden of satisfying the Court affirmatively, by evidence which the Court can believe and act upon, that he is entitled to the benefit of those provisions. *Gayan Singh v. Emperor*. 26 Cr. L. J. 29 : 83 I. C. 509 : A. I. R. 1923 All. 277.

—S. 100—Deceased unarmed, accused, if can claim right.

Where the deceased is made helpless by being disarmed by the accused, the accused has no right of private defence by causing injuries to the deceased for an assault made previous to the disarming. *Jumma Khan v. Emperor*. 36 Cr. L. J. 914 : 156 I. C. 6 : 7 R. Pesh. 113 : A. I. R. 1935 Pesh. 59.

—S. 100—Duty of Court—Private defence, right of.

When there is evidence proving that a person accused of killing or injuring another acted in the exercise of the right of private defence, the Court ought not to ignore that evidence and convict the accused merely because the latter set up a different defence and denied having committed the assault. *Ghulam Rasul v. Emperor*. 22 Cr. L. J. 507 (b) : 62 I. C. 331 : A. I. R. 1922 Lah. 314.

—S. 100—Exercise of right under, essentials of—Accused denying inflicting blow, effect of.

In order to establish the exercise of the right of private defence, it is absolutely necessary to detail the exact circumstances which led the accused to strike the blow in question. Such a defence can seldom if ever successfully be made out when the accused's case is that they did not strike the blow at all. *Ajgar Shaikh v. Emperor*. 30 Cr. L. J. 799 (b) : 117 I. C. 596 : 32 C. W. N. 839 : 48 C. L. J. 138 : I. R. 1929 Cal. 548 : A. I. R. 1928 Cal. 700.

—S. 100—Exercise of right under, when justified—Attack with lathis—Apprehension of grievous hurt—Death caused in exercise of right of private defence.

The accused, two brothers, while passing a certain way were attacked by three men armed with lathis, and in the fight that ensued, one of the accused inflicted a blow on the head of one of the assailants which proved fatal. Several injuries had been caused by the assailants to the accused : Held, the accused were justified in striking in self-defence in the manner in which they did and were not guilty of any offence. *Mangal Singh v. Emperor*. 26 Cr. L. J. 1305 : 89 I. C. 249 : 7 L. L. J. 167 : A. I. R. 1925 Lah. 370.

—S. 100—Exercise of right under, when justified.

The exercise of the right of self-defence is justified when there was even a reasonable

PENAL CODE ACT (XLV OF 1860)

apprehension of danger. *Bahadur Khan v. Emperor*. 34 Cr. L. J. 373 :

142 I. C. 818 : 9 O. W. N. 1019 : I. R. 1933 Oudh 130 : A. I. R. 1933 Oudh 63.

—S. 100—Extent of right under.

A person who is exercising his right of private defence against several armed assailants cannot be expected to count the number of blows that he is to inflict and weigh the force with which he is to inflict them and the mere fact that he himself received no serious injuries is not an indication that he exceeded his right of private defence. *Sardara v. Emperor*. 30 Cr. L. J. 863 :

117 I. C. 907 : I. R. 1929 Lah. 731 : A. I. R. 1929 Lah. 494.

—S. 100—Extent of right under—Attack by sticks—Death caused in defence—Offence.

The deceased attacked the accused and pursued them striking them with a stick. The accused turned round, armed themselves with pieces of wood which were lying near and defended themselves in the same manner. They inflicted injuries on the deceased which resulted in his death : Held, that the accused had acted in the exercise of a right of private defence. *Pahlad v. Emperor*. 26 Cr. L. J. 61 :

83 I. C. 589 : 11 O. L. J. 50 : A. I. R. 1924 Oudh 334.

—S. 100—Extent of right under.

Private defence—Extent of right—Persons exercising their right in abating a nuisance—Attack—Free fight—Death—Right of private defence, held, extends to causing of death. *Hashim Khair Muhammad v. Emperor*. 34 Cr. L. J. 768 :

144 I. C. 431 : I. R. 1933 Sind 187 : A. I. R. 1933 Sind 142.

—S. 100—Mutual fight, effect of.

When both parties are prepared to fight each other, neither party can claim the right of private defence. *Matt Mandal v. Emperor*. 33 Cr. L. J. 509 :

137 I. C. 693 : 13 P. L. T. 193 : I. R. 1932 Pat. 156 : A. I. R. 1932 Pat. 189.

—S. 100—Mutual fight—Presumption—Injuries.

When two men are fighting together, it is extremely hazardous to conjecture as to their relative positions from the nature of the injuries received because the combatants are constantly changing their positions with regard to one another in the course of the struggle. *Nga Ni v. Emperor*. 37 Cr. L. J. 186 :

159 I. C. 925 : 8 R. Rang. 293 : A. I. R. 1935 Rang. 391.

—S. 100—Plea of self-defence.

A plea of self-defence need not be made in so many words if the circumstances indicate that the Court should take it into consideration even if not specially pleaded. *Bahadur Khan v. Emperor*. 34 Cr. L. J. 373 :

142 I. C. 818 : 9 O. W. N. 1019 : I. R. 1933 Oudh 130 : A. I. R. 1933 Oudh 63.

PENAL CODE ACT (XLV OF 1860)

———S. 100—Private defence — *Person seeing his friend being chased by another with a da, striking him, whether has right of private defence, extent of.*

Where a person on seeing his friend being chased by another with a *da*, strikes that person he would certainly have a right of private defence, and whether or not the blow which he struck was in excess of that right would of course depend upon the circumstances, upon the amount of danger which his friend was in, and the measures which such person took to ensure his friend's safety. *Nga Kyaw Win v. The King.* 41 Cr. L. J. 373 :

186 I. C. 719 : 12 R. Rang. 295 :
A. I. R. 1940 Rang. 55.

———S. 100—Private defence—*Trespasser in possession, if can claim right of private defence against rightful owners.*

Where the true owners of a piece of land go to claim the land from persons who are wrongfully in possession of it, the persons in possession cannot claim a right of private defence because the land does not belong to them and they cannot assert any *bona fide* claim to possession. A rightful owner or his agent has every right to eject a trespasser by all lawful means. That would include prevention of the trespasser from persisting in his trespass. The plea of private defence cannot avail them and if they beat the rightful owner, their conviction of the offences under S. 147 is right: *Held*, that in the present case, however, the sentences of long terms of imprisonment were excessive, particularly as accused were ordered to execute bonds for keeping peace which was pre-eminently a suitable order in the case. *Anantram v. Emperor.* 41 Cr. L. J. 315 :

186 I. C. 469 : 1939 N. L. J. 564 :
12 R. N. 227.

———S. 100—Protection under, when avails.

Accused not admitting having stabbed deceased—Evidence showing that accused acted in self-defence—No specific plea of self-defence—Procedure regarding onus to prove exception, should not be allowed to override dictates of justice—Accused held, should be given benefit of S. 100. *Gul Habib v. Emperor.* 36 Cr. L. J. 1455 :

158 I. C. 635 : 8 R. Pesh. 62.

———S. 100—Protection under, when avails.

Where a person is waylaid and attacked by others armed with deadly weapons and he snatches a weapon from one of them and hits one of the assailants in order to save his life, he cannot be held guilty of any offence. *Fazal Hussain v. Emperor.* 34 Cr. L. J. 584 :

143 I. C. 362 : I. R. 1933 Lah. 345 :
A. I. R. 1933 Lah. 665.

———S. 100—Right of private defence—*Duty of Court.*

If on the record a right of private defence can be clearly raised, the Court should give

PENAL CODE ACT (XLV OF 1860)

effect to it, even although not pleaded by the accused. *Waryam Singh v. Emperor.*

24 Cr. L. J. 451 :
72 I. C. 611 : A. I. R. 1922 Lah. 394.

———S. 100—Right of private defence, extent of.

Accused, who were Sikhs, abducted a Muhammadan married woman and converted her to Sikhism. Nearly a year after the abduction, the relatives of the woman's husband came and demanded the return of the woman from the accused. The latter refused to return her and the woman herself expressed her unwillingness to go. Thereupon the husband's relatives attempted to take her away by force. The accused resisted the attempt and in doing so one of them inflicted a blow on the head of one of the woman's assailants which caused the latter's death: *Held*, that the right of the accused to defend the woman against her assailants extended under S. 100 to the causing of death. *Jagat Singh v. Emperor.*

25 Cr. L. J. 669 :
81 I. C. 157 : A. I. R. 1923 Lah. 155.

———S. 100—Right of private defence, extent of—*Apprehension of grievous hurt to accused—Accused striking with dang and causing death—Offence.*

There was a dispute between the deceased and the appellant, and in the course of a fight which followed, the appellant gave a blow on the head of the deceased which resulted in his death. The Court found that the deceased and his brother were the aggressors and had acted in a high-handed manner and that the deceased had just raised his *slang* with a view to strike the appellant when the latter struck him with his *dang*: *Held*, that the appellant acted in the exercise of his right of private defence of person as he could reasonably have apprehended a danger of grievous hurt being caused to him. *Bishen Singh v. Emperor.*

31 Cr. L. J. 47 :
120 I. C. 185 : 11 L. L. J. 80 :
30 P. L. R. 97 : A. I. R. 1929 Lah. 443.

———S. 100—Right of private defence, extent of—*Right extending to causing of death of assailant.*

Where the deceased, sturdy and dissolute youngman, upon a quarrel with the accused, his uncle and his uncle's son, aged 70 and 85 years, respectively, after an exchange of abuse snatched up a heavy *jatu* (side post of a cart) 3 feet long and aimed a blow with it at his uncle and possibly another at his uncle's son, and his uncle's son seized a second *jatu*, two feet long and struck the assailant twice on the head with it in consequence of which he died: *Held*, that there was no excess of the right of private defence and the accused had committed no offence. *Puran v. Emperor.*

3 Cr. L. J. 232 :
7 P. L. R. 21.

———S. 100—Right of private defence.

If the accused hits back and causes injuries to his assailant which ultimately result in

PENAL CODE ACT (XLV OF 1860)

death, it cannot be said that he exceeds the right of private defence, if at the time he inflicts the injuries he does not realise that they were of a very serious nature. *Mohamed Habib v. Emperor*. 41 Cr. L. J. 520 :

187 I. C. 846 : 6 B. R. 557 : 12 R. P. 664 :
A. I. R. 1940 Pat. 595.

-----S. 100—*Right of private defence—Persons in possession repelling attack whether unlawful assembly.*

Persons who are using canal water in good faith, cannot be said to constitute an unlawful assembly if they resist and repel an aggression in order to maintain the right of which they are in possession. The extent to which the exercise of the right of self-defence is justified, depends not on the actual danger but on whether there is a reasonable apprehension of such danger. *Bagh Singh v. Emperor*.

25 Cr. L. J. 625 :
81 I. C. 113 : A. I. R. 1925 Lah. 49.

-----S. 100—*Right of private defence, when avails.*

A Sub-Inspector was instructed to examine the person of the accused and while doing so the accused did not allow his hand to be moved as asked by the Sub-Inspector. Thereupon the latter abused him calling him *sala*. The Inspector ordered his constables to beat him and he was beaten on the head with a *lathi* by R, a constable, accordingly. At this stage he took out his knife and first stabbed G, another constable and when the former tried to strike him again, with a *lathi* he stabbed him on the arm. G succumbed to his injuries: *Held*, that although the accused's threatening the Inspector with his cane may amount to an offence under S. 253, Penal Code, the Police were entitled only to seize the accused and not to beat him, and in view of their superior numbers and the fact that the cane was not a dangerous weapon, there was no need for resort to beating: *Held*, also that the situation was one in which he reasonably apprehended the infliction of grievous hurt on himself and S. 100, Penal Code, applied. *Inzar Gul Khan v. Emperor*.

37 Cr. L. J. 1090 :
165 I. C. 151 (2) : 19 N. L. J. 135 :
9 R. N. 63 : I. L. R. 1936 Nag. 194 :
A. I. R. 1936 Nag. 234.

-----S. 100—*Right of private defence, when avails—Accused in possession—Deceased and partisans attempting to forcibly dispossess them—Both parties armed with lathis—Resistance.*

Where the deceased and their partisans were the aggressors and the accused being in lawful possession, the deceased and their partisans desired forcibly to dispossess them and both parties were armed with *lathis* and the deceased did cause a reasonable apprehension in the minds of the accused that unless they were resisted they would cause death or at least grievous hurt to some of the accused: *Held*, that the accused

PENAL CODE ACT (XLV OF 1860)

had the right of private defence of person and property. *Rameshwar v. Emperor*.

37 Cr. L. J. 954 :
164 I. C. 426 : 1936 O. L. R. 451 :
9 R. O. 66 : 1936 O. W. N. 834 :
A. I. R. 1936 Oudh 375.

-----S. 100—*Right of private defence, when avails—Whether grievous hurt must be caused before right of private defence of person comes in: Held, on facts, that accused were entitled to benefit of S. 100.*

S. 100, Penal Code, does not lay down that grievous hurt must be actually caused by the assailant before the right of private defence comes into play. All that the section lays down is that the person claiming the right of private defence must be under a *bona fide* apprehension or fear that death or grievous hurt would otherwise be the consequence of the assault on him, if he does not defend himself: *Held*, that the accused had the right of private defence of person against the deceased, and that they were entitled to the benefit of S. 100, Penal Code. *Gaya Prasad v. Emperor*.

37 Cr. L. J. 1135 :
165 I. C. 264 : 1936 O. W. N. 974 :
1936 O. L. R. 617 : 9 R. O. 182.

-----S. 100—*Right of self-defence, when avails—Extent of right.*

The deceased brutally ill-treated his wife, the sister of the accused. On the night when the deceased was killed, he had again been beating this unfortunate woman. She rushed out of her *kothri* to where her brother was sleeping and pleaded with him to protect her. She was followed by her husband. Thereupon the accused seized a hatchet and hit the deceased on the head and killed him. It was also in evidence that if he had not killed his brother-in-law, his brother-in-law would have killed him: *Held*, that the accused had not committed any offence. *Karamat Hussain Mulla v. Emperor*.

39 Cr. L. J. 506 :
174 I. C. 961 : 10 R. L. 650 :
A. I. R. 1938 Lah. 269.

-----S. 100—*Right under, extension of.*

When the person attacked had managed to obtain the weapon from the grasp of the attacker, he may be allowed to use that weapon in his defence in order to prevent the attacker from regaining possession of it. *Nga Ni U v. Emperor*.

37 Cr. L. J. 186 :
159 I. C. 925 : 8 R. Rang. 293 :
A. I. R. 1935 Rang. 391.

-----S. 100—*Right under, when avails.*

Accused's attack on deceased while protecting himself and persons in whom he was interested—Conviction under S. 302 is not justifiable. *Wazir v. Emperor*.

35 Cr. L. J. 468 :
147 I. C. 705 : 6 R. L. 432 :
A. I. R. 1933 Lah. 1053.

PENAL CODE ACT (XLV OF 1860)

———S. 100—*Right under, when avails.*

Accused being attacked by strong adversary with ironbound *lathi*—Accused striking adversary and killing him—Right of private defence is not exceeded. *Ram Adhin v. Emperor.*

34 Cr. L. J. 243 :
141 I. C. 751 : 9 O. W. N. 1146 :
I. R. 1933 Oudh 82 :
A. I. R. 1933 Oudh 59.

———S. 100—*Right under, when avails.*

Deceased assaulting accused's pregnant wife violently with a weapon—Accused giving blows on deceased and fracturing skull—Accused giving water and allowing deceased to return home—Conviction under either Ss. 302 or 304, is not legal—Right of private defence, held not exceeded. *Uraon Bhumi v. Emperor.*

36 Cr. L. J. 316 :
153 I. C. 301 : 7 R. P. 322 :
A. I. R. 1934 Pat. 588.

———S. 100—*Right under, when avails.*

Deceased deliberately coming armed with *lathi* to take Rs. 3 from accused even at cost of life—Deceased compelling accused to fight—Death ensuing—Right of private defence, held not exceeded. *Ram Bilas v. Emperor.*

37 Cr. L. J. 325 :
160 I. C. 807 : 1936 O. L. R. 106 :
1936 O. W. N. 225 : 8 R. O. 276 :
A. I. R. 1936 Oudh 231.

———S. 100—*Right under, when avails.*

Deceased endeavouring to violate accused's wife—Accused seeing the act and striking deceased—Death—Right of private defence was not exceeded. *Snraj Narain Lal v. Emperor.*

34 Cr. L. J. 882 :
144 I. C. 1010 : 6 R. A. 33 :
1933 A. L. J. 472 :
A. I. R. 1933 All. 213.

———S. 100—*Right under, when avails.*

Marpit brought about by deceased—Accused hitting rather harder in resisting the attack of the deceased—Right of private defence, held not exceeded. *Allah Ditta v. Emperor.*

36 Cr. L. J. 305 :
153 I. C. 209 : 35 P. L. R. 725 :
7 R. L. 403 : A. I. R. 1934 Lah. 696.

———S. 100—*Right under, when avails.*

When peaceful citizens are attacked by a body of men armed with deadly weapons, it cannot be said that the right of private defence is exceeded if those attacked, in their turn, use similar weapons and one of the aggressors is killed. *Man Singh v. Emperor.*

34 Cr. L. J. 765 :
144 I. C. 383 : 1933 A. L. J. 581 :
I. R. 1933 All. 426 :
A. I. R. 1933 All. 401.

———S. 100—*Right under, when avails.*

Where a person is attacked by two or three men and he has every reason to apprehend that grievous hurt would be inflicted, he has a right of private defence

PENAL CODE ACT (XLV OF 1860)

which extends to the voluntary causing of death. *Shoban Mahomedali v. Emperor.*

34 Cr. L. J. 760 :
144 I. C. 413 : I. R. 1933 Sind 183 :
A. I. R. 1933 Sind 138.

———S. 100—*Right under, when available.*

Altercation between accused and deceased—Deceased challenging accused to fight—*Lathi* blow dealt by accused ending in death—Right of private defence, held not exceeded. *Chheda v. Emperor.*

35 Cr. L. J. 55 :
146 I. C. 436 : 10 O. W. N. 750 :
6 R. O. 121 : A. I. R. 1933 Oudh 380.

———S. 100—*Right under, when exceeded.*

Attack by notorious bully—Slight injuries effected to accused—Accused stabbing with knife—Death—Right of private defence, held exceeded—Sentence reduced to 3 years. *Mohammad Shafi v. Emperor.*

34 Cr. L. J. 1170 :
146 I. C. 34 : 6 R. L. 168 :
A. I. R. 1933 Lah. 227.

———S. 100—*Scope of.*

A certain amount of abuse was bandied about by various members of a tea party, in the course of which the deceased, from his squatting position, picked up a *dhama* from the floor and slashed it at the accused who thereupon went outside the hut. The latter returned, however, armed with a stick and, from a standing position, struck the deceased with it on the head. The deceased received a severe injury and died as a result: *Held*, that as the accused was able to leave the hut quite unscathed, it could not be held that, at the time when he returned to the hut and struck the deceased, the alleged exercise of the right of private defence of the body by the accused was occasioned by any offence committed by the deceased. Therefore, the accused failed to bring himself within S. 100, Penal Code. *Nga Chit Tin v. The King.*

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

———S. 100—*Scope of—Assault—Apprehension of grievous hurt—Right of private defence, extent of.*

The accused having got a decree against the deceased put up his house for sale in execution. As nobody from the place was prepared to bid, the accused went to a neighbouring place to proclaim that a certain house had been put up for sale. Deceased and another followed him, assaulted him, felled him to the ground and attempted to throttle him, whereupon the accused drew his knife and stabbed the deceased in the chest. The deceased died three days after, having developed pneumonia: *Held*, that the assault by the deceased, including an attempt by him to throttle the accused, occasioned the exercise of the right of private defence, as it was likely to cause the apprehension of death or grievous hurt. *Chhabil Das v. Emperor.*

26 Cr. L. J. 17 :
83 I. C. 497 : A. I. R. 1923 Lah. 172.

PENAL CODE ACT (XLV OF 1860)

———S. 100—*Scope of.*

Nazir directing removal of huts of judgment-debtors in good faith—Assault and obstruction of further process of Court—Right of private defence is not available. *Government of Bengal v. Alimuddin.* 34 Cr. L. J. 826 ; 144 I. C. 817 : 57 C. L. J. 41 : 6 R. C. 45 : A. I. R. 1933 Cal. 469.

———S. 100—*Scope of—Squeezing of testicles of accused by deceased—Accused picking up knife lying near by and giving blow to deceased.*

During a quarrel, the deceased caught hold of the testicles of the accused and pressed them hard, as a result of which, the accused losing his self-control, struck the deceased two blows with knife lying nearby : *Held*, that the squeezing of testicles could result in death and, therefore, the case fell under S. 100, Penal Code. *Sardari Lal v. Emperor.* 38 Cr. L. J. 867 : 170 I. C. 25 : 10 R. L. 87 : A. I. R. 1937 Lah. 108.

———S. 100—*Use of force to maintain right, effect of—Right of private defence, extent of—Amount of force necessary, determination of.*

Where a person is attacked while doing a lawful act, he is entitled to stand his ground and defend himself and is not required to run away and to seek the assistance or the protection of the authorities. Where a man is put in a situation in which he is entitled to protect his own life against an intended attack, it is impossible to weigh the force of the blows which he uses for that purpose in golden scales and to adjudicate with great nicety as to the exact amount of force which would be justified under the circumstances. *Bai Nath v. Emperor.* 26 Cr. L. J. 513 : 85 I. C. 353 : 27 O. C. 292 : 1 O. W. N. 588 : A. I. R. 1925 Oudh 425.

———Ss. 100, 102—*Right of private defence of body, when commences.*

S. 100, gives the right of private defence of the body only against actual assailants ; it does not authorise the killing or causing of hurt to persons who may, in the future, when reinforced by others become assailants. The right arises only on the occurrence of an offence, or of an attempt to commit an offence, and as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed. *Narain Das v. Emperor.*

23 Cr. L. J. 513 : 68 I. C. 113 : 4 L. L. J. 91 : 3 Lah. 144 : 9 P. W. R. 1922 Cr. : A. I. R. 1922 Lah. 1.

———Ss. 100, 148, 325—*Right of private defence—Injury caused in self-defence.*

Four persons of the accused's party were digging a drain. They were attacked by the complainants. Partisans of the parties ran up and a free fight ensued. One of the accused's party was killed and the arm of one of the complainant's party was fractured. The accused were convicted of offences under S. 148 and 325, Penal Code :

PENAL CODE ACT (XLV OF 1860)

Held, that the accused acted in self-defence either of themselves or of the deceased. *Bega v. Emperor.* 18 Cr. L. J. 139 : 37 I. C. 491 : 105 P. L. R. 1916 Cr. : A. I. R. 1917 Lah. 322.

———Ss. 100, 300—*Right of private defence of body—Death caused in self-defence.*

One night while accused was proceeding in a certain direction with two companions, he was hit by the deceased with a stick. The two companions of the accused took to flight and the accused himself ran away. He was pursued by the deceased and two others and when he was rounded up, he struck the deceased with a knife and caused his death. It was notorious that people in that part of the country were in the habit of carrying knives : *Held*, that the accused had good reason to suppose that unless he used his knife, grievous hurt at least, if not death, would be inflicted upon him, and he did not exceed his right of private defence. *Yusaf Khan v. Emperor.* 21 Cr. L. J. 335 : 55 I. C. 607 : 1 P. W. R. 1920 Cr. : 2 U. P. L. R. Lah. 19 : 2 P. L. R. 1920 : A. I. R. 1920 Lah. 392.

———Ss. 100, 300, Excep. (2)—*Right of private defence, when avails.*

Merely to cause, even with great force, an injury sufficient in the ordinary course of nature to cause death, is not necessarily, and by itself sufficient to deprive a person of the right of private defence of his body. Where after having picked up a quarrel with the accused and after having inflicted an injury on him with a *dah*, the deceased was on the point of cutting the accused a second time, and he had his *dah* raised for the purpose, when the accused struck the deceased on the head with the *dah* and the injury resulted in the death of the deceased : *Held*, that the accused did not exceed the power given to him by law of private defence. *Nga Chil Tin v. The King.*

40 Cr. L. J. 725 : 183 I. C. 145 : 12 R. Rang. 45 : A. I. R. 1939 Rang. 225.

———Ss. 100, 302, 304—*Right of private defence, when exceeded—Intention to cause death—Murder—Culpable homicide.*

If a person in defending himself exceeds the right of private defence and intends to cause the death of his assailant, he is not necessarily guilty of murder. A person in order to defend himself may kill his adversary provided he has a reasonable apprehension that otherwise he himself would be killed. But where there is no reasonable apprehension of his being killed but only reasonable apprehension of grievous hurt, and in defending himself he exceeds his right of private defence and kills the other, he is not guilty of murder but only guilty of an offence less than murder. His act may amount to an offence under S. 304, Penal Code. *In re : Katiri.*

26 Cr. L. J. 1143 : 88 I. C. 455 : A. I. R. 1925 Mad. 1069.

PENAL CODE ACT (XLV OF 1860)

———Ss. 100, 304—*Dangerous assault—Exceeding right of self-defence.*

Where an assault has once assumed a dangerous form, every allowance should be made for one who, with the instinct of self-preservation strong upon himself, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. *Gurlingappa Shidramappa v. Emperor.*

22 Cr. L. J. 618 :
63 I. C. 154 : 23 Bom. L. R. 817 :
A. I. R. 1921 Bom. 335.

———Ss. 100, 304 (1)—*Right of private defence, when exceeded—Fight between two parties—One person from one party running but chased, and overtaken and killed by another from opposite party—Chaser held guilty under S. 304 (1), having exceeded his right of private defence.*

Where in a course of fight a person from one of the parties runs away but is chased by another from the opposite party and is overtaken at a considerable distance and is killed, the person chasing would be deemed to have exceeded his right of private defence and is, therefore, guilty under S. 304 (1), Penal Code. *Sadhu v. Emperor.*

40 Cr. L. J. 904 :
184 I. C. 270 : 41 P. L. R. 360 :
12 R. L. 189 : A. I. R. 1939 Lah. 393.

———Ss. 100, 304 (II), 325—*Right of private defence, when avails—Fatal blow struck on sudden provocation.*

The deceased went to the accused's house armed with a pitchfork and abused her sister. The deceased's son also turned up and struck a blow on the sister's head with a stick. The accused hearing the cries of her sister came out with a pitchfork in her hand and struck the deceased with its handle, who died within a short time: *Held*, (1) that though the deceased and his son acted in a high-handed manner, their action could not be regarded as a sufficient justification for causing the death and the accused could not avail herself of the benefit of S. 100, Penal Code; (2) that inasmuch as the conduct of the deceased and his son provoked the accused she was guilty of an offence under S. 325. *Siryan v. Emperor.*

17 Cr. L. J. 270 :
34 I. C. 990 : 69 P. L. R. 1916 :
A. I. R. 1916 Lah. 419.

———S. 101.

See also Penal Code, 1860, Ss. 99, 147.

———S. 102.

See also Penal Code, 1860, Ss. 99, 323.

———S. 102—*Private defence of person—Extent of offence.*

In cases where right of private defence is available and where there is imminent danger to the life of the accused, the accused cannot be expected to regulate the extent

PENAL CODE ACT (XLV OF 1860)

of force to be used by any precise standard. *Kala Singh v. Emperor.*

34 Cr. L. J. 1175 (2) :
146 I. C. 27 : 34 P. L. R. 259 :
6 R. L. 159 : A. I. R. 1933 Lah. 167.

———S. 102—*Private defence; right of, when commences—Recourse to law.*

When the applicants apprehending opposition went armed to appraise crops, and on the arrival of the opposite party similarly armed, did not wait till the opposite party had actually attacked but proceeded to meet them and a fight took place: *Held*, that the applicants had acted within the right of private defence which commenced as soon as the opposite party appeared with arms and began to move towards them which was a distinct threat to attack them and, as they had not inflicted injuries more than were necessary under the circumstances, their conviction could not be sustained: *Held*, further, that when a person is attacked while doing a lawful act, he is entitled to stand his ground and defend himself and that the law does not intend that he must run away to have recourse to the protection of the public authorities. *Hafiz Ali v. Emperor.*

6 Cr. L. J. 271 :
10 O. C. 196.

———S. 102—*Private defence.*

The mere presence of persons at the time of the scuffle when they do not take steps to protect the accused, does not take away the right of private defence which the accused has. *Kala Singh v. Emperor.*

34 Cr. L. J. 1175 :
146 I. C. 27 : 34 P. L. R. 259 :
6 R. L. 159 : A. I. R. 1933 Lah. 1676.

———S. 103.

See also (i) Cr. P. C., 1898, S. 193.
(ii) Penal Code, 1860, Ss. 96, 97.

———S. 103—*Private defence, whether exceeded.*

Free fight with lathis to release woman—Injuries of same nature on both sides—Accused discontinuing fight after release of woman: *Held*, accused did not exceed right of private defence. *Ramji Lal v. Emperor.*

36 Cr. L. J. 1501 :
158 I. C. 1049 : 8 R. A. 365 :
1935 A. L. J. 950 (2) :
1935 A. W. R. 935 :
A. I. R. 1935 All 913.

———S. 103—*Private defence of property, limits of.*

The right of private defence of property to the extent of causing death arises not only when the house is broken into but when an attempt is made to break into the house. *Emperor v. Ali Mea.*

27 Cr. L. J. 1287 :
98 I. C. 183 : 43 C. L. J. 532 :
A. I. R. 1926 Cal. 1012.

PENAL CODE ACT (XLV OF 1860)

———Ss. 103, 304—*Attempt to commit burglary—Causing of death in self-defence—Legality of.*

A person who honestly believing that a burglar is attempting to break into his house, causes the death of another person who turns out not to be a burglar, does not commit any offence, inasmuch as death is caused only in the exercise of the right of private defence and the limits of the right are not exceeded. *Emperor v. Ali Mea*, 27 Cr. L. J. 1287 : 98 I. C. 183 : 43 C. L. J. 532 : A. I. R. 1926 Cal. 1012.

———Ss. 103, 304, 442—*Burglar discovered in house at night—Death caused by blow on head—Right of private defence, whether exceeded—Offence.*

Accused was awakened in the middle of the night by the sound of movements in an enclosure adjoining the room where he was sleeping. On getting up he found a man inside the enclosure, and in the scuffle which ensued, he killed him by striking him on his head three times with his stick: *Held*, (1) that although the deceased had been guilty of the offence of house-trespass, the offence had been completed once the deceased had effected his entry into the enclosure and the accused was not, therefore, entitled to the exercise of the right of private defence, under S. 103 (2). *Ismail v. Emperor*.

27 Cr. L. J. 38 :
91 I. C. 70 : 6 Lah. 463 :
A. I. R. 1926 Lah. 28.

———Ss. 103, 304—*A—Firing at dacoit before he begins to commit dacoity, if within right of private defence of property.*

Three or four men armed with lathis came to a village at night to commit dacoity. Two of the villagers saw them and one of them fired and killed a dacoit: *Held*, that the firing was in the right of private defence of property against intended robbery and house-breaking by night and did not amount to an offence. *Dhu Ram v. Emperor*.

30 Cr. L. J. 504 :
115 I. C. 609 : I. R. 1929 All. 385 :
1929 A. L. J. 148 : A. I. R. 1929 All. 299.

———S. 104.

See also Penal Code, 1860, Ss. 97, 99, 147, 300, 358.

———S. 104—*Private defence of property—Peaceful but unlawful possession only for two hours by accused of land in possession of deceased—Accused mere trespasser—Deceased trying to eject him—Deceased and not accused has right of private defence.*

Where an accused succeeds in obtaining peaceful but unlawful possession of certain land and remains in possession for only a couple of hours and the possession is never acquiesced in by the deceased co-sharer, such a possession is nothing better than mere trespass and does not give the accused a right of self-defence if the person already in possession tries to eject the accused by force. On the other hand, the person in possession has a right to maintain his possession and to

PENAL CODE ACT (XLV OF 1860)

inflict any necessary injury, short of death, in the exercise of his right of private defence of the property under S. 104, Penal Code, in ejecting the accused. *Indar Singh v. Emperor*.

39 Cr. L. J. 288 :
173 I. C. 269 : 10 R. L. 421 :
A. I. R. 1938 Lah. 60.

———S. 104—*Private defence of property—Whether exceeded.*

Deceased seen at night in accused's field—Accused believing him to be stealing paddy—*Lathi* blows on vital part of body—Right of private defence of property: *Held*, right was exceeded. *Bachchu Lal v. Emperor*.

36 Cr. L. J. 1209 :
157 I. C. 641 : 1935 O. L. R. 493 :
1935 O. W. N. 934 : 8 R. O. 32 (2) :
A. I. R. 1935 Oudh 442.

———Ss. 104, 105—*Private defence of property—Possession of land delivered by Civil Court to master of accused—Accused cultivating land—Opposition by complainants—Right of private defence of property.*

Possession of the disputed land was obtained by the master of the accused through the Civil Court. The accused went upon the land to cultivate it. The complainants' party obstructed them and a fight ensued in which persons of both the parties were more or less injured: *Held*, that the accused went upon the land with a view to maintain a right and were not guilty of rioting. *Fatch Singh v. Emperor*.

14 Cr. L. J. 380 :
20 I. C. 140 : 41 Cal. 43.

———Ss. 104, 504—*Using abusive language, if within private defence.*

S. 104, Penal Code, can have no application by way of defence to a charge under S. 504 for using abusive language. *Rakhal Das v. Kallash Banu*.

11 Cr. L. J. 213 :
5 I. C. 721 : 11 C. L. J. 113.

———S. 105.

See also Penal Code, 1860, S. 300.

———S. 105—*Private defence, exceeding of.*

In striking a fatal blow on the head of the deceased, the accused exceeded the right of private defence of property, but in the circumstances, a sentence of six months' rigorous imprisonment was sufficient. *Hasham v. Emperor*.

37 Cr. L. J. 428 :
161 I. C. 344 : 8 R. L. 719 :
A. I. R. 1936 Lah. 28.

———S. 105—*Private defence of person—extent of force.*

The mere fact that before the accused gave the deceased a blow on the head, the deceased had struck him with a *lathi* will not justify the accused or his associates to cause many serious injuries on the body of the deceased. *Rakhia v. Emperor*.

36 Cr. L. J. 292 :
153 I. C. 27 (2) : 35 P. L. R. 664 :
7 R. L. 374 : A. I. R. 1934 Lah. 595.

PENAL CODE ACT (XLV OF 1860)

———S. 105—*Private defence of property against theft, up to what time exercisable.*

The right of private defence of property against theft ceases to exist as soon as the offender has effected his retreat with the property, and does not revive when the owner subsequently finds the property, so as to empower him to recover the property by the use of violence from the person in whose possession it is found. *Mir Dad v. Emperor.*

27 Cr. L. J. 929 :
96 I. C. 385 : 7 Lah. 21 :
27 P. L. R. 280 : A. I. R. 1926 Lah. 74.

———S. 105—*Private defence of property—Attack by persons armed with dangerous weapons—Death caused by one blow—Right of private defence, whether arises.*

Accused, who were five in number, at night made a hole in the wall of a courtyard attached to a house and entering the courtyard attempted to remove a cow which was kept there. The inmates of the house, who were sleeping in the courtyard, woke up and followed the accused. One of them struck one of the accused with a *dang* whereupon the latter fell upon the former and caused severe injuries to him, one of which proved fatal. The accused were charged and convicted of offences under Ss. 304-II and 457 of the Penal Code; *Held*, that the death of the deceased having, however, been caused by a single blow given by one of the accused who had not been specifically identified and there being no charge under S. 149, Penal Code, the accused could not be convicted of an offence under S. 304-II, Penal Code; that the accused having armed themselves with dangerous weapons must have known that in case of opposition, the weapons would be used, and in all probability, grievous hurt at least would be caused and that, therefore, the accused were guilty of an offence under Ss. 325/114, Penal Code. *Niamal v. Emperor.*

26 Cr. L. J. 753 :
86 I. C. 337 : 6 L. L. J. 385 :
A. I. R. 1925 Lah. 117.

———S. 105—*Private defence of property, extent of.*

A number of persons went to rescue two buffaloes alleged to have been stolen and in the possession of the petitioners. They tried not only to secure the stolen buffaloes but began to drive the whole herd of the petitioners. A fight ensued and the petitioners were charged and convicted; *Held*, that the petitioners were not guilty of any offence. *Karam Ali v. Emperor.*

28 Cr. L. J. 750 :
103 I. C. 798 : 9 L. L. J. 260 :
28 P. L. R. 299 : A. I. R. 1927 Lah. 355.

———S. 105—*Private defence of property—Extent of force.*

Under S. 105 if the thief had effected his retreat with the property or if the property had been recovered, the owner of that property has no right to proceed with violence against the thief. *Rakhita v. Emperor.*

36 Cr. L. J. 292 :
153 I. C. 27 (2) : 35 P. L. R. 664 :
7 R. L. 374 : A. I. R. 1934 Lah. 595.

PENAL CODE ACT (XLV OF 1860)

———S. 105—*Private defence of property—Right of—When available.*

Paddy sheaves belonging to accused carried away in carts by persons not having *bona fide* right to them—Accused chasing carts—Cartmen jumping out and running away—Right of private defence ceases when cartmen run away leaving sheaves in accused's possession. *Nga Pu Ke v. Emperor.*

35 Cr. L. J. 267 :
147 I. C. 74 : 6 R. Rang. 146 :
A. I. R. 1933 Rang. 340.

———S. 105—*Private defence of property—Trespass by cattle—Cattle chased by owners of land—Accused beating straggler chaser—Exercise of right of private defence.*

Certain cattle belonging to the accused trespassed on the complainant's field and grazed there. An attempt was made by the complainant to seize them with a view to take them to the cattle-pound. The cattle ran away towards the field of the accused and were chased by the complainant and his friends. The chasers were joined by the deceased who, however, lagged behind. The accused inflicted fatal injuries on him: *Held*, that the accused had no right of private defence against the deceased who had not seized any cattle and was a mere straggler. *Waryami v. Emperor.*

30 Cr. L. J. 627 :
116 I. C. 463 : I. R. 1929 Lah. 527 :
A. I. R. 1929 Lah. 692.

———S. 105—*Private defence—Right of—When not available.*

When two parties are equally determined to fight on the pretence of securing their respective possessions over a field, there can be no question of a right of private defence. *Bhairo Singh v. Emperor.*

36 Cr. L. J. 861 :
156 I. C. 120 : 31 N. L. R. 380 :
7 R. N. 217 : A. I. R. 1935 Nag. 141.

———S. 105—*Private defence—Use of force, if unlawful.*

Force used by a person, who is in peaceful possession of the property, to ward off aggressors cannot be characterised as unlawful. *Bhairo Singh v. Emperor.*

36 Cr. L. J. 861 :
156 I. C. 120 : 31 N. L. R. 380 :
7 R. N. 217 : A. I. R. 1935 Nag. 141.

———S. 105 (2)—*Right of private defence of property, limitations of.*

The Penal Code does not give any right of private defence of property in regard to which an offence under S. 403 or 411 of the Code has been committed. S. 105 (2), Penal Code, applies to cases of theft only. *Agra v. Emperor.*

16 Cr. L. J. 209 :
27 I. C. 833 : 219 P. L. R. 1915 :
37 P. R. 1914 Cr. : A. I. R. 1914 Lah. 579.

———S. 106.

See also Cr. P. C., 1898, S. 96.

PENAL CODE ACT (XLV OF 1860)

———S. 107.

See also (i) Burma Anti-Boycott Act, 1922, S. 4 (a).

(ii) Cr. P. C., 1898, Ss. 221, 222 (1).

(iii) Penal Code, 1860, Ss. 302, 361.

(iv) Prisons Act, 1894, S. 42 (8).

———S. 107—Abetment, definition of—Instigation, meaning of.

A person abets the doing of a "thing" who instigates a person to do that thing and if the "thing," instigated is an offence, the instigator abets an offence, and if the offence is committed in consequence of abetment and no express provision is made by the Penal Code for the punishment of such abetment, he is liable to the punishment provided for the offence. A person is said to "instigate" another to an act when he actively suggests or stimulates him to the act, by any means or language direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. *Emperor v. Mihaan Singh*.

26 Cr. L. J. 1352 :
89 I. C. 392 : 5 Lah. 1 :
A. I. R. 1924 Lah. 440.

———S. 107—Abetment of cheating—What amounts to.

Wrong identification on assurance of stranger—Omission to state that identification is made on such assurance alone : *Held*, abetment of cheating by false personation. *Radhe Kishun v. Emperor*.

30 Cr. L. J. 642 :
116 I. C. 753 : I. R. 1929 Pat. 321 :
10 P. L. T. 657 : A. I. R. 1929 Pat. 157.

———S. 107—Abetment of exciting disaffection—What amounts to.

If C engaged with S in a conspiracy to excite disaffection towards the Government, and if, in pursuance of that conspiracy and in order to the exciting of disaffection an 'act' took place, then C is guilty of abetment of the excitement of disaffection under S. 107, Penal Code. *In re : V. O. Chidambaram Pillai*.

9 Cr. L. J. 130 :
1 I. C. 36 : 5 M. L. T. 16 : 32 Mad. 35.

———S. 107—Abetment of offence not committed, if offence.

One S, an agent or partner of one B, who was accused in a case on charges framed under Ss. 448, 458 and 460, Penal Code, pending in the Court of the 5th Presidency Magistrate of Calcutta, voluntarily and without any coercion or threat approached K, the Bench Clerk of the Magistrate, intending to incite K to instigate the Magistrate to take a bribe and to acquit B. K then saw the Chief Presidency Magistrate of the Court with reference to the matter and played the part of a Police spy. When S made over to K at the latter's place the bribe which was to be handed over by K to the Magistrate, a Police Inspector, who was concealed behind a curtain, seized the money. S was then tried on charges framed under Ss. 161

PENAL CODE ACT (XLV OF 1860)

and 109, Penal Code, and convicted : *Held*, that S, when he handed over the money to K, committed a distinct incitement of K to instigate the Magistrate to take a bribe and so was rightly convicted under S. 109, even though no bribe had ever been offered to the Magistrate. *Srilal Ohamaria v. Emperor*.

20 Cr. L. J. 49 (b) :
48 I. C. 817 : 22 C. W. N. 1045 :
28 C. L. J. 370 : 46 Cal. 607 :
A. I. R. 1919 Cal. 654.

———S. 107—Abetment of offence—Presence at time of commission.

Mere presence on the occasion of the commission of an offence does not amount to abetment within the meaning of S. 107, unless there is an obligation cast by the law upon the persons present to prevent the commission of the offence. *Chalru Gope v. Emperor*.

19 Cr. L. J. 63 (b) :
43 I. C. 95 : A. I. R. 1918 Pat. 584.

———S. 107—Abetment, what amounts to.

In order to amount to abetment within the meaning of Cl. 3 of S. 107, the aid given must be with the intention to aid the commission of a crime. The mere giving of aid will not make the act of abetment an offence if the person who gave the aid did not know that an offence was being committed or contemplated. *Ram Nath v. Emperor*.

26 Cr. L. J. 362 :
84 I. C. 714 : 22 A. L. J. 1106 :
47 All. 268 : A. I. R. 1925 All. 230.

———S. 107—Abetment, what constitutes.

A, B and C had an altercation with D. B was armed with a *lathi* and C with a spear and A gave general order to beat D, C thereupon inflicted a mortal blow on D with his spear : *Held*, that A must be deemed to have intended all the results that followed from his general order to beat, and was, therefore, guilty of the offence committed by C. *Ghanshyam Singh v. Emperor*.

29 Cr. L. J. 239 :
107 I. C. 305 : 6 Pat. 627 :
A. I. R. 1928 Pat. 100.

———S. 107—Abetment, what is.

Abetment by aiding or instigation necessarily means some active suggestion or support or stimulation to the commission of the offence itself. An act done after an offence is complete which might help the offender does not amount to abetment. *Hazari Lal v. Emperor*.

22 Cr. L. J. 452 :
61 I. C. 836 : 2 P. L. T. 78 :
A. I. R. 1921 Pat. 286.

———S. 107—Knowingly aiding in disposal of stolen property, if abettor.

A person who knowingly aids in the disposal of stolen property falls under the third definition under S. 107 and is an accomplice. *Maruthalayan v. Emperor*.

36 Cr. L. J. 633 :
155 I. C. 74 : 1934 M. W. N. 1140 :
67 M. L. J. 693 : 40 L. W. 873 :
58 Mad. 86 : 7 R. M. 544 :
A. I. R. 1934 Mad. 721.

PENAL CODE ACT (XLV OF 1860)

———S. 107—Omission to prevent beating, whether abetment.

To constitute abetment, there must be under S. 107, Penal Code, either (1) instigation, (2) conspiracy, or (3) actual aid either by an act or an illegal omission. The mere fact that the accused was sitting by when another person was beating a third, and did not interfere, is not sufficient to constitute abetment. *Emperor v. Chanda*.

26 Cr. L. J. 470 :
85 I. C. 150 : A. I. R. 1925 All. 126.

———S. 107—Speaker singing revolutionary song at meeting—*President, if abettor*.

Where a person sings a revolutionary song at a meeting, the President is not guilty of abetment. Simply doing nothing is not an act, and unless there is a duty to do something, there is no illegal omission. *Emperor v. Bepin Behari*.

33 Cr. L. J. 699 :
138 I. C. 763 : 36 C. W. N. 191 :
I. R. 1932 Cal. 519 : A. I. R. 1932 Cal. 549.

———S. 107—Licensed driver permitting unlicensed driver to drive—*Latter driving rashly or negligently—Former whether guilty of offence of abetment*.

A licensed driver permitting an unlicensed one to drive a motor vehicle cannot for that reason alone be charged with abetment of the offence of rash or negligent driving by the latter, under S. 107, though he may be guilty of an offence under Motor Vehicles Act. The charge of allowing an unlicensed man to drive a motor vehicle is not included logically in the charge of abetting his driving rashly and negligently. *Mahomad Jamal v. Emperor*.

30 Cr. L. J. 1077 :
119 I. C. 536 : I. R. 1929 Sind 216 :
A. I. R. 1930 Sind 64.

———Ss. 107, 109—*Abetment by omission*.

It is not an abetment of the offence for the master to omit to give information to his servant, unless the omission were illegal, that is to say, in disobedience of an obligation imposed upon him by law. *Emperor v. Cooverji*.

5 Cr. L. J. 176 :
9 Bom. L. R. 161.

———Ss. 107, 109, 182—*Cases under S. 182—Applicability*.

Ss. 107 and 109, Penal Code, apply to cases under S. 182. Person instigating another to make a false report can be convicted under S. 182 read with S. 109. *Dawar Singh v. Emperor*.

39 Cr. L. J. 102 :
172 I. C. 23 : 1937 A. L. J. 881 :
10 R. A. 383 : 1937 A. W. R. 865 :
A. I. R. 1937 All. 755.

———Ss. 107, 111—“*Abetment*,” includes conspiracy and aiding.

The definition of abetment in S. 107 includes not merely instigation, which is the normal form of abetment, but also conspiracy and aiding. *Sonappa Shina Shetty v. Emperor*.

41 Cr. L. J. 481 :
187 I. C. 464 : 42 Bom. L. R. 205 :
12 R. B. 488 : A. I. R. 1940 Bom. 126.

PENAL CODE ACT (XLV OF 1860)

———Ss. 107, 114—*Abetment, when constituted*.

Where four persons combine to attack with lathis their common enemy, each is abetting the conduct of the other within the meaning of S. 107, Penal Code, and when each one of them is present, S. 114, Penal Code, fully applies. The test is whether, in the circumstances of a given case, grievous hurt should have been foreseen as the probable result of their concerted action. The case may be different where the surrounding circumstances, including the comparatively harmless character of the weapons used by the assailants, did not make it probable that grievous hurt would result, though it did in the course of the assault through accident or some act of one of the assailants which had not been contemplated by the others. *Jaimangal v. Emperor*.

37 Cr. L. J. 864 :
163 I. C. 848 : 1936 A. L. J. 462 :
9 R. A. 86 : 1936 A. W. R. 298 :
A. I. R. 1936 All. 437.

———Ss. 107, 120-B—*Abetment by conspiracy—Option of prosecution to proceed under S. 107, or S. 120-B*.

Where an offence is committed in conspiracy, it is optional for the prosecution to proceed either under S. 107, for abetment of the offence by conspiracy, or under S. 120-B of the said Code as amended by the Criminal Law Amendment Act, 1918, for the conspiracy as a substantive offence. *Udhasing Tahsil Singh v. Emperor*.

17 Cr. L. J. 366 :
35 I. C. 670 : 10 S. L. R. 69 :
A. I. R. 1916 Sind 95.

———Ss. 107, 120-B—*Charge—Criminal conspiracy—Commission of offence which is the object of conspiracy—Conspiracy amounting to abetment—S. 120-B, charge under, should not be framed*.

Where a criminal conspiracy amounts to an abetment under S. 107, it is unnecessary to invoke the provisions of Ss. 120-A and 120-B because the Code has made specific provision for the punishment of such a conspiracy. Where the offences which are alleged to have been the object of the conspiracy were in fact committed, the conspiracy amounts to abetment and hence additional charges under S. 120-B, Penal Code, should not be made. *Jageshwar Singh v. Emperor*.

37 Cr. L. J. 893 :
164 I. C. 86 : 15 Pat 26 :
17 P. L. T. 234 : 2 B. R. 702 :
9 R. P. 84 : A. I. R. 1936 Pat. 346.

———Ss. 107, 124-A—*Abetment of sedition—What amounts to*.

Government sanctioned the prosecution of two persons S and G for sedition under S. 121-A, Penal Code. The Prosecuting Inspector, after formally charging them with the said offence in pursuance of the order of Government, put in a supplementary complaint charging G with abetment of the action

PENAL CODE ACT (XLV OF 1860)

of *S* in the matter of the alleged seditious speeches by the latter. Objection was taken on behalf of *C* that the supplementary complaint was not covered by the sanction of Government: *Held*, that the sanction order of Government was intended to cover all offences punishable under the stated sections and committed in connection with the delivery of all the speeches referred to in it, and that as the offence of the abetment of sedition was punishable under S. 124-A, I. P. C., the supplementary complaint was within the terms of the authority of Government. *In re: V. O. Chidabaram Pillai*.

9 Cr. L. J. 130 :
1 I. C. 36 : 5 M. L. T. 16 :
32 Mad. 35.

-----Ss. 107, 376 *Kidnapping—Abetment of, what constitutes.*

The evidence against the accused in connection with a charge under S. 366, I. P. C., was to the following effect: *B* and his wife *L* lived in Malda District. *B* who was at Dinajpore came back to Malda and told his wife that he had got work at Dinajpore and wanted to take her with him to cook for him and in that way induced her to leave Malda for Dinajpore. When they got to the station they were met by *S* and went to the house of *K*. When *L* enquired why she was brought there she was told by *K* that *B* had sold her to *S* for Rs. 150 and that *S* would make her happy. *S* was also said to have asked her to come and live with him: *Held*, that the question was whether the offence of the husband under S. 366 was abetted by *S* and *K* under S. 107, and not whether *S* had made immoral proposals to her or that *K* was a brothel keeper, and there being no evidence of such abetment, the verdict convicting *S* and *K* could not be upheld. *Basanta Kumar Gossain v. Emperor*.

28 Cr. L. J. 108 :
99 I. C. 236 : 44 C. L. J. 317.

-----Ss. 107, 420, 511—*Attempt to cheat—Abetment of—What is—False claim against Insurance Company—Conspiracy—Attempt and preparation, distinction between.*

Accused No. 1 effected insurances of his stock of paddy said to be lying at a mill belonging to accused No. 2, with three insurance companies. The mill and the paddy were subsequently burnt. Accused No. 1 gave notice of the fire to the insurance companies and followed this up by loss claims in which a much larger quantity of paddy was stated to have been destroyed by the fire than could possibly have been stored in the godowns of the mill. In the inquiry which followed, accused No. 2 supported the statement of accused No. 1 as to the quantity of paddy which had been destroyed, although he must have known that the quantity destroyed was considerably less: *Held*, (1) that act of accused No. 1 in sending in a claim to the insurance companies which was false to his knowledge amounted to an attempt to cheat the companies and was not merely a preparation to cheat; (2) that accused No. 2 was

PENAL CODE ACT (XLV OF 1860)

guilty of abetment of the offence committed by accused No. 1 under the second clause of S. 107, Penal Code. *Maung Po Hmyin v. Emperor*.

25 Cr. L. J. 1175 :
82 I. C. 39 : 3 Bur. L. J. 1 :
2 Rang. 53 : A. I. R. 1924 Rang. 241.

-----S. 107 (1)—*Instigation, what amounts to.*

Instigation necessarily indicates some active suggestion, or support or stimulation to the commission of the act itself, and advice can become an instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence. The fact that a person advises another to do a thing, does not necessarily mean that he "instigates" that other to do that thing within the meaning of S. 107 (1), Penal Code. *Raghunath Dass v. Emperor*.

21 Cr. L. J. 213 :
54 I. C. 997 : 1 P. L. T. 60 :
1920 Pat. 76 : 5 P. L. J. 129 :
2 U. P. L. R. Pat. 70 :
A. I. R. 1920 Pat. 502.

-----S. 107, Cls. (2) (3)—*Abetment of murder—What is.*

In order to secure a conviction for abetment of murder under S. 107, it is essential for the prosecution to prove that the accused knew that the actual murderer did intend to commit the murder. Where, therefore, the only evidence against the accused was that he was found within a few yards of the scene of the murder but no weapon was found on him and no overt act was alleged tending even remotely to facilitate the commission of the crime: *Held*, that he could not be convicted of abetment of murder. *In re: Nennur Rami Reddi*.

17 Cr. L. J. 175 :
33 I. C. 665 : A. I. R. 1917 Mad. 351.

-----Ss. 107 (3), 121, 121 (a)—*Waging war—Abetment.*

Cl. 3 of S. 107 relates only to intentional aiding. Where it is not proved that accused's intention in omitting to report plot, under S. 44, Cr. P. C., was with a view to aiding the waging of war, the accused cannot be convicted of the offence of abetment of waging war. *Goman Saya v. Emperor*.

14 Cr. L. J. 610 :
21 I. C. 658 : 6 Bur. L. T. 153.

-----S. 108—*Abetment of abetment of offence, if punishable.*

Abetment of an abetment of an offence is punishable under the Penal Code. *Ghazi Khan v. Emperor*.

36 Cr. L. J. 278 :
152 I. C. 890 : 7 R. Pesh. 64 :
A. I. R. 1934 Pesh. 110.

-----S. 108—*Act abetted need not be committed.*

Act abetted need not be committed for an offence of abetment. *D. P. Minwalla v. Emperor*.

36 Cr. L. J. 877 :
156 I. C. 189 : 7 R. S. 226 :
A. I. R. 1935 Sind 78.

PENAL CODE ACT (XLV OF 1860)

———S. 108—Principal and abettor, joint trial of—Principal, acquittal of—Abettor whether entitled to acquittal.

As a general rule, an offence or abetment necessarily falls through if the principal offence is not substantiated, but there can be cases where the rule is not applicable. Where, for instance, there is a confession, retracted or otherwise, by the abettor, on which the Jury can find against him, the abettor is not necessarily entitled to an acquittal if there is no other sufficient evidence to support a conviction against the principal. *Umadas Dasi v. Emperor*.

26 Cr. L. J. 11 :
83 I. C. 491 : 40 C. L. J. 143 :
28 C. W. N. 1046 : 52 Cal. 112 :
A. I. R. 1924 Cal. 1031.

———S. 108—Use of motor car for abduction, owner, if abettor.

Allegation of use of motor car for abduction—Owner of car when an abettor stated. *Maung Bu Yow v. Ma Illa Kin*.

35 Cr. L. J. 52 :
146 I. C. 402 : 6 R. Rang. 96 :
A. I. R. 1933 Rang. 297.

———S. 108, Expl. 3—Applicability.

Explanation 3 to S. 108 is not confined to abetment by instigation but applies also to abetment by intentional aiding. *Emperor v. Dinkar Rao*.

34 Cr. L. J. 623 :
143 I. C. 661 : 1933 A. L. J. 1481 :
I. R. 1933 All. 306 : A. I. R. 1933 All. 513.

———Ss. 108, 135, 511—Abetment of desertion of persons supposed to be regimental sepoy, if offence.

Where the accused helped a regimental sepoy, a Head Constable and a *gharriwala*, believing the latter two also to be regimental sepoys, to desert their regiment : *Held*, that they were guilty of attempting and abetting the desertion of sepoys in the army under S. 135 read with Ss. 108 and 511 and it made no difference that the regimental sepoy never intended to desert and had offered to do so only to entrap the accused. *Salch Mahomed v. Emperor*.

18 Cr. L. J. 431 :
38 I. C. 991 : 10 S. L. R. 159 :
A. I. R. 1917 Sind 28.

———S. 108-A—Child marriage celebrated outside British India—Its abetment, if abetment within meaning of section.

The word "offence" in S. 108-A, Penal Code, denotes an act or acts made punishable under the Penal Code, which a child marriage celebrated outside British India is not, and hence its abetment is not an abetment within the meaning of S. 108-A. *Haider v. Isa Syed*.

39 Cr. L. J. 651 :
175 I. C. 615 : 11 R. N. 2 :
A. I. R. 1938 Nag. 235.

———S. 109.

See also (i) Admission.
(ii) Calcutta Suppression of Immoral Traffic Act, 1923, Ss. 6, 6 (1).

PENAL CODE ACT (XLV OF 1860)

(iii) Cr. P. C., 1808, Ss. 117, 179, 423, 439 (4).

(iv) Penal Code, 1860, Ss. 34, 40, 107, 120-A, 182, 300, 302, 320, 301, 457, 407, 485, 486, 496.

(v) Stamp Act, 1809, S. 69-(a) (b).

———S. 109—Abetment by omission, when offence.

Abetment by omission is punishable only if the omission is an illegal omission. The owner of a motor car cannot, therefore, be held guilty of abetment in merely omitting to give information to his employees as to the rules framed under the Bombay Motor Vehicles Act, 1904. *Emperor v. Cooverji*.

5 Cr. L. J. 173 :
9 Bom. L. R. 159.

———S. 109—Abetment of murder—What is.

Any person who instigates a raider, or leader of the raid in which death has been caused, is guilty of abetment of murder. *Sarjya Kumar Sen v. Emperor*. (F. B.) 35 Cr. L. J. 334 :
147 I. C. 32 : 6 R. C. 304 :
A. I. R. 1934 Cal. 221.

———S. 109—Abetment, what amounts to.

Where two persons set out to accomplish a particular act and agree that, if the necessity should arise, they would resort to the use of fire-arms, with which they provide themselves, and on the necessity arising, one of them indulges in shooting, the other must be treated as having abetted the shooting, as this takes place in pursuance of the common intention which inspired the two persons. *Sushil Chandra v. Emperor*.

20 Cr. L. J. 465 :
51 I. C. 449 : 6 O. L. J. 210 :
A. I. R. 1919 Oudh 160.

———S. 109—Abetment—What is.

The mere fact that an accused was actually standing by the side of a man who ultimately turned out to be a thief without any evidence to show that he was engaged in any conspiracy with the principal offender for the doing of the theft, does not entitle a Court to conclude that he was guilty of abetting the theft. *Govind Mahto v. Emperor*.

23 Cr. L. J. 30 :
64 I. C. 510 : 1921 Pat. 96.

———S. 109—Accompanying murderer to place of murder and aiding him in flight afterwards, if abetting.

There is no reason for saying that a man must be absent in order to abet under S. 109, Penal Code. An accused by instigating the unknown murderer by accompanying him to the place and by aiding him in his flight afterwards, may abet the murder under S. 109, Penal Code, even if he is not present at the murder; his presence there would make him liable for the murder under S. 114. *Emperor v. Nirral Kanta Roy*.

15 Cr. L. J. 460 :
24 I. C. 340 : 18 C. W. N. 723 :
41 Cal. 1072 : A. I. R. 1914 Cal. 901.

PENAL CODE ACT (XLV OF 1860)

———S. 109—*Aiding and abetting actual preparation of crime at time of its commission comes under S. 109.*

A person who aids and abets the actual preparation of the crime at the very time when it is committed, is a principal of the second degree and comes under S. 109, Penal Code. *Brinchipada Dasadar v. Emperor.*

39 Cr. L. J. 964 :
177 I. C. 929 : 67 C. L. J. 45 :
11 R. C. 296 : A. I. R. 1938 Cal. 625.

———S. 109—*Applicability.*

The fact that S. 171-D, Penal Code, specifically provides for an abetment of the offence of double voting does not prevent the applicability of S. 109 of the Code for abetment of an offence under S. 55 (1), Madras Act V of 1920, and render it chargeable and punishable only under S. 171-D. It is open to a complainant to proceed under S. 55, Madras District Municipalities Act, read with S. 109, Penal Code, and in such a case, no sanction is necessary under S. 190, Cr. P. C. *Sesha Aiyar v. Venkatasubba Chetty.*

25 Cr. L. J. 442 :
77 I. C. 730 : 19 L. W. 201 :
1924 M. W. N. 268 : A. I. R. 1924 Mad. 487.

———S. 109—*Applicability.*

Where, however, the abduction was never committed, S. 109 can have no application. *Maung Ba Yone v. Ma Hla Kin.*

35 Cr. L. J. 52 :
146 I. C. 402 : 6 R. Rang. 96 :
A. I. R. 1933 Rang. 297.

———S. 109—*Applicability.*

Where the accused while grappling with the deceased, calls out to her son, who thereupon comes with a *lathi* and in the fight the accused gives a *lathi* blow on the head of the deceased, the accused is guilty of abetment but it is S. 109, and not S. 114, which is applicable to the case. *Mumtaz Ali v. Emperor.*

36 Cr. L. J. 1201 :
157 I. C. 312 : 1935 O. L. R. 470 :
1935 O. W. N. 909 : 8 R. O. 21 :
A. I. R. 1935 Oudh 473.

———S. 109—*Dacoity, abetment of.*

A person who meets the band of dacoits just prior to the commission of the dacoity and brings them food, is guilty of abetment. *Nga Pyaung v. Emperor.*

35 Cr. L. J. 863 :
148 I. C. 1064 : 6 R. Rang. 273 :
A. I. R. 1934 Rang. 30.

———S. 109—*Evidence — Conspiracy, inference of.*

Mere evidence of association is not sufficient to lead to an inference of conspiracy. *Pran Krishna Chakravarty v. Emperor.* (S. B.)

36 Cr. L. J. 1322 :
158 I. C. 176 : 39 C. W. N. 188 :
8 R. C. 166 : A. I. R. 1935 Cal. 580.

———S. 109—*Interpretation.*

The words "illegal omission" in connection with the definition of abetment have refer-

PENAL CODE ACT (XLV OF 1860)

ence to an intention of "aiding the doing of a thing." *Jagadish Narain Tewary v. Emperor.*

34 Cr. L. J. 36 :
140 I. C. 550 : 36 C. W. N. 722 :
56 C. L. J. 231 : I. R. 1933 Cal. 8 :
A. I. R. 1933 Cal. 36.

———S. 109—*Madras Gaming Act—No person found to have committed offence under S. 4 of Act—Conviction for abetment under S. 109, Penal Code, legality of—No particular person found guilty under S. 4 (ii)—Conviction of accused under S. 109, Penal Code (Act XLV of 1860), read with S. 4 (ii), Madras Gaming Act, propriety of.*

Where no particular person is found to have committed the offence under S. 4 (ii) of the Act, which the accused could be said to have abetted, his conviction under S. 109, I. P. C., read with S. 4 (ii), Madras Gaming Act, as necessary either before or after the betting is wrong. *In re : C. Kanniah Maistry.*

41 Cr. L. J. 181 :
185 I. C. 385 : 1939 M. W. N. 1003 :
1939, 2 M. L. J. 618 :
50 L. W. 769 : 12 R. M. 565 :
A. I. R. 1939 Mad. 976.

———S. 109—*Scope.*

A man who makes a theft or robbery feasible by giving another person money for that person to be robbed, cannot be said to have abetted the robber with whom he has never had any communication. *J. W. Atkinson v. S. W. H. Xavier.*

37 Cr. L. J. 723 :
162 I. C. 988 : 8 R. Rang. 603 :
A. I. R. 1936 Rang. 242.

———Ss. 109, 114—*Abetment, what amounts to.*

In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but it is absolutely necessary to connect him in some way or other with those steps of the transaction which are criminal. *Rajmal v. Emperor.*

26 Cr. L. J. 1069 :
88 I. C. 13 : A. I. R. 1925 Nag. 372.

———Ss. 109, 114—*Applicability.*

When a person is present and abets another to commit an offence, S. 114, Penal Code, is not applicable to the case. When a person who abets the commission of an offence is present and helps in the commission of the offence, he is guilty of the offence and not merely of abetment except in a few cases like rape or bigamy where the person committing the offence alone can be guilty of the offence. S. 114 applies to a case where a person abets the commission of an offence some time before it takes place and happens to be present at the time when the offence is committed, and is not applicable to a case where the abetment is at the time when the offence takes place and the abettor helps in the commission. Active abetment at the time of committing the offence is covered by S. 109 and S. 114 is clearly intended for an abetment previ-

PENAL CODE ACT (XLV OF 1860)

ous to the actual commission of the crime, any time, that is, before the first steps have been taken to commit it. A person was on his way home in the evening when he was waylaid by *M* and *B* along with *J* at whose instigation *M* and *B* inflicted certain injuries on that person. *M* and *B* were convicted under Ss. 324 and 325, Penal Code, respectively, and *J* was convicted under Ss. 324 and 325, read with S. 114: *Held*, that it might have been more correct to convict *J* under S. 109, but he on either view was liable to exactly the same punishment, and therefore, the interests of justice did not require any interference on what can only be regarded as a technical ground. *Jadunadan Jha v. Emperor*.

38 Cr. L. J. 790 :
169 I. C. 489 : 3 B. R. 582 :
10 R. P. 24 : 18 P. L. T. 628 :
A. I. R. 1937 Pat. 317.

———Ss. 109, 114, 467, 471—*Abetment of forgery—What amounts to.*

Where a party to a judicial proceeding relies on a forged document in support of his case, a witness who states that he saw the execution of the document by the person by whom it purports to have been executed, intentionally aids by his deposition the using of the document as genuine and is liable to prosecution for an offence under S. 471 read with S. 109 of the Penal Code, although he could not be charged with abetment of the forgery itself. *Emperor v. Gajadhar Prasad*.

26 Cr. L. J. 1567 :
90 I. C. 447 : 2 O. W. N. 707 :
A. I. R. 1925 Oudh 610.

———Ss. 109, 147—*No evidence of actual words used in abetment—Conviction is unsafe.*

In the absence of any definite information as to what the words actually used by the accused in abetting an offence were, the other circumstances referred to by the Judge upon which he has relied to base his conviction, lose much of their force and it is not safe to convict him for abetment of the offence. *Hari Prasad v. Emperor*.

38 Cr. L. J. 90 :
165 I. C. 952 : 3 B. R. 109 :
9 R. P. 238 : A. I. R. 1936 Pat. 608.

———Ss. 109, 161—*Bribery, abetment of—What is.*

Per Curiam.—The offer of a bribe to a public servant to lay a trap for him and expose his dishonesty and bring him to justice, constitutes the offence of abetment of bribery under Ss. 109 and 161, Penal Code. *In re : Lakshminarayana Aiyar*.

19 Cr. L. J. 29 :
42 I. C. 989 : 22 M. L. T. 373 :
6 L. W. 677 : 1917 M. W. N. 831 :
A. I. R. 1918 Mad. 732.

———Ss. 109, 161—*Public servant—Illegal gratification—Abetment.*

A person cannot be convicted of abetment of an offence of taking a gratification by a public servant as a reward or motive to forbear to do any official act if, when the bribe is said to have been offered, it was

PENAL CODE ACT (XLV OF 1860)

not within the powers of the public servant to show any favour to him. *Shamsul Huq v. Emperor*.

23 Cr. L. J. 1 :
64 I. C. 369 : 33 C. L. J. 379 :
A. I. R. 1921 Cal. 344.

———Ss. 109, 280 and 304-A—*Abetment of—What amounts to—Causing death by rash and negligent act.*

The second accused was convicted of offences under S. 280, Penal Code, (rash and negligent navigation) and S. 304-A (causing death by a rash and negligent act), and the first accused was convicted of abetment of those offences. The second accused was only a servant acting under the directions of the 1st accused, and he was not found guilty of any negligent act: *Held*, that in the circumstances, the conviction of the 1st accused for the abetment of the said offences could not stand. He was, therefore, directed to be retried for an offence under S. 304-A, Penal Code. *Sangili Nandan v. Emperor*.

12 Cr. L. J. 495 :
12 I. C. 215 : 1911, 2 M. W. N. 170.

———Ss. 109, 302—*Abetment of conspiracy to commit murder—Absence of evidence as to who inflicted fatal blow—Conviction for abetment.*

Where the two accused along with a third person conspired to commit theft and in pursuance of that conspiracy to kill another in order to commit theft, and committed theft and murder, but there was no evidence to show who actually struck the fatal blow: *Held*, that both the accused could be convicted of abetment of murder under S. 302 read with S. 109, Penal Code. *Sheo Barhi v. Emperor*.

32 Cr. L. J. 5 :
127 I. C. 566 : 11 P. L. T. 520 :
I. R. 1930 Pat. 710 :
A. I. R. 1930 Pat. 164.

———Ss. 109, 302—*Abetment of murder—Person ordering his men to beat his opponents—Death caused by beating—Liability for abetment of murder.*

A person who comes with a number of men armed with deadly weapons to meet his opponents and on a quarrel ensuing, orders his men to beat the latter, will be guilty of abetment of murder if, in consequence of his order, his men beat the opposite party and some of them are killed as a result of the beating. *Nawabali v. Emperor*.

30 Cr. L. J. 621 :
116 I. C. 372 : I. R. 1929 Cal. 468 :
A. I. R. 1928 Cal. 752.

———Ss. 109, 325—*Abetment of causing grievous hurt—What amounts to.*

An altercation having ensued between the parties, *T* told his son *K* to beat *S*, whereupon *K* gave *S* one swinging sideways blow with his *lathi* thus causing a rupture of the liver of *S* and a fracture of his eighth and ninth ribs, as a result of which he died shortly afterwards: *Held*, (1) that as *K* did not lift his *lathi* above his head with both hands and bring it down on the head of

PENAL CODE ACT (XLV OF 1860)

the deceased, and there was no evidence that he intended to rupture the liver of *S*, or even knew that he was likely to do so, he was not guilty of culpable homicide; (2) that under the circumstances, *K* must have had the intention of causing grievous hurt. *Karan Singh v. Emperor*.

25 Cr. L. J. 1145 :
81 I. C. 969 : 11 O. L. J. 563 :
A. I. R. 1925 Oudh 135.

—Ss. 109, 342, 366, 368—*Abduction—Principal offenders acquitted under S. 342 but convicted under S. 366—Abettors convicted under S. 368 read with S. 109—Legality of conviction.*

Where in a case of abduction the principal offenders were acquitted under S. 342, Penal Code, but convicted under S. 366, and the abettors were convicted under S. 368 read with S. 109, Penal Code: *Held*, that as the principal offenders had been acquitted under S. 342 and there was no conviction or even accusation against them under S. 368, the conviction of the abettors under S. 368 read with S. 109 was illegal. *Todbul Hussain v. Emperor*.

31 Cr. L. J. 646 :
124 I. C. 326 : 33 C. W. N. 891 :
A. I. R. 1929 Cal. 767.

—Ss. 109, 352—*Abetment — Inducing others to beat.*

A person who merely says "beat" but does not take any part himself, can only be convicted of abetment of an offence under S. 352, Penal Code. *In re : Mir Hyder Sahab*.

16 Cr. L. J. 456 :
29 I. C. 88 : A. I. R. 1916 Mad. 1038.

—Ss. 109, 362—*Abduction, abetment of.*

Certain persons conspired together to induce by deceitful means a girl of eighteen to leave her home and accompany them to another place with the intention of making her over to *S* for the purpose of being married to his brother. When the girl was made over to *S* she refused to accompany him and the latter caught hold of her hand and dragged her: *Held*, that *S* was not guilty of abetment of abduction but of abduction. *Sundar Singh v. Emperor*.

26 Cr. L. J. 695 :
86 I. C. 71 : 12 O. L. J. 27 :
2 O. W. N. 17 :
A. I. R. 1925 Oudh 328.

—Ss. 109, 363—*Kidnapping, charge for—Abetment, conviction for.*

A person charged with an offence under S. 363, Penal Code, cannot be convicted of an offence under that section read with S. 109 where he was not charged with that offence. *Sheoradni v. Emperor*.

21 Cr. L. J. 44 :
54 I. C. 252 : A. I. R. 1920 Pat. 512.

—Ss. 109, 379 — *Procedure—Charge for theft—Conviction for abetment.*

A person charged with an offence under S. 379, Penal Code, cannot be convicted of

PENAL CODE ACT (XLV OF 1860)

abetting that offence, where he is not charged with such abetment. *Darbari Choudhury v. Emperor*.

22 Cr. L. J. 311 :
60 I. C. 999.

—Ss. 109, 379—*Theft—Accused convicted of theft—Whether can be convicted for abetment of theft.*

Where an accused person is charged with and convicted only for theft, it is illegal for the Appellate Court, while quashing the conviction for theft, to alter the conviction into one for abetment of theft under Ss. 379 and 109, Penal Code. *In re : Varayal Krishnan Nair*.

13 Cr. L. J. 223 :
14 I. C. 319.

—Ss. 109, 379—*Theft, conviction for—Modification of conviction by Appellate Court into one of abetment—Legality of.*

Where a person has been convicted under S. 379, Penal Code, of theft, it is not competent for an Appellate Court, while finding the accused to be not guilty of theft, to modify the conviction into one of abetment of theft. *Singaraveln Pillay v. Emperor*.

13 Cr. L. J. 203 (b) :
14 I. C. 203.

—Ss. 109, 379, 381—*Theft, abetment of, what constitutes.*

To sustain a conviction of abetment of theft, it must be shown that the accused was engaged in a conspiracy with the principal offender for committing the theft, the mere fact that he was standing by the principal offender is not sufficient. *Govind Mahton v. Emperor*.

23 Cr. L. J. 270 :
66 I. C. 334 : 3 P. L. T. 127.

—Ss. 109, 405—*Abetment of criminal breach of trust by instigation—What is.*

A practice in the Corporation treasury of Madras of cashing cheques was alleged to have been availed of by *A* for the purpose of using Corporation money for his own profit by having the use of Corporation money from time to time. The *modus operandi* followed was as under: *A* used to issue cheques himself, though sometimes they were issued by his friends, and the cheques were presented for encashment at the Corporation treasury either by himself or by his servant, and thereby moneys were obtained from the Corporation treasury even when the persons who drew the cheques had no funds to meet those cheques and many of the cheques so cashed, were dishonoured subsequently. This money which was obtained from the Corporation treasury was taken for the purpose of *A*'s private business. Besides *A*, the collection manager *C* was charged with abetment of criminal breach of trust. There was nothing to show that *C* had anything to do with the payment of the cheques and it could not be said that he had done anything which facilitated the cashing of cheques nor was there anything to show that he had instigated any one to make the payment: *Held*,

PENAL CODE ACT (XLV OF 1860)

that *O* was not guilty of abetment of criminal breach of trust. *A*, however, was guilty of the offence of abetment of the criminal breach of trust, the abetting being by instigation and the case was covered by S. 109. *In re: G. Ananthachari*.

40 Cr. L. J. 302 :
179 I. C. 971 : 1938 M. W. N. 908 :
48 L. W. 471 : 11 R. M. 640 :
1938, 2 M. L. J. 574 :
A. I. R. 1938 Mad. 996.

———Ss. 109, 467—*Abetment of forgery—Dishonest intention, necessity of.*

A person cannot be convicted of abetment of forgery where there is no evidence to prove any dishonest or fraudulent intention on his part. *Khuda Bakhsh v. Emperor*.

29 Cr. L. J. 1031 :
112 I. C. 359 : 10 L. L. J. 369.

———Ss. 109, 467—*Abetment of—Forgery—What is.*

A and *B*, who were partners, conspired to make a false *khata*. In furtherance of the conspiracy, *B* went to a professional forger, *C*, who prepared the false *khata*. *A* and *B* were both tried for abetment of forgery. *B* was acquitted on the ground that the only evidence against him was the uncorroborated testimony of an accomplice. *A* was convicted under Ss. 467, 109 of the Penal Code. On appeal, *A* contended that as *B* had been acquitted, the charge of conspiracy failed and *A* was entitled to an acquittal: *Held*, that the charge against *A* was that he abetted *C*'s offence of forging the *khata*, and, if that abetment is proved against *A*, he must be convicted of that charge, even although the prosecution were not successful in establishing the particular means or instrument selected by *A*, for the abetment of *C*'s offence. *Emperor v. Chhotalal Babar*.

13 Cr. L. J. 542 :
15 I. C. 814 : 14 Bom. L. R. 567.

———Ss. 109, 467, 120-B—*Abetment of conspiring to forge valuable security—Charges framed under S. 120-B-467 and S. 467-109—Charge under S. 120-B-467 cancelled for want of sanction under S. 196-A, Cr. P. C., (Act V of 1898)—Accused, if can be convicted under S. 467-109.*

Where accused are charged under S. 120-B, 467, I. P. C., with the offence of conspiring to forge a valuable security and subsequently an additional charge is framed of abetment under S. 467-109, I. P. C., and after recording all the prosecution evidence the charge under S. 120-B-467 is cancelled for want of sanction required by S. 196-A, Cr. P. C., the Court can convict the accused under S. 467-109. *Yavar Bakht Chowdhury v. Emperor*.

41 Cr. L. J. 719 :
189 I. C. 173 : I. L. R. 1940, 1 Cal. 531 :
71 C. L. J. 181 : 44 C. W. N. 474 :
13 R. C. 73 : A. I. R. 1940 Cal. 277.

PENAL CODE ACT (XLV OF 1860)

———Ss. 109, 469, 471—*Conviction of abettor for using forged document as genuine, legality of.*

An abettor of the forgery of the document cannot be convicted of the offence of using it as genuine. *In re: Authoor Valappil Syed Ahmad Musaliyar*. 15 Cr. L. J. 568 :
24 I. C. 976 : A. I. R. 1914 Mad. 144.

———S. 110.

See also Penal Code, 1860, S. 302.

———S. 111.

See also Penal Code, 1860, Ss. 107, 302.

———S. 111—*Abetment of assault by servant.*

Master ordering servant to chastise or beat deceased—Servant holding deceased but master murdering deceased—Servant is only guilty of abetment of assault. *Girja Prasad Singh v. Emperor*. 36 Cr. L. J. 438 :
153 I. C. 999 (2) : 1935 A. L. J. 54 :
1935 A. W. R. 64 : 7 R. A. 655 :
A. I. R. 1935 All. 346 (2).

———S. 111—*Applicability.*

The main provision of S. 111 is applicable only when the act done is a probable consequence of the abetment. *Mumtaz Ali v. Emperor*. 36 Cr. L. J. 1201 :
157 I. C. 312 : 1935 O. L. R. 470 :
8 R. O. 21 : 1935 O. W. N. 909 :
A. I. R. 1935 Oudh 473.

———S. 111—*Burden of proof.*

Act committed different from act abetted—Burden of proof that act committed was probable consequence of instigation is on the prosecution. *Girja Prasad Singh v. Emperor*. :
36 Cr. L. J. 438 ::

153 I. C. 999 (2) : 1935 A. L. J. 54 :
1935 A. W. R. 64 : 7 R. A. 655 :
A. I. R. 1935 All. 346 (2)

———S. 111—*Conviction under—Legality of.*

Use of spear-head not probable consequence of anything said or done by instigator—Conviction of abettor for abetment of murder cannot be sustained. *Girja Prasad Singh v. Emperor*. 36 Cr. L. J. 438 :
153 I. C. 999 (2) : 1935 A. L. J. 54 :
1935 A. W. R. 64 : 7 R. A. 655 :
A. I. R. 1935 All. 346 (2).

———S. 111—*Conviction under—Legality of.*

When the act done is different from the act instigated, an abettor is only liable for such a different act if it was a likely consequence of the instigation or if it was an act which the instigator could reasonably have been expected to foresee might be committed as a result of his instigation. *Girja Prasad Singh v. Emperor*. 36 Cr. L. J. 438 :
153 I. C. 999 (2) : 1935 A. L. J. 54 :
1935 A. W. R. 64 : 7 R. A. 655 :
A. I. R. 1935 All. 346 (2).

PENAL CODE ACT (XLV OF 1860)

—S. 111—Liability.

A and *B* conspiring to assault *C*—*B* inflicting grievous hurt on *C*'s companion during assault and without any instigation from *A*—*A* is not liable under S. 111 for causing grievous hurt to *C*'s companion. *Sonappa Shetty v. Emperor*.

41 Cr. L. J. 481 :

187 I. C. 464 : 42 Bom. L. R. 205 :

12 R. B. 488 : A. I. R. 1940 Bom. 126.

—S. 111—Picketing, when offence.

Advocating picketing cannot be held to be a lawful act merely because picketing could be done lawfully. *Ganesh Prasad v. Emperor*.

32 Cr. L. J. 478 :

130 I. C. 269 : I. R. 1934 Pat. 173.

A. I. R. 1931 Pat. 52.

—S. 111—Picketing, when offence.

Peaceful picketing is not an offence but picketing becomes an offence if it is carried on by criminal means. *Ganesh Prasad v. Emperor*.

32 Cr. L. J. 478 :

130 I. C. 269 : I. R. 1931 Pat. 173 :

A. I. R. 1931 Pat. 52.

—S. 111—Scope.

S. 111 refers to the abetment of a criminal act. *Ganesh Prasad v. Emperor*.

32 Cr. L. J. 478 :

130 I. C. 269 : I. R. 1931 Pat. 173 :

A. I. R. 1931 Pat. 52.

—S. 111—(Illustrations)—Scope.

Per *Grucr, J.*—The illustrations to S. 111, Penal Code, show that it contemplates cases not only where a different act is done but also where a different person is attacked in pursuance of the conspiracy. *Mangta v. Emperor*.

38 Cr. L. J. 628 :

168 I. C. 748 : 9 R. N. 269.

—Ss. 111, 114—Intention to do certain act—Act done different one—Liability, how determined.

There may be cases where the common intention is to do one act and then different act is done. When this is so, and there has been prior abetment, each abettor is liable as an abettor for the crime actually committed, provided the conditions specified in S. 111 have been fulfilled. That of course applies when the abettor is not actually present at the crime. But when he is there, S. 114 comes into operation and makes him liable for the crime for which he would have been punishable "as an abettor" if he had not been there. In offences of this nature each person is liable for all crimes committed in furtherance of the common intention. What that intention was and whether each accused shared it are questions of fact which must be determined afresh in each case, with reference to the circumstances which exist there. When, however, offences are committed which travel beyond the common intention, then each is still liable for these other offences, provided there has been prior abetment and provided he would have been liable as an

PENAL CODE ACT (XLV OF 1860)

abettor under S. 114, if he had not been present. *Mangta v. Emperor*.

38 Cr. L. J. 628 :

168 I. C. 748 : 9 R. N. 269.

—Ss. 111, 114, 302—Conspiracy to obtain girl by force—Homicide committed by one accused—Abetment.

H and *S* in pursuance of a conspiracy to obtain a certain girl by show of force went to her mother's house and asked her to give up the girl. The mother refused to do so, and *H* thereupon fired a gun loaded with *hankar* at her. The mother died from the wounds inflicted by the shot : *Held*, that *S* was not guilty of abetting the death of the mother, inasmuch as the death was not a probable consequence of the conspiracy, and was not caused under the influence of the instigation or with the aid or in pursuance of the conspiracy which constituted the abetment. *Sukha v. Emperor*.

19 Cr. L. J. 235 (b) :

43 I. C. 827 : A. I. R. 1918 All. 97.

—Ss. 111, 114, 304 (2)—Abetment of causing death.

Woman carried away by her husband—Her father and brothers going out with *lathis* to fetch her by overbearing opposition, if any—Fight invited by abusing husband's brother who dying as result of blows received—Right of self-defence—Offence held committed. *Mangta v. Emperor*.

38 Cr. L. J. 628 :

168 I. C. 748 : 9 R. N. 269.

—S. 114.

See also (i) Abetment.

(ii) Cr. P. C., 1898, Ss. 102, 233, 236, 237, 239 (d).

(iii) Evidence.

(iv) Penal Code, 1860, Ss. 34, 105, 109, 215, 304-A, 323, 397.

(v) Registration Act, 1877, S. 82 (c) and (d).

—S. 114—Abetment and being present at commission of offence.

S. 114, Penal Code, does not apply to any person who would not be punishable as an abettor if he were absent. A person who would be so punishable is, if present at the crime, punishable not as an abettor but as a principal. *Emperor v. Pha Laung*.

5 Cr. L. J. 414 :

3 L. B. R. 264.

—S. 114—Applicability—Abetment during commission of offence—Abettor present at commission of offence—Liability of abettor, nature of.

S. 114, applies to a case where a person abets the commission of an offence sometime before it takes place and happens to be present at the time when the offence is committed, and is not applicable to a case where the abetment is at the time when the offence takes place and the abettor helps in the commission of the offence. In such a case, the person is guilty of the offence itself and not merely of abetment except in cases

PENAL CODE ACT (XLV OF 1860)

like rape or bigamy where the person committing the offence alone can be guilty of it. *In re : Jogali Bhaigo Naiks.*

27 Cr. L. J. 1198.
97 I. C. 958 : A. I. R. 1927 Mad. 97.

————S. 114—Abetment of offence—
Presence and instigation, whether sufficient to constitute abetment.

To come within S. 114, Penal Code, the abetment must be complete apart from the presence of the abettor. The accused was present at the occurrence of an offence under S. 326, Penal Code, and it was found that the assailant inflicted a blow at the instigation of the accused. There was no evidence to show that there was any conspiracy between the accused and the assailant prior to the occurrence: *Held*, that the accused could not be convicted under Ss. 326 and 114, Penal Code, for abetment of the offence under S. 326. *In re : Vijayaranga Naidu.*

29 Cr. L. J. 72 :
106 I. C. 584 : 26 L. W. 649 :
53 M. L. J. 760 : 39 M. L. T. 589 :
51 Mad. 263 : A. I. R. 1927 Mad. 1115.

————S. 114—Abettor present—*Effect.*

Abettor, if present when the act for which he will be punishable as abettor, shall be deemed to have committed that act. *In re : Pandurang Mudali.*

34 Cr. L. J. 90 :
140 I. C. 767 : 63 M. L. J. 906 :
1932 M. W. N. 1357 : I. R. 1933 Mad. 35 :
A. I. R. 1933 Mad. 123.

————S. 114—Accused punishable under
S. 114, Penal Code—*Sentence of whipping, legality of.*

If a person is convicted of an offence under a particular section of the Penal Code read with S. 114, and if the offence under the particular section of the Code renders the offender liable to whipping in lieu of, or in addition to, any other punishment either under the Whipping Act or under Burma Act, VIII of 1927, the person so convicted is punishable with whipping in lieu of, or in addition to, any other punishment. *Emperor v. Maung Pu Kai.*

30 Cr. L. J. 961 :
118 I. C. 637 : 7 R. A. 329 :
I. R. 1929 Rang. 285 :
A. I. R. 1929 Rang. 203.

————S. 114—*Applicability.*

Abetment to come under S. 114, must be one which is prior to the commission of the offence and complete by itself and not an abetment which is done immediately before or at the time of the commission of the offence, for, in the latter case, the abettor would not have committed the abetment if he had not been present and would not, therefore, have been liable to punishment as an abettor. *Sital v. Emperor.*

36 Cr. L. J. 1151 :
157 I. C. 370 : 1935 O. L. R. 467 :
1935 O. W. N. 902 : 8 R. O. 18 :
A. I. R. 1935 Oudh 468.

PENAL CODE ACT (XLV OF 1860)

————S. 114—*Applicability.*

S. 114 does not apply where abetment alleged consists solely of things done at the time of the commission of the offence. *Emperor v. Ahmed Hasham.*

34 Cr. L. J. 559 :
143 I. C. 273 : 35 Bom. L. R. 240 :
57 Bom. 329 : I. R. 1933 Bom. 264 :
A. I. R. 1933 Bom. 162.

————S. 114—*Applicability.*

In order to bring a case within S. 114, Penal Code, the abetment must be complete, apart from the presence of the abettor. *Mian Gul v. Emperor.*

33 Cr. L. J. 564 :
138 I. C. 191 : 33 P. L. R. 679 :
I. R. 1932 Lah. 422 :
A. I. R. 1932 Lah. 483.

————S. 114—*Applicability—Offence committed in presence of abettor.*

S. 114, Penal Code, only applies where the abetment having been made beforehand, the abettor is also present when the offence abetted is subsequently committed. *Tha Mya v. Emperor.*

8 Cr. L. J. 472 :
4 L. B. R. 271.

————S. 114—*Applicability—One accused not joining in attack with same intention as the other, S. 114 cannot be applied.*

Where it is not shown that accused M joined the attack on the deceased with the same intention or knowledge as G, another accused, S. 114 is not applicable to him and he can be held liable only for the injury that he caused. *Gandu v. Emperor.*

5 L. L. J. 414 : A. I. R. 1923 Lah. 170.

————S. 114—*Applicability.*

S. 114 applies to those cases only in which the accused, if absent, would be liable to be punished as an abettor. *Mumtaz Ali v. Emperor.*

36 Cr. L. J. 1201 :
157 I. C. 372 : 1935 O. L. R. 470 :
1935 O. W. N. 909 : 8 R. O. 21 :
A. I. R. 1935 Oudh 473.

————S. 114—*Applicability.*

The act of abetment must have taken place at a time prior to the actual commission of the offence and it is only when the abettor happens to be present at the time of the commission of the offence itself, that the operation of S. 114 would be attracted. *Basharat v. Emperor.*

36 Cr. L. J. 308 :
153 I. C. 222 : 36 P. L. R. 37 :
7 R. L. 407 : A. I. R. 1934 Lah. 813.

————S. 114—*Charge—Defective charge, effect of.*

A charge against an accused ran thus:—
“You.....abetted by being present, in the commission of the offence of mischief..... and thereby committed an offence under Ss. 114 and 480, I. P. C.” No acts were alleged on the part of the accused which related to a point of time previous to the commission of the offence. At the trial the case sought to be made out against him was that he was at the place where the offence was committed and instigated the other ac-

PENAL CODE ACT (XLV OF 1860)

cused to commit the offence at the time they committed it. On revision against the conviction: *Held*, that the accused must be held to have been misled by the nature of the charge and that the error had occasioned a failure of justice. *Annavi v. Emperor*.

25 Cr. L. J. 1254 :
82 I. C. 262 : 21 L. W. 19 :
A. I. R. 1925 Mad. 364.

—S. 114—Charge of principal offence—Conviction for abetment of that—Legality of.

Accused charged with offence itself—Fact justifying conviction for abetment—Accused can be convicted for abetment. *Mitho v. Emperor*.

36 Cr. L. J. 53 :
151 I. C. 976 : 28 S. L. R. 12 :
7 R. S. 70 : A. I. R. 1934 Sind 89.

—S. 114—Charge under—Necessity of.

An accused person cannot be convicted under S. 114 when no charge has been framed against him under that section. *Emperor v. Profulla Kumar Mazumdar*.

24 Cr. L. J. 763 :
74 I. C. 267 : 50 Cal. 41 :
A. I. R. 1923 Cal. 453.

—S. 114—Instigation—Meaning of.

Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. *Nazir Ahmad v. Emperor*.

28 Cr. L. J. 313 :
100 I. C. 537 : 25 A. L. J. 149 :
A. I. R. 1927 All. 730.

—S. 114—Liability—Nature of.

A person, who is punishable under a particular section of the Penal Code read with S. 114, is punishable not as an abettor but as a principal and is guilty of the substantive offence and not merely of abetment of that offence. *Emperor v. Maung Pu Kai*.

30 Cr. L. J. 961 :
118 I. C. 637 : 7 Rang. 379 :
I. R. 1929 Rang. 285 :
A. I. R. 1929 Rang. 203.

—S. 114—Murder, abetment of—Persons giving moral support.

Persons who are present at the time of a murder and have given their moral support to, and abetted the deed, even if they did not take part in the actual murder, are under S. 114, Penal Code, deemed to have committed the offence. *Tulli v. Emperor*.

26 Cr. L. J. 450 :
85 I. C. 130 : 22 A. L. J. 1075 :
47 All. 276 : A. I. R. 1925 All. 185.

—S. 114—Presumption under.

The effect of S. 114, Penal Code, is that if a man is present at a commission of an offence, he is to be deemed to have committed it and not that he has committed it. *Emperor v. Kashia Antoo*.

7 Cr. L. J. 32 :
10 Bom. L. R. 26 : 3 M. L. T. 122.

—S. 114—Scope—Abetment of murder.

Whether the charge is framed in terms of S. 302, Penal Code, read with S. 114, or in terms of S. 302 alone, the offence denoted is substantially the same. As the two charges

PENAL CODE ACT (XLV OF 1860)

overlap each other, they cannot be regarded as implying two separate offences. *Mrs. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

—S. 114—Scope.

S. 114 deals with a person, who would be guilty of abetment independent of any act done at the time of the offence, that is to say, a person whose abetment is complete apart from his presence. The section defines the liability of such a person if he happens to be present when the offence is committed. *Annavi v. Emperor*.

25 Cr. L. J. 1254 :
82 I. C. 262 : 21 L. W. 19 :
A. I. R. 1925 Mad. 364.

—S. 114—Scope.

S. 114 is a provision which is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition. The section is evidentiary not punitive. *Barendra Kumar Ghose v. Emperor*.

26 Cr. L. J. 431 P. C. :
85 I. C. 47 : 29 C. W. N. 181 :
1925 M. W. N. 26 : 26 P. L. R. 50 :
27 Bom. L. R. 148 : 6 P. L. T. 169 :
23 A. L. J. 314 : 41 C. L. J. 240 :
48 M. L. J. 543 : 1 O. W. N. 935 :
52 Cal. 197 : 52 I. A. 40 :
A. I. R. 1925 P. C. 1.

—S. 114—Scope.

S. 114 is evidentiary not punitive. The presumption raised by S. 114 brings the case within the ambit of S. 34. *Nga Po Kyow v. Emperor*.

35 Cr. L. J. 41 :
146 I. C. 392 : 11 Rang. 354 :
6 R. Rang. 93 : A. I. R. 1933 Rang. 236.

—S. 114—Scope.

S. 114, Penal Code, is evidentiary and not punitive because it establishes a presumption which is irrebuttable that actual presence plus prior abetment means participation. Where persons are charged under S. 406, Penal Code, and others under S. 114, a complaint under S. 108, is necessary. *In re : Muhammad Looai*.

32 Cr. L. J. 1116 :
134 I. C. 57 : 1930 M. W. N. 694 :
I. R. 1931 Mad. 809 :
A. I. R. 1931 Mad. 247.

—Ss. 114, 199, 466—False declaration—Abetment of—What is.

Where some persons personated P. S. before the Mohammedan Registrar of Marriages and thus obtained the registration of P. S.'s divorce from his wife and the appellant told the Registrar that the man before him was P. S.: *Held*, that as neither under Act I of 1876 nor under any other law was the Mohammedan Registrar of Marriages bound or authorised to receive the statement of any person in evidence, S. 199, I. P. C., did not apply to the case, though S. 466 was applicable: *Held further*, (1) that whether the appellant

PENAL CODE ACT (XLV OF 1860)

was guilty of abetment would depend chiefly on whether he knew that the man personated was not P. S. or at least had no knowledge whether he was or not; (2) that the evidence on this point was fairly put to the Jury. *Yasin Sheikh v. Emperor*. 2 Cr. L. J. 8 : 9 C. W. N. 69.

—Ss. 114, 302—*Abetment of murder—Abetment must be complete apart from presence of abettor.*

A conviction for murder under S. 302, Penal Code, read with S. 114 cannot stand where the only abetment charged necessarily required the presence of the accused, for to come within S. 114, the abetment must be complete apart from the presence of the abettor. *Ram Ranjan Roy v. Emperor*. 16 Cr. L. J. 170 : 27 I. C. 554 : 19 C. W. N. 128 : 42 Cal. 422 : A. I. R. 1915 Cal. 545.

—Ss. 114, 302—*Abetment of murder, what constitutes.*

An accused person who was sitting near the scene of a quarrel urged his co-accused to kill their opponent telling them that if the latter survived he would get them into trouble, and the victim was murdered: *Held*, that the accused's conduct amounted to abetment of murder and that he could rightly be convicted under Ss. 302 and 114. *Dhani v. Emperor*. 28 Cr. L. J. 85 : 99 I. C. 117 : 8 L. L. J. 509 : 27 P. L. R. 716.

—Ss. 114, 307—*Illegal order to fire—Firing in obedience to orders, if offence.*

A Police party in charge of a Head Constable who were escorting a number of prisoners arrived in a village and demanded food and water. As they did not receive the attention to which they thought themselves entitled, the Head Constable lost his temper and struck one of the villagers. At this a number of villagers assembled and a row started between the Police and the villagers. The Head Constable ordered one of the constables to fire on the villagers, and after repeated orders the constable did so and wounded one of the villagers: *Held*, (1) that the Head Constable was guilty of an offence under Part II of S. 307, read with S. 114, Penal Code; (2) that the constable was not protected in that he had obeyed the orders of his superior officer, for the constable and the Head Constable had the same opportunity of observing what the danger was, and judging what action the necessities of the case required, and that the order which the constable had obeyed being illegal, he must suffer the consequences of his illegal act; (3), that, therefore, the constable also was guilty of an offence under S. 307, Part II of the Penal Code. *Allah Rakho v. Emperor*. 26 Cr. L. J. 142 : 83 I. C. 762 : 17 S. L. R. 182 : A. I. R. 1924 Sind 33.

PENAL CODE ACT (XLV OF 1860)

—Ss. 114, 330—*Stimulating commission of offence by remarks and suggestions, if abetment.*

While some persons were voluntarily causing hurt to another, the accused who was standing by expressed his approval of the conduct of the assailants and suggested that the victim should be given a sound beating. It was found that blows were inflicted after the accused's remarks: *Held*, that the accused stimulated the commission of the offence and, therefore, was guilty of abetment. *Nazir Ahmad v. Emperor*. 28 Cr. L. J. 313 : 100 I. C. 537 : 25 A. L. J. 149 : A. I. R. 1927 All 730.

—Ss. 114, 342—*Wrongful arrest and confinement—Abetment—Liability of instigator.*

A person who is instrumental in getting a wrongful arrest made, and after the arrest is made, instigates the Bailiff to wrongfully confine the person arrested in spite of a valid protection order in his favour, cannot, in answer to a charge under S. 342/114, Penal Code, put forward the defence that he was not present at the actual arrest. *Tiruvengkatachariar v. Chockalinga Chetty*. 25 Cr. L. J. 138 : 76 I. C. 234 : 18 L. W. 167 : A. I. R. 1924 Mad. 31.

—Ss. 114, 363—*Abetment of kidnapping.*

Where the finding is that a person took part in the actual removal of the girl immediately after she was taken out of the house of her guardian, his conviction under S. 363 read with S. 114 is correct. *Reekha Rai v. Emperor*. 28 Cr. L. J. 820 : 104 I. C. 436 : 6 Pat. 471 : A. I. R. 1928 Pat. 159.

—Ss. 114, 377—*Evidence.*

Conviction under Ss. 114 and 377—Commission of offence and presence of abettor must be established. *D. P. Minwalla v. Emperor*. 36 Cr. L. J. 877 : 156 I. C. 189 : 7 R. S. 226 : A. I. R. 1935 Sind 78.

—Ss. 114, 379—*Theft committed in presence of alleged abettor in prosecution of common object of unlawful assembly—Alleged abettor taking no part in commission of theft—Conviction as abettor, legality of.*

Whereas accused person was a member, and in fact, the leader of an unlawful assembly, the common object of which was to commit trespass and theft, and theft was actually committed by certain members of this unlawful assembly, but it was not proved that the accused had himself committed any theft by removing any property; nor was it proved that the accused had made any previous preparation for committing any theft or aiding any one in the commission of theft: *Held*, that the conviction of the accused under S. 379 read

PENAL CODE ACT (XLV OF 1860)

with S. 114, Penal Code, was illegal. *Hansa Pathak v. Banshi Lal Dass.*

1 Cr. L. J. 449 :
8 C. W. N. 519.

—Ss. 114, 406—*Abetment of criminal breach of trust.*

A jewel was entrusted to A who gave it to B for being pledged to some person. C, who was aware that the jewel did not belong to B, took B to a money-lender and induced him to give a loan to B on the pledge of the jewel. Both B and C acted at the instance of A; C was charged with and convicted of the offence of criminal breach of trust: *Held*, (1) that C was not guilty of the offence of criminal breach of trust under S. 406, Penal Code, read with S. 114, as the latter section applied only where the act, at the doing of which the abettor was present, would itself amount to an offence; (2) that though C was charged with the offence of breach of trust, he could be convicted of abetment of criminal breach of trust. *Yediltha Subbaya v. Emperor.*

13 Cr. L. J. 453 :
15 I. C. 85 : 1912 M. W. N. 725 :
12 M. L. T. 203 : 23 M. L. J. 722.

—Ss. 114, 447—*Criminal trespass—Persons inciting—Liability as principal offenders.*

In view of S. 114, a person who incites another to commit criminal trespass and is present when the offence is committed, is guilty of criminal trespass even though he does not actually enter upon the land concerned. *Patilbawa Raojibala Gavli v. Emperor.*

27 Cr. L. J. 1153 :
97 I. C. 737 : 28 Bom. L. R. 1029 :
A. I. R. 1926 Bom. 512.

—S. 115.

See also Penal Code, 1860, S. 302.

—S. 115—*Applicability.*

S. 115 applies only when the abetment is not punishable under another provision of the Code. *Santa Singh Kamal v. Emperor.*

34 Cr. L. J. 1207 :
146 I. C. 222 : 6 R. L. 187 (1) :
A. I. R. 1933 Lah. 660.

—S. 115—*Instigating at meeting, offence punishable with death, if comes within Ss. 115, 117.*

Where persons who gathered together at a certain meeting by speeches and resolutions instigated to commit an offence punishable with death, the offence falls under S. 115 as well as under S. 117. *Emperor v. Dwarika Nath Goswami.*

34 Cr. L. J. 164 :
141 I. C. 578 : 60 Cal. 427 :
37 C. W. N. 91 : I. R. 1933 Cal. 138 :
A. I. R. 1933 Cal. 47.

—S. 115—*Scope.*

Under S. 115 the abetment of the commission of an offence by any particular person against

PENAL CODE ACT (XLV OF 1860)

any particular persons, is not necessary. *Emperor v. Dwarka Nath Goswami.*

34 Cr. L. J. 164 :
141 I. C. 578 : 60 Cal. 427 :
37 C. W. N. 91 : I. R. 1933 Cal. 138 :
A. I. R. 1933 Cal. 47.

—Ss. 115, 117, 109—*Abetting commission of murder by public.*

Accused abetting commission of murder by public—Whether should be sentenced under S. 115 or S. 117—Such murder committed—Appropriate section of such offence is S. 109. *Emperor v. Lavji Mandan.*

41 Cr. L. J. 183 :
185 I. C. 413 (2) : 41 Bom. L. R. 980 :
12 R. B. 253 : A. I. R. 1939 Bom. 452.

—S. 116.

See also Penal Code, 1860, S. 161.

—S. 116—*Offence under—What is.*

S. 116 makes an abortive attempt at giving a bribe an offence from the point of view of the person who offers it. *Rahimullah v. Emperor.*

36 Cr. L. J. 626 :
154 I. C. 910 : 7 R. Pesh. 91 :
A. I. R. 1935 Pesh. 26.

—Ss. 116, 114, 494—*Abetment of bigamy.*

Persons abetting the celebration of a bigamous marriage to which the woman does not consent, should be convicted under S. 116 and not under S. 114, Penal Code, inasmuch as the offence of bigamy is not fully completed without the consent of the bride. *Sanwan v. Emperor.*

18 Cr. L. J. 478 :
39 I. C. 318 : 10 S. L. R. 171 :
A. I. R. 1917 Sind 14.

—Ss. 116, 161—*Offer of bribe to officer functus officio—Offence, whether committed.*

No offence under S. 161, Penal Code, is committed where the public servant to whom the bribe is offered is at the time when the offer is made *functus officio* as to the matter in respect of which the bribe is offered. *In re : Venkatarama Naidu.*

30 Cr. L. J. 1055 :
119 I. C. 315 : 30 L. W. 235 :
57 M. L. J. 239 : 1929 M. W. N. 695 :
I. R. 1929 Mad. 955 :
A. I. R. 1929 Mad. 756.

—Ss. 116, 161—*Offering bribe to public servant for showing favour.*

Where a person offers a bribe to a public servant for showing some favour in the exercise of his official functions, he will be guilty of an offence under S. 161, Penal Code, even though the public servant is not in reality in a position to show such favour. *Ajudhia Prasad v. Emperor.*

30 Cr. L. J. 67 :
113 I. C. 179 : 1929 A. L. J. 153 :
51 All. 467 : I. R. 1929 All. 107 :
A. I. R. 1928 All. 752.

—Ss. 116, 161—*Tender of bribe to Head Constable to drop case against another person—Abetment.*

Tender of a bribe to a Police Head Constable to drop an offence committed by another under

PENAL CODE ACT (XLV OF 1860)

S. 161, Penal Code, falls within the first part of S. 116, Penal Code, and not under the second part of the section inasmuch as an offence under S. 161 is not cognizable by the Police and a Head Constable cannot be regarded as a public servant whose duty it is to prevent the commission of such an offence, within the meaning of the second part of S. 116. *Puran Singh v. Emperor*.

29 Cr. L. J. 601 :
109 I. C. 681 : 10 L. L. J. 364 :
A. I. R. 1928 Lah. 840.

-----Ss. 116, 161, 107—Public servant—Illegal gratification—Abetment.

The accused called on C, a Municipal Commissioner, to express acknowledgments for the withdrawal of objections against a building which a cousin of his wished to erect. In the course of the conversation the accused enquired if he should put in a tender for some cement about which the Municipality had advertised, remarking that it was no good putting in a tender unless one had influence. After this the accused said to C "when shall I see you again." C replied that there was no need. The accused again said: "shall I see you here or elsewhere." C said, "what about." Accused said, "about that Rs. 5,000." C enquired, "what Rs. 5,000." Accused replied, "my cousin wishes to give you Rs. 5,000." C became suspicious and called a colleague K who was in the adjoining room and told him that the accused had offered him a bribe. The accused in the presence of the colleague admitted that he offered the money on behalf of his cousin. When asked to leave the office, the accused was profuse in his apologies and reluctantly withdrew. The accused was charged under S. 116, Penal Code, for the abetment of an offence under S. 161. He stated in his defence that the sum offered was for certain charities in which C was interested, and that C did not allow him to make himself clear. As a matter of fact C was interested in certain charities and had requested many gentlemen to subscribe to them. The accused was acquitted at the trial. The Government appealed: *Held*, that the words "my cousin wishes to give you Rs. 5,000," did not legally amount to an offer, but they indicated a state of mind on the part of the cousin that, if asked, he might give the sum, that the words were an instigation stimulating C towards making an attempt to get the amount and that even if it was assumed that the accused was instigating C to get the sum for one of his funds, that would amount to no more than a mitigation of the offence since under S. 161 gratification was not restricted to pecuniary gratification or to gratification estimable in money. *Emperor v. Amiruddin Salebhoy*.

23 Cr. L. J. 466 :
67 I. C. 818 : 24 Bom. L. R. 534 :
A. I. R. 1923 Bom. 44.

-----S. 117.

See also (i) Criminal Law Amendment Act, 1908, S. 17 (1).
(ii) Salt Act, 1882, S. 9.

PENAL CODE ACT (XLV OF 1860)

-----S. 117—Abetment by leaflets.

Abetment by leaflets—Public should have read them or leaflets should be exposed to public gaze. *Parimal v. Emperor*.

34 Cr. L. J. 78 :
140 I. C. 787 : 36 C. W. N. 982 :
I. R. 1933 Cal. 44 :
A. I. R. 1932 Cal. 760.

-----S. 117—Abetment—Offence under Salt Act.

An abetment of an offence under the Salt Act can be punished under S. 117, Penal Code, if the offence falls within the scope of that section. *Ganesh Vaman Joshi v. Emperor*.

32 Cr. L. J. 471 :
130 I. C. 25 : 55 Bom. 353 :
33 Bom. L. R. 56 :
I. R. 1931 Bom. 233 :
A. I. R. 1931 Bom. 140.

-----S. 117—Inciting audience to murder Englishmen and Government officials, if offence within scope.

Where the accused in a speech incites to murder Englishmen and Government officials, the accused is liable under S. 117, read with S. 302, or S. 115 read with S. 302, in the alternative. *Santa Singh Kawal v. Emperor*.

34 Cr. L. J. 1207 :
146 I. C. 222 : 6 R. L. 187 (1) :
A. I. R. 1933 Lah. 660.

-----S. 117—Joint trial—Validity of.

Where one person is arrested with revolutionary leaflets in one place and another person for distribution of leaflets of the same kind in a different place, there is no objection to introduce a charge under S. 120-B, to justify a joint trial. *Tarapada Mitra v. Emperor*.

34 Cr. L. J. 1073 :
145 I. C. 814 : 37 C. W. N. 426 :
6 R. C. 138 : A. I. R. 1933 Cal. 603.

-----S. 117—Offence under —What is.

Instigating workers to lie on rails during strike, constitutes offence. *S. Subramania Ayyar v. Emperor*.

34 Cr. L. J. 524 (1) :
143 I. C. 107 (1) : 1932 M. W. N. 1153 :
I. R. 1933 Mad. 269 (1) :
A. I. R. 1933 Mad. 279 (1).

-----S. 117—Procedure.

Abetment of offence triable as summons case is a summons case. *Narasinha Narayan Chaudur v. Emperor*.

32 Cr. L. J. 718 :
131 I. C. 472 : 33 Bom. L. R. 353 :
I. R. 1931 Bom. 296 : A. I. R. 1931 Bom. 199.

-----S. 117—Scope.

Section covers all offences and is a general provision for abetment by any number of persons exceeding law. *Emperor v. Dwarka Nath Goswami*.

34 Cr. L. J. 164 :
141 I. C. 578 : 60 Cal. 427 :
37 C. W. N. 91 : I. R. 1933 Cal. 138 :
A. I. R. 1933 Cal. 47.

-----S. 117—Sentence.

An accused person who is guilty of having instigated more than ten persons to commit

PENAL CODE ACT (XLV OF 1860)

an offence under the Madras Salt Act is liable under S. 117, for 3 years' imprisonment and not merely to 6 months under S. 74, Salt Act. *In re : Konda Satyavallamma.*

32 Cr. L. J. 1131 :
134 I. C. 187 : 34 L. W. 92 :
1931 M. W. N. 494 : 61 M. L. J. 987 :
55 Mad. 90 : I. R. 1931 Mad. 843 :
A. I. R. 1932 Mad. 371.

-----S. 120.

See also Penal Code, 1860, S. 302.

-----S. 120-A—Charge—Particulars of—Conspiracy to do series of acts—Charge, nature of—Specification of acts contemplated together necessary.

Where the accused are charged under S. 120-A, Penal Code, of having conspired to do or cause to be done a series of illegal acts, it is not necessary that the charge should state in all its details the actual specific acts which the conspirators are alleged to have agreed to do or to cause to be done. *Htin Gyan v. Emperor.*

29 Cr. L. J. 555 :
109 I. C. 491 : 6 Rang. 6 :
I. L. T. 40 Rang. 41 : A. I. R. 1928 Rang. 118.

-----S. 120-A—Conspiracy—Evidence.

To prove conspiracy, there need not be evidence of direct concert nor even of any meeting together of the conspirators. The agreement can be inferred from collateral acts but these acts must show a common plan so as to exclude a reasonable possibility of the acts of the conspirators having been done separately and connected only by coincidence. *Nitai Chandra Jana v. Emperor.* (S. B.)

38 Cr. L. J. 852 :
170 I. C. 201 : 10 R. C. 98 :
A. I. R. 1937 Cal. 433.

-----S. 120-A—Conspiracy—Meaning of.

The gist of the offence of conspiracy lies in the forming of the scheme or agreement between the parties. It is not the act done in pursuance of the conspiracy but the place where the conspiracy was formed or made which determines the jurisdiction of the Court. *Gokaldas v. Emperor.*

35 Cr. L. J. 585 :
148 I. C. 135 (2) : 27 S. L. R. 392 :
6 R. S. 180 : A. I. R. 1933 Sind 333.

-----S. 120-A—Conspiracy—Proof.

In order to establish a charge of conspiracy, it is only necessary to show that the party charged entered into an agreement to do an unlawful act. *Moti Lal Roy v. Emperor.* (F. B.)

37 Cr. L. J. 999 :
164 I. C. 779 : 39 C. W. N. 754 :
9 R. C. 298.

-----S. 120-A—Conspiracy—Proof.

In most cases question of criminal conspiracy has to be inferred from acts of persons concerned done in pursuance of an apparent criminal purpose in common between them. *Punjab Singh Ujjagar Singh v. Emperor.*

35 Cr. L. J. 322 :
147 I. C. 2 : 35 P. L. R. 51 :
15 Lah. 84 : 6 R. L. 339 :
A. I. R. 1933 Lah. 977.

PENAL CODE ACT (XLV OF 1860)

-----S. 120-A—Conspiracy—Proof of one conspiracy and not a series of conspiracies is essential—Cr. P. C. (Act V of 1898), S. 239—Unrelated conspiracies—Misjoinder.

For a charge of conspiracy to succeed, there should be one conspiracy and not a series of conspiracies and criminal acts unconnected by unity of intention. An accused not shown to be a member of that conspiracy is entitled to demand an acquittal, however bad his record may be and however much he may be suspected of this or that offence. Consequently, if only a number of unrelated conspiracies were proved, the trial would be found to be bad for misjoinder of parties under S. 230, Cr. P. C., although *prima facie* on the prosecution case as alleged the joinder was quite legal. *Muhammad Ismail v. Emperor.*

38 Cr. L. J. 106 :
165 I. C. 913 : 9 R. N. 101 :
I. L. R. 1936 Nag. 152 :
A. I. R. 1936 Nag. 97.

-----S. 120-A—Conspiracy to commit murder—Proof.

In a charge of conspiracy to commit murder it is not necessary that there should be express proof of conspiracy. It is not necessary to prove that two or more persons came together and actually agreed in terms to have the common design and to pursue it by common means and so carry it into execution. *Benoyendra Chandra Pandey v. Emperor.*

37 Cr. L. J. 394 :
161 I. C. 74 : 40 C. W. N. 432 :
63 Cal. 929 : 8 R. C. 472 :
A. I. R. 1936 Cal. 73.

-----S. 120-A—Conspirators—Who are—Each accused not in agreement to do some illegal act—Whether parties to same conspiracy.

In order to constitute the offence of conspiracy as defined in S. 120-A, Penal Code, it is only necessary for the prosecution to show that the persons concerned had agreed to do or cause to be done an illegal act, or an act which is not illegal, by illegal means, and the "explanation" given in S. 120-A states that it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. Where it is not possible at any rate except by straining the language to say that every one of the accused was in agreement to do the same illegal act or cause the same illegal act to be done, they cannot be held to have been parties to one and the same conspiracy within S. 120-A. *Rash Behari Shaw (Handa) v. Emperor.*

38 Cr. L. J. 545 :
168 I. C. 657 : 41 C. W. N. 225 :
9 R. C. 853 : A. I. R. 1936 Cal. 753.

-----S. 120-A—Criminal conspiracy—Proof.

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Where there is a charge of conspiracy, particular facts are proved to show that one or more of the defendants took part in

PENAL CODE ACT (XLV OF 1860)

it after general evidence of the existence of the conspiracy is first given. To admit evidence under this head, however, the other acts tendered must be of the same specific kind as that in question, and not of a different character and the acts tendered must also have been proximate in point of time to that in question. The term "unlawfully and maliciously," in the sense in which it is familiarly used in the criminal law of England, signifies "not for a lawful object and intentionally, without justification or excuse or claim of right." *Amritlal Hazra v. Emperor*.

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 : 42 Cal. 957 :
A. I. R. 1916 Cal. 188.

————S. 120-A—*Jurisdiction—Jurisdiction of Court where conspiracy is found at one place and offence in pursuance thereof committed at other place.*

Conspiracy is a substantive offence in itself. It is not given in one of the illustrations to S. 180, Cr. P. C., as one of the offences which is an offence because of its relation to another offence such as abetment which would give the Court jurisdiction either where the principal offence or the connected offence was committed, nor can it be brought within the meaning of the section itself. The gist of the offence of conspiracy lies in the forming of the scheme of agreement between the parties. Conspiracy is generally a matter of inference deducted from certain criminal acts of the parties accused with a common criminal purpose. In certain cases it may, therefore, be difficult for the Courts to decide whether a particular agreement which forms the basis of a criminal charge was made or concluded at a particular time or at a particular place. But it does not follow therefrom that the scope of the conspiracy would determine the place where the conspiracy or part of it occurred. It is not the act done in pursuance of the conspiracy but the place where the conspiracy was formed or made which determines the jurisdiction of the Court and it has been consistently held that in an indictment for conspiracy the venue should be laid where the conspiracy was and not where the result of such conspiracy was put in execution. *Emperor v. Perumal Gerimal*.

39 Cr. L. J. 630 (b) :
175 I. C. 620 : 10 R. S. 298 :
A. I. R. 1938 Sind 108.

————S. 120-A—*Offence, gist of—Agreement to commit offence, if sufficient—Overt acts, proof of—Whether necessary.*

The gist of the offence under S. 120-A, Penal Code, consists in agreement and when the conspiracy alleged is to commit an offence, the agreement itself amounts to criminal conspiracy under the proviso. Although it is not essential to prove overt acts where the conspiracy is to commit an offence, still in many cases, it is only

PENAL CODE ACT (XLV OF 1860)

by means of overt acts that the existence of the conspiracy can be made out. *Muhammad Ismail v. Emperor*.

38 Cr. L. J. 106 :
165 I. C. 913 : 9 R. N. 101 :
I. L. R. 1936 Nag. 152 :
A. I. R. 1936 Nag. 97.

————S. 120-A—*Proof.*

Proof of case should not depend on absence of explanation by accused. *Benoyendra Chandra Pandey v. Emperor*.

37 Cr. L. J. 394 :
161 I. C. 74 : 40 C. W. N. 432 :
63 Cal. 929 : 8 R. C. 472 :
A. I. R. 1936 Cal. 73.

————Ss. 120-A, 107—*Conspiracy, if can be abetted.*

A conspiracy is not "an act committed" which can be abetted. *S. Jone Bin v. A. Manual*.

164 I. C. 522 :
9 R. Rang. 107 : 14 Rang. 597 :
A. I. R. 1936 Rang. 358.

————Ss. 120-A, 120-B—*Applicability.*

Where the matter has gone beyond the stage of mere conspiracy and offences are alleged to have been actually committed in pursuance thereof, Ss. 120-A and 120-B are wholly irrelevant. *In re : Mallimoggala*.

39 Cr. L. J. 266 :
173 I. C. 26 : 46 L. W. 709 :
1937, 2 M. L. J. 862 : 1937 M. W. N. 996 :
10 R. M. 515 : A. I. R. 1938 Mad. 130.

————Ss. 120-A, 420—*Conspiracy to cheat—Conviction under—Legality of.*

A Provident Fund Society issued certain pamphlets, containing certain misrepresentations regarding the directors and management of the company. The real man behind this was some third person; the accused being mere servants, having no sufficient education, knowledge or experience to understand what was being done in their names; and due to the misrepresentations contained in the pamphlets, some persons were induced to deliver money to the Society. The pamphlets contained an impracticable and highly speculative scheme. The accused were convicted of conspiracy to cheat: *Held*, that as they had no association with false statements, the accused could not be convicted, they being unable to understand what was being done in their names and that there was no *mens rea* which was necessary for conviction. *Parsram v. Emperor*.

38 Cr. L. J. 651 :
168 I. C. 827 : 9 R. S. 248 :
A. I. R. 1937 Sind 58.

————S. 120-B—*Abetment by conspiracy—Evidence.*

The accused, a loading officer of a Railway Company, fraudulently endorsed shorter weights on the back of consignment notes, whereby the Railway Company were defrauded and the consignees were benefited. It was proved that the firm of the consignees was in negotiation with the accused about something and that the firm had, through its dealings with

PENAL CODE ACT (XLV OF 1860)

some leading officer of the Railway Company, been able to defraud the company of considerable sums and the name of the accused signed by himself appeared in one of the note-books of the firm and there was positive evidence that it was the duty of the accused to make out the weights on the consignment notes: *Held*, that under S. 10, Evidence Act, the note-books and *jama kharch* of the firm could be used as evidence of abetment by conspiracy against the accused. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Mohan Roy*. 17 Cr. L. J. 439 : 35 I. C. 999 : 20 C. W. N. 292.

————S. 120-B—Acts done in pursuance of conspiracy, if offences.

Conspiracy to obtain money by false pretences from public—Acts in pursuance of, are offences. *Dur Mahomed v. Emperor*.

35 Cr. L. J. 1337 :
151 I. C. 494 : 28 S. L. R. 119 :
7 R. S. 55 : A. I. R. 1934 Sind 57.

————S. 120-B—Applicability.

S. 120-B, Penal Code, only applies where no offence has been actually committed. *In re : Mallimoggala Venkataramaiah*.

39 Cr. L. J. 266 :
173 I. C. 26 : 46 L. W. 709 :
1937, 2 M. L. J. 862 : 1937 M. W. N. 996 :
10 R. M. 515 : A. I. R. 1938 Mad. 130.

————S. 120-B—Burden of proof.

Burden is on prosecution to prove conspiracy—Groups of persons in constant communication—Single activity—Defence must give satisfactory explanation. *Bhabesh Chandra Hazra v. Emperor*.

36 Cr. L. J. 7 :
152 I. C. 285 : 7 R. P. 165 :
1 B. R. 23 : A. I. R. 1934 Pat. 575.

————S. 120-B—Charge.

A charge against certain accused, of having "conspired with each other to commit an offence punishable under S. 420, Penal Code, to wit to cheat the Government of India of large sums of money in respect of the supply of linseed oil, turpentine, and water-soluble oil, and of having thereby committed an offence punishable under Ss. 120-B and 420," though not clearly worded, is capable of being interpreted as alleging one general conspiracy to commit an offence or offences under S. 420, the three transactions mentioned constituting overt acts, from which the conspiracy might be inferred ; and the defect in the charge is not fatal if the accused are fully aware of the charge being of one general conspiracy and not of three different conspiracies. *Billinghurst v. Emperor*.

25 Cr. L. J. 1313 (b) :
82 I. C. 545 : 27 C. W. N. 821 :
A. I. R. 1924 Cal. 18.

————S. 120-B—Charge.

An acquitted person, after his acquittal of a particular offence, can be charged with an offence of conspiracy, only the evidence on

PENAL CODE ACT (XLV OF 1860)

which he has been acquitted cannot be received at a subsequent trial on a charge of conspiracy. *Ram Das v. Emperor*.

35 Cr. L. J. 1349 :
151 I. C. 442 : 1934 A. L. J. 852 :
7 R. A. 163 : A. I. R. 1934 All. 61.

————S. 120-B—Charge, form of.

A charge of conspiracy in respect of but one agreement between several accused persons to cheat such members of the public as they could defraud by deceitful means is not a bad charge. *Kishanchand v. Emperor*.

27 Cr. L. J. 243 :
92 I. C. 419 : 20 S. L. R. 18 :
A. I. R. 1926 Sind 171.

————S. 120-B—Charge, form of.

The fact that a charge for conspiracy does not specify the persons who were parties to the conspiracy is a mere irregularity which can be cured by S. 537, Cr. P. C. *Samo v. Emperor*.

28 Cr. L. J. 426 :
101 I. C. 458 : A. I. R. 1927 Sind 161.

————S. 120-B—Charge, form of.

The inclusion in a charge of conspiracy to cheat of certain specific offences relied on by the prosecution in proof of the substantive offence of cheating does not render the charge illegal as being in respect of different offences specified therein. *Kishenchand v. Emperor*.

27 Cr. L. J. 243 :
92 I. C. 419 : 20 S. L. R. 18 :
A. I. R. 1926 Sind 171.

————S. 120-B—Charge framed—Trial.

Once a charge of conspiracy is framed, anything done in pursuance of the conspiracy can be tried at the trial for conspiracy. *Abdul Salim v. Emperor*.

23 Cr. L. J. 657 :
69 I. C. 145 : 35 C. L. J. 279 :
26 C. W. N. 680 : 49 Cal. 573 :
A. I. R. 1922 Cal. 107.

————S. 120-B—Charge—Irregularities in.

There is not the same objection to the joinder of a number of charges in a conspiracy trial that there might be in other cases since, even if the accused had not been charged, the offences alleged to have been committed in pursuance of the conspiracy could have been proved to support the charge of conspiracy. This being so, there is no irregularity or an improper exercise of discretion in putting in the form of charges the specific acts specially relied on against each individual accused to show that they joined in the conspiracy. *Abdul Salim v. Emperor*.

23 Cr. L. J. 657 :
69 I. C. 145 : 35 C. L. J. 279 :
26 C. W. N. 680 : 49 Cal. 573 :
A. I. R. 1922 Cal. 107.

————S. 120-B—Charge—Overt act.

Conspiracy is a substantive offence and has nothing to do with abetment. Although an overt act may be specified in the charge, yet this is not (except when the end of the conspiracy is not to commit an offence) necessary. The overt act or acts is or are introduced not as partially constituting an offence but as

PENAL CODE ACT (XLV OF 1860)

giving information and example as to what the conspiracy was. The offence is conspiracy. Nor is there any limit to the number of overt acts which can be given in the charge. *Chandiran v. Emperor*. 27 Cr. L. J. 286 : 92 I. C. 462 : 20 S. L. R. 140 .

A. I. R. 1926 Sind 174.

———S. 120-B—Charge—Practice of adding charge under, where necessary, is condemnable.

The practice of adding a charge under S. 120-B in cases where it is not necessary, with the result that the jurors sit in the same trial as assessors is condemnable. *Abdul Gafur Kotwal v. Emperor*.

178 I. C. 637 : 11 R. C. 383 :

I. L. R. 1938, 1 Cal. 636 :

A. I. R. 1938 Cal. 658.

———S. 120-B—Charge.

There is no objection to charge under both Ss. 117 and 120-B. *Tarapada Mitra v. Emperor*.

34 Cr. L. J. 1073 :

145 I. C. 814 : 37 C. W. N. 426 :

6 R. C. 138 : A. I. R. 1933 Cal. 603.

———S. 120-B—Complaint under S. 476, Cr. P. C., when necessary—Cr. P. C. (Act V of 1898), Ss. 195 (1), 476—Civil suit—Commitment of offence by party in conspiracy with strangers—Prosecution of party and stranger—Complaint or sanction of Local Government, necessity of.

In a civil suit the Judge found that certain offences referred to in S. 195, Cr. P. C., had been committed by the defendant along with another. He wrote to the Police asking them to investigate into the matter. The Police discovered that seven persons including the defendant had acted in conspiracy and instituted proceedings against them for certain offences falling under S. 195 and for an offence under S. 120-B, Penal Code, without obtaining the sanction of the Local Government, and the accused were committed to the Sessions: *Held*, that the commitment was illegal inasmuch as the defendant, who has a party, could not be prosecuted without a complaint under S. 476, Cr. P. C., and the others could not be prosecuted without either the sanction of the Local Government or a complaint by the Judge. *Bishambar Das v. Emperor*.

31 Cr. L. J. 589 :

123 I. C. 847 : A. I. R. 1929 Lah. 785.

———S. 120-B—Conspiracy—Circumstantial evidence.

In a prosecution for conspiracy direct evidence of conspiracy will seldom be forthcoming and it is necessary to look at the circumstances to see whether the conspiracy actually existed. *Gour Ohandra Das v. Emperor*.

30 Cr. L. J. 475 :

115 I. C. 359 : 32 C. W. N. 1004 :

I. R. 1929 Cal. 359 :

A. I. R. 1929 Cal. 14.

———S. 120-B—Conspiracy—Circumstantial evidence.

In respect of a charge of conspiracy, direct evidence is naturally difficult to obtain and such a charge must depend largely on circum-

PENAL CODE ACT (XLV-OF 1860)

stantial evidence. *Mohammad Hadi Husain v. Emperor*.

29 Cr. L. J. 983 :

112 I. C. 103 : 5 O. W. N. 281 :

3 Luck. 494 : A. I. R. 1928 Oudh 277.

———S. 120-B—Conspiracy—Circumstantial evidence, sufficiency of.

A charge for conspiracy may be established either by direct evidence of an agreement between the conspirators which is hardly ever adduced, or it may be established by evidence from which the Court may raise a presumption of a common concerted plan to carry out an unlawful design. *Samo v. Emperor*.

28 Cr. L. J. 426 :

101 I. C. 458 : A. I. R. 1927 Sind 161.

———S. 120-B—Conspiracy—Circumstantial evidence, sufficiency of.

A charge of conspiracy may be proved by evidence of circumstances from which the Court may presume the conspiracy and though general evidence of the existence of the conspiracy may first be given before particular facts are proved to show that one or more of the accused took part in it, it does not mean that conspiracy cannot be proved by circumstantial evidence only and that general evidence must be given. *Abdulla v. Emperor*.

28 Cr. L. J. 421 :

101 I. C. 453 : A. I. R. 1928 Sind 73.

———S. 120-B—Conspiracy, gist of, offence of.

The gist of the offence of criminal conspiracy to commit offences lies in the agreement or common intention of the accused and the question whether such an agreement or common intention exists, is a matter of inference to be deduced from the facts of the case and the acts of the accused proved in evidence and alleged to have been committed by them in pursuance of such agreement or common intention. If between the dates of different matters alleged as overt acts amounting to criminal conspiracy of the accused, there are transactions by them which are not false or fraudulent, they are not inconsistent with the existence of a general conspiracy. *Billinghurst v. Emperor*.

25 Cr. L. J. 1313 (b) :

82 I. C. 545 : 27 C. W. N. 821 :

A. I. R. 1924 Cal. 18.

———S. 120-B—Conspiracy—Meaning of.

It is not necessary in a case of criminal conspiracy for one conspirator to be aware of all the acts of his fellow conspirator committed in pursuance of the conspiracy. *Dur Mohammad v. Emperor*. 35 Cr. L. J. 1337 :

151 I. C. 494 : 28 S. L. R. 119 :

7 R. S. 55 : A. I. R. 1934 Sind 57.

———S. 120-B—Conspiracy—Proof of.

Evidence of association to be of any value must suggest something suspicious. Inference one way or another cannot be drawn by casual meeting or conversation in public place. *Bachcha Babu v. Emperor*.

36 Cr. L. J. 684 :

155 I. C. 369 : 1935 A. W. R. 1 :

7 R. A. 908 : A. I. R. 1935 All. 162.

PENAL CODE ACT (XLV OF 1860)

—S. 120-B—Conspiracy—Proof.

For conspiracy to fabricate evidence to obtain capital conviction, all conspirators should know that charge is false. *Dwarka Nath Varma v. Emperor*. 34 Cr. L. J. 322 :

142 I. C. 335 : 37 L. W. 584 :
64 M. L. J. 466 : 1933 M. W. N. 409 :
10 O. W. N. 522 : 37 C. W. N. 514 :
57 C. L. J. 177 : 14 P. L. T. 305 :
1933 A. L. J. 645 : 35 Bom. L. R. 507 :
I. R. 1933 P. C. 65 P. C. :
A. I. R. 1933 P. C. 124.

—S. 120-B—Conspiracy—Proof.

If persons are to be held guilty not only of committing an offence but of conspiracy to commit it, there must be evidence not only of the commission of the offence but of the conspiracy. *Bala Huddar v. Emperor*.

35 Cr. L. J. 594 :
148 I. C. 157 : 6 R. N. 167 :
A. I. R. 1933 Nag. 252.

—S. 120-B—Conspiracy—Proof.

In looking to the evidence of the conspiracy, one does not expect to find direct evidence of the plotting and planning by which a movement of this kind is instigated and strengthened. The strongest possible evidence is, however, afforded by the conduct of those who attended the meetings, the speeches they delivered and the behaviour of their associates subsequent to hearing them. *Than Pa Sein v. Emperor*.

38 Cr. L. J. 801 :
169 I. C. 668 : 10 R. Rang. 31 :
A. I. R. 1937 Rang. 161.

—S. 120-B—Conspiracy—Proof.

It is immaterial if all the accused had concocted the scheme of the conspiracy or that all of them should have originated it. It is sufficient if it originated with some of them and the others had subsequently joined the original conspirators. *Kishanchand v. Emperor*.

27 Cr. L. J. 243 :
92 I. C. 419 : 20 S. L. R. 18 :
A. I. R. 1926 Sind 171.

—S. 120-B—Conspiracy—Proof.

Police officers taking bribes from both sides—This act does not afford evidence of conspiracy with one side. *Dwarka Nath Varma v. Emperor*.

34 Cr. L. J. 322 :
142 I. C. 335 : 37 L. W. 584 :
64 M. L. J. 466 : 1933 M. W. N. 409 :
10 O. W. N. 522 : 37 C. W. N. 514 :
57 C. L. J. 177 : 14 P. L. T. 305 :
1933 A. L. J. 645 : 35 Bom. L. R. 507 :
I. R. 1933 P. C. 65 P. C. :
A. I. R. 1933 P. C. 124.

—S. 120-B—Conspiracy—Proof.

Proof of one offence of dacoity or robbery is not sufficient to support a charge of conspiring to commit robberies and dacoities. *Jagan v. Emperor*.

35 Cr. L. J. 796 :
148 I. C. 929 : 11 O. W. N. 208 :
6 R. O. 470 : A. I. R. 1934 Oudh 106.

—S. 120-B—Conspiracy—Proof.

The conspiracy may be proved either by direct evidence or by proof of circumstances

PENAL CODE ACT (XLV OF 1860)

from which the Court may presume the conspiracy. *Kishanchand v. Emperor*.

27 Cr. L. J. 243 :
92 I. C. 419 : 20 S. L. R. 18 :
A. I. R. 1926 Sind 171.

—S. 120-B—Conspiracy—Proof of.

When the main charge is one of conspiracy, it is not possible always to have proof of direct meeting, of combination, or that the parties have been brought into each other's presence. To establish a charge of conspiracy, the agreement is very often to be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. *C. E. Ring v. Emperor*.

31 Cr. L. J. 65 :
120 I. C. 340 : 31 Bom. L. R. 545 :
53 Bom. 479 : A. I. R. 1929 Bom. 296.

—S. 120-B—Conspiracy relating to overt acts—Overt acts amounting to offence—Proper procedure.

Where proof of the conspiracy is sought to be rested on proof of participation in an overt act which itself amounts to an offence, the proper course is to put the accused on trial for that offence. It is not right in such a case to charge with conspiracy on the off-chance of being able to secure a conviction for the overt act. That would lead to a misuse of the provisions of S. 120-B, Penal Code, which the Courts have always deprecated. It would, in fact, offend against a well-settled rule that when evidence at the disposal of the prosecution is insufficient to secure a conviction for the crime committed, it is inexpedient even though it may be lawful, to prosecute the accused for a conspiracy, the proof whereof really rests on the establishment of the very crime. *Goloke Behari Takal v. Emperor*.

39 Cr. L. J. 161 :
173 I. C. 65 : 66 C. L. J. 25 :
42 C. W. N. 129 : 10 R. C. 441 :
I. L. R. 1938, 1 Cal. 290 :
A. I. R. 1938 Cal. 51.

—S. 120-B—Conspiracy to murder—Presumption—Agreement—Liability.

In a case where the prosecution allege that there was an agreement between the accused persons and others to commit murder and to abet the commission of murder, but being unable to give direct proof of any such agreement, ask the Court to deduce the existence and nature of the agreement from the fact that certain members of the conspiracy actually did commit a murder : *Held*, that if the facts alleged are established, it would be a fair and justifiable inference that the alleged agreement between the parties accused did in fact exist, that each and every member of the conspiracy is responsible for an offence committed in pursuance of the conspiracy, and that it is not necessary to show that a particular member actually concerted the offence with the member who committed it. *Balmokand v. Emperor*.

16 Cr. L. J. 354 :
28 I. C. 738 : 11 P. W. R. 1915 Cr. :
17 P. R. 1915 Cr. : 246 P. L. R. 1915 :
A. I. R. 1915 Lah. 16.

PENAL CODE ACT (XLV OF 1860)

———S. 120-B—Charge—Conspiracy to possess fire-arms—Proper charge.

Where two or more persons conspire to possess fire-arms without a licence, they are guilty of an offence under S. 120-B, Penal Code, read with S. 19 (f), Arms Act, and it is not necessary for the prosecution in such a case to specify in the charge or to prove that the accused conspired to possess any particular arms or that any such fire-arms were actually in existence. *Nirmal Chandra De v. Emperor*.

28 Cr. L. J. 241 :
100 I. C. 113 : 31 C. W. N. 239 :
A. I. R. 1927 Cal. 265.

———S. 120-B—Conspirators—Who are.

It cannot be said that temporary residence in a house containing explosive articles, even with the knowledge of their existence there, is possession within the meaning of S. 5, Explosive Substances Act. Conspiracy to possess connotes some act of possession or attempted possession. *Hari Narayan Chandra v. Emperor*.

29 Cr. L. J. 49 :
106 I. C. 545 : 46 C. L. J. 368 :
A. I. R. 1928 Cal. 27.

———S. 120-B—Conspirators—Who are.

Where there is no means of discriminating between the cases of various persons found at a place of a criminal conspiracy, and the circumstances point to the conclusion that every person found in the house was a member of the conspiracy, absence of proof that a particular person was there innocently leads to the conclusion that no one's presence was innocent. *Hari Narayan Chandra v. Emperor*.

29 Cr. L. J. 49 :
106 I. C. 545 : 46 C. L. J. 368 :
A. I. R. 1928 Cal. 27.

———S. 120-B—Constructive liability—Proof.

Court viewing that there was conspiracy to cause explosions in various places on a certain date—To hold any person constructively liable, it must be shown that he was actually privy to the plot. *Jahangiri Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

———S. 120-B—Criminal conspiracy, gist of.

The gist of the offence of criminal conspiracy is the agreement itself, and where the object of the agreement is to do an unlawful act and not to do a lawful act by unlawful means, it is sufficient to specify the unlawful object without specifying the means adopted by all or any of the conspirators to gain that object. *Samo v. Emperor*.

28 Cr. L. J. 426 :
101 I. C. 458 : A. I. R. 1927 Sind 161.

———S. 120-B—Criminal conspiracy, what is.

An offence under S. 120-B, Penal Code, consists in the conspiracy without a reference to the subject-matter of the conspiracy. Criminal conspiracy consists in the agreement of two

PENAL CODE ACT (XLV OF 1860)

or more persons to commit an offence punishable by law. It is true that the law does not take notice of the intention or the state of mind of the offender and there must be an overt act to give expression to that intention. The overt act in a case of conspiracy, however, consists in the agreement of the parties, and in the case of an agreement to commit an offence, it is not necessary in order to constitute the offence of conspiracy that the agreement should be followed by some act. A person may be guilty of criminal conspiracy even though the illegal act which he has agreed to do, has not been done, for the crime of conspiracy consists only in the agreement or confederacy to do an illegal act by legal means or a legal act by illegal means. *Nirmal Chandra De v. Emperor*.

28 Cr. L. J. 241 :
100 I. C. 113 : 31 C. W. N. 239 :
A. I. R. 1927 Cal. 265.

———S. 120-B—Duty of prosecution.

Prosecution must prove agreement between two or more persons to do some illegal act. If agreement is other than one to commit an offence, prosecution must prove some act in pursuance of agreement. If agreement is to commit offence, no overt act need be proved though proof of overt act will help to prove agreement. *Bachcha Babu v. Emperor*.

36 Cr. L. J. 684 :
155 I. C. 369 : 1935 A. W. R. 1 :
7 R. A. 908 : A. I. R. 1935 All. 162.

———S. 120-B—Essentials of offence.

Agreement to do illegal act being in itself criminal conspiracy—Offence continues so long as parties to conspiracy remain in agreement. *Abdul Rahman v. Emperor*.

36 Cr. L. J. 982 :
156 I. C. 678 : 62 Cal. 749 :
8 R. C. 21 : A. I. R. 1935 Cal. 316.

———S. 120-B—Evidence, weighing of.

On the evidence of witnesses who were aware of the conspiracy and of the objects of the same, and who were merely tools in the hands of the leaders of the conspiracy for a certain time, and had nothing to do with the control and possession of fire-arms, the main charge against the accused persons cannot be viewed with suspicion. *Narain Chandra Biswas v. Emperor*.

37 Cr. L. J. 445 :
161 I. C. 289 : 63 C. L. J. 191 :
8 R. C. 508 : A. I. R. 1936 Cal. 101.

———S. 120-B—Ingredients.

The ingredients of the offence of conspiracy are:—(1) that there should be an agreement between the persons who are alleged to conspire; and (2) that the agreement should be:—(i) for doing of an illegal act, or (ii) for doing by illegal means an act which may not itself be illegal. *Chandiran v. Emperor*.

27 Cr. L. J. 286 :
92 I. C. 462 : 20 S. L. R. 140 :
A. I. R. 1926 Sind 174.

———S. 120-B—Interpretation.

The words "where an express provision has been made in the Code for the punishment of such a conspiracy" appearing in S. 120-B, Penal Code, do not mean that where there is

PENAL CODE ACT (XLV OF 1860)

proof of an abetment of an offence, the charge should be for such abetment. It is optional for the Crown to proceed for abetment of an offence committed in pursuance of the conspiracy or of the offence of conspiracy. *Kishan Chand v. Emperor*.

27 Cr. L. J. 243 :
92 I. C. 419 : 20 S. L. R. 18 :
A. I. R. 1926 Sind 171.

———S. 120-B—Interpretation.

The words "where no express provision has been made in this Code for the punishment of such a conspiracy" in S. 120-B, do not mean that when there is proof of an abetment of an offence, the charge should be for such an abetment. They only include cases where there is express provision for the punishment of the particular conspiracy alleged and the only such case in the Penal Code is that under S. 121-A. *Udhasing Tahsing v. Emperor*.

17 Cr. L. J. 366 :
35 I. C. 670 : 10 S. L. R. 69 :
A. I. R. 1916 Sind 95.

———S. 120-B—Jurisdiction.

Facts within S. 121-A—Still Government can proceed under S. 120-B. *Maganlal Bageli v. Emperor*.

35 Cr. L. J. 1097 :
150 I. C. 623 : 30 N. L. R. 269 :
7 R. N. 10 : A. I. R. 1934 Nag. 71.

———S. 120-B—Liability of conspirators—Conspiracy between two persons—Acquittal of one and conviction of the other, legality of.

Where two persons are accused of a conspiracy between themselves under S. 120-B, Penal Code, and one of them is acquitted, the other cannot be convicted of that conspiracy. *Kasem Ali v. Emperor*.

28 Cr. L. J. 449 :
101 I. C. 481 : A. I. R. 1927 Cal. 949.

———S. 120-B—Liability of conspirators.

Conspiracy is one form of abetment, and where an offence is alleged to have been committed by more than two persons, such of them as actually took part in the commission should be charged with the substantive offence, while those who are alleged to have abetted it by conspiracy should be charged with the offence of abetment under S. 100, Penal Code. *In re : Mallimoggala Venkataramiah*.

39 Cr. L. J. 266 :
173 I. C. 26 : 46 L. W. 709 :
1937, 2 M. L. J. 862 : 1937 M. W. N. 996 :
10 R. M. 515 : A. I. R. 1938 Mad. 130.

———S. 120-B—Liability of conspirators.

Where a charge of conspiracy is based upon the fact that only three persons participated in the conspiracy, and two of those persons are acquitted of the charge, the third must necessarily be acquitted also, inasmuch as a charge of conspiracy cannot stand against a single individual. *Prafulla Kumar Roy v. Emperor*.

27 Cr. L. J. 147 :
91 I. C. 883 : 30 C. W. N. 94 :
A. I. R. 1926 Cal. 345.

———S. 120-B—Proof.

It is not sufficient, in order to convict a

PENAL CODE ACT (XLV OF 1860)

person under S. 120-B, to merely prove that he had been associating with the other accused at a certain place, and on his arrest, endeavoured to extricate himself from being accused of something connected with the conspiracy. *Rakhal Chandra Das v. Emperor*.

32 Cr. L. J. 399 :
129 I. C. 619 : I. R. 1931 Cal. 235 :
A. I. R. 1930 Cal. 647.

———S. 120-B—Sanction for prosecution:

It is only in cases where no crime has been committed in pursuance of a Criminal conspiracy, that sanction to initiate proceedings is necessary as some safeguard against frivolous prosecution. *In re : Mallimoggala Venkataramiah*.

39 Cr. L. J. 266 :
173 I. C. 26 : 46 L. W. 709 :
1937, 2 M. L. J. 862 : 1937 M. W. N. 996 :
10 R. M. 515 : A. I. R. 1938 Mad. 13.

———S. 120-B—Sanction for prosecution, necessity of.

Obiter—The consent of the Local Government under S. 100-A, Cr. P. C., is necessary in the case of persons who are not parties to the proceedings but who may have conspired with such parties to commit an offence mentioned in Sub-s. (1), S. 105, Cr. P. C., which merely applies to the parties to the proceedings. *Bishanbar Das v. Emperor*.

31 Cr. L. J. 589 :
123 I. C. 847 : A. I. R. 1929 Lah. 785.

———S. 120-B—Sanction under S. 196-A, Cr. P. C., if necessary.

Sanction of District Magistrate under S. 100-A, Cr. P. C., is necessary. *Bhikhari Singh v. Emperor*.

36 Cr. L. J. 17 :
152 I. C. 282 : 15 P. L. T. 523 :
13 Pat. 719 : 7 R. P. 16 :
A. I. R. 1934 Pat. 561.

———S. 120-B—Sanction under S. 196-A—Necessity of.

S. 100-A, Cr. P. C., only renders sanction necessary where the prosecution is for criminal conspiracy punishable under S. 120-B, Penal Code. It does not alter the former law that a prosecution for abetment by way of conspiracy punishable under S. 109, Penal Code, requires no sanction. *Abdul Salim v. Emperor*.

23 Cr. L. J. 657 :
69 I. C. 145 : 35 C. L. J. 279 :
26 C. W. N. 680 : 49 Cal. 573 :
A. I. R. 1922 Cal. 107.

———S. 120-B—Scope.

S. 120-A and 120-B did not find a place in the Penal Code before the 27th March 1913, when Act VIII of 1913 became law, and, therefore, persons accused under S. 120-B cannot be convicted unless the prosecution establishes that the accused were members of a conspiracy after the 27th March 1913. *Amritlal Hazra v. Emperor*.

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 : 42 Cal. 957 :
A. I. R. 1916 Cal. 188.

PENAL CODE ACT (XLV OF 1860)

————S. 120-B—*Section not in force—Conviction under S. 109—Permissibility.*

A conviction under S. 120-B, Penal Code, cannot stand if the offence was committed before that section came into force but the accused can be convicted of abetment under S. 109, Penal Code, as abetment includes abetment by conspiracy. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Mon Mohan Roy.* 17 Cr. L. J. 439 : 35 I. C. 999 : 20 C. W. N. 292.

————S. 120-B—*Sentence.*

For an offence under S. 120-B, punishment is provided by S. 109 if an offence has been committed, but if an offence has not been committed, punishment is limited to the extent provided by S. 116. Perhaps, strictly speaking, in the former case, there should not be a conviction for conspiracy but for abetment of an offence, for conspiracy followed by an act done to carry out the purpose of the conspiracy amounts to abetment. *Harsha Nath Chatterjee v. Emperor.* 16 Cr. L. J. 9 : 26 I. C. 313 : 21 C. L. J. 201 : 42 Cal. 1153 : 19 C. W. N. 706 : A. I. R. 1915 Cal. 719.

————S. 120-B—*Sentence.*

Where the accused have been sentenced separately for the several acts constituting a conspiracy, separate sentence for an offence under S. 120-B is not called for. *Punjab Singh Ujagar Singh v. Emperor.* 35 Cr. L. J. 322 : 147 I. C. 2 : 35 P. L. R. 51 : 15 Lah. 84 : 6 R. L. 339 : A. I. R. 1933 Lah. 977.

————Ss. 120-B, 109.

Abetment by conspiracy—Evidence Act (I of 1872), S. 10—Appeals, criminal, in connected cases—Cross-reference to evidence and judgments in cases by Appellate Court—Irregularity. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Mon Mohan Roy.* 17 Cr. L. J. 439 : 35 I. C. 999 : 20 C. W. N. 292.

————Ss. 120-B, 109, 116—*Sentence—Punishment for conspiracy—Act done in furtherance of conspiracy, when can be separately punished.*

The punishment for the offence of conspiracy under S. 120-B, Penal Code, depends upon whether the illegal act has or has not been carried out. In the former case, the punishment will be in accordance with S. 109, i. e., it will be the same as for the offence itself. In the latter case, it will be in accordance with S. 116. Where in a case, proof is given that the illegal acts were done in furtherance of the conspiracy, the offence under S. 120-B, is punishable under S. 109 and not under S. 116. But acts done in pursuance of the conspiracy cannot be separately punished unless these acts are separately charged and particular-

PENAL CODE ACT (XLV OF 1860)

ized as required by the Code. *Emperor v. Karamalli Gulamalli.* 40 Cr. L. J. 118 :

178 I. C. 706 : 40 Bom. L. R. 1092 : 11 R. B. 184 : I. L. R. 1939 Bom. 42 : A. I. R. 1938 Bom. 481.

————Ss. 120-B, 115—*Sentence.*

In inflicting punishment, a distinction must be drawn between the case of a person who joins a conspiracy before the actual crime, which is the object of the conspiracy, is committed, and the case of a person who joins it subsequent to the commission of such a crime. Therefore, where two persons A and B conspire to commit murder, and B subsequently does commit murder, A is punishable as if he had abetted that murder but if B has already committed a murder before A conspires with him to commit murder, A is liable to be punished only to the extent provided in S. 115, Penal Code. But in every such case the offence committed by a member or members of the conspiracy prior to the entry of A into the conspiracy, would be a relevant fact as indicating the nature and objects of the conspiracy. The fact that a member of the conspiracy was not admitted to the full dignity of membership of the committee but was treated more as a tool than as a colleague, is no ground for showing leniency in punishment to that member. *Balmokand v. Emperor.* 16 Cr. L. J. 354 :

28 I. C. 738 : 11 P. W. R. 1915 Cr. : 17 P. R. 1915 Cr. : 246 P. L. R. 1915 : A. I. R. 1915 Lah. 16.

————Ss. 120-B, 296, 412—*Conspiracy—Proof.*

The offence of conspiracy under S. 120-B, I. P. C., is one which requires detailed and specific proof against each of the accused that he individually participated in a particular design to do a particular criminal thing. *Emperor v. Aftab Mohammad Khan.* 41 Cr. L. J. 647 :

188 I. C. 649 : 1940 A. L. J. 206 : 13 R. A. 55 : A. I. R. 1940 All. 291.

————Ss. 120-B, 302—*Conspiracy to murder—Evidence—Inference from mere presence.*

Per Cuming, J.—Though conspiracy cannot often be proved by direct evidence, conspiracy to murder cannot be inferred from the mere fact that the accused were seen at the house of the deceased on the night when the deceased is alleged to have been murdered. *Emperor v. Yunus Ali.* 30 Cr. L. J. 820 :

117 I. C. 680 : 32 C. W. N. 783 : I. R. 1929 Cal. 568.

————Ss. 120-B, 384—*Cr. P. C. (Act V of 1898), S. 196-A—Conviction under Ss. 384 and 120-B without sanction of Local Government, legality of—Conviction under S. 381, whether can be separated and maintained.*

Where two accused persons were convicted under S. 384 and S. 384 read with S. 114, Penal Code, respectively, and both were convicted also under S. 120-B, Penal Code,

PENAL CODE ACT (XLV OF 1860)

without obtaining the sanction contemplated by S. 196-A, Cr. P. C.: *Held*, (1) that as the object of the conspiracy was to commit an offence under S. 384, which is a non-cognizable offence, the Court could not take cognizance of the offence under S. 120-B, Penal Code, without sanction of the Local Government or the District Magistrate in that behalf; (2) that the trial held on charges which did not require sanction along with such as required sanction could not be separated and the convictions were wholly illegal. *Bhattacharyya v. Emperor*.

31 Cr. L. J. 995 :
126 I. C. 272 : 33 O. W. N. 834 :
57 Cal. 99 : A. I. R. 1929 Cal. 754.

—Ss. 120-B, 404—Sanction under S. 196-A, Cr. P. C., if necessary.

A Court is not competent to take cognizance of an offence under S. 404/120-B, Penal Code, without the sanction required by S. 196 (A) (2), Cr. P. C. *Sukumar Chatterjee v. Mufiz-ad-Din Ahmed*.

22 Cr. L. J. 455 :
61 I. C. 839 : 25 C. W. N. 357 :
A. I. R. 1921 Cal. 561.

—Ss. 120-B, 409—Conspiracy to commit criminal breach of trust by public servant—Ingredients.

Without the slightest evidence of any money having been received by a public servant, he can be convicted of criminal breach of trust by a public servant, under S. 409, and of conspiracy under S. 120-B, Penal Code, when property under his control disappears and his connection with the conspiracy is brought home to him. *Hdy v. Emperor*.

26 Cr. L. J. 1217 :
88 I. C. 833 : 28 O. C. 203 :
2 O. W. N. 469 :
A. I. R. 1925 Oudh 469.

—Ss. 120-B, 420—Appeal to gambling instinct, whether per se cheating—Accused held not guilty of cheating or conspiracy to cheat.

An appeal to the gambling instinct of humanity does not per se amount to cheating. That in starting an insurance scheme which was calculated to confer money benefits on the policy-holders in the share of twelve times the money invested by each, the accused were not guilty of either cheating or conspiracy to cheat, as upon a fair reading of the prospectus, it could not be said that it contained any fraudulent or deceitful representations though it might appear too absurd for such schemes to work with success. *Radha Ballav Pal v. Emperor*.

40 Cr. L. J. 600 :
181 I. C. 918 : 11 R. C. 872 :
43 C. W. N. 388 :
A. I. R. 1939 Cal. 327.

—S. 121.

See also Cr. P. C., 1898, S. 239.

—S. 121—Abetment of offence.

Accused an influential man in village which was hot-bed of rebellion—Also President of body

PENAL CODE ACT (XLV OF 1860)

resisting tax—Assisting rebels after battle and recruiting rebels: *Held*, he was guilty of abetment of offence under S. 121. *Nga Po Ai Gyi v. Emperor*.

38 Cr. L. J. 715 :
169 I. C. 218 : 9 R. Rang. 389 :
A. I. R. 1937 Rang. 118.

—S. 121—Charge, contents of.

Under Ss. 221 and 222, Cr. P. C., there is no duty on the prosecution to mention the fellow conspirators by name. *Manabendra Nath Roy v. Emperor*.

35 Cr. L. J. 768 :
148 I. C. 833 : 6 R. A. 772 :
A. I. R. 1933 All. 498.

—S. 121.

Essentials of offence stated. *Nga Aung Pa v. Emperor*.

34 Cr. L. J. 929 :
145 I. C. 251 : 6 R. Rang. 32 :
A. I. R. 1933 Rang. 116.

—S. 121—Liability of retiring conspirator.

If a conspirator has formed the intention to leave conspiracy and ceases to be a conspirator by his own act and intention when the other conspirators wage war, he cannot be held guilty under S. 121, Penal Code. *Goman Saya v. Emperor*.

14 Cr. L. J. 610 :
21 I. C. 658 : 6 Bur. L. T. 153.

—S. 121—Waging war—What amounts to—Conspiracy to overthrow Government—Attack on officers.

Where there was a conspiracy to overthrow the British Government in Burma, and the conspirators attacked and fought the Township Officer's party which had come to arrest them: *Held*, that the attack constituted the act of waging war; it was not riot but the culminating act of a deeply laid plot to overthrow the Government of the country. *Pan Thin v. Emperor*.

14 Cr. L. J. 514 :
20 I. C. 646 : 9 Bur. L. T. 146.

—S. 121—Waging war—What amounts to.

Rebels recruiting people with object of overthrowing existing Government and punishing those refusing to join them—This amounts to waging war. *Nga Aung Pa v. Emperor*.

34 Cr. L. J. 929 :
145 I. C. 251 : 6 R. Rang. 32 :
A. I. R. 1933 Rang. 116.

—S. 121—Waging war—What amounts to.

The accused published a book of poems. A spirit of blood-thirstiness and murderous eagerness directed against the Government and white rulers ran through the poems; the urgency of taking up the sword was conveyed in unambiguous language, and an appeal of blood-thirsty incitement was made to the people to take up the sword, form secret societies, and adopt guerrilla warfare for the purpose of rooting out the demon of foreign rule: *Held*, that an instigation to

PENAL CODE ACT (XLV OF 1860)

wage war was conveyed by the poems and that the accused committed the offence of waging war punishable under S. 121, Penal Code. *Emperor v. Ganesht Damodar.*

11 Cr. L. J. 264 :
5 I. C. 854 : 12 Bom. L. R. 195.

———S. 121-A—*Ban on views.*

The law does not prohibit a person from forming any views however extreme they may be, if the accused confines himself to an academic discussion. *Mandbendra Nath Roy v. Emperor.*

35 Cr. L. J. 768 :
148 I. C. 833 : 6 R. A. 772 :
A. I. R. 1933 All. 498.

———S. 121-A—*Charge of one conspiracy—Accused if can be found guilty of another.*

Where several persons are charged with the same conspiracy, it is a legal impossibility to find some guilty of one conspiracy and some of another. Any accused not shown to be a member of a particular conspiracy, is entitled to demand an acquittal however bad his record may be and however much he may be suspected of this or that offence. *Emperor v. Noni Gopal.*

12 Cr. L. J. 286 :
10 I. C. 582 : 15 C. W. N. 593 :
38 Cal. 559.

———S. 121-A—*Conspiracy—Illegal act or omission as overt acts of conspiracy, if should be established.*

Under the law as contained in S. 121-A, Penal Code, conspiracy itself is a crime and it is not necessary to establish any illegal act or illegal omission as overt acts of the conspiracy, the existence of which has to be established. The illegal acts or omission, if established, support the case of the existence of the conspiracy itself, the offence being complete even though two persons conspiring together go no further than the original agreement. There cannot be, strictly speaking, direct evidence of the inception of a conspiracy, if any of the conspirators themselves do not choose to speak to the same. *Jitendra Nath Gupta v. Emperor.* (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

———S. 121-A—*Conspiracy—Overt acts by members, value of.*

Where there are overt acts on the part of the members of the conspiracy, they are to be looked at as evidence of the existence of a concealed intention. *Jitendra Nath Gupta v. Emperor.* (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

———S. 121-A—*Conspiracy—Proof.*

Conspiracy in existence and accused member with intention to use violence, if necessary—Possession of weapons—It is immaterial whether he used them in acts of aggression or resistance. *Surjya Kumar Sen v. Emperor.* (F. B.)

35 Cr. L. J. 334 :
147 I. C. 32 : 6 R. C. 304 :
A. I. R. 1934 Cal. 221.

PENAL CODE ACT (XLV OF 1860)

———S. 121-A—*Conspiracy, proof of.*

Where the members of the conspiracy are members of different organisations, it is not necessary to establish that the different organisations were connected with one another. *Jitendra Nath Gupta v. Emperor.* (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

———S. 121-A—*Criminal conspiracy—Offence, when complete.*

The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means. The agreement itself is enough to constitute the offence as contemplated by S. 121-A, Penal Code, it not being necessary that any act or illegal omission shall take place in pursuance of the conspiracy. *Jitendra Nath Gupta v. Emperor.* (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

———S. 121-A—*Conspiracy to wage war—Dacoities committed as part of conspiracy—Conviction, acquittal and discharge, effect of.*

The principal charge against several persons was under S. 121-A, Penal Code, of conspiracy to wage war against His Majesty the King Emperor. As a part of the conspiracy, it was alleged by the prosecution, that many crimes, e. g., dacoities were committed and that these formed the subject of judicial investigation which resulted in some of the accused being convicted, and others being acquitted or discharged: *Held*, that, where there was an acquittal, it was conclusive, for a judgment of not guilty fully establishes the innocence of an accused. The convictions also were similarly conclusive. As to those who were discharged, no steps were taken to have the order of discharge set aside, nor was further evidence adduced, but on the contrary, some evidence which was adduced before the Magistrate and which was favourable to the accused, was not even adduced; that the guilt of these accused had not been proved, nor had any connection been established between the dacoity and the alleged conspiracy. *Emperor v. Noni Gopal.*

12 Cr. L. J. 286 :
10 I. C. 582 : 15 C. W. N. 593 :
38 Cal. 559.

———S. 121-A—*Conviction under—Legality of.*

Accused since released from internment, plotting against Government and plans vigorously being put into operation—Accused personally responsible for death of innocent persons: *Held*, he was rightly convicted under Ss. 121 and 121-A. *Surjya Kumar Sen v. Emperor.* (F. B.)

35 Cr. L. J. 334 :
147 I. C. 32 : 6 R. C. 304 :
A. I. R. 1934 Cal. 221.

———S. 121-A—*Essence of offence.*

The essence of an offence under S. 121-A, Penal Code, is the agreement

PENAL CODE ACT (XLV OF 1860)

to do fall or any of the unlawful acts mentioned in the section. It is not necessary that any act or illegal omission should take place in pursuance of the agreement. *Emperor v. Nila Kanta*.

13 Cr. L. J. 305 :
14 I. C. 849 : 1912 M. W. N. 207 :
22 M. L. J. 490 : 35 Mad. 247.

—S. 121-A—Evidence.

Direct evidence that accused entered into agreement to conspire need not be given. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

—S. 121-A—Evidence, sufficiency of—Question of fact.

The question whether the evidence is sufficient to establish a charge of conspiracy laid under S. 121-A, Penal Code, is a question of fact, because the solution of the question depends upon the view which the trial Court takes of the evidence adduced before it and of the inferences reasonably to be drawn from that evidence. *Purnananda Das Gupta v. Emperor*. (F. B.)

40 Cr. L. J. 199 :
179 I. C. 506 : 68 C. L. J. 206 :
11 R. C. 557 : 1 L. R. 1939, 1 Cal. 1 :
A. I. R. 1939 Cal. 65.

—S. 121-A—General evidence of existence of conspiracy—Whether can be given.

In a trial under S. 121-A, general evidence of the existence of a conspiracy can be given before particular facts are proved to show that one or more of the accused took part in it. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

—S. 121-A—Holding communist views, if per se offence.

Mere holding of communist beliefs or doctrines is not punishable per se. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

—S. 121-A—Jurisdiction.

Where it is evident that a place was one of the centres of a conspiracy and the accused frequently wrote letters at that place, the Sessions Court at that place has jurisdiction. *Manabendra Nath Roy v. Emperor*.

35 Cr. L. J. 768 :
148 I. C. 833 : 6 R. A. 772 :
A. I. R. 1933 All. 498.

—S. 121-A—Liability of communists from abroad.

Members of Communist Party in Great Britain sent to India and carrying on activities in India are liable to the same extent as members of Communist Party of India for conviction of offence under S. 121-A. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

PENAL CODE ACT (XLV OF 1860)

—S. 121-A—Necessary element.

A charge of conspiracy to wage war against His Majesty the King-Emperor under S. 121-A, Penal Code, may, to the lay mind, imply a political situation of the gravest character, and it is partly for this reason that the Legislature has prescribed that a charge of this description should not be entertained except upon complaint made by order of Government. The provisions of the law, however, are comprehensive and no very formidable elements, either in men or means, are required to satisfy its definition of a conspiracy to wage war. No act or illegal omission is necessary; the agreement of two or more will suffice, so that the determination by a Court that a conspiracy to wage war has been established would not imply the existence of a serious menace to the constitution or the stability of constituted authority in India. *Emperor v. Nont Gopal*.

12 Cr. L. J. 286 :
10 I. C. 582 : 15 C. W. N. 593 :
38 Cal. 559.

—S. 121-A—Object of Communist Party in India, if offence.

Objects of Communist Party in India stated—They are liable to conviction under S. 121-A. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

—S. 121-A—Offence under—Proof.

For the purpose of S. 121-A it is not necessary that any act or illegal omission shall take place in pursuance of the conspiracy. The agreement in itself is enough to constitute the offence. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

—S. 121-A—Omission of names of members of revolutionary society—Effect of.

Where, in a sanction, the persons to be prosecuted are named and the sections under which they are alleged to have committed offences as also the period of their activity are specified, the mere circumstance that they are not described as members of the revolutionary society, the existence whereof was sought to be established at the trial, does not affect the validity of the sanction as being vague. An indictment for conspiracy must contain a statement of the facts relied upon as constituting the offence, in ordinary and concise language, with as much certainty as the nature of the case will admit. *Lathi* play by itself is perfectly harmless, and standing alone, it cannot be treated as evidence of a conspiracy to wage war. *Pulin Behary Das v. Emperor*.

13 Cr. L. J. 609 :
16 I. C. 257 : 15 C. L. J. 517 :
16 C. W. N. 1105.

—S. 121-A—Participating in Trade Union activities, if offence.

Accused not belonging to party adopting programme of Communist International—Mere

PENAL CODE ACT (XLV OF 1860)

taking part in Trade Union activities raises no presumption of their having entered into conspiracy under S. 121-A. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

—S. 121-A—Proof.

Conspiracy to deprive King-Emperor of Sovereignty in British India is enough. Whether conspiracy is expected to succeed in the lifetime of the present King-Emperor or his successor is immaterial. *Jhabwala v. Emperor*.

34 Cr. L. J. 967 :
145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

—S. 121-A—Sentence—Considerations in passing sentence.

The linking up of politics with treason, revolution and murder cannot serve to minimise the offence charged against the accused. In awarding sentence, the prevention of crime, the protection of the State, the society and the public, as also the reformation of the offender, have to be kept in view. In the case of political offences, arising out of beliefs of the accused, severe sentences defeat their object. But a distinction must be drawn between political offences of the nature of sedition or spread of ideas of communism and socialism charged under S. 121-A, Penal Code, and offences against the State and society involving treason, armed rebellion and murder, in connection with which the name of politics is used. The sentence passed in a case which is required to be deterrent must be in proportion to the gravity of the offence committed. In awarding sentences, the complicity of each of the individual accused person, and the part played by him as a member of the conspiracy in furtherance of the aims and objects of the conspiracy, must be carefully considered. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

—S. 121-B—Views of accused—Relevancy of.

The Court may take cognizance of the fact that accused does hold certain views, for as a guide to his conduct and intention, these views are more relevant consideration. *Manabendra Nath Roy v. Emperor*.

35 Cr. L. J. 768 :
148 I. C. 833 : 6 R. A. 772 :
A. I. R. 1933 All. 498.

—S. 121-A—Waging war against King—Conspiracy with person known and unknown—Persons not named in petition of complaint but named in sanction of Government—No jurisdiction to try.

Where the accused were charged with having conspired with one another and other persons known and unknown to wage war against His Majesty : *Held*, that the charge could not be sustained if the known persons

PENAL CODE ACT (XLV OF 1860)

were not mentioned in it. Where one of the accused was not named in the petition of complaint though his name was mentioned in the sanction of the Government authorizing the prosecution : *Held*, that the accused must be discharged. *Emperor v. Lalit Mohan Chakravarti*.

12 Cr. L. J. 2 :
8 I. C. 1059 : 15 C. W. N. 98.

—S. 121-A—Waging war—What amounts to.

Institute attacked as persons using it were expected to be Government supporters. Mere fact that only one man present was an official will not make raid anything less than waging war. *Surjya Kumar Sen v. Emperor*. (F. B.)

35 Cr. L. J. 334 :
147 I. C. 32 : 6 R. C. 304 :
A. I. R. 1934 Cal. 221.

—Ss. 121-A, 517—Disposal of property used for commission of offence.

When a person has been convicted for carrying out the policy of the Communist International by writing articles, books used for the purpose of committing the offence cannot be returned to the accused but books produced by the defence on which prosecution did not rely for proof of offence can be returned. *Philip Spratt v. Emperor*. 35 Cr. L. J. 1389 :
151 I. C. 735 : 4 A. W. R. 550 :
1934 A. L. J. 425 : 7 R. A. 195 :
A. I. R. 1934 All. 207.

—S. 123—Charge, form of.

A charge under S. 123, Penal Code, can be legally joined with one under S. 121-A and may be tried at one trial. *Pulin Behary Das v. Emperor*.
13 Cr. L. J. 609 :
16 I. C. 257 : 15 C. L. J. 517 :
16 C. W. N. 1105.

—S. 124.

See also Cr. P. C., 1898, S. 225.

—S. 124—Disaffection.

Reciting seditious poem in public meeting held, an offence. *Lachhman Das v. Emperor*.
32 Cr. L. J. 588 :
130 I. C. 655 : 31 P. L. R. 918 :
I. R. 1931 Lah. 335 : A. I. R. 1931 Lah. 52.

—S. 124—Sedition, what is.

An article which attributes base, improper and dishonourable motives to the Government comes within the mischief of S. 124-A, Penal Code. *Gopal Lal Sanyal v. Emperor*.
28 Cr. L. J. 900 :
105 I. C. 228 : 46 C. L. J. 156 :
A. I. R. 1927 Cal. 751.

—S. 124-A.

- Attempt to publish sedition.
- Bail, grant of.
- Bona fide* comments.
- Boycott of British goods.
- Charge.
- Complaint.
- Construction.
- Criminal conspiracy.

PENAL CODE ACT (XLV OF 1860)

- Criticism attributing indifference to welfare of people, if and when offence.
- Disaffection.
- Evidence.
- Exhortation to join Communist or Bolshevik party, if sedition.
- Fair comment.
- Gist of offence.
- Government established by law in India, meaning of.
- Hatred and contempt.
- Intention.
- Jurisdiction.
- Keeper of press.
- Offence under.
- Principles of construction.
- Printer.
- Proprietors of papers responsibility.
- Sedition.
- Seditious articles.
- Seditious document.
- Seditious literature.
- Seditious speech.
- Sentence.
- Trial for sedition.
- Waging of war.

-----S. 124-A—*Attempt to publish sedition—When complete.*

An attempt to commit an offence is punishable under the Penal Code. All that is necessary to constitute such an attempt, is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish a seditious article is complete for the purposes of law when copies of the magazine containing the article are sold. It is nonetheless an attempt because something external happens which prevents a perusal of the article by the buyers of the magazine or any other member of the public. *Ganesh Balwant Modak v. Emperor.*

11 Cr. L. J. 180 :
5 I. C. 612 : 12 Bom. L. R. 21.

-----S. 124-A—*Bail, grant of.*

The offence under S. 124-A is a non-bailable one punishable with transportation for life. So the accused should not be released on bail at all. *Giani Meher Singh v. Emperor.*

41 Cr. L. J. 138 :
185 I. C. 249 : I. L. R. 1939, 2 Cal. 42 :
43 C. W. N. 639 : 12 R. C. 349 :
A. I. R. 1939 Cal. 714.

-----S. 124-B—*Bona fide comments—Limits of.*

Every one has the right to comment upon the action of any particular individual or set of individuals. But the way in which the comment is put forward has to be considered and if the article read as a whole is likely to bring the Government into hatred or contempt or is liable to excite disaffection,

PENAL CODE ACT (XLV OF 1860)

the writer will be guilty of an offence under S. 124-A. *Jagat Narain Lall v. Emperor.*

30 Cr. L. J. 213 :
113 I. C. 696 : 9 P. L. T. 784 :
I. R. 1929 Pat. 88 :
A. I. R. 1929 Pat. 10.

-----S. 124-A—*Bona fide comment, if offence.*

A writer is entitled to express his opinion on the Reform Scheme, and the mere fact that he states that the scheme is not a genuine reform or not a genuine measure of constitutional progress, cannot be seditious. *Mon Mohun v. Emperor.* 11 Cr. L. J. 667 :
8 I. C. 531 : 15 C. W. N. 141.

-----S. 124-A—*Boycott of British goods.*

The mere preaching of the boycott of British goods does not amount to sedition. *Jagan Nath Luthra v. Emperor.*

32 Cr. L. J. 1172 :
134 I. C. 486 : I. R. 1931 Lah. 934 :
A. I. R. 1932 Lah. 7.

-----S. 124-A—*Charge of sedition defective—Objection taken late—Effect.*

A charge of sedition is defective if it does not set out the speeches or the passage in the speeches which the prosecution alleges to be seditious, but this defect does not vitiate the charge, especially where no objection is taken by the accused till a very late stage in the proceedings and he is not misled by the omission and no failure of justice has been occasioned by such omission. *In re : Subramania Siva.*

9 Cr. L. J. 108 :
3 I. C. 22 : 5 M. L. T. 1 : 32 Mad. 3.

-----S. 124-A—*Charge, requirements of.*

If an offence under S. 124-A is committed by words spoken, the requirements of the law are satisfied if the charge gives such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged, that is, if the charge states the words used with substantial, though not absolute, accuracy. Even if the words, or the substance of the words used, are not entered at all in the charge, this will amount only to an irregularity and will not afford ground for reversing a conviction unless the accused has, in fact, been misled by the omission, and it has occasioned a failure of justice. *In re : Krishnasawmi.*

9 Cr. L. J. 456 :
2 I. C. 33.

-----S. 124-A—*Complaint—Requirements—Defective complaint—Irregularity.*

There is no informality in a complaint for sedition which does not set out the speeches or the alleged seditious words which forms the subject-matter of a subsequent charge. A complaint is not intended to give information to the accused. Even if a complaint for sedition is defective in that it does not set out the dates of the speeches and the nature of the alleged seditious matter, this is at most an irregularity within S. 537 (a), Cr. P. C., and a conviction cannot be set

PENAL CODE ACT (XLV OF 1860)

aside on this ground unless the irregularity has in fact occasioned a failure of justice. *In re : Subramania Siva.* 9 Cr. L. J. 108 :

3 I. C. 22 : 5 M. L. T. 1 : 32 Mad. 3.

———S. 124-A—Construction.

In order to decide whether or not a speech constitutes an attempt to excite hatred, contempt or disaffection, it would be viewed from the standpoint of the type of persons to whom it is primarily addressed. On the one hand, their limitations, if any, must be taken into account; on the other, the fact that the words may convey to them a literal meaning must not be lost sight of. The time and the place are also factors which should be considered. The Court ought not to look to a sentence or an isolated expression, but should take the speech as a whole and give due weight to every part of it and undue weight to none, and give it a full, free and generous consideration. *Udamadja v. Emperor.* 24 Cr. L. J. 842 :

74 I. C. 954 : 1 Rang. 211 :
A. I. R. 1923 Rang. 212.

———S. 124-A—Construction.

The expression "attempts to bring into hatred or contempt or excites or attempts to excite disaffection" must, as a rule of construction, be very narrowly construed so as to interfere as little as possible with the liberty of the subject and the freedom of speech. *Satyaranjan Bakshi v. Emperor.* 28 Cr. L. J. 723 :

103 I. C. 771 : 45 C. L. J. 638 :
A. I. R. 1927 Cal. 698.

———S. 124-A—Construction.

The word "written" includes "printed". S. 7 of Act XXV of 1867 makes the printer of a newspaper responsible for seditious Articles printed in the newspaper, whoever may be the writer of those Articles. The burden of proof that he is not responsible for such Articles lies on him. Absence in good faith and without knowledge of the seditious Articles, when these were printed, would be sufficient to discharge the burden. But if he knew before absenting himself that such Articles will be printed in his absence, his absence will not relieve him of his liability. *Emperor v. Phandera Nath Mitter.* 8 Cr. L. J. 438 :

35 Cal. 945.

———S. 124-A—Construction.

It is a sound and fair rule, especially in the case of oral speeches that they should be read as a whole in a fair, free and liberal spirit. *Kidar Nath Sahgal v. Emperor.* 31 Cr. L. J. 603 :

123 I. C. 865 : A. I. R. 1929 Lah. 817.

———S. 124-A—Construction.

S. 124-A is in such wide terms that unless it is strictly and narrowly construed, there is real danger that legitimate criticism may be stifled altogether. *Gopal Lal Sanyal v. Emperor.* 28 Cr. L. J. 900 :

105 I. C. 228 : 46 C. L. J. 156 :
A. I. R. 1927 Cal. 751.

———S. 124-A—Construction.

The words 'Government established by law

PENAL CODE ACT (XLV OF 1860)

in British India', include the executive power in action. *Khitish Chandra Roy v. Emperor.*

33 Cr. L. J. 690 :

138 I. C. 766 : 59 Cal. 1197 :

36 C. W. N. 510 : I. R. 1932 Cal. 513 .

A. I. R. 1932 Cal. 547.

———S. 124-A—Criticism attributing indifference to welfare of people, if and when offence.

Criticism attributing indifference to the welfare of the people would not always amount to sedition. If the criticism is couched in language which imports corrupt or malicious motives, the writer cannot escape. But if it aims to draw attention to a weak point in the administration in the hope that the criticism may lead to the redress of grievances or the removal of a disability, the writing cannot be condemned. *Annic Besant v. Government of Madras.* 18 Cr. L. J. 157 :

37 I. C. 525 : 1916, 2 M. W. N. 385 :

5 L. W. 1 : 39 Mad. 1085 :

21 M. L. T. 124 : A. I. R. 1918 Mad. 1210.

———S. 124-A—Disaffection—Exhorting audience to change Congress creed into one of violence—If sedition.

To advise a person to persuade others to adopt violence as a means of attaining a political goal is no less objectionable than advising that person to commit violence himself for that purpose. In either case, the advice is to pursue a course of action which is calculated to disturb the tranquillity of the State. A speech which exhorts the audience to attempt to convert the Congress policy of non-violence to one of anarchy, is within the mischief contemplated by S. 124-A. *Anand Kishore v. Emperor.* 31 Cr. L. J. 201 :

121 I. C. 76 : A. I. R. 1930 Lah. 306.

———S. 124-A—Disaffection.

To make a charge of gross partiality against Government, such as that Government was siding with Capitalists is to inspire feelings of enmity and disaffection against Government. *Maniben Liladhar Kara v. Emperor.*

34 Cr. L. J. 231 :

141 I. C. 780 : 34 Bom. L. R. 1642 :

57 Bom. 253 : I. R. 1933 Bom. 153.

A. I. R. 1933 Bom. 65.

———S. 124-A—Evidence—Admissibility in evidence of articles other than one complained of.

In order to use other articles than that complained of as seditious for the purpose of showing the meaning of certain expressions used in the article complained of and also to show the intention of the writer, it is necessary to show who the writer was and that all the articles produced were by the same hand. *Mon Mohan v. Emperor.*

11 Cr. L. J. 667 :

8 I. C. 531 : 15 C. W. N. 141.

———S. 124-A—Evidence.

In considering whether an article published in a newspaper is seditious or not, it is not proper to allow articles subsequently published

PENAL CODE ACT (XLV OF 1860)

in the newspaper to be admitted in evidence. *Satyaranjan Bakshi v. Emperor.*

28 Cr. L. J. 723 :
103 I. C. 771 : 45 C. L. J. 638 :
A. I. R. 1927 Cal. 698.

———S. 124-A—Evidence—Police Officer's notes, admissibility of—Other speeches, admissibility of, to prove intention of speaker.

Where certain speeches form part of a series of speeches or lectures on one topic delivered within a short period of time; any of such speeches or lectures are admissible, under S. 14 as evidence of the intention of the speaker in respect of the speech which form the subject of prosecution. In a prosecution under S. 124-A in respect of a speech delivered by the accused, notes of the speech taken by a Police Officer at the time of the speech can be admitted in evidence. It is not necessary that the officer should be made to testify orally after referring to those notes. *Om Parkash v. Emperor.*

31 Cr. L. J. 1182 :
127 I. C. 209 : A. I. R. 1930 Lah. 867.

———S. 124-A—Evidence—Relevancy of other articles.

Articles other than those which are the subject of the charge, taken from the same issue of a newspaper and which show the style of the paper are relevant and admissible to show that there was a deliberate intention of preaching sedition. *Emperor v. Phanendra Nath Mitter.*

8 Cr. L. J. 438 :
35 Cal. 945.

———S. 124-A—Evidence—Relevancy of other speeches.

In a prosecution under S. 124-A in respect of a speech delivered by the accused, it is not open to the Court to admit evidence of other speeches alleged to have been made by the accused on other occasions for the purpose of determining the guilt or otherwise of the accused or even for the purpose of determining the sentence to be awarded. *Indra v. Emperor.*

31 Cr. L. J. 1187 :
127 I. C. 218 : 31 P. L. R. 625 :
A. I. R. 1930 Lah. 870.

———S. 124-A—Evidence—Sedition, trial for—Evidence of previous sedition, whether admissible.

As a general rule in sedition cases, evidence of previous sedition is inadmissible. But it is open to the prosecution where the accused himself tries to show that he is a well affected man, because he has been particularly making loyal speeches, to prove that he has been in the habit of making seditious speeches also. The speech, the subject of charge, may be of such a character that its meaning is not patent. It may contain obscure political, social or historical references, elucidation of which may be sought from previous speeches of the same accused. In such a case, previous speeches would be admissible. *Emperor v. Govindanand.*

26 Cr. L. J. 304 :
84 I. C. 448 : 16 S. L. R. 156 :
A. I. R. 1921 Sind 199.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—Evidence—Written statement of accused—Relevancy of.

The written statement filed by the accused in a sedition case does not affect the intention of the accused, which is to be derived from a construction of the speech itself. Nevertheless it is a matter to be taken into consideration, and shows how the accused is minded. *Jnananjan Niyogi v. Emperor.*

31 Cr. L. J. 1114 :
126 I. C. 768 : A. I. R. 1930 Lah. 363.

———S. 124-A—Exhortation to join Communist or Bolshevik party, if sedition.

The speech which amounts to an exhortation to his hearers to join the Communist or Bolshevik party, is not in itself objectionable within the meaning of S. 124-A, Penal Code. *Sodhi Pindi Das v. Emperor.*

39 Cr. L. J. 930 :
177 I. C. 707 : 40 P. L. R. 872 : 11 R. L. 357 :
A. I. R. 1938 Lah. 629.

———S. 124-A—Fair comment.

A journalist may comment expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, but he must do so without attempting to excite hatred and disaffection. *Satyaranjan Bakshi v. Emperor.*

33 Cr. L. J. 702 ;
138 I. C. 790 : I. R. 1932 Cal. 526 :
A. I. R. 1932 Cal. 758.

———S. 124-A—Fair comment.

A reasonable criticism of the action of Government in a particular matter without attempting to create hatred or contempt of Government is not sedition within the meaning of S. 124-A, I. P. C. *Emperor v. Phanendra Nath Mitter.*

9 Cr. L. J. 438 :
35 Cal. 945.

———S. 124-A—Fair comment—What is.

A speech which attributes evil motives to the Government and indulges in a wholesale denunciation, is not a mere criticism of the policy of the Government. *Kidar Nath Sahgal v. Emperor.*

31 Cr. L. J. 603 :
123 I. C. 865 : A. I. R. 1929 Lah. 817.

———S. 124-A—Fair comment.

Where the accused in a speech delivered by him stated that though matters were bad under other Kings who ruled before the British, the Indians were never in worse plight than now; that the British had sucked the blood of Indians and that the British Government had only given education to fit the people for clerks allowing trades and handicrafts to be ruined and referred to various incidents of material law days: *Held*, that the speech, on the whole, exceeded the limits of fair comment and brought the accused within the purview of S. 124-A, Penal Code. *Sham Das v. Emperor.*

31 Cr. L. J. 1169 :
127 I. C. 147 : A. I. R. 1930 Lah. 874.

PENAL CODE ACT (XLV OF 1860)

—S. 124-A—*Gist of offence—Intention—Intention, how gathered.*

The gist of the offence under S. 124-A lies in the intention of the writer. That intention has to be gathered not from isolated or stray passages here and there, but from a fair and generous reading of the article in respect of which the charge has been laid, and in gathering that intention, allowance must be made for a certain amount of latitude to writers in the public press. *Gopal Lal Sanyal v. Emperor.*

28 Cr. L. J. 900 :
105 I. C. 228 : 46 C. L. J. 156 :
A. I. R. 1927 Cal. 751.

—S. 124-A—*Gist of offence—Intention of writer, how gathered.*

The gist of offence under S. 124-A lies in the intention of the writer which is not to be gathered from isolated or stray passages here and there but from a fair and generous reading of the article as a whole. In gathering the intention, allowance must be made for a certain amount of latitude to writers in the public press. *Ram Chandra v. Emperor.*

29 Cr. L. J. 381 :
108 I. C. 372.

—S. 124-A—“Government established by law in India”, meaning of.

The “Government established by law in British India,” means the various governments constituted by the Statutes relating to the Government of India now consolidated into the Government of India Act, 1915, and denotes the person or persons authorised by law to administer executive government in any part of British India. *Bal Gangadhar Tilak v. Emperor.*

18 Cr. L. J. 567 :
39 I. C. 807 : 19 Bom. L. R. 211 :
A. I. R. 1916 Bom. 9.

—S. 124-A—“Government established by law in British India,” meaning of.

The “Government established by law in British India” is a concrete phrase which applies to such Government, whatever form that Government takes and is as much applicable to it after the Government of India Act, 1919, as when it was enacted. *Satyaranjan Bakshi v. Emperor.*

31 Cr. L. J. 313 :
121 I. C. 749 : 56 Cal. 1085 :
A. I. R. 1930 Cal. 220.

—S. 124-A—*Hatred and contempt against particular form of Government.*

An attempt to excite hatred or contempt against the Government would fall within the purview of S. 124-A even though it is only an attempt to excite hatred or contempt against the particular form of Government obtaining for the time being. *In the matter of : Sajani Kantha Das.*

31 Cr. L. J. 1147 :
127 I. C. 73 : 34 C. W. N. 277 :
A. I. R. 1930 Cal. 244.

—S. 124-A—*Hatred and contempt—Holding up admired character as a cloak to vilify the British by contrast—Sedition.*

PENAL CODE ACT (XLV OF 1860)

It is one thing to hold up an admired character as a pattern, and quite another to vilify the British by contrast; but a speaker cannot be allowed to use the former as a cloak for the latter if the result of what he says in fact be to inspire his audience with hatred and disaffection towards Government. *Jnananjan Niyogi v. Emperor.*

31 Cr. L. J. 1114 :
126 I. C. 768 : A. I. R. 1930 Lah. 363.

—S. 124-A—*Hatred and contempt—Imputing base motives to Government—Exciting hatred and disaffection—Sedition.*

Though it is open to a writer to criticise any policy of the Government as permitted by the explanations to S. 124 A, Penal Code, if he proceeds to attribute base motives to Government and accuses Government of having deliberately ruined the subjects, etc., he is liable to be punished under S. 124-A of the Code. *Arjan Singh v. Emperor.*

31 Cr. L. J. 694 :
124 I. C. 348 : A. I. R. 1930 Lah. 186.

—S. 124-A—*Hatred and contempt.*

Test to determine intention of accused charged under, for making seditious speech—Entire speech showing spirit of revolt against established Government in India—Bringing Government into hatred and contempt : Held, speech attracted provisions of S. 124-A.

37 Cr. L. J. 1077 :
164 I. C. 1071 : 40 C. W. N. 607 :
63 Cal. 588 : 9 R. C. 324 :
A. I. R. 1936 Cal. 524.

—S. 124-A—*Hatred and contempt—Attempt to excite hatred against Government of attacking religion—Sedition—Sentence—Matters to be considered—‘Tahzirat-i-Hind’, meaning of.*

The accused in a speech said that a subject race cannot be said to have any religion, that there was no religion in India but slavery and that the Indian Penal Code contained an attack on every religion : Held, that the speech was clearly an attempt to bring into hatred or contempt or to excite disaffection towards the Government and the accused was guilty under S. 124-A, Penal Code. *Amir Alam v. Emperor.*

32 Cr. L. J. 199 :
129 I. C. 20 : I. R. 1931 Lah. 100 :
A. I. R. 1930 Lah. 885.

—S. 124-A—*Hatred and contempt.*

Where another article contained the following passage: “Under their rule the English have displayed such acts of oppression, high-handedness, excesses, tyranny, repression and dishonesty as are making the world civilization feel ashamed. English rule in India depends upon those bad characters of number 10 of England who have become notorious for their folly, barbarity and hard-heartedness. Such cruel, unmannerly and foolish persons are sent as officers of this country as might be considered burdensome for England’s soil. This is the reason why the general massacre of Jallianwala Bagh, the bloody field Guru-ka-Bagh and the Karbalas and bloody scenes of Nankana Sahib

PENAL CODE ACT (XLV OF 1860)

and Jaito are being seen in India": Held, that the object of the article was evidently to bring the Government of India into hatred and contempt and the publisher was guilty of sedition. *Lachhman Singh v. Emperor*.

31 Cr. L. J. 734 :

124 I. C. 681 : A. I. R. 1930 Lah. 156.

———S. 124-A—*Hatred and contempt*.

While a very large amount of latitude is and must be allowed to writers in the public press, the interests of the State must at the same time be not lost sight of, and writers cannot under the guise of criticism of public affairs be allowed to indulge in attributing base, improper or dishonest motives to those who carry on the work of the Government of the country. *Satyaranjan Bakshi v. Emperor*.

28 Cr. L. J. 723 :

103 I. C. 771 : 45 C. L. J. 638 :

A. I. R. 1927 Cal. 698.

———S. 124-A—*Intention, determination of*.

In judging the question of the intent of the accused, he must be deemed to intend that which is the natural result of the words used having regard among other things to the character and description of the part of the public who are expected to read the words. *Satyaranjan Bakshi v. Emperor*.

30 Cr. L. J. 850 :

117 I. C. 834 : I. R. 1929 Cal. 594 :

A. I. R. 1929 Cal. 277.

———S. 124-A—*Intention—How gathered*.

The intention of a person in making a speech has to be gathered from the speech itself and the effect it is likely to produce upon the audience. *Kidar Nath Sahgal v. Emperor*.

31 Cr. L. J. 603 :

123 I. C. 865 : A. I. R. 1929 Lah. 817.

———S. 124-A—*Intention—How gathered*.

The intention of a writer or a speaker, however, has to be gathered from the language used in the particular article or speech which is the subject-matter of the charge. When a man is charged in respect of anything that he has written, the meaning of what he wrote must be taken to be his meaning and that meaning is what his language would be understood to mean by the people to whom it is addressed. The offending article must be read as a whole in fair, free and liberal spirit. One should not pause upon an objectionable sentence here or a strong word there but the article as a whole should be dealt with in a spirit of freedom. It should not be viewed with an eye of narrow and fastidious criticism but should be viewed in a free, bold, manly and generous spirit towards the accused. *Satyaranjan Bakshi v. Emperor*.

28 Cr. L. J. 723 :

103 I. C. 771 : 45 C. L. J. 638 :

A. I. R. 1927 Cal. 698.

———S. 124-A—*Intention*.

In considering whether a book is seditious, the preface, though written by a third person, which throws light upon the intention of the writer, cannot be ignored. *Kirpal Singh v. Emperor*.

32 Cr. L. J. 649 :

131 I. C. 219 : A. I. R. 1931 Lah. 106.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—*Intention—Inference*.

The essence of the crime of sedition consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. Intention for this purpose is really no more than meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed. *Emperor v. Bal Gangadhar Tilak*.

8 Cr. L. J. 281 :

10 Bom. L. R. 848.

———S. 124-A—*Intention—Presumption*.

A man is presumed to intend the reasonable consequences of his own acts, and if he chooses to print and publish a seditious document, the intent to excite disaffection is to be presumed. *Braja Behari Burman v. Emperor*.

32 Cr. L. J. 742 :

131 I. C. 671 : 53 C. L. J. 182 :

A. I. R. 1931 Cal. 349.

———S. 124-A—*Intention*.

Intention is an essential ingredient of the offence under S. 124-A, and a person accused under that section cannot be attributed the requisite intention if he was not even aware of the contents of the seditious publication. *Chuni Lal v. Emperor*.

32 Cr. L. J. 681 :

131 I. C. 273 : 12 Lah. 483 :

32 P. L. R. 740 : I. R. 1931 Lah. 401 :

A. I. R. 1931 Lah. 182.

———S. 124-A—*Intention—Sedition, ingredient of offence—Intention, how determined—Direct evidence—Presumption*.

The question whether a certain article in a newspaper is or is not seditious, depends upon whether it was or was not intended to bring the Government into hatred or contempt. Intention is a state of mind which may be gathered from the surrounding circumstances and may well be presumed from the conduct of the writer or the publisher which would include also the character of the language employed by him. Intention is an essential element in the offence of sedition but it is not necessary for the prosecution to prove the intention directly by evidence. The law will presume the intention—whether good or bad—from the language and conduct of the accused, and it will be then for him to show that his words were harmless and his motives innocent. *Jiwan Singh v. Emperor*.

25 Cr. L. J. 1342 :

82 I. C. 574 : 6 L. L. J. 379 :

A. I. R. 1925 Lah. 16.

———S. 124-A—*Intention—Similar articles*.

Articles published in the same issue of a paper and forming the subject-matter of one or other of the charges may be

PENAL CODE ACT (XLV OF 1860)

admitted to prove intention. *Satyendra Nath Majumdar v. Emperor.*

32 Cr. L. J. 758 :
131 I. C. 566 : 34 C. W. N. 1095 :
53 C. L. J. 256 : I. R. 1931 Cal. 454 :
A. I. R. 1931 Cal. 337 (2).

———S. 124-A—*Intention—Speech urging strike directed against millowners and not Government.*

Where a speech was made at a meeting to pass a resolution of sympathy with a strike which was directed against the millowners and not against the Government and no act was suggested in the whole speech to be done against the Government or against any of its officials: *Held*, that the speech did not come within the four corners of S. 124-A, Penal Code. *Arjun Arora v. Emperor.*

38 Cr. L. J. 662 :
168 I. C. 947 : 1937 A. L. J. 261 :
1937 A. W. R. 189 : 9 R. A. 688 :
A. I. R. 1937 All. 295.

———S. 124-A—*Intention.*

The Court must also look to the intention and spirit of the article. The Court has to decide whether the general tendency of the article is such as to show an intention to excite the feelings of disaffection as explained in the section. The amount or intensity of the disaffection is absolutely immaterial. *Nageswar Prasad Sharma v. Emperor.*

26 Cr. L. J. 78 :
83 I. C. 638 : 1924 Pat. 283 :
A. I. R. 1925 Pat. 99.

———S. 124-A—*Intention.*

The essence of the crime of sedition consists in the intention with which the language is used and although in inferring the intention the principle that a man must be presumed to intend the natural and reasonable consequences of his action must be applied, the articles should be read in a fair, free and a liberal spirit and if any doubt should arise in regard to the intention, the benefit of that doubt should be given to the accused. *Satyendra Nath Majumdar v. Emperor.*

32 Cr. L. J. 758 :
131 I. C. 566 : 34 C. W. N. 1095 :
53 C. L. J. 256 : I. R. 1931 Cal. 454 :
A. I. R. 1931 Cal. 337 (2).

———S. 124-A—*Intention.*

Under S. 124-A, as it now stands, the offence of sedition is independent of intention. *Ram Nath v. Emperor.*

2 Cr. L. J. 31 :
1 P. R. 1905 Cr. : 6 P. L. R. 259.

———S. 124-A—*Jurisdiction.*

The Magistrate of the place where the seditious matter is printed has jurisdiction to try the offence under S. 124-A, Penal Code, even though such matter may not have been published there. *Chellam Pillai v. Emperor.*

30 Cr. L. J. 707 :
117 I. C. 49 : I. R. 1929 Rang. 161 :
A. I. R. 1928 Rang. 276.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—*Keeper of press—Knowledge of contents of pamphlet—Presumption.*

For the purpose of S. 124-A, knowledge by a printer of the nature of the matter printed is a question to be determined on the particular facts of each case. In the case of a small pamphlet, the title page of which contains seditious matter prominently displayed, and which is printed in a small press, the knowledge of its contents by the keeper of the press may be presumed. *Ram Saran Dal v. Emperor.*

26 Cr. L. J. 302 :
84 I. C. 446 : A. I. R. 1925 Lah. 298.

———S. 124-A—*Offence.*

Article read as a whole referring to British Government—Evidence as to how readers would regard it—Whether necessary—Conviction for sedition, held proper. *Jagannath Tripathi v. Emperor.*

34 Cr. L. J. 310 :
142 I. C. 293 (2) : I. R. 1933 Cal. 254 :
A. I. R. 1933 Cal. 141.

———S. 124-A—*Offence under.*

An agreement between two or more persons to do all or any of the unlawful acts mentioned in S. 124-A is an offence, and the fact that the purpose was not immediate would only be material in so far as it might bring the matter within the saving operation of S. 95, Penal Code. *Barindra Kumar v. Emperor.*

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 469.

———S. 124-A—*Offence, what is.*

The matter in question was headed: "Condition of Political Prisoners in Midnapore Jail. Petition for interview with Mr. Subhas Bose." The allegation made therein was not against the Government at all, but against the *jamadar* and others who were in charge of the accommodation. A Press Communique was issued denying the suggestion or allegations made in this composition. This Press Communique was also immediately published in full: *Held*, that insinuations of this character published as they were, in the form of news item could not fairly be construed as calculated to excite disaffection towards the Government established by law. If the language used could bear any such construction, in view of the immediate publication of the Government Communique, a sentence of fine would be sufficient punishment for any offence which might have been committed. *Satyendra Nath Majumdar v. Emperor.*

40 Cr. L. J. 630 :
182 I. C. 115 : 12 R. C. 1 :
A. I. R. 1939 Cal. 270.

———S. 124-A—*Principles of construction.*

Historical article—Comments inflaming public opinion—Article consistently one-sided suppressing anything going in favour of Government—Article comes within S. 124. *Satyendra Nath Majumdar v. Emperor.*

32 Cr. L. J. 758 :
131 I. C. 566 : 53 C. L. J. 256 :
34 C. W. N. 1095 : I. R. 1931 Cal. 454 :
A. I. R. 1931 Cal. 337 (2).

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—Principles of construction.

Speech should be looked at as a whole to gather intonation of speaker. *Maniben Liladhar Kara v. Emperor*. 34 Cr. L. J. 231 :

141 I. C. 780 : 57 Bom. 253 :
34 Bom. L. R. 1642 :
I. R. 1933 Bom. 153 :
A. I. R. 1933 Bom. 65.

———S. 124-A—Principles of construction.

The question whether a particular speech offends against S. 124-A or S. 153-A is not a mere question of fact. A speech has to be read as a whole and a fair construction must be put upon it and more attention should be paid by the Court to the general facts than any isolated words or passages. *Secretary, High Court Bar Association v. Emperor*.

33 Cr. L. J. 831 :
139 I. C. 696 : 33 P. L. R. 911 :
I. R. 1932 Lah. 606 :
A. I. R. 1932 Lah. 559.

———S. 124-A—Printer and proprietor's responsibility.

Where it is sought to inculpate the printer for seditious articles published in a newspaper, the prosecution need not give any evidence that he is the printer or publisher. It is enough to produce the declaration made by him under S. 7 of Act XXV of 1807. But in the case of a person inculpated as proprietor, it is necessary first of all to prove that he is the proprietor. The question of what presumption, if any, will arise from such proof, will depend on circumstances. *Harisarvohama Rao v. Emperor*.

9 Cr. L. J. 506 :
2 I. C. 193 : 5 M. L. T. 415.

———S. 124-A—Printer and publisher's liability.

The fact that a person makes a declaration as printer of a newspaper, under S. 7, Printing Presses and Newspapers Act, raises a presumption of his liability as printer and publisher for seditious articles published therein, and if that presumption is not rebutted, his guilt is conclusively established. *Harisarvohama Rao v. Emperor*.

9 Cr. L. J. 506 :
2 I. C. 193 : 5 M. L. T. 415.

———S. 124-A—Printer—Absent keeper of press issuing objectionable pamphlet, if guilty.

Absent keeper—Where the declared keeper was absent from the place when pamphlet was printed and there was no evidence of his knowledge : *Held*, he could not be convicted under S. 124-A. *Chuni Lal v. Emperor*.

32 Cr. L. J. 681 :
131 I. C. 273 : 12 Lah. 483 :
32 P. L. R. 740 : I. R. 1931 Lah. 401 :
A. I. R. 1931 Lah. 182.

———S. 124-A—Printer.

Printer cannot pretend that he has no knowledge of contents of publications printed and issued by him where there is *prima facie* evidence against him, he can lead evidence to show he was away and had no knowledge. If he does not

PENAL CODE ACT (XLV OF 1860)

call such evidence, he can be convicted. *Braja Behari Burman v. Emperor*. 32 Cr. L. J. 742 :
131 I. C. 671 : 53 C. L. J. 182 :
A. I. R. 1931 Cal. 349.

———S. 124-A—Printer, liability of.

The Assistant Manager of a Press who causes to be printed certain seditious matter in the Press is liable to be dealt with under S. 124-A. But the mere fact of the accused being Assistant Manager of the Press where such matter is printed does not *ipso facto* make him liable for the offence. To bring the offence home to him, it must be established by evidence that he had knowledge of such printing. There is no presumption that because a man is the Assistant Manager of a Press he has knowledge of every bit of job printing. Therefore, no onus is cast upon such a person to prove that he had no knowledge of the seditious matter having been printed at the Press. *Chellam Pillai v. Emperor*. 30 Cr. L. J. 707 :
117 I. C. 49 : I. R. 1929 Rang. 161 :
A. I. R. 1928 Rang. 276.

———S. 124-A—Proprietor of paper's responsibility.

In the case of a large paper with a separate editor, who is responsible for the selection and publication of literary matter, no presumption can *prima facie* be made that the proprietor authorised the publication of seditious matter appearing in it. Nor can such presumption be made in the case of an absentee proprietor. But such presumption in favour of the proprietor can be rebutted by proof, direct or inferential, that the proprietor did, in fact, authorise the publication. In the case of a petty paper, with no separate editor responsible for the literary matter and published under the eye of the proprietor, the presumption that the proprietor authorised the publication of seditious articles appearing in it might be an eminently reasonable one, though of course, it would be open to the proprietor to rebut it and prove that the publication was, in fact, not authorised by him. *Harisarvohama Rao v. Emperor*.

9 Cr. L. J. 506 :
2 I. C. 193 : 5 M. L. T. 415.

———S. 124-A—Publication of seditious pamphlet—Authorship, proof of—Name appearing on title page, whether sufficient.

In the absence of any other evidence the mere fact that the title page of a pamphlet bears a certain name, does not justify the conclusion that a person bearing that name and nobody else, could be the author and publisher of the pamphlet. The prosecution must prove by evidence that the accused is the author or publisher of the pamphlet. *Ranjit Singh Tajwar v. Emperor*.

26 Cr. L. J. 1124 :
88 I. C. 356 : 2 Lah. Cas. 27 :
A. I. R. 1925 Lah. 569.

———S. 124-A—Advocating rebellion—Abuse of officialdom, whether abuse of Government.

Advocating any form of rebellion is not a necessary element in an offence under S. 124-A. It is possible by the abuse of Government

PENAL CODE ACT (XLV OF 1860)

officials as officials, to make an endeavour to bring into hatred or contempt the Government established by law in British India. *Satyaranjan Bakshi v. Emperor*. 31 Cr. L. J. 313 : 121 I. C. 749 : 56 Cal. 1085 : A. I. R. 1930 Cal. 220.

———S. 124-A—Sedition—Bona fide comment of Government.

A man may comment upon any measure or act of Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely; and even unreasonably, perversely or unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond, and, whether the course of comments is upon measures or not, holds up the Government itself to the hatred of his readers—as for instance, by attributing to it every sort of evil and misfortune suffered by the people or dwelling on its foreign origin and character, or imputing to it base motives or accusing it of hostility or indifference to the people—then he is guilty under S. 124-A and the explanation will not save him. *Mon Mohan v. Emperor*. 11 Cr. L. J. 667 : 8 I. C. 531 : 15 C. W. N. 141.

———S. 124-A—Sedition—Boycott of foreign goods.

Where the accused in one of his speeches advocated the boycott of foreign goods, not as a means for helping industries but to get rid of the English from India and followed it up by imprecations as to the presence of the English in India as a curse to the country: *Held*, that it amounted to sedition punishable under Ss. 124-A and 153-A, I. P. C. *In re : V. O. Chidambaram Pillai*. 9 Cr. L. J. 140 : 1 I. C. 42 : 19 M. L. J. 81, 5 M. L. T. 24.

———S. 124-A—Sedition by writing, ingredients of.

The publication of a seditious matter is not a necessary ingredient of the offence of sedition by writing. *Chellam Pillai v. Emperor*. 30 Cr. L. J. 707 : 117 I. C. 49 : I. R. 1929 Rang. 161 : A. I. R. 1928 Rang. 276.

———S. 124-A—Sedition—Construction of article—Article in newspaper, construction of.

In order to decide whether an article is such as to bring it within the purview of S. 124-A, the Court must not look to single sentences or isolated expressions but take the article as a whole and give a full, free and generous consideration and amply deal with it in a fair and liberal spirit, not picking out objectionable sentences or strong words used, nor should undue importance be given to inflated and turgid language. *Nageswar Prasad v. Emperor*. 26 Cr. L. J. 78 : 83 I. C. 638 : 1924 Pat. 283 : A. I. R. 1925 Pat. 99.

———S. 124-A—Sedition—Conviction on abstracts from speech.

An accused prosecuted for an offence under

PENAL CODE ACT (XLV OF 1860)

S. 124-A, Penal Code, can be convicted on the basis of the short abstracts taken down from his speech, if the portions taken down are of seditious character. *Krishna Chandra Pangoria v. Emperor*. 38 Cr. L. J. 972 : 170 I. C. 874 : 1937 A. W. R. 401 : 1937 A. L. J. 365 : 10 R. A. 191 : A. I. R. 1937 All. 466.

———S. 124-A—Sedition—Criticism of Ministry.

No comment expressing disapprobation of the measure sponsored by a Ministry with a view to obtain its alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection, would amount to an offence under S. 124-A of the Penal Code. *Dhirindra Nath Sen v. Emperor*. 40 Cr. L. J. 82 : 178 I. C. 536 : 42 C. W. N. 1150 : 11 R. C. 371 : I. L. R. 1938, 2 Cal. 672 : A. I. R. 1938 Cal. 721.

———S. 124-A—Sedition—Criticism of Police.

A criticism of the acts of the Police, which represents one of the chief agencies of the Government, will fall within the purview of S. 124-A if the natural effect of the words used is to infuse hatred or contempt of the Government. Whether the words are such as to create hatred or contempt against the Government is a question of fact. *Satyaranjan Bakshi v. Emperor*. 30 Cr. L. J. 850 : 117 I. C. 834 : I. R. 1929 Cal. 594 : A. I. R. 1929 Cal. 277.

———S. 124-A—Sedition—Duty of prosecution.

In a charge under S. 124-A, Penal Code, the prosecution must prove to the hilt that the intention of the writer or the speaker, whoever he may be, is to bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the Government established by law in British India. *Satyaranjan Bakshi v. Emperor*. 28 Cr. L. J. 723 : 103 I. C. 771 : 45 C. L. J. 638 : A. I. R. 1927 Cal. 698.

———S. 124-A—Sedition, essence of.

An intention to incite people to violence is no element of the offence of sedition, the offence is committed if the words used are sufficient to bring into hatred or contempt or excite disaffection against the Government. *Satya Pal v. Emperor*. 31 Cr. L. J. 266 : 121 I. C. 425 : 31 P. L. R. 11 : A. I. R. 1930 Lah. 309.

———S. 124-A—Sedition, essence of.

The essence of the crime of sedition consists in the intention with which the language is used and what is rendered punishable by S. 124-A is the intentional attempt, successful or otherwise, to rouse as against Government the feelings enumerated in the section; a mere tendency in an article to promote such

PENAL CODE ACT (XLV OF 1860)

feelings is not sufficient to justify a conviction.
Satyaranjan Bakshi v. Emperor.

28 Cr. L. J. 723 :
103 I. C. 771 : 45 C. L. J. 638 :
A. I. R. 1927 Cal. 698.

———S. 124-A—Sedition, essentials of.

The essence of the crime of sedition consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. Hatred, contempt or disaffection towards the Government is usually created by words or writings imputing to the Government base, dishonourable, corrupt or malicious motives in the discharge of its duties, or by writings or words unjustly accusing the Government of hostility or indifference to the welfare of the people or by abusing the Government or its officials. *Arjun Arora v. Emperor.*

38 Cr. L. J. 662 :
168 I. C. 947 : 1937 A. L. J. 261 :
9 R. A. 688 : 1937 A. W. R. 189 :
A. I. R. 1937 All. 295.

———S. 124-A—Sedition — Exhortation to attain Swaraj.

Where the petitioner in the course of a speech asked the audience to secure *Swaraj*; *Held*, that the word *Swaraj* does not mean Government of the country to the exclusion of the present Government. Its literal meaning is "self-government" and its ordinary acceptance is "home rule" under the Government. Looking at the substance of the speech and the exact words, there was nothing that would bring the petitioner under S. 124-A. *Puni Bhisan Roy v. Emperor.*

6 Cr. L. J. 297 :
11 C. W. N. 1050 : 6 C. L. J. 699 :
I. L. R. 34 Cal. 991 : 34 Cal. 991.

———S. 124-A—Sedition—Expression of hatred and contempt against Civil Service.

All Governments established by law act through human agency, and the Civil Service in India is the principal agency of the Government for the administration of the country in time of peace. Therefore, criticisms of the Civil Service *en bloc*, in words, the natural effect of which is to infuse hatred of the Civil Service, amount to infusing hatred or contempt of the established Government whose accredited agent the Civil Service is. *Bal Gangadhar Tilak v. Emperor.*

18 Cr. L. J. 567 :
39 I. C. 807 : 19 Bom. L. R. 211 :
A. I. R. 1916 Bom. 9.

———S. 124-A—Sedition—Fair comment.

If a party publishes any matter in a newspaper and it contains no more than a calm, dispassionate and quiet discussion showing possibly a little feeling in the man's mind, that will not be sedition; but if the article goes beyond and attributes improper and dishonest or corrupt motive and thereby is calculated to excite tumult, then it is sedition. *Satyaranjan Bakshi v. Emperor.*

28 Cr. L. J. 723 :
103 I. C. 771 : 45 C. L. J. 638 :
A. I. R. 1927 Cal. 698.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—Sedition.

'Government established by law in British India', meaning of—Article in newspaper expressing law to be used as weapon of tyranny and viewing executions with pleasure held, seditious. *Kshitish Chandra Roy v. Emperor.*

33 Cr. L. J. 690 :
138 I. C. 766 : 59 Cal. 1197 :
36 C. W. N. 510 : I. R. 1932 Cal. 513 :
A. I. R. 1932 Cal. 547.

———S. 124-A—Sedition—Ingredients of the offence.

Changes in policy and changes in measures are liable to criticism, and to criticise and urge objections to them is a special right of a free press in a free country. But any effort which aims at impairing the confidence with which the public is entitled to look to Government, and at producing an unwillingness to accept the intervention and protection of the Government, for the purposes for which Governments exist, is within the mischief contemplated by S. 124-A even though there be no intention to excite a rising or actual violence of any kind. *Emperor v. Bhaskar.*

4 Cr. L. J. 1 :
8 Bom. L. R. 421 : I. L. R. 30 Bom. 421.

———S. 124-A—Sedition—Intention.

Intention is a necessary ingredient in the offence punishable under S. 124-A. But the intention has to be gathered from the expressions used by the accused. *Indra v. Emperor.*

31 Cr. L. J. 1187 :
127 I. C. 218 : 31 P. L. R. 625 :
A. I. R. 1930 Lah. 870.

———S. 124-A—Sedition—Liability of writer, printer and publisher.

The writer may be guilty of exciting or attempting to excite feelings of "disaffection", as that term is used in S. 124-A, no matter how guardedly he may attempt to conceal his real object, but the printer and publisher cannot be punished if the concealed object is not established by evidence on the record. *Mon Mohan v. Emperor.*

11 Cr. L. J. 667 :
8 I. C. 531 : 15 C. W. N. 141.

———S. 124-A—Sedition—"Liberties", meaning of.

A writer in a newspaper called upon the Nationalist Party to "once more assume their legitimate place in the struggle for Indian liberties": *Held*, that the use of the word "liberties" in the plural would not *prima facie* point to liberation of the country from foreign rule, but to certain specific liberties, and that the words were not seditious. *Mon Mohan v. Emperor.*

11 Cr. L. J. 667 :
8 I. C. 531 : 15 C. W. N. 141.

———S. 124-A—Sedition—Nature of article, determination of.

The question of publication and the question of the seditious character of article are questions of fact, which have to be determined on the evidence and by the light of surrounding circumstances. *Ganesh Balwant Modak v. Emperor.*

11 Cr. L. J. 180 :
5 I. C. 612 : 12 Bom. L. R. 21.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—Sedition—Publication of life-sketch of a revolutionary, when amounts to sedition.

If the subject-matter of a publication is likely to bring Government into hatred or contempt or excite disaffection towards it, and if it has been published with the intention of producing such an effect, it would be immaterial for the purposes of S. 124-A, Penal Code, whether the publication assumes the form of a life-sketch or a poem, or an allegory or some other form. The crucial point for decision in such cases is the intention of the writer and his intention has to be gathered from the subject-matter of the publication as well as the surrounding circumstances. *Arjan Singh v. Emperor*.

31 Cr. L. J. 720 :
124 I. C. 678 : A. I. R. 1930 Lah. 153 (2).

———S. 124-A—Sedition—Shouting objectionable slogans.

Shouting objectionable slogans in a meeting, namely "destroy the dishonest Government" and "long live bloody revolution" are objectionable within the meaning of S. 124-A, Penal Code. *Sodhi Pindi Das v. Emperor*.

39 Cr. L. J. 930 :
177 I. C. 707 : 40 P. L. R. 872 :
11 R. L. 357 : A. I. R. 1938 Lah. 629.

———S. 124-A—Sedition.

Speech before Railway Union meeting—Every calamity that falls to the country and people's suffering attributed to Government—Exhortation to people of the Union to bring in the examples of Soviet Russia and Ireland—Offences under Ss. 124-A, 153-A, held made out. *Munshi Singh v. Emperor*.

36 Cr. L. J. 541 :
154 I. C. 671 : 1935 O. W. N. 301 :
7 R. O. 494 : A. I. R. 1935 Oudh 347.

———S. 124-A—Sedition—Speech to be read as whole.

In construing a speech for the purposes of S. 124-A, Penal Code, the question is one of determining its reasonable, natural and probable effect taken as a whole on the minds of those to whom it is addressed. In dealing with it, one should not pause upon an objectionable sentence here or a strong word there. It should be dealt with in a spirit of freedom and not viewed with an eye of narrow criticism. *Bal Gangadhar Tilak v. Emperor*.

18 Cr. L. J. 567 :
39 I. C. 807 : 19 Bom. L. R. 211 :
A. I. R. 1916 Bom. 9.

———S. 124-A—Sedition—Suggesting change in form of Government.

There is a sharp distinction between the Government and the form of the Government. To fight against a principle or doctrine is not the same thing as to fight against a Government established by law. To suggest a change in the form of Government is not tantamount to causing disaffection towards the Government established by law. To suggest some other form of Government is not necessarily to bring the present Govern-

PENAL CODE ACT (XLV OF 1860)

ment into hatred or contempt. *Arjun Arora v. Emperor*.

38 Cr. L. J. 662 :
168 I. C. 947 : 1937 A. L. J. 261 :
9 R. A. 688 : 1937 A. W. R. 189 :
A. I. R. 1937 All. 295.

———S. 124-A—Sedition—"Swaraj", meaning of—Whether preaching "boycott" or "strike" is sedition.

The word *Swaraj* is used in different senses, and the sense in which a speaker employs it, must be judged mainly by the context of the speech in which the word is used. Language advising a "strike" of workmen, or the "boycott" of foreign goods is not itself seditious however misguided or mischievous such advice may be. *In re : Subramania Siva*.

9 Cr. L. J. 108 :
1 I. C. 22 : 5 M. L. T. 1 : 32 Mad. 8.

———S. 124-A—Sedition—Test—Impression created on audience—Impossibility of increasing hatred and contempt, whether excuse.

Whether a speech is seditious or not, depends on the impression which it would create on the mind of the audience. A speech which brings the Government into hatred and contempt cannot be considered to be innocuous because such hatred and contempt cannot be increased from the standard that exists in the mind of the people to whom it is addressed. *V. S. Dandekar v. Emperor*.

31 Cr. L. J. 429 :
122 I. C. 596 : A. I. R. 1930 All. 324.

———S. 124-A—Sedition—Test—Right of free speech.

The right of free speech exists throughout British India subject only to the qualification that the freedom is not permitted to degenerate into a licence to provoke breaches of the peace, to stir up disaffection towards the King-Emperor or the Government established by law in British India, or to bring the Government established by law into hatred or contempt. Speeches which are made from a public platform must conform to the law in this and in every other respect, and in considering the intention of those present and addressing the meeting, their words must be taken in their natural meaning unless there is express evidence to show that the natural meaning was neither intended nor understood, and the surrounding circumstances must be taken into consideration. *Thakin Ba Sein v. Emperor*.

38 Cr. L. J. 801 :
169 I. C. 668 : 10 R. Rang. 31 :
A. I. R. 1937 Rang. 161.

———S. 124-A—Sedition—Test.

Whether an article is seditious within the meaning of S. 124-A, Penal Code, depends on whether the article was intended to bring the Government into hatred and contempt and the question of intention in such cases is a question of fact. *Ganesh Balwant Moduk v. Emperor*.

11 Cr. L. J. 180 :
5 I. C. 612 : 12 Bom. L. R. 21.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—*Sedition—Truthfulness of facts, if defence.*

If certain facts are used as a peg on which to hang seditious comments, the truth of the facts does not excuse the seditious commentary. *Ram Chandra v. Emperor.*

31 Cr. L. J. 168 :
120 I. C. 798 : A. I. R. 1930 Lah. 371.

———S. 124-A—*Sedition, what is.*

A hook which holds up the Government of India to the hatred and contempt of the reader by attributing to it all misfortunes and evils suffered by the people and imputing to it base motives would come within the purview of S. 124-A, even though it is no part of the author's purpose to advocate that India should become entirely independent of the British Empire. *In the matter of : Sajani Kanta Das.*

31 Cr. L. J. 1147 :
127 I. C. 73 : 34 C. W. N. 277 :
A. I. R. 1930 Cal. 244.

———S. 124-A—*Sedition, what is.*

A journalist wrote : "Until these demands are granted, we shall use the pressure of that refusal of co-operation which is termed passive resistance. The Swadeshi-Buycott Movement still moves by its own impetus. We must free our social and economic development from the incubus of the litigious resort to the ruinously expensive British Court" : *Held*, that the words were not seditious. *Man Mohan v. Emperor.*

11 Cr. L. J. 667 :
8 I. C. 531 : 15 C. W. N. 141.

———S. 124-A—*Sedition, what is.*

A writer wrote the following in a newspaper : "We shall not break the law and, therefore, we need not fear the law. But if a corrupt police, unscrupulous officials or a partial judiciary make use of the honourable publicity of our political methods to harass the men who stand in front by illegal abuses, suborned and perjured evidence or unjust decision : shall we shrink from the toll that we have to pay on our march to freedom ?" *Held*, that these words did not fall within S. 124-A of the Penal Code. *Man Mohan v. Emperor.*

11 Cr. L. J. 667 :
8 I. C. 531 : 15 C. W. N. 141.

———S. 124-A—*Sedition, what is.*

An article in a newspaper which attributes to the Government a deliberate policy of fomenting communal strifes comes within the purview of S. 124-A. *Jagat Narain Lall v. Emperor.*

30 Cr. L. J. 213 :
113 I. C. 696 : 9 P. L. T. 784 :
I. R. 1929 Pat. 88 :
A. I. R. 1929 Pat. 10.

———S. 124-A—*Sedition, what is.*

It is not legitimate to use the existence of the non-Indian elements of Government as a means of exciting hatred, contempt and disaffection against Government—as Strachey, J., puts it, to hold up the Government to hatred and contempt by dwelling adversely on its foreign character and origin. It all depends

PENAL CODE ACT (XLV OF 1860)

on the manner in which and the object with which the circumstance is used in argument. *Annie Besant v. Government of Madras.*

18 Cr. L. J. 157 :
37 I. C. 525 : 1916, 2 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
A. I. R. 1918 Mad. 1210.

———S. 124-A—*Sedition, what is.*

It is sedition to say in a public speech that the Government holds the lives of the people of this country as of no value and is prepared to shoot them down under the pretext of acting in the interest of law and order. *Narainjan Das v. Emperor.*

32 Cr. L. J. 538 :
130 I. C. 431 : I. R. 1931 Lah. 303 :
A. I. R. 1931 Lah. 31 (2).

———S. 124-A—*Sedition, what is—Sentence.*

Newspaper article attributing reckless oppression and free exploitation, to Imperialism—Imperialism need not be interchangeable with Government—Article is seditious—Small circulation of paper and youth and little education of accused held considerations in mitigation of sentence. *A. M. A. Zaman v. Emperor.*

34 Cr. L. J. 309 :
142 I. C. 292 : I. R. 1933 Cal. 255 :
A. I. R. 1933 Cal. 140.

———S. 124-A—*Sedition, what is.*

Speech recommending Bolshevik form of Government as preferable to present form—Speech held, did not come under S. 124-A. *Kamal Krishna Sircar v. Emperor.*

36 Cr. L. J. 1370 :
158 I. C. 204 : 39 C. W. N. 1245 :
62 C. L. J. 116 : 8 R. C. 177 :
A. I. R. 1935 Cal. 636.

———S. 124-A—*Sedition, what is.*

To refer to the Mutiny of 1857 as the 'War of Independence' which unluckily failed and to advise the hearers to attain the same object by different means amounts to sedition. *Ram Saran Das v. Emperor.*

32 Cr. L. J. 444 :
129 I. C. 700 : 31 P. L. R. 688 :
I. R. 1931 Lah. 220 : A. I. R. 1930 Lah. 892.

———S. 124-A—*Sedition, what is.*

To suggest some other form of Government is not necessarily to bring the present Government into hatred or contempt. *Kamal Krishna Sircar v. Emperor.*

36 Cr. L. J. 1370 :
158 I. C. 204 : 39 C. W. N. 1245 :
62 C. L. J. 116 : 8 R. C. 177 :
A. I. R. 1935 Cal. 636.

———S. 124-A—*Sedition.*

What was sedition in 1807 may not be so in 1932. *In the matter of : The Anrita Bazar Patrika.* (F. B.)

33 Cr. L. J. 949 :
140 I. C. 304 : 56 C. L. J. 157 :
37 C. W. N. 166 : I. R. 1932 Cal. 696 :
A. I. R. 1932 Cal. 738.

———S. 124-A—*Sedition, what is—Offence.*

Where a speaker's theme throughout was that the Government was tyrannical and that

PENAL CODE ACT (XLV OF 1860)

Englishmen or English rulers were devoid of all feeling of sympathy towards India and Indians and his aim and object was to impress upon the audience the paramount necessity of making a sustained effort for independence and to gain it or to perish in the struggle for it and to turn the Englishmen out of India : *Held*, that the speech as a whole was seditious and the speaker was guilty under S. 124-A, Penal Code. *Satya Pal v. Emperor*.

31 Cr. L. J. 266 :
121 I. C. 425 : 31 P. L. R. 11 :
A. I. R. 1930 Lah. 309.

-----S. 124-A—Sedition, what is.

Where a speaker told the audience that the Government wanted to ruin those people who were trying to set them on the right path, that the Englishmen had come to India to make the people addicted to drink, opium and *bharg*, that the executive and judiciary are partial to white men and exhorted the audience to resolve not to live under Englishmen : *Held*, that the speech was calculated to excite disaffection against the Government and to bring it into hatred and contempt. *Kidar Nath Sahgal v. Emperor*.

31 Cr. L. J. 603 :
123 I. C. 865 : A. I. R. 1929 Lah. 817.

-----S. 124-A—Sedition, what is—Hatred and contempt.

Where the editor of a newspaper was convicted under S. 124-A, in respect of an article which contained the following paragraph :—“The English have made a fine move for taking possession of Kabul, by their duplicity. On the one hand, the Afghan King has been made to introduce European fashions in his country, and on the other, the Afghan subjects have been incited to rebel against their King” : *Held*, that as there was no reference to the Government of India and as the language was not calculated to excite disaffection or hatred, the conviction was illegal. *Lachhman Singh v. Emperor*.

31 Cr. L. J. 734 :
124 I. C. 681 : A. I. R. 1930 Lah. 156.

-----S. 124-A—Seditious article—Copying from another paper, whether good defence—Question of sentence.

The fact that a seditious article was merely ‘copied’ by the accused from another newspaper in regard to the appearance in which no prosecution followed and that the accused thought that the article was not seditious and did not ‘intend’ to publish anything seditious is no defence to a charge under S. 124-A, but may be taken into consideration in determining the question of sentence. *Krishna Gopal Sharma v. Emperor*.

32 Cr. L. J. 161 :
128 I. C. 605 : 1930 A. L. J. 1215 :
I. R. 1931 All. 77 : A. I. R. 1930 All. 836.

-----S. 124-A—Seditious article in newspaper—Editor’s liability.

If an article in a newspaper constitutes an offence under S. 124-A, the fact that it was not written by the editor would not affect the question of his guilt, whatever effect it may

PENAL CODE ACT (XLV OF 1860)

have on the question of sentence. *Khushal Chand Khursand v. Emperor*.

31 Cr. L. J. 1170 :
127 I. C. 148 : A. I. R. 1930 Lah. 875.

-----S. 124-A—Seditious document—Cumulative effect.

Where the cumulative effect of the statements made in a book is to bring into hatred and contempt the Government established by law in British India, the Government is justified in proscribing the book even though the statement standing alone would not justify the step. *Baij Nath Kedia v. Emperor*.

26 Cr. L. J. 679 :
86 I. C. 55 : 23 A. L. J. 1 :
A. I. R. 1925 All. 195.

-----S. 124-A—Seditious literature—Class of paper and readers—Relevancy of.

The Court has also to bear in mind the class of paper in which the article appears and the class of people among whom it will be circulated, and although the ultimate object of the writer may be unobjectionable, if, explaining that object he uses language which is likely to bring the Government into contempt or to excite disaffection, S. 124-A will apply. *Nageswar Prasad Sharma v. Emperor*.

26 Cr. L. J. 78 :
83 I. C. 638 : 1924 Pat. 283 :
A. I. R. 1925 Pat. 99.

-----S. 124-A—Seditious speech—Essentials.

It is quite possible to express dissatisfaction with the Government without exciting disaffection ; and the speech will have to be judged not by the political views of the accused or his party but by the purpose of the accused in expressing those opinions in the way he does. Fair criticism of the Government is no offence but the question the Court has to decide is whether the speech of the accused indicated an intention to promote hostility and ill-will towards the Government. *In re : S. S. Balliwala*.

39 Cr. L. J. 938 :
177 I. C. 747 : 1938 M. W. N. 529 :
48 L. W. 170 : 1938 2 M. L. J. 416 :
11 R. M. 375 : A. I. R. 1938 Mad. 758.

-----S. 124-A—Seditious speech—Whole speech not taken down verbatim by reporter, if conviction, legality of.

Where in a case of sedition in respect of a speech delivered by the accused, the whole of the speech was not taken down by the reporter but there was nothing to show that such portions as were taken down were taken down incorrectly or that the excerpts of the speeches were not a fair representation of the general drift of the speech, and the entire subject-matter of the speech was seditious : *Held*, that the accused could be convicted under S. 124-A, Penal Code. *Sant Ram v. Emperor*.

31 Cr. L. J. 562 :
123 I. C. 572 : A. I. R. 1930 Lah. 86.

-----S. 124-A—Sentence.

A lenient sentence may be passed where the speech is not couched in intemperate

PENAL CODE ACT (XLV OF 1860)

language and the speaker is an old man.
Shan Das v. Emperor. 31 Cr. L. J. 1169 :
 127 I. C. 147 : A. I. R. 1930 Lah. 874.

———S. 124-A—Sentence.

In imposing punishment for an offence under S. 124-A, each case must be dealt with on its own particular facts and the circumstances and atmosphere of the time when it was delivered must be considered.
Amir Alam v. Emperor. 32 Cr. L. J. 199 :
 129 I. C. 20 : I. R. 1931 Lah. 100 :
 A. I. R. 1930 Lah. 885.

———S. 124-A—Sentence.

In awarding sentence for offence under S. 124-A, the test should be whether speech was violent and whether the intention of accused was to excite people to commit violence.
Munshi Singh v. Emperor.

36 Cr. L. J. 541 :
 154 I. C. 671 : 1935 O. W. N. 301 :
 7 R. O. 494 : A. I. R. 1935 Oudh 347.

———S. 124-A—Sentence.

On the question of sentence, the position of printers of such documents is probably worse than that of the authors because the seditious acts of the author would be far less extensive in their operation if it were not for the existence of persons able and willing to print and publish them.
Braja Behari Burman v. Emperor.

32 Cr. L. J. 742 :
 131 I. C. 671 : 53 C. L. J. 182 :
 A. I. R. 1931 Cal. 349.

———S. 124-A—Sentence.

The fact that author of seditious book was an inexperienced young man and he did not realize that he was bringing himself within the law by publishing sketches like those that had appeared in some other publications of the same kind against which no action was taken, can be considered in the matter of sentence.
Kirpal Singh v. Emperor.

32 Cr. L. J. 649 :
 131 I. C. 219 : A. I. R. 1931 Lah. 106.

———S. 124-A—Sentence.

The fact that an article was written at a time of great public excitement and the writer was penning his article in an exasperated mood will go towards the mitigation of sentence but cannot be held to constitute an excuse.
Satyaranjan Bakshi v. Emperor.

28 Cr. L. J. 723 :
 103 I. C. 771 : 45 C. L. J. 638 :
 A. I. R. 1927 Cal. 698.

———S. 124-A—Sentence.

Though sedition is a serious offence, many factors have got to be taken into consideration in awarding punishment. The object of the State in instituting prosecution for sedition is not to take vindictive action.
Satyaranjan Bakshi v. Emperor.

28 Cr. L. J. 723 :
 103 I. C. 771 : 45 C. L. J. 638 :
 A. I. R. 1927 Cal. 698.

PENAL CODE ACT (XLV OF 1860)

———S. 124-A—Sentence.

When the general tenor of the newspaper has been good and that the article was published at a time when the editor was otherwise busy and was not able to fully discharge his duties as an editor is an extenuating circumstance and a ground for inflicting a light sentence.
Khushal Chand Khursand v. Emperor. 31 Cr. L. J. 1170 :
 127 I. C. 148 : A. I. R. 1930 Lah. 875.

———S. 124-A—Trial for sedition—Principles rightly understood by Tribunal—Proper application of those principles to case is question of fact—Interference by Privy Council with conclusions arrived at by Courts in India.

Once it appears that in a trial for sedition the principles of the law of sedition have been rightly understood by the Tribunal in India, the question whether those principles have been properly applied to the facts of the case is so much in the nature of a question of fact and depends so largely upon local conditions that it is difficult for the Board to interfere on this ground with the conclusions arrived at by the Court in India.
Kali Nath Roy v. Emperor.

22 Cr. L. J. 129 P. C. :
 59 I. C. 641 : 19 A. L. J. 65 :
 33 C. L. J. 124 : 40 M. L. J. 10 :
 13 L. W. 253 : 1921 M. W. N. 49 :
 29 M. L. T. 142 : 2 Lah. 34 :
 25 C. W. N. 701 : 23 Bom. L. R. 709 :
 10 P. W. R. 1921 Cr. : A. I. R. 1921 P. C. 29.

———S. 124-A—Waging of War—Offence, when complete.

Per *Shah, A. C. J.*—It is not necessary that as a result of the abetment the war should be waged in fact. But the main purpose of the instigation should be the waging of war. It should not be merely a remote and incidental purpose, but the thing principally aimed at by the instigator.
Emperor v. Hasrat Mohani.

24 Cr. L. J. 923 :
 75 I. C. 299 : 24 Bom. L. R. 885 :
 A. I. R. 1922 Bom. 284.

———S. 124-A, Expls. 2, 3—Scope and object—Fair comment, what is.

Expls. 2 and 3 to S. 124-A are intended to protect criticism of Government measures, and of administrative and executive actions of Government, and they give a perfect freedom to journalists, to publicists, to orators and public speakers, to discuss the measures and administrative acts of Government, disapprove of them, to attack them, and to use forcible and strong language, if necessary, and to do every thing legitimate and honest in bringing before the public or the Government the fact that their measures or their actions are disapproved by a section of the public or by that particular speaker or journalist. But no publicist, no journalist, no speaker has any right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse or calculated to

PENAL CODE ACT (XLV OF 1860)

engender feelings of enmity, hatred, or disloyalty against Government. *Emperor v. Bal Gangadhar Tilak.* 8 Cr. L. J. 281 : 10 Bom. L. R. 848.

———Ss. 124-A, 17—*Construction—Ministers of a Province, whether "the Government" within meaning of S. 124-A and S. 17.*

Ministers chosen from the elected representatives of the people of the province cannot be described as "officers subordinate" to the Governor within the meaning of S. 49, Government of India Act, 1935. It follows therefore, that although in popular language, the Ministers may be referred to as "the Government," they are not "the Government" within the meaning of Ss. 17 and 124-A, Penal Code. *Emperor v. Hemendra Prosad Ghosh.* (S. B.) 40 Cr. L. J. 782 : 183 I. C. 349 : 69 C. L. J. 599 : 43 C. W. N. 950 : 12 R. C. 153 : I. L. R. 1939, 2 Cal. 411 : A. I. R. 1939 Cal. 529.

———Ss. 124-A, 131—*Sedition.*

Where *P* in the issue of "India" (a vernacular weekly newspaper) of 25th April 1907, published an article headed: "The British Government's Native Forces, *Bande Matram*" which purported to be a letter from a sympathiser of Native Soldiers to their address and calculated to seduce soldiers of the Indian Army from their allegiance and their duty to His Majesty, the King-Emperor of India and *D* abetted the same by printing the article at his Press: *Held*, that the accused were rightly convicted under Ss. 124-A and 131, Penal Code, and that publishing to broadcast some 8,000 copies of the letter addressed to native soldiers, and which was bound to reach them, is clearly an act amounting to an attempt and: *Held*, further, that in the case of conviction under the above sections, a Press used for printing a seditious article cannot be confiscated under S. 517, Cr. P. C., 1898. *Pindi Das v. Emperor.* 6 Cr. L. J. 411 : 2 P. W. R. Cr. 97.

———Ss. 124-A, 153-A—*Charge, contents of.*

A charge against an accused person under Ss. 124-A and 153-A in respect of certain speeches delivered by him need not set forth which portions of the speeches are within the provisions of each of the sections. A general statement in the charge to the effect that in making the speech the accused attempted to excite disaffection towards Government and to promote feelings of enmity or hatred between classes is a good charge. *In re: V. O. Chidambaram Pillai.* 9 Cr. L. J. 140 : 1 I. C. 42 : 19 M. L. J. 81 : 5 M. L. T. 24.

———Ss. 124-A, 153-A—*Hatred and contempt.*

Explanations 2 and 3 to S. 124-A have no application whatever unless the criticisms are concerning the measures of Government or the administrative or other action of Government and that, too, without exciting

PENAL CODE ACT (XLV OF 1860)

or attempting to excite hatred, contempt or disaffection. The object of the Explanations is to protect *bona fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or distinguished, to make the people hate their rulers. *Thakin Lay Maung v. The King.* 40 Cr. L. J. 668 : 182 I. C. 361 : 1939 Rang. 239 : 12 R. Rang. 8 : A. I. R. 1939 Rang. 169.

———Ss. 124-A, 153-A—*Joint trial in respect of two articles.*

The accused was charged under S. 124-A in respect of one article, and separately charged under Ss. 124-A and 153-A, Penal Code, in respect of another article: *Held*, that he could be tried at one trial on both the charges. *Emperor v. Bal Gangadhar Tilak.* 8 Cr. L. J. 281 : 10 Bom. L. R. 848.

———Ss. 124-A, 153-A—*Offences under—Offences, whether can be committed in same article—British Government and people, distinction between.*

Attack on the policy of the British Government is not necessarily an attack on the British people, and it is possible to blame one without hating the other. *Emperor v. Nabibau.* 25 Cr. L. J. 614 : 81 I. C. 102 : 17 S. L. R. 341 : A. I. R. 1925 Sind 59.

———Ss. 124-A, 153-A—*Sentence.*

Punishments for offences, under Ss. 124-A and 153-A should be deterrent, especially where a peculiarly mischievous conspiracy is proved and an obnoxious pamphlet appears to have been specially prepared to catch the attention and poison the immature minds of students and others of an impressionable temperament. *Emperor v. Virumal.* 11 Cr. L. J. 583 : 8 I. C. 203 : 4 S. L. R. 55.

———S. 131.

See also Penal Code, 1860, S. 124-A.

———Ss. 131, 135—"Soldier," meaning of—*Definition in Articles of War, scope of.*

The word "soldier" in S. 135, Penal Code, must be interpreted as in the Explanation to S. 131 of the Code. The definition of the word "soldier" given in the Indian Articles of War is expressly confined to those Articles and is a very limited one. *Sri Nawas v. Emperor.* 21 Cr. L. J. 511 (a) : 56 I. C. 671 : 102 P. L. R. 1920 : A. I. R. 1920 Lah. 114.

———Ss. 140, 149—"Offence," meaning of.

The word "offence" in S. 149, Penal Code, means only an offence under the Penal Code, and does not include an offence under the Railways Act. Consequently, a conviction under S. 126, Railways Act, read with S. 149, Penal Code, is illegal. *Inder Sain v. Emperor.* 21 Cr. L. J. 418 : 56 I. C. 210 : A. I. R. 1920 Lah. 144.

PENAL CODE ACT (XLV OF 1860)

———S. 141.

See also (i) Cr. P. C., 1898, S. 196-A.
(ii) Penal Code, 1860, S. 100, 105.

———S. 141—Applicability of.

The phrase "to enforce a right" in S. 141 can only apply when the party claiming the right has not possession over the subject of the right. It has no application to the case of persons who being in possession of a right attempt to maintain that right. *Bagh Singh v. Emperor*.

25 Cr. L. J. 625 :
81 I. C. 113 : A. I. R. 1925 Lah. 49.

———S. 141—Assembly not unlawful at beginning when becomes unlawful.

An assembly which is not unlawful in its inception does not become an unlawful assembly merely because of its refusal to obey an order to disperse. *Girdharu Singh v. Emperor*.

23 Cr. L. J. 5 :
64 I. C. 373 : 4 U. P. L. R. Lah. 11 :
3 L. L. J. 529 : 21 P. L. R. 1922 :
A. I. R. 1922 Lah. 135.

———S. 141—Charge—Common object, finding as to, different from that stated in charge—Conviction, legality of.

A conviction for an offence involving the membership of an unlawful assembly is not vitiated by the fact that the finding of the Appellate Court as to the common object of the assembly is slightly different from the common object stated in the charge, where the accused knew exactly what the case against them was. *Hasan Beg v. Emperor*.

25 Cr. L. J. 657 :
81 I. C. 145 : 19 N. L. R. 154 :
A. I. R. 1924 Nag. 49.

———S. 141—Charge.

Where the common object in regard to offences under Ss. 149 and 307, Penal Code, was stated in the charge to be "harassing Hindus" and in the prosecution thereof Hindus were attacked with gun and sword: *Held*, (1) that the language of the charge was sufficient to satisfy the requirements of S. 141, Penal Code, and to give the accused persons a sufficiently clear idea of the charge against them; (2) that the band of harassers being armed with swords and guns, each of them may be credited with the knowledge that murder was likely to be committed in the course of harassing. *Parakuzhiyil Ayamad v. Emperor*.

24 Cr. L. J. 852 :
74 I. C. 1044 : 18 L. W. 350 :
A. I. R. 1924 Mad. 376.

———S. 141—Common object—Conviction for rioting.

To sustain a conviction for rioting, there must be five persons who have a common object. Where two of the five persons convicted were found to have no common object, the conviction as against the rest cannot stand. *In re : Vyarpuri Chetty*.

11 Cr. L. J. 197 :
4 I. C. 1142 : 5 M. L. T. 295.

PENAL CODE ACT (XLV OF 1860)

———S. 141 Common object.

In a case of unlawful assembly it is necessary that the accused should have reasonably distinct notice of the common object imputed to them and of the manner in which that common object is to be brought with the language of S. 141. *Parakuzhiyil Ayamad v. Emperor*.

24 Cr. L. J. 852 :
74 I. C. 1044 : 18 L. W. 350 :
A. I. R. 1924 Mad. 376.

———S. 141—Common object.

The object of an unlawful assembly must be judged from the surrounding circumstances as it is impossible to look into the minds of men. *Lachmi Singh v. Emperor*.

29 Cr. L. J. 567 :
109 I. C. 503 : A. I. R. 1928 Pat. 562.

———S. 141—Common object—Time.

For the purposes of S. 141 the "common object" must denote a common object then and there as an assembly to take action, and it cannot be held that there was such a common object because the members of the assembly agreed at some uncertain further date to take individual action. *Emperor v. Nga Tun Maung*.

27 Cr. L. J. 337 :
92 I. C. 849 : 4 Bur. L. J. 169 :
A. I. R. 1925 Rang. 362.

———S. 141—Compelling person to omit to do his duty.

Where the common object of an assembly is to compel a person by means of force to omit to do a certain act, the assembly will become an unlawful assembly only if the act, the omission of which is compelled, is one which the person so compelled was legally entitled to do. *Baif Nath v. Emperor*.

26 Cr. L. J. 513 :
85 I. C. 353 : 27 O. C. 292 :
1 O. W. N. 588 : A. I. R. 1925 Oudh 425.

———S. 141—Defending possession by force if unlawful.

In a partition effected between two Kathi Talukdars, the joint account books were agreed to be kept in the possession of the elder brother, and a list of the books signed by that brother was to be handed over to the younger brother. Before the books were handed over, they were kept in a room belonging to the latter, and the key with a servant of the former. Another servant of his, then went to prepare the lists, but, as the Agency Manager of the younger brother, who was a minor, objected to the entry of certain books, alleging that they were the minor's exclusive property, he did not finish his task and left, but returned with a cart to take away the books, when the Manager prohibited the removal of the cart owing to that clerk not having passed a receipt. He then brought armed men, and in spite of the Manager's having posted two policemen with a written order not to allow the removal of the cart containing the books, he removed the books without passing any

PENAL CODE ACT (XLV OF 1860)

receipt. These persons were accordingly convicted under S. 144, I. P. C. : *Held*, that as the elder brother had admittedly the key of the library room and also, as such, was the reasonable interpretation of the partition-deed, the physical possession was with him; that the provision in the deed for lists to be made and the elder brother's receipt to be obtained below one list, was a subsequent provision; that there was no reason to regard it as a condition precedent; that a Criminal Court was concerned, not with title, but with actual physical possession, which was, of course, very different thing from the right to possession; and that, if the elder brother had the exclusive possession, he was not taking possession enforcing the right in possession, but merely maintaining it. *Ahmad Kasam v. Emperor*.

3 Cr. L. J. 443.

————S. 141—*Defending possession by force, if unlawful.*

Where the common object was not to enforce any right or supposed right, but to maintain undisturbed the actual enjoyment of a right, there is no unlawful assembly. *Silajit Mahota v. Emperor*.

10 Cr. L. J. 471 :

4 I. C. 19 : 13 C. W. N. 801 : 36 Cal. 865.

————S. 141—*Defending possession with force, if unlawful.*

A party of men who are not enforcing any right by means of criminal force but are by means of force, maintaining a certain right, for instance, the right to use water, which is being actually exercised by them, cannot be regarded as an unlawful assembly. *Baij Nath v. Emperor*.

26 Cr. L. J. 513 :

85 I. C. 353 : 27 O. C. 292 :

1 O. W. N. 588 : A. I. R. 1925 Oudh 425.

————S. 141—*Defending possession with force, if unlawful.*

The party of the accused having notice that a trespass would be committed on their property assembled on the property, armed with lathis, with the object of preventing the contemplated trespass. The opposite party arrived, similarly armed, and insisted on committing the trespass. A fight ensued and one member of the opposite party was killed and several were injured : *Held*, that irrespective of the fact who struck the first blow, the party of the accused having assembled to prevent a contemplated wrong were not an unlawful assembly and were not guilty of any offence. *Parmeshar Din v. Emperor*.

25 Cr. L. J. 579 :

81 I. C. 67 : A. I. R. 1923 Oudh 167.

————S. 141—*Enforcing agreement by force.*

The leaders of the Hindu and Muhammadan communities of a place entered into an agreement on behalf of the communities by which, *inter alia*, the latter undertook not to sacrifice cows publicly. The Hindus apprehending sacrifice of cows assembled with deadly weapons, and as a result, a riot ensued and some Muhammadans died : *Held*, that

PENAL CODE ACT (XLV OF 1860)

the object of the assembly fell within the purview of Cl. (4), S. 141, and that the members of the assembly could be charged and convicted for being members of an unlawful assembly. *Lachhmi Singh v. Emperor*.

29 Cr. L. J. 567 :

109 I. C. 503 : A. I. R. 1928 Pat. 562.

————S. 141—*Enforcing right by force.*

An assembly is unlawful, if it consists of a body of men, who are determined to vindicate their rights or supposed rights by unlawful force and when they engage in a fight with men, who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, as no question of self-defence arises in such a case and neither side is trying to protect itself but each side is trying to get the better of the other. *Muhammad Ibrahim v. Emperor*.

30 Cr. L. J. 38.

112 I. C. 902 : I. R. 1929 Nag. 10 :

A. I. R. 1929 Nag. 43.

————S. 141—*Enforcing right with force.*

It is an offence under S. 141 to collect a number of persons to support one's right by show of force. *Punni Basava v. Amara Gounden*.

10 Cr. L. J. 116 :

2 I. C. 613 : 5 M. L. T. 85.

————S. 141—*Lawful acts exciting unlawful acts if unlawful.*

An assembly does not become unlawful by reason of its lawful acts exciting others to do unlawful acts. *Muhammad Ibrahim v. Emperor*.

30 Cr. L. J. 38 :

112 I. C. 902 : I. R. 1929 Nag. 10 :

A. I. R. 1929 Nag. 43.

————S. 141—*Member of unlawful assembly—Who is.*

Any person who intentionally joins or continues in an unlawful assembly while the assembly is committing an offence becomes a member of that assembly. Any person who has innocently got into the crowd and is unable owing to pressure of numbers to escape from it, is not a member of the unlawful assembly; but he would have to make out his case on the point. *Gendo Uraon v. Emperor*.

29 Cr. L. J. 79 :

106 I. C. 591 : 6 Pat. 828 :

9 P. L. T. 167 : A. I. R. 1928 Pat. 115.

————S. 141—*Members of unlawful assembly—Who are.*

The actions of a few members of an assembly which has gathered together for a perfectly lawful purpose, cannot by themselves, make the whole assembly an unlawful assembly. The circumstances must be such as at least to justify the presumption that the other persons present associated themselves with the offending members. The mere fact that they are with the offending members at the time does not make them members of the unlawful assembly formed by those members; they must be shown to have joined or continued in that portion of the assembly which

PENAL CODE ACT (XLV OF 1860)

has become an unlawful assembly. *Maning Oh Kyan v. Emperor*. 26 Cr. L. J. 1186 :

88 I. C. 706 : 4 Bur. L. J. 80 :
A. I. R. 1925 Rang. 243.

———S. 141—Religious procession when unlawful assembly.

The mere knowledge that a religious procession is going to be opposed by force is not in cases sufficient to constitute the members of the procession an unlawful assembly. Each case must be decided on its own facts. Where, however, the members of a procession go out armed for an express purpose of having a fight and a fight ensues as a consequence, the members of the procession are guilty of rioting. *Dilli v. Emperor*.

26 Cr. L. J. 1325 :
89 I. C. 269 : 2 O. W. N. 589 :
A. I. R. 1925 Oudh 656.

———S. 141—Resisting execution of law.

Order prohibiting procession lawfully made—Resistance to police trying to execute it, brings it under S. 141. *Ramendra Chandra Roy v. Emperor*. 32 Cr. L. J. 844 :

132 I. C. 174 : 35 C. W. N. 716 :
58 Cal. 1303 : I. R. 1931 Cal. 558 :
A. I. R. 1931 Cal. 410.

———S. 141—Right to use force.

There is no provision of law whatsoever which gives any person or body of persons a right to use force and violence to prevent their feelings being wounded by an illegal act. *Emperor v. Bhaggan*. 37 Cr. L. J. 39 :

159 I. C. 26 : 1935 A. W. R. 1075 :
1935 A. L. J. 1169 : 8 R. A. 409 :
A. I. R. 1935 All. 931.

———S. 141—Unlawful assembly—Common object, change in.

The common object of an unlawful assembly can change in the course of an occurrence. A crowd may have a common object at one time and may have another common object as things develop, and it may well be that there are various common objects in the course of an occurrence, and these all have to be placed before a Jury for the Jury to decide if any of them has been proved against the accused, and if so, which of them. *Abdul Gani v. Emperor*. 25 Cr. L. J. 1386 :

83 I. C. 346 : A. I. R. 1925 Cal. 494.

———S. 141.

Unlawful assembly—Common object—Inference from surrounding circumstances—Going armed—Custom, effect of—Enforcing right by show of criminal force—Offence. *Lachhmi Singh v. Emperor*. 29 Cr. L. J. 567 :

109 I. C. 503 : A. I. R. 1928 Pat. 562.

———S. 141—Unlawful assembly—Crown, right of, to prosecute.

A complaint for rioting or for being a member of an unlawful assembly discloses a non-compoundable offence for which the Crown alone in the interests of public peace and security has a right to prosecute, and a complainant has no independent right to have the guilty persons punished. *In re : Malayil Kottadil Koyassan Kutty*. 18 Cr. L. J. 329 :
38 I. C. 441 : A. I. R. 1918 Mad. 494.

PENAL CODE ACT (XLV OF 1860)

———S. 141—Unlawful assembly—"Enforcing any right," meaning of.

The true import of the expression "to enforce any right" in Cl. (iv) of S. 141, relates to an initial act when it is done in furtherance of any right and not to an act when it is done to maintain a position already achieved in the lawful exercise of that right. *Baij Nath v. Emperor*. 26 Cr. L. J. 513 :

85 I. C. 353 : 27 O. C. 292 :
1 O. W. N. 588 : A. I. R. 1925 Oudh 425.

———S. 141—Unlawful assembly—Maintaining existing rights.

Where certain persons were merely acting in maintenance of an existing peaceful possession, they cannot be said to have been enforcing any right or supposed right, and therefore, cannot be held to form an unlawful assembly within the meaning of S. 141, Cl. (i). *Emperor v. Mohammad Idris*.

34 Cr. L. J. 748 :
144 I. C. 262 (1) : 10 O. W. N. 788 :
I. R. 1933 Oudh 228 :
A. I. R. 1933 Oudh 279.

———S. 141—Unlawful assembly, use of force.

The mere use of criminal force or show of criminal force by any person to take possession of any property is not sufficient to bring a case within Cl. (5) of S. 141, unless some criminal intent is proved against the persons so using force or show of force. *Addaita Bhua v. Kali Das & Co.*

6 Cr. L. J. 393 :
12 C. W. N. 96.

———S. 141—Unlawful assembly, what constitutes.

Persons who form an assembly for the purpose of defending what they are possessed of and bona fide believe they have a right to, whether it be tangible property or such a right as that to a supply of water are not criminally liable. *In re : Veeerabhadra Pillai*.

28 Cr. L. J. 945 :
105 I. C. 657 : 26 L. W. 549 :
1927 M. W. N. 828 : 53 M. L. J. 696 :
51 Mad. 91 : A. I. R. 1927 Mad. 986.

———S. 141—Unlawful assembly, what constitutes.

The law does not declare a mere assemblage of men, however large, illegal. In order to be illegal, it must be inspired by an object as specified in S. 141. *Sitaram v. Emperor*.

26 Cr. L. J. 587 :
85 I. C. 731 : A. I. R. 1925 Nag. 260.

———S. 141—Unlawful assembly—What is.

There was a dispute between the Pallars and Kallars of a village in respect of the right to catch fish in an *oorani*. The Kallars armed and in large numbers went to the *oorani* to exercise their right and suddenly ran towards and attacked the Pallars, 20 or 30 in number, who were gathered 200 yards off, and the latter in the course of the attack inflicted injuries on their assailants. They were convicted of offences under Ss. 147, 148, 323 and 325 :

PENAL CODE ACT (XLV OF 1860)

Held, (1), that no common criminal intention having been established with regard to this assembly of Pallars, they were not members of any unlawful assembly and were not guilty of the offence of rioting; (2) that in the course of their defending themselves against a sudden and virulent attack by a much larger body of Kallars, the Pallars were entitled to inflict such injuries as they had inflicted, and that consequently, they were not guilty of any offence. *Ramaswami v. Emperor*.

27 Cr. L. J. 108 :
91 I. C. 540 : 1925 M. W. N. 666 :
A. I. R. 1925 Mad. 1213.

S. 141—Unlawful assembly—What is.

Where the members of an assembly merely agree as to what they should individually do, when, in the case of each person separately, a demand is made for the payment of a certain tax, the assembly does not become unlawful assembly. *Emperor v. Nga Tun Maung*.

27 Cr. L. J. 337 :
92 I. C. 849 : 4 Bur. L. J. 169 :
A. I. R. 1925 Rang. 362.

S. 141—Vindication of disputed right, offence.

The plain object of Cl. 4, S. 141, is to prevent the resort to force in vindication of supposed rights. The mere fact that the accused entertained honestly a claim cannot take the case out of S. 141, if the claim was a disputed claim and not an admitted claim or an ascertained right. *Emperor v. Gulam Hoosein*.

10 Cr. L. J. 427 :
3 I. C. 958 : 11 Bom. L. R. 849.

S. 141—What constitutes offence.

Certain land on the north bank of the Sutlej was claimed as their respective property by one Haidar of Montgomery District and one Sajawara of Bahawalpur State territory. Sajawara entered upon the land, cut down trees and crops, and for this, he was convicted by a Magistrate of the first class at Montgomery on two separate charges under Ss. 379-147, Penal Code: *Held*, that as the accused had resorted to force, he had rendered himself liable to punishment under Cl. 5, S. 141. *Sajawara v. Emperor*.

1 Cr. L. J. 94 :
5 P. L. R. 47.

S. 141—Assembly to enforce right or supposed right and assembly to maintain existing right—Distinction.

There is no distinction between forming an assembly to enforce a right or supposed right and forming an assembly forcibly to maintain an existing right, and it is not necessary for the prosecution to show affirmatively that it was an assembly of the former description and not of the latter. *Ghyas-ud-Din Ahmad v. Emperor*.

33 Cr. L. J. 864 :
139 I. C. 616 : 13 P. L. T. 288 :
11 Pat. 523 : I. R. 1932 Pat. 251 :
A. I. R. 1932 Pat. 215.

Ss. 141, 143—Compelling persons to do what is not their duty—Meeting of association

PENAL CODE ACT (XLV OF 1860)

—Members compelled to take oath by violence—Members not taking part in violence, whether guilty.

Accused was the Secretary of a Wanthanu Society. He convened a meeting of the society, the object of which was to discuss whether certain resolutions should be adopted. It was proposed at the meeting that the members present should take a certain oath. Some of the members objected to the form of the oath, whereupon certain other members who were more than five in number, got up in an angry and threatening manner and in consequence of their attitude, the objecting members took the oath. There was no evidence that the accused in any way associated himself with the show of violence or that he made any speech after violence had been used: *Held*, (1) that the action of those members who used violence fell within the fifth clause of S. 141 of the Penal Code, and that they, therefore, constituted an unlawful assembly; (2) that there was nothing, however, to show that the accused had become or had continued to be a member of the unlawful assembly and that consequently the accused could not be convicted under S. 143 of the Penal Code. *Maung Oh Kyan v. Emperor*.

26 Cr. L. J. 1186 :
88 I. C. 706 : 4 Bur. L. J. 80 :
A. I. R. 1925 Rang. 243.

Ss. 141, 143—Defending possession without violence, if offence.

There is no offence, if in the bona fide exercise of a right, a person resists a trespass by another into his land without resort to violence and even threatens force if the trespass was not desisted from. *Punni Basava v. Amara Gounden*.

10 Cr. L. J. 116 :
2 I. C. 613 : 5 M. L. T. 85.

Ss. 141, 143—Unlawful Assembly—What is.

A thief who places stolen crops on a part of common threshing floor, does not by that act obtain legal possession of the land so used by him, and an entry by anybody to deprive him of such crops does not amount in law to a trespass. Where in such a case the owner of the crop assisted by a number of persons entered the threshing floor and took away the crop: *Held*, that they did not constitute an unlawful assembly. *Jarha Chamar v. Surit Ram*.

7 Cr. L. J. 49 :
3 N. L. R. 177.

S. 141, 143—Unlawful assembly, what is—Common object—Meeting for deliberation.

An assembly cannot be an unlawful assembly unless the common object of the persons composing the assembly falls within one of the five clauses described in that section. *Emperor v. Nga Tun Maung*.

27 Cr. L. J. 337 :
92 I. C. 849 : 4 Bur. L. J. 169 :
A. I. R. 1925 Rang. 362.

Ss. 141, 143, 149—Unlawful assembly—What is.

An irrigated and unfenced wheat field of

PENAL CODE ACT (XLV OF 1860)

the accused having been found newly damaged by beasts, they, on enquiry, either saw the cattle of the complainants close by or jumped to the conclusion that the damage must have been caused by their cattle, and so the accused got hold of the cattle and drove them to the pound either to punish the complainants or to make them vacate the accused's village where the complainants had encamped owing to a drought, in their own. On the complainant's interfering, or on the accused's disregarding their entreaties to desist, a fight took place, in which one complainant was killed, one grievously hurt, and both, the parties received more or less severe injuries. Cross cases were prepared, but the complainants were discharged under S. 253, Cr. P. C., and the accused committed: *Held*, that, as the removal of the cattle was attempted in the first place by two or three of them, as it was not proved that criminal force was used in pursuance of the common object of removing the cattle, and as the fight was possibly the result merely of an abusive dispute, they were not guilty under Ss. 141, 143 and 149, I. P. C. *Emperor v. Vajesing Naranji*. 4 Cr. L. J. 271.

———Ss. 141, 145—Common object—Burden of proof.

It is for the prosecution to show that the common object of a crowd was such, as would constitute it an unlawful assembly under S. 141. *Muhammad Ibrahim v. Emperor*. 30 Cr. L. J. 38 : 112 I. C. 902 : I. R. 1929 Nag. 10 : A. I. R. 1929 Nag. 43.

———Ss. 141, 145, 151—Unlawful assembly.

Fact to be established—Assembly likely to cause disturbance of peace. *Girdhara Singh v. Emperor*. 23 Cr. L. J. 5 :

64 I. C. 373 : 4 U. P. L. R. Lah. 11 : 3 L. L. J. 529 : 21 P. L. R. 1922 : A. I. R. 1922 Lah. 135.

———Ss. 141, 146, 149—Rioting.

Where five or more persons assemble together armed with *lathis* and some of them attack their opponents while the others, who at first kept in the background, proceed to assault their opponents' helpers, the legal consequence would necessarily be : (1) that they constituted an unlawful assembly within the meaning of S. 141, Penal Code ; (2) that every one of them was guilty of rioting under S. 146 as soon as one or more of them used violence in prosecution of their common object. *Masti v. Emperor*. 12 Cr. L. J. 274 (b) :

10 I. C. 852 : 9 P. W. R. 1911 Cr. : 3 P. R. 1911 Cr. : 87 P. L. R. 1911.

———Ss. 141, 147—Defending possession with force, if unlawful.

A party assembled on a piece of land, which is in their possession, for the sole purpose of preventing a trespass does not constitute an unlawful assembly within the meaning of S. 141, and if such trespass is

PENAL CODE ACT (XLV OF 1860)

committed and the party thus assembled proceeds to resist or prevent it, and in doing so uses force, it cannot be held to be guilty of rioting. *Inderjit v. Emperor*.

26 Cr. L. J. 43 : 83 I. C. 523 : 11 O. L. J. 40.

———Ss. 141, 147, 148, 323, 325, 100—Unlawful assembly—Proof.

For establishing the offence of unlawful assembly which is a necessary element in the offence of rioting, it must be established that the unlawful assembly had a common object by means of criminal force or show of criminal force of doing any of the various things mentioned in S. 141 and the common intention of the unlawful assembly to use criminal force must be established as a fact by legal evidence. *Ramaswami v. Emperor*. 27 Cr. L. J. 108 :

91 I. C. 540 : 1925 M. W. N. 666 : A. I. R. 1925 Mad. 1213.

———Ss. 141, 147, 352—Cr. P. C. (Act V of 1898), Ss. 238, 535—Prosecution under S. 147—Conviction for assault under S. 352.

A person charged under S. 147, Penal Code, for rioting may be convicted of an offence of assault under S. 352, Penal Code, but on a charge under S. 147, there can be no conviction for abetment of assault. *Muthukanakku Pillai v. Emperor*.

23 Cr. L. J. 206 : 65 I. C. 862 : 1922 M. W. N. 182 : 15 L. W. 583 : A. I. R. 1922 Mad. 110.

———S. 141 (4)—Application—"To enforce any right", meaning of.

The fourth clause of S. 141 has no application to a case where a person in lawful possession of any property proposes to use force in order to maintain his possession. The phrase "to enforce any right" in the fourth clause of S. 141 is not applicable to a party who uses force to defend property in its possession, such a party is not enforcing a right but preventing a wrong. Therefore, a party assembled for the purpose of preventing a trespass cannot be called an lawful assembly. *Parmeshar Din v. Emperor*. 25 Cr. L. J. 579 :

81 I. C. 67 : A. I. R. 1923 Oudh 167.

———S. 141, Cl. (4)—Enforcing right or supposed right—Maintenance of existing peaceful possession with or without title, if offence.

Persons, merely acting in maintenance of an existing peaceful possession, no matter whether the possession was with or without title, cannot be said to enforce any right or supposed right, and therefore, cannot be held to form an unlawful assembly. *Sarabawan Singh v. Emperor*. 15 Cr. L. J. 232 :

23 I. C. 184 : 17 O. C. 21 : 1 O. L. J. 527 : A. I. R. 1914 Oudh 222.

PENAL CODE ACT (XLV OF 1860)

—S. 141, Cl. (4)—Scope.

The fourth clause of S. 141 has no application to a case where a person in lawful possession of any property proposes to use force in order to maintain his possession. The clause speaks of "to take or obtain possession of any property." It does not speak of maintaining possession or resisting an attempt by another to take possession. It has no application to a party who uses force to defend property in his possession. Such a person is not enforcing a right, but preventing a wrong. *Inderjit v. Emperor*.

26 Cr. L. J. 43 :
83 I. C. 523 : 11 O. L. J. 40.

—S. 141 (4), 147.

Religious procession, right to take through streets—Intention to fight—Unlawful assembly—Riot. *Dilli v. Emperor*.

26 Cr. L. J. 1325 :
89 I. C. 269 : 2 O. W. N. 589 :
A. I. R. 1925 Oudh 656.

—S. 142—Member of unlawful assembly—Proof—Necessity of.

Prosecution has to prove unlawful assembly and that it committed various offences; then that each accused was a member of the assembly. Then S. 149 applies and every member is guilty of offences committed in prosecution of its common object. *Emperor v. Sheo Dayal*.

35 Cr. L. J. 360 :
147 I. C. 15 : 55 All. 689 : 6 R. A. 437 :
A. I. R. 1933 All. 535.

—S. 142—Unlawful assembly—Presumption from presence—Rebutted.

If the defence is that a particular person was present among the rioters with an innocent intention, then the burden of proving that innocence lies upon the defence. *Emperor v. Sheo Dayal*.

35 Cr. L. J. 360 :
147 I. C. 15 : 55 All. 689 : 6 R. A. 437 :
A. I. R. 1933 All. 535.

—S. 143.

See also (i) Cr. P. C., 1898, Ss. 228, 236, 237, 342, 423 (b) (2), 537.
(ii) Penal Code, 1860, Ss. 105, 120-B.

—S. 143—Defending possession by force, if unlawful—Criminal trespass—Bona fide assertion of grazing right—Unlawful assembly.

A person cannot be convicted of criminal trespass because he asserts a grazing right which has never been declared against him and which he *bona fide* believes he has, nor can he be said to be a member of an unlawful assembly because he went with his party and protected against the land being ploughed up. *Reajaddin Molla v. Emperor*.

15 Cr. L. J. 725 :
26 I. C. 173 : 18 C. W. N. 1245 :
A. I. R. 1915 Cal. 236.

—S. 143—Enforcing established right, if unlawful.

PENAL CODE ACT (XLV OF 1860)

Where the accused were put into possession of land and crops by a Civil Court under O. XXI, r. 95, C. P. C., they are entitled to cut the crop standing on it, whether ripe or unripe, and they cannot be convicted under Ss. 143 and 427. *Arman Shaik v. Naimuddin Shaik*.

37 Cr. L. J. 524 :
161 I. C. 974 (2) : 8 R. C. 553 :
A. I. R. 1936 Cal. 157.

—S. 143—Enforcing right by force.

A headman and 18 villagers conducted a funeral procession along a public road with the object of vindicating their right to use the road, and intending to resist obstruction. It was not proved that the party was armed, but some of its members used threatening language : *Held*, that the use of threats made the funeral party an unlawful assembly. *Nga Kyaw Yaung v. Emperor*.

2 Cr. L. J. 832 :
U. B. R. 1905 : 1 P. C. 21 :
12 Bur. L. R. 37.

—S. 143—Essentials of.

The essence of the offence under S. 143 is the combination of several persons, united in the purpose of committing a criminal offence and that purpose constitutes in itself an offence distinct from the criminal offence which these persons agree and intend to commit. *In re : Mathi Venkanna*.

24 Cr. L. J. 114 :
71 I. C. 242 : 17 L. W. 451 : 46 Mad. 257 :
A. I. R. 1923 Mad. 592.

—S. 143—Force.

Held, on facts that there was no force used by crowd which would make it an unlawful assembly and that High Court would not interfere in revision with order of acquittal. *Meghu Mahto v. Rampartap Chowdhury*.

36 Cr. L. J. 1090 :
157 I. C. 74 : 1 B. R. 709 : 8 R. F. 85 (2).

—S. 143—Four persons, if make unlawful assembly.

Where more than five persons are charged with being members of an unlawful assembly but only four of them are found to have taken any part in the assembly, none of the accused can be convicted under S. 143. *Emperor v. Abdul Qadir Kasuri*.

32 Cr. L. J. 249 :
129 I. C. 221 : 1 R. 1931 Lah. 157 :
A. I. R. 1930 Lah. 1044.

—S. 143—Membership.

The mere fact that a person applied to be made a member of an association some months before it was declared unlawful, cannot be said to be proof of his membership of the association after it had been declared unlawful. *Mela Ram v. Emperor*.

32 Cr. L. J. 1233 :
134 I. C. 782 : 32 P. L. R. 83 :
I. R. 1931 Lah. 990 : A. I. R. 1931 Lah. 361.

PENAL CODE ACT (XLV OF 1860)

—S. 143—Obstructing highway, if offence.

The petitioners formed part of *Moharam* procession and while going on a high road, placed the *Tabuts* in a line across the road, thereby preventing the mail tonga from passing along. The Magistrate, holding that the act was deliberate, convicted them under S. 143, of being members of an unlawful assembly and certain of the accused of obstructing the highway: *Held*, that the conviction was right and that the placing of the *Tabuts* on the road was obstructing the highway, and that though they were entitled to the use of the road, they could not so occupy it to the exclusion of others equally entitled to the use of it. *In the matter of: Mruthyuzar Khan Sab.* 9 Cr. L. J. 321 : 12 M. C. C. R. 68.

—S. 143—Offence—Sentence.

Where two parties were entitled to joint possession of a property but one party having been out of possession, their servants (the petitioners) with 30 or 40 other persons went armed with *lathis* to take forcible possession of the property and succeeded in getting possession without having had to use any force: *Held*, that the petitioners were rightly convicted of an offence under S. 143, but as the masters of the petitioners had a right to possession and as what the petitioners did, though not warranted by law, did not actually lead to a breach of the peace, the sentence ought not to be too severe. *Bepin Behari Gulha v. Pranakul Majumdar.* 5 Cr. L. J. 19 : 11 C. W. N. 176.

—S. 143—Persons passing by the village of their enemies, if offence.

Persons by simply passing close to the village of their enemies cannot be convicted under S. 143. *Radha Kishen v. Emperor.*

13 Cr. L. J. 476 :
15 I. C. 316 : 7 P. W. R. 1912 Cr. :
67 P. L. R. 1912.

—S. 143—Persons preventing Municipality from realising rent which they have no right to realise—If guilty.

Where certain persons prevent the Municipality from realising rent from stall-holders, which the Municipality has no right to realise either under the statutory or common law, they do not commit any illegal act and cannot be punished as members of an unlawful assembly under S. 143. *Dhummon Chowdhury v. Emperor.*

25 Cr. L. J. 114 :
76 I. C. 178 : 3 P. L. T. 339 :
A. I. R. 1922 Pat. 286.

—S. 143—Resisting order of public servant—What is.

When the procession is taken out in spite of the Police ban, it is resistance to the execution of the law denoting an overt act. *Public Prosecutor v. Vadlamudi Satyanarayana.*

32 Cr. L. J. 806 :
131 I. C. 844 : 1931 M. W. N. 489 :
33 L. W. 691 : I. R. 1931 Mad. 604 :
A. I. R. 1931 Mad. 484.

PENAL CODE ACT (XLV OF 1860)

—S. 143—Sentence.

Where the accused are charged under S. 143 and S. 341 read with S. 149, Penal Code, there cannot be two separate sentences but only one. *Emperor v. Abdul Qadir Kasuri.*

32 Cr. L. J. 249 :
129 I. C. 221 : I. R. 1931 Lah. 157 :
A. I. R. 1930 Lah. 1044.

—S. 143—Trespass—Unlawful assembly.

Assuming that trespassers have a right to possession after they have once unlawfully entered, they will be guilty under S. 143, Penal Code, if they, being more than five in number, enforce that right by means of criminal force. *Emperor v. Bandhu Singh.*

29 Cr. L. J. 99 :
106 I. C. 691 : 6 Pat. 794 :
A. I. R. 1928 Pat. 124.

—S. 143—Unlawful assembly—Accused found together in middle of night in temple with implements of house-breaking—Offence.

Where in the middle of night the accused are found together in a temple with various implements of house-breaking, they must have been there with a common object of an unlawful kind and are guilty under S. 143, Penal Code. The fact that they were there with a common unlawful object is not enough to support a conviction under S. 120-B, Penal Code. *Public Prosecutor v. Picha Kone.*

39 Cr. L. J. 901 :
177 I. C. 545 : 1938 M. W. N. 593 :
48 L. W. 146 : 11 R. M. 344 :
A. I. R. 1938 Mad. 726.

—S. 143—Unlawful assembly—Unlawful object, necessity of.

A conviction under S. 143, Penal Code, is illegal where it is not proved that the accused had an unlawful object. *Dibakar Das v. Sakthidhar.*

28 Cr. L. J. 404 :
101 I. C. 180 : 54 Cal. 476 :
31 C. W. N. 527 : A. I. R. 1927 Cal. 520.

—Ss. 143, 65—Sentence—Imprisonment in default of fine imposed under S. 143—Limit of.

Passing of a sentence of two months' rigorous imprisonment in default of payment of fine imposed for an offence under S. 143 is illegal. S. 65 limits the imprisonment in default to a maximum of one-fourth of the period of six months fixed by S. 143. *Goukul Chandra Nandi v. Sribooth Chandra Banerjee.*

41 Cr. L. J. 957 :
190 I. C. 598 : 21 P. L. T. 795 :
7 B. R. 58 : 13 R. P. 264 :
A. I. R. 1941 Pat. 48.

—Ss. 143, 144, 379—Sentence—Common object—Theft—Separate sentence.

Where the common object of an unlawful assembly was theft, the members of the assembly cannot be sentenced separately under Ss. 379 and 143 or 144. *Prayag Gope v. Emperor.*

25 Cr. L. J. 1276 :
82 I. C. 284 : 1924 Pat. 247 :
5 P. L. T. 571 : 3 Pat. 1015 :
A. I. R. 1924 Pat. 764.

PENAL CODE ACT (XLV OF 1860)

———Ss. 143, 147.

Lawful assembly, whether becomes unlawful by exciting others to unlawful acts—Rioting—Duty of Court. *In re : Mulka Mulhrian.*

16 Cr. L. J. 743 :

31 I. C. 343 : A. I. R. 1916 Mad. 1062.

———Ss. 143, 149.

Unlawful assembly—Common object—Evidence as to common object—Opinion of witnesses—Conduct of members—Criminal trial—Omission to examine material witness—Consequences. *Jogi Raut v. Emperor.*

28 Cr. L. J. 906 :

105 I. C. 234 : 9 P. L. T. 260 :

A. I. R. 1928 Pat. 98.

———Ss. 143, 149, 425, 427—*Mischief—Unlawful assembly—Intention—Making ditch through Railway—Motive—Letting water run off fields of accused.*

The accused, fifty in number, finding their fields flooded, cut a channel through the Railway to let the water run off their fields. Ten or fifteen only of the accused were engaged in digging while all were present: *Held*, that although the motive of the accused was to free their fields from water, their intention was to make a ditch through the Railway and they were guilty of mischief and unlawful assembly with the common object of damaging the Railway. *Deputy Superintendent v. Chulhan Ahir.*

13 Cr. L. J. 138 :

13 I. C. 826 : 16 C. W. N. 263.

———Ss. 143, 186—*Offence under — When constituted.*

Where a District Board decided to replace a bridge across a *khal* which was out of repair by means of a road with pipes passing underneath for the flow of water and the owners of the bed of the *khal* objected to the laying of the pipes on the ground that it would obstruct the flow of water and removed the pipes placed there by the District Board *Sircar : Held*, that the conviction of the owners under Ss. 143 and 186, I. P. C. was bad. *Addaita Bhuia v. Kali Das De.*

6 Cr. L. J. 393 :

12 C. W. N. 96.

———Ss. 143 426—*Offence under—Drainage water from rice mill—Right of owner to empty drainage water in public channel—Obstruction on ground of injury to crops—Offence whether committed—Natural right of drainage, limits of.*

Where drainage water from a rice mill flowed into a channel, which in turn, emptied into a main public channel and certain persons obstructed the flow on the ground that the water draining from the mill was polluting the water supply and so damaging the crops and rendering the water unfit for drinking purposes and they were charged under Ss. 143 and 426, Penal Code : *Held*, that inasmuch as there is no natural right to let out refuse water which has come artificially, on to a public water channel and the accused were acting 'under colour of a right to do so, they were

PENAL CODE ACT (XLV OF 1860)

not guilty of any offence. *Tatiparti Veeraswami v. Sanom Kankayya.* 31 Cr. L. J. 225 : 121 I. C. 159 : 1929 M. W. N. 711 : A. I. R. 1929 Mad. 833.

———Ss. 143, 426 — *Unlawful assembly—What amounts to—Trespass—Unlawful assembly.*

The accused entered into a vacant *manai*, broke down a wall and rebuilt it. The wall belonged to one of the accused : *Held*, that there could be no unlawful assembly as the accused were there to build their own wall : *Held*, further, that the accused could not be convicted of mischief. *In re : Sarvana Pillai.*

11 Cr. L. J. 533 :

7 I. C. 855 : 8 M. L. T. 222.

———Ss. 143, 447—*Composition of offence under S. 447—Conviction of accused under S. 143, legality of.*

In the case of a house trespass by members of an unlawful assembly, the conviction of the accused under S. 143 is not illegal even though the offence under S. 447 had been compounded. *In re : Mathi Venkanna.*

24 Cr. L. J. 114 :

71 I. C. 242 : 17 L. W. 451 :

46 Mad. 257 : A. I. R. 1923 Mad. 592.

———S. 144.

See also Penal Code, 1860, Ss. 114, 188.

———S. 144—*Evidence and onus.*

The fact that the accused's party were victorious, does not lead to any inference that they were the aggressors. *Ahmad Sher v. Emperor.*

32 Cr. L. J. 868 :

132 I. C. 381 : I. R. 1931 Lah. 573 :

A. I. R. 1931 Lah. 513.

———S. 145.

See also Police Act 1861, Ss. 30, 30-A, 32.

———S. 145—*Charge—Common object.*

The failure to specify the common object in a charge under S. 145 would not be fatal to the trial if there was ample evidence to prove what the common object was. *Ramchandra v. Emperor.*

33 Cr. L. J. 64 :

134 I. C. 1226 : 33 Bom. L. R. 1169 :

55 Bom. 725 : I. R. 1932 Bom. 10 :

A. I. R. 1931 Bom. 520.

———S. 145—*Essentials of offence.*

In order to obtain a conviction under S. 145, it is necessary that the prosecution should establish : (1) that there was an assemblage of at least five persons ; (2) that the object of the meeting was any of the five objects mentioned in S. 141 ; (3) that the accused shared that object with at least four others of the meeting ; (4) that the accused intentionally joined the meeting ; (a) having knowledge of the meeting, or ; (b) he continued therein after having had that knowledge ; (5) That such unlawful assembly had been commanded to disperse ; (6) that such command to disperse was in the manner prescribed by law ; (7) that accused joined or continued in such unlawful assembly after it had been

PENAL CODE ACT (XLV OF 1860)

commanded to disperse; (8) that he did so knowing that it had been commanded to disperse. *Girdhara Singh v. Emperor*.

23 Cr. L. J. 5 :
64 I. C. 373 : 4 U. P. L. R. Lah. 11 :
3 L. L. J. 529 : 21 P. L. R. 1922 :
A. I. R. 1922 Lah. 135.

———S. 145—Offence under.

Disobedience of duly published order under S. 42, Bombay District Police Act, by forming procession and refusing to disperse when assembly declared unlawful —Persons can be convicted under S. 145. *Ramchondra v. Emperor*.

33 Cr. L. J. 64 :
134 I. C. 1226 : 33 Bom. L. R. 1169 :
55 Bom. 725 : I. R. 1932 Bom. 10 :
A. I. R. 1931 Bom. 520.

———S. 145—Resisting execution of legal process—*What is.*

Disobedience of notification under Police Act is resistance of legal process. *Ramchandra v. Emperor*.

33 Cr. L. J. 64 :
134 I. C. 1226 : 33 Bom. L. R. 1169 :
55 Bom. 725 : I. R. 1932 Bom. 10 :
A. I. R. 1931 Bom. 520.

———S. 145—Refusing to disperse, if offence.

Procession—Refusal to obey order to disperse. Object, becomes unlawful. *Ambika Charan De v. Emperor*.

34 Cr. L. J. 814 :
144 I. C. 691 (2) : 6 R. C. 8 :
A. I. R. 1933 Cal. 361.

———S. 146—Force or violence—*Brandishing of bamboos, whether amounts to use of force.*

It is not necessary for the purpose of S. 146 that the force or violence referred to in the section should be directed against any particular person or object. The brandishing of bamboos and the cutting of a branch of a tree by persons who are members of an unlawful assembly amounts to a use of force under S. 146. *Ghani Khan v. Emperor*.

19 Cr. L. J. 828 :
46 I. C. 844 : 21 O. C. 134 :
A. I. R. 1918 Oudh 171.

———S. 146—*Force or violence.*

The force or violence mentioned in the definition of rioting under S. 146 may be force or violence directed against an inanimate object. *Mir Bayyan Khan v. Emperor*.

36 Cr. L. J. 933 :
156 I. C. 239 : 7 R. Pesh. 120 :
A. I. R. 1935 Pesh. 65 (2).

———S. 146—Rioting.

Accused were members of an unlawful assembly, the common object of which was to propagate the temperance campaign by pulling down toddy shop and destroying toddy trees, and in prosecution of the common object, a toddy shop was pulled down and spathes of toddy trees were cut and destroyed : *Held*, that the accused were guilty of rioting and it was not necessary to show that they

PENAL CODE ACT (XLV OF 1860)

were the actual persons responsible for the violence used. *In re : Marimuthu Naidu*.

25 Cr. L. J. 139 :
76 I. C. 235 : 17 L. W. 577 :
32 M. L. T. 315 : A. I. R. 1923 Mad. 606.

———S. 146—*Rioting—What is.*

Merely coming to the spot even with *lathi* or other weapon in response to a cry by the accused that he was being killed, can hardly be considered sufficient to make them guilty of rioting. *Deodhari Koeri v. Emperor*.

38 Cr. L. J. 271 :
166 I. C. 726 : 9 R. P. 342 :
3 B. R. 216 : A. I. R. 1937 Pat. 34.

———S. 146—‘Violence’, meaning of.

In S. 146, Penal Code, violence includes violence against inanimate objects, such as pulling down a man's house. *Samaruddin v. Emperor*.

13 Cr. L. J. 821 :
17 I. C. 565 : 40 Cal. 367.

———S. 146 “Violence,” meaning of.

The word ‘violence’ in S. 146 is not restricted to force used against persons only but extends also to force against inanimate objects. *In re : Venkatasubbier*.

24 Cr. L. J. 356 :
72 I. C. 356 : 44 M. L. J. 407 :
17 L. W. 535 : 32 M. L. T. 190 :
A. I. R. 1923 Mad. 603.

———Ss. 146, 147, 323, 325—*Rioting and hurt—Separate sentences.*

Separate sentences for the offences of rioting and hurt are legal in a case in which the common object stated in the charge is not to cause hurt but to commit some other offence and each of the persons separately sentenced is proved to have taken an individual part in the assault. *Kapil Mandal v. Rabbani Sheikh*.

26 Cr. L. J. 1297 :
89 I. C. 241 : 41 C. L. J. 471 :
A. I. R. 1925 Cal. 1039.

———S. 147.

- Applicability.
- Assault.
- Charge.
- Common object.
- Conviction.
- Entry on land in possession of another.
- Essence of.
- Evidence.
- Evidence and onus.
- Ingredients.
- Joining in unlawful assembly.
- Lawful acts and private defence.
- Members when guilty of rioting.
- Miscellaneous.
- Possession.
- Procedure.
- Resisting attachment of property under illegal warrant, if offence.
- Riot.
- Rioting.
- Sentence.
- Seven persons charged with rioting.
- Single motive.

PENAL CODE ACT (XLV OF 1860)

- Trial of offence under.
- Unlawful assembly.
- What constitutes offence.
- S. 147.

See also (i) Cr. P. C., 1898, Ss. 35, 106, 195, 222, 235, 236, 238 (1), 239, 423, 537.

(ii) Easement.

(iii) Penal Code, 1860, Ss. 71, 96, 97, 99, 142, 147, 302, 323.

(iv) Railways Act, 1890, S. 127.

———S. 147—Applicability — Assembly of five or more persons—Acquittal of some members of assembly, effect of.

Where it is found by the Court that the number of persons who committed an offence under S. 147, Penal Code, was five or more, the acquittal of some of the accused cannot dispel the application of S. 147 of the Code, to the others. The essential question in such a case is whether the number of persons who took part in the crime was five or more than five. The identity of the persons who were members thereof relates to the determination of the guilt of the individual accused. *Feroz Din v. Emperor*. 29 Cr. L. J. 859 : 111 I. C. 443 : A. I. R. 1929 Lah. 59.

———S. 147—Assault—Crowd coming to rescue victim—Assailant receiving injuries resulting in death—Common intention of assembly—Liability of members for fatal blow.

Where on A being assaulted by B, a number of persons rush to the scene to rescue A and a fracas occurs in which B is killed, the members of the crowd cannot be convicted under S. 147, Penal Code. In so far as excessive force is used by some members of the assembly, the users of such force alone are liable to be punished for the assaults committed by them and not the other members of the assembly, and in the absence of proof as to who actually dealt the fatal blow to B, the original assailant, no member of the assembly is punishable in respect of that blow. *Nawab v. Emperor*.

29 Cr. L. J. 593 : 109 I. C. 673 : 10 L. L. J. 298 : 29 P. L. R. 727 : A. I. R. 1928 Lah. 277.

———S. 147—Assault on Police, offence of—Rioting—Warrant, defective execution of.

Two persons were accused under S. 498, Penal Code, of the abduction of one K. The Magistrate, intending to act under S. 90, Cr. P. C., ordered the issue of a warrant for the arrest of K. By mistake, however, the warrant stated that K herself was charged with an offence under S. 498. The officer, to whom the warrant was made over for execution, went with some constables to the village of K, and on her failure to furnish bail, arrested her and had taken her a short distance from the village, when the accused rescued K and inflicted injuries on the Police: *Held*, that the accused were guilty

PENAL CODE ACT (XLV OF 1860)

of an offence under S. 147, the common object being to rescue K, the causing of hurt to the Police being a necessary incident of the rescue and, therefore, a part of the common object. *Attar Singh v. Emperor*.

19 Cr. L. J. 390 : 44 I. C. 742 : 9 P. R. 1918 Cr. : 14 P. W. R. 1918 Cr. : 57 P. L. R. 1918 : A. I. R. 1918 Lah. 332.

———S. 147—Charge — Common object, omission of—Effect.

The omission to state the common object in the charge does not vitiate a conviction if there is evidence on record to show it. *Ekdashi v. Emperor*.

28 Cr. L. J. 107 : 99 I. C. 235 : A. I. R. 1927 Oudh 85.

———S. 147—Charge—Defect in—If curable—Cr. P. C. (Act V of 1898), Ss. 106 (3), 423 (1) (b), 537—Rioting—Charge not specifying common object of unlawful assembly—Prejudice to accused, absence of—Irrregularity.

Where a person is constructively made liable for the acts of another under S. 147, Penal Code, it is especially necessary to set out in the charge the common object of the assembly. But if the absence of particulars regarding the common object does not prejudice the accused in their defence, the irregularity would be cured by S. 537, Cr. P. C., and the High Court will not interfere. *Maharaj Singh v. Emperor*.

20 Cr. L. J. 760 : 53 I. C. 488 : A. I. R. 1918 Nag. 64.

———S. 147—Charge for rioting, failure of—Conviction for substantive offence.

Even though the charge of having formed an unlawful assembly with the common object of committing an offence fails, the Court can convict one of the accused of having committed a substantive offence. In such a case, a person may be convicted of an offence, even if there has been no charge in respect of it, if the evidence on the record is such as to establish a charge that might have been made. *Ghousbux Mahomed Aminkhan v. Emperor*.

36 Cr. L. J. 598 : 154 I. C. 915 : 28 S. L. R. 304 : 7 R. S. 174 : A. I. R. 1935 Sind 34.

———S. 147—Charge.

In a charge of rioting, the common object of which is to enforce a right, or a supposed right, it is necessary for the prosecution only to show that the accused was not in actual possession at the time of the occurrence. *Chhakari Shaik v. Emperor*. 26 Cr. L. J. 567 : 85 I. C. 711 : A. I. R. 1926 Cal. 439.

———S. 147—Charge.

Once a charge of unlawful assembly fails, a person cannot be convicted in respect of an injury which is not proved to have been caused by him. *Lila v. Emperor*.

25 Cr. L. J. 538 : 77 I. C. 1002 : 9 O. L. J. 291 : 4 U. P. L. R. Oudh 74 : A. I. R. 1922 Oudh 228.

PENAL CODE ACT (XLV OF 1860)

————S. 147—*Charge—Whether should contain words “force or by show of force.”*

Charge under S. 147 need not include the words, “by force or by show of force,” because suggestion of force is contained in the word “rioting” which is to be included in the charge. *Suraj Dusadh v. Emperor*.

38 Cr. L. J. 87 :
165 I. C. 945 : 3 B. R. 108 :
9 R. P. 237 : A. I. R. 1936 Pat. 627.

————S. 147—*Common object—Appellate Court, whether can invent fresh common object.*

When the common object assigned in the charge as framed to support a case under S. 147 cannot be sustained, an Appellate Court cannot invent another common object to support the conviction. *Emperor v. Akbar Molla*.

25 Cr. L. J. 773 :
81 I. C. 261 : 38 C. L. J. 379 :
51 Cal. 271 : A. I. R. 1924 Cal. 449.

————S. 147—*Common object—Difference between common object charged and common object found—Conviction, validity of.*

Where the accused were convicted on a charge of rioting committed with intent to dispossess the complainant, and on appeal, the Sessions Judge upheld the conviction but found that the common object was enforcement of their right or supposed right : Held, that although there was a difference between the common object charged and the common object found, the difference was very slight and as both common objects raised the same question of law and the accused had not been in any way prejudiced in their defence, the conviction was not bad. *Manir-ud-Din v. Emperor*.

7 Cr. L. J. 374 :
12 C. W. N. 579 : 35 Cal. 384.

————S. 147—*Common object.*

If five or more persons go to a place and some of them assault a person there, the presumption is that the assault was committed in prosecution of the common object of assaulting that person. Assuming that assault was not the original common object, it must be presumed that it was formed at the time the assault was committed. *Birjubhukan v. Janrao*.

23 Cr. L. J. 745 :
69 I. C. 633 : A. I. R. 1923 Nag. 100.

————S. 147—*Common object.*

In cases of rioting, the common object should be clearly and specifically set out in the charge. *In re : Ramasamy Naidu*.

16 Cr. L. J. 809 :
31 I. C. 825 : A. I. R. 1916 Mad. 834.

————S. 147—*Common object.*

In trial for rioting, the charge is bound to state the common object of the assembly, and if it does not, the omission is not fatal to the conviction, if the accused have in no way been prejudiced, but where, as in this case, it is shown that omission to state in the charge of rioting, the time and place and the common object has prejudiced the accused in

PENAL CODE ACT (XLV OF 1860)

their defence, the conviction is liable to be set aside. *Gowardhan Das v. Emperor*.

6 Cr. L. J. 446 :
2 P. W. R. Cr. 106.

————S. 147—*Common object—Individual acts of rioters.*

Where the presence of all the accused at the time of the occurrence is fully proved, it is not necessary for the prosecution to prove in a case of riot what each individual rioter was responsible for. *Sundar Lal v. Emperor*.

34 Cr. L. J. 732 :
144 I. C. 256 : 10 O. W. N. 671 :
I. R. 1933 Oudh 222 : A. I. R. 1933 Oudh 276.

————S. 147—*Common object—Isolated assault—Offence.*

Where there is no proof of formation of an unlawful assembly, an isolated or independent assault by some of the candidates and their supporters for an election cannot be considered to be actuated by any common object. *Afsal Beg v. Emperor*.

34 Cr. L. J. 782 :
144 I. C. 518 : I. R. 1933 Lah. 499 :
A. I. R. 1933 Lah. 235 (2).

————S. 147—*Common object, meaning of—Proper charge.*

Before a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly ; and also that the common object so found should have been clearly stated in the charge so that the accused person might have an opportunity of meeting it. *Allah Dad v. Emperor*.

25 Cr. L. J. 43 :
75 I. C. 731 : A. I. R. 1924 Lah. 667.

————S. 147—*Common object, necessity of—Defect in charge—Effect.*

Per *Woodroffe and Mookerjee, JJ.*—It is essential to sustain a conviction under S. 147 that the persons forming the unlawful assembly should be animated by common object ; and in the absence of such a finding, the conviction is not sustainable and ought, on that ground alone, to be set aside. Where the findings of a Court negative the common object which is not very precisely set out in the charge and the charge is itself defective, and does not specify the property, the taking possession of which is supposed to be the common object of the unlawful assembly, the accused are thereby prejudiced and S. 537, Cr. P. C., should not be taken recourse to, particularly when the specification of the property would alter the whole complexion of the case. If at the time of the occurrence the accused were in possession, their common object could not have been to take possession by criminal force, and when the common object fails and the substantive charge is disbelieved, the accused should be acquitted. It is not proper for an Appellate Court, which disbelieves the alleged common object of an unlawful assembly, to find out a different common object regarding which the accused were never called upon to plead nor

PENAL CODE ACT (XLV OF 1860)

tried, and affirm the conviction. *Parcs Nath Sircar v. Emperor*. 3 Cr. L. J. 153 :

2 C. L. J. 516 : I. L. R. 23 Cal. 295.

—S. 147—Common object—No express finding—No question as to common object—Prejudice.

Where the common object of an unlawful assembly is clearly set out in the charge and there is no question in the lower Courts as to the common object so set out, a conviction for rioting with the object set out is good even though there might be no express finding as to the common object, if the accused has not been in any way prejudiced by the absence of such finding. *Dasarathi Mahapatra v. Raghu Sahu*. 8 Cr. L. J. 129 :

1 I. C. 794 : 8 C. L. J. 69 :

12 C. W. N. 944 : 36 Cal. 158.

—S. 147—Common object—Omission to state common object, whether necessarily fatal.

Failure to define expressly and accurately the common object with which an unlawful assembly acts is not such an error, omission or irregularity as may not be cured by S. 537, Cr. P. C. *In re : N. Venkadu*. 31 Cr. L. J. 347 :

121 I. C. 862 : 31 L. W. 236 :

1930 M. W. N. 80 : A. I. R. 1930 Mad. 188.

—S. 147—Common object, proof of.

In order to establish the common object of an unlawful assembly, it is not necessary to prove that its members actually met and conspired to commit an offence ; such intention can be inferred from the circumstances of the case. In the case of a concerted attack by five or more persons upon another, it is a perfectly valid and reasonable inference that they all had a common object and were, therefore, members of an unlawful assembly. *Lajja v. Emperor*. 28 Cr. L. J. 264 :

100 I. C. 232 : 9 L. L. J. 209 :

28 P. L. R. 273 : A. I. R. 1927 Lah. 193.

—S. 147—Common object—Riot—Omission to specify common object of unlawful assembly in charge—Legality of trial.

In a riot case, the omission to specify the common object of the unlawful assembly in the charge does not vitiate the trial unless such omission has prejudiced the accused or resulted in a failure of justice. *Hasanali v. Emperor*. 30 Cr. L. J. 467 :

115 I. C. 399 : 30 Bom. L. R. 653 :

I. R. 1929 Bom. 303 :

A. I. R. 1928 Bom. 286.

—S. 147—Common object.

Rioting—Common object must be proved—Such common object must be mentioned in the charge. *Allahrakhio v. Emperor*. 36 Cr. L. J. 231 (2) :

152 I. C. 1061 : 7 R. S. 110 :

A. I. R. 1934 Sind 164.

—S. 147—Common object—Rioting.

The omission to set out the common object in all cases in which there is a charge under S. 147, does not necessarily make the conviction

PENAL CODE ACT (XLV OF 1860)

bad, except, when the accused have been misled and a failure of justice has been occasioned thereby. *Nawab Khan v. Government of Mysore*. 9 Cr. L. J. 531 :

13 M. C. C. R. 72.

—S. 147—Common object stated in charge—Common object, non-conviction under—Legality of, established—Maintaining actual enjoyment of right—No unlawful assembly—Right of private defence.

It cannot be laid down as a general proposition of law that a conviction under S. 147 cannot be supported whenever the common object, as stated in the charge, is not precisely made out. The question in each individual case is whether the common object established agrees in essential particulars with the common object as stated in the charge. Where the common object as stated in the charge was to assault the complainant and his men who were cutting the paddy of their land and thereby forcibly ousting them from the land, and the common object established upon the evidence was to maintain possession of the land by the accused persons : *Held*, that the common object as stated in the charge was not substantially established. *Silajil Mahoto v. Emperor*. 10 Cr. L. J. 471 :

4 I. C. 19 : 36 Cal. 865 :

13 C. W. N. 801.

—S. 147—Conviction and sentences.

When an offence forms an ingredient of the offence of rioting, the rioters cannot be punished both for rioting and the other offence, so where the common object of an unlawful assembly was to assault, the Police Officers in discharging their duty and hurt was actually caused to some of them, separate sentences under Ss. 147 and 332, I. P. C., were disallowed and sentence under S. 332, I. P. C., only was maintained. *Gowardhan Das v. Emperor*. 6 Cr. L. J. 446 :

2 P. W. R. Cr 106.

—S. 147—Conviction for rioting, legality of—Free fight—Death caused—Non-liability of accused—First report—Rioting—Murder.

Where in the case of a free fight by exchanging stone missiles between the two parties, the death of a person is caused but there is no conclusive proof by whom the act which caused the death was done, none of the accused can be made liable for the offence committed. Accused persons cannot be convicted of rioting when that offence is neither alleged by the prosecution nor is it proved by the evidence on either side. *Fatch Sher v. Emperor*. 14 Cr. L. J. 593 :

21 I. C. 465 : 318 P. L. R. 1913 :

35 P. W. R. 1913 Cr.

—S. 147—Conviction of accused for two offences—Single sentence—Appcal—Acquittal of the accused as regards one of the offences—No reduction in sentence.

A was convicted by a Second Class Magistrate of offences under Ss. 147 and 379, Penal Code. The Appellate Court acquitted the accused of the offence under S. 379 but maintained the sen-

PENAL CODE ACT (XLV OF 1860)

tence in its entirety and also passed an order for security under S. 106, Cr. P. C.: *Held*, that in such cases, some reduction of sentence by the Appellate Court must be made unless the Court thinks that the sentence ought not to be reduced, in which case, it should refer the matter to the High Court for enhancement of the sentence. *Paramasiva Pillai v. Emperor*.

5 Cr. L. J. 88 :

1 M. L. T. 403 : I. L. R. 30 Mad. 48.

—S. 147—Conviction—Rioting—Assaulting and obstructing public servant—Separate convictions, legality of—Identification.

Several persons were convicted under S. 147 of rioting with a view to attacking and obstructing the Police in the discharge of their duties, and were also convicted under S. 333 of the substantive offence of so attacking and obstructing them: *Held*, that both convictions could not stand and that the conviction under S. 147 must be set aside. *Kallu v. Emperor*.

23 Cr. L. J. 449 :

67 I. C. 721 : 4 L. L. J. 448 :

4 U. P. L. R. Lah. 95 : A. I. R. 1922 Lah. 31.

—S. 147—Conviction under.

Accused were convicted of offences under Ss. 147, 323 and 325, Penal Code, the common object of the unlawful assembly being described as "looting crops belonging to the complainant's master." On appeal, the Appellate Court held that it could not be determined which portion of the land in dispute belonged to the accused and which portion belonged to the complainant's master. There was a *bona fide* dispute with regard to the title to the land: *Held*, (1) that the title to the land being uncertain and there being a *bona fide* dispute, there could be no looting of the crops; (2) that, therefore, there could be no conviction under S. 147; (3) that in the absence of an unlawful assembly, only those persons could be convicted under Ss. 323 and 325 with regard to whom it could be established that they had been guilty of acts which fell under those sections. *Bhagwat Jha v. Emperor*.

25 Cr. L. J. 557 :

81 I. C. 45 : 6 Pat. L. T. 310 :

A. I. R. 1925 Pat. 158.

—S. 147—Entry on land in possession of another—If unlawful assembly and rioting.

The petitioners went with three ploughs on land to which the complainant had the right of possession and of which he was in possession till such entry, and began to plough up the land, to uproot some castor plants and throw them away. While they were thus in actual but temporary occupation, the complainant and his party went on the land and tried to unyoke the cattle, whereupon a riot took place: *Held*, that the petitioners were not justified in entering on the land, in ploughing it, uprooting the plants and throwing them away, that they were members of an unlawful assembly, the common object of which was to enforce a right or supposed right for the exercise of which they were prepared to use force, and

PENAL CODE ACT (XLV OF 1860)

that their action in beating the complainant's party was not justified by the fact of their having obtained temporary occupation. *Jairam Mahton v. Emperor*. 7 Cr. L. J. 123 : 35 Cal. 103.

—S. 147—Essence of.

The essence of S. 147, Penal Code, is that the public servant should exercise the power lawfully. *Idu Mandal v. Emperor*.

6 Cr. L. J. 439 :

6 C. L. J. 753.

—S. 147—Evidence.

Free fight—No evidence showing that accused's party were aggressors—Mark of injuries does not raise presumption of guilt. *Ahmad Sher v. Emperor*.

32 Cr. L. J. 868 :

132 I. C. 381 : I. R. 1931 Lah. 573 :

A. I. R. 1931 Lah. 513.

—S. 147—Evidence.

Held, on evidence and circumstances that charge under S. 147 was not made out. *Emperor v. Ram Dal*.

34 Cr. L. J. 538 :

143 I. C. 129 : 10 O. W. N. 585 :

I. R. 1933 Oudh 161 :

A. I. R. 1933 Oudh 340.

—S. 147—Evidence—Injuries on body.

Injuries on the body of persons is a sure guide that they took part in the riot. *Sadho v. Emperor*.

35 Cr. L. J. 1494 :

152 I. C. 108 : 1934 A. L. J. 640 : 7 R. A. 256 :

A. I. R. 1934 All. 881.

—S. 147—Evidence and onus—Riot case—Enmity between rival factions established.

In a case under S. 147, Penal Code, where the evidence of the prosecution is all interested and where a considerable amount of enmity exists between the factions who are concerned in the affairs, it is necessary to scrutinise the evidence of the prosecution very carefully. *Majhi v. Emperor*.

28 Cr. L. J. 685 :

103 I. C. 413 : 9 L. L. J. 369 :

A. I. R. 1927 Lah. 617.

—S. 147—Ingredients.

It cannot be said that any minor offence is included in S. 147. The use of criminal force is a necessary ingredient of that offence, but any particular kind of voluntary use of such criminal force may, and should be separately charged either substantively against the individuals who committed the offence, or for the purpose of using S. 149 against all the rioters. *Kanta Naya v. Emperor*.

12 Cr. L. J. 82 (a) :

9 I. C. 455.

—S. 147—Joining in unlawful assembly—If offence.

R filed a prosecution against *K* for enticing away his wife *A*. *K* claimed to be the husband of *A*, and denied the marriage of *A* with *R*. On the day of hearing, *R* in company of several others forcibly seized *A*, put her in the carriage of one *H* and drove away: *Held*, that *H*, the carriage

PENAL CODE ACT (XLV OF 1860)

driver, had been rightly convicted under S. 147. He must have seen that the object of the unlawful assembly was to carry off A, and when he drove A off against her wish, he joined the unlawful assembly and assisted the carrying out of the unlawful object for which it had assembled. *Imperator v. Haji Baka*. 10 Cr. L. J. 208 : 2 S. L. R. 6.

—S. 147—Lawful acts and private defence.

Auction-purchaser given symbolical possession—Obstruction to actual possession by lessee whose crops were standing—Lessee, commits no offence. *Laxmanrao Narainrao v. Emperor*. 35 Cr. L. J. 1213 : 150 I. C. 1028 : 7 R. N. 45 : A. I. R. 1934 Nag. 172.

—S. 147—Lawful acts and private defence.

B bought the disputed land from the guardian of a minor. The minor subsequently sold the same land to S. Thereupon B obtained an *ex parte* decree declaring his right to the land and secured possession in execution of that decree. In the meantime, the petitioners, who held the land as *bhagdars* under S, actually cultivated the land and raised the crop which B's *bhagdar*, the complainant, tried to cut. The petitioners opposed and a riot ensued, and the petitioners were convicted: *Held*, that as the petitioners actually cultivated the disputed crop and were no parties either to the suit or to the delivery of possession of the land, they were justified in claiming what they had grown and in resisting the action of the complainant when he went to take possession, and that the petitioners were not guilty of rioting. *Gojendra Ghorai v. Emperor*. 13 Cr. L. J. 188 : 13 I. C. 1004 : 15 C. L. J. 80.

—S. 147—Lawful act, a private defence.

Hire-purchase of lorry—Default in payment of instalment by purchaser—Seller having legal right to possession through Court—Agents of seller using force to recover possession—Servants of purchaser in peaceful possession—Altercation—Injury to agents—Servants held entitled to resist. *Nawab Raza v. Emperor*. 35 Cr. L. J. 740 : 148 I. C. 696 : 11 O. W. N. 288 : 6 R. O. 427 : A. I. R. 1934 Oudh 108.

—S. 147—Lawful acts and private defence.

In order to establish that a party acted in the exercise of the right of private defence in a riot, it lies upon such party to establish the circumstances under which each blow that caused an injury to a member of the opposite party was inflicted. *Hazura Singh v. Emperor*. 28 Cr. L. J. 838 : 104 I. C. 454 : A. I. R. 1927 Lah. 786.

—S. 147—Lawful acts and private defence—Maintaining one's right to ferry against wrongful interference.

A person cannot be convicted of rioting where he merely maintains his legal right to ply a ferry in his own *ghat* against wrongful

PENAL CODE ACT (XLV OF 1860)

interference by rival ferry owners. *Anwar Ali v. Emperor*. 27 Cr. L. J. 1291 : 98 I. C. 187 : A. I. R. 1927 Pat. 96.

—S. 147—Lawful acts and private defence.

Party stationed higher up stream obstructing flow—Party on lower level cannot take law in its hands though impulse to breach of peace may be strong. *Bachu Singh v. Emperor*. 40 Cr. L. J. 337 : 180 I. C. 335 : 5 B. R. 384 : 11 R. P. 501 : A. I. R. 1939 Pat. 314.

—S. 147—Lawful acts and private defence—Rescue from lawful custody—Arrest on warrant with bail—No intimation that bail was allowed—Arrest whether legal.

Where a warrant allowing bail is being executed by a constable, it is his bounden duty to state that bail would be taken. If the constable did not give the slightest intimation to the person arrested of the fact that bail had been allowed, the arrest would be illegal. The arrested person's people would be justified by the law of private defence, in rescuing him, by committing a common assault upon the constable. *Shyama Charan Majumdar v. Emperor*. 13 Cr. L. J. 590 : 15 I. C. 1006 : 16 C. W. N. 549.

—S. 147—Lawful acts and private defence—Rioting—Private defence of property—Recourse to public authorities—Offence.

J. R. lawfully and legally obtained possession of certain land and sowed certain crops on it. One B. K. in bad faith and dishonestly with a party of men went upon the land and commenced to cut the crops for the purpose of removing them or at least damaging them. Information of this was sent to J. R. and he in company with a band of men went straight to the spot to protect his property. A fight resulted in which very slight injuries were caused: *Held*, that J. R. and his party were not guilty of rioting, inasmuch as they were acting in the defence of their property, they did not use any more violence than was absolutely necessary for the protection of the property, and they had no time to have recourse to the protection of the public authorities. *Jageshar v. Emperor*. 18 Cr. L. J. 663 : 40 I. C. 311 : 15 A. L. J. 47 : A. I. R. 1917 All. 119.

—S. 147—Lawful acts and private defence.

S. 147 cannot apply to a case where a person in lawful possession of any property proposes to use force in order to maintain his possession. *Emperor v. Mohammad Idris*. 34 Cr. L. J. 748 : 144 I. C. 262 (1) : 10 O. W. N. 788 : I. R. 1933 Oudh 228 : A. I. R. 1933 Oudh 279.

—S. 147—Members, when guilty of rioting.

Where it is found that the accused were members of an unlawful assembly having a common object and made an assault or pre-

PENAL CODE ACT (XLV OF 1860)

paration to use force or violence, in the absence of proof that some members of the unlawful assembly which they joined used force or violence in prosecution of their common object, they cannot be convicted of rioting under S. 147, but can be convicted only of being members of an unlawful assembly under S. 143. *Wajid Ali v. Emperor*.

28 Cr. L. J. 337 :
100 I. C. 817 : 4 O. W. N. 420 :
A. I. R. 1927 Oudh 151.

—S. 147 — Miscellaneous — *District Magistrate rescinding order passed under S. 144, Cr. P. C.—It is not a licence to commit trespass or riot.*

The order of the District Magistrate rescinding an order passed under S. 144, Cr. P. C., cannot properly be treated as a licence to commit criminal trespass; still less as a licence to riot. *Pachu Singh v. Emperor*.

40 Cr. L. J. 337 :
180 I. C. 335 : 5 B. R. 384 :
11 R. P. 501 : A. I. R. 1939 Pat. 314.

—S. 147—Possession of the accused — *Accused can enforce their right to crops and so cannot be guilty.*

Where the accused were in the actual possession of the land, though some years back the land was sold at a rent sale, the accused were held not to be guilty of the charge under S. 147 of being members of an unlawful assembly, their object being to enforce their right to the standing crops. *Gajadhar Singh v. Emperor*.

A. I. R. 1923 Pat. 299.

—S. 147 — Possession ordered and delivered to accused by Civil Court — *Accused must be assumed to be in possession—Duty of prosecution to prove subsequent actual dispossession of accused to secure conviction under S. 147.*

Where the accused had actually obtained possession which was ordered to be and was duly delivered to him by the Civil Court, it must be assumed that he was in actual possession, and in order to secure conviction of the accused under S. 147, it is consequently the duty of the prosecution to allege and prove that subsequent to the delivery of possession complainants again dispossessed the accused and began to exercise acts of possession of their own, and it is not open to complainants to allege that they remained in possession notwithstanding the delivery of possession which was affected in their presence without putting forward a case of actual dispossession thereafter. *Baburam Singh v. Emperor*.

40 Cr. L. J. 618 :
181 I. C. 891 : 5 B. R. 700 :
11 R. P. 648.

—S. 147—Possession, what is.

Delivery of possession by the Court passes possession to the party and must be treated as doing so even though the other side may

PENAL CODE ACT (XLV OF 1860)

allege the delivery of possession to be of doubtful legality. *Karu Mahto v. Emperor*.

33 Cr. L. J. 862 :
139 I. C. 585 : 13 P. L. T. 395 :
I. R. 1932 Pat. 246 :
A. I. R. 1932 Pat. 244.

—S. 147 — Procedure — *Cross-cases of rioting—Simultaneous trial.*

In trial of two cross-cases of rioting, one case was taken up first, and some witnesses for the prosecution were examined. The other case was taken up on the next day, and certain witnesses for the prosecution in that case were examined. The other sheets showed that on certain days certain witnesses were examined in both the cases, while, on other days, witnesses in one or the other case were examined, and in some instances, some of the accused in one case were examined as witnesses for the prosecution in the other. The charges in the two cases were framed at an interval of four days, but the evidence was completed, and arguments were heard on one and the same day, and two days after both the cases were disposed of by separate judgments: *Held*, that the trial was not vitiated by reason of the procedure adopted by the Magistrate, nor were the accused in any way prejudiced thereby. *Sahadev Ahir v. Emperor*.

1 Cr. L. J. 199 :
8 C. W. N. 344.

—S. 147—Procedure.

In a charge of rioting where a number of men are accused, the Magistrate should deal with the case of each of the accused separately or discuss the evidence against each of the accused, especially when the evidence against each of the accused is by no means equally strong. *In re : Ramasamy Naidu*.

16 Cr. L. J. 809 :
31 I. C. 825 : A. I. R. 1916 Mad. 834.

—S. 147—Procedure—Summary trial.

A Magistrate has no jurisdiction to minimise an offence to enable it to try it summarily, as for instance, a case of rioting as one of hurt under S. 323, Penal Code. *Mewa Lal v. Emperor*.

30 Cr. L. J. 686 :
116 I. C. 789 : I. R. 1929 All. 613 :
1929 A. L. J. 340 : 51 All. 540 :
A. I. R. 1929 All. 349.

—S. 147—Resisting attachment of property under illegal warrant, if offence.

Where in a case in which the accused were charged with rioting with the common object of resisting attachment of a property, it was found that the warrant of attachment was not sealed with the seal of the Court: *Held*, that the warrant and attachment being illegal, it was not an offence to resist the attachment. *Khidir Bux v. Emperor*.

20 Cr. L. J. 139 :
49 I. C. 171 : 3 P. L. J. 636 :
A. I. R. 1919 Pat. 404.

—S. 147—Riot—Proof—Duty of Court.

In a case of riot which is the result of a party faction in a village where the evidence on

PENAL CODE ACT (XLV OF 1860)

either side is liable to be prejudiced, it is necessarily of importance to ascertain the cause of the trouble. *Narsingh Singh v. Emperor*.

41 Cr. L. J. 209 :
185 I. C. 594 : 6 B. R. 215 :
20 P. L. T. 655 : 12 R. P. 431 :
A. I. R. 1939 Pat. 659.

———S. 147—Riot—Proof.

Where the prosecution allege that the riot was the result of the threats and attempts of the accused to prevent the servant of a complainant from working for his employer, the only way the prosecution can prove these threats is by the evidence of some one who heard them uttered. The hearsay evidence of the complainant with regard to what the servant told him that the accused persons had said, is inadmissible unless, possibly, it is impossible to secure the attendance of the servant. It is possible to believe a story of an apparently unjustified attack when it is supported by unambiguous and unimpeachable evidence. But when the evidence tendered is not of that description, it is unsafe to accept it unless it is supported by circumstances indicating its truth. Evidence of previous threat is evidence of such a nature. *Narsingh Singh v. Emperor*.

41 Cr. L. J. 209 :
185 I. C. 594 : 1939 Pat. 659 :
6 B. R. 215 : 20 P. L. T. 655 :
12 R. P. 431 : A. I. R. 1939 Pat. 659.

———S. 147—Riot—Unlawful assembly—Leader of gang, liability of.

A conviction under S. 147, Penal Code, of the leader of a gang whose common object is to assault passers-by, is not legal. *Sujatalli v. Emperor*.

23 Cr. L. J. 256 :
66 I. C. 192 : 24 Bom. L. R. 110.

———S. 147—Rioting.

Accused assaulting and causing injuries to complainant's men—Conviction under Ss. 147 and 323 is proper. *Emperor v. Sahab Raj Singh*.

34 Cr. L. J. 1099 :
145 I. C. 913 : 1933 A. L. J. 1178 :
6 R. A. 205 : A. I. R. 1933 All. 819.

———S. 147—Rioting and grievous hurt—Separate sentences.

Where an accused person is convicted of offences under Ss. 147, 452 and 325 and the acts constituting the offence under Ss. 452 and 325, are the specific acts which constitute the object and purpose of the riot, a separate sentence under S. 147 is not justified. *Ram Singh v. Emperor*.

25 Cr. L. J. 568 :
81 I. C. 56 : A. I. R. 1923 Lah. 160.

———S. 147—Rioting—Attempt by Police to arrest persons not engaged in commission of offence—Resistance to arrest, if rioting.

A party of Policemen, on receiving information that certain persons were waiting near a railway line with the intention of robbing a train, arrived at the scene and found the accused and certain other persons, sitting or roaming about near the railway line. The Police attempted to arrest those present and a fight ensued but the accused were eventually

PENAL CODE ACT (XLV OF 1860)

secured and taken to the Police Station. They were subsequently charged with and convicted of an offence under S. 147 : *Held*, that the Police had no jurisdiction for attempting to arrest the accused and that consequently in resisting the arrest, the accused were not guilty of the offence of rioting. *Rampri Ahir v. Emperor*.

26 Cr. L. J. 1608 :
90 I. C. 712 : 7 P. L. T. 218 :
A. I. R. 1926 Pat. 560.

———S. 147—Rioting.

Common object—Charge, defective—Precaution, if may be taken by party in possession—Aggression—Prejudice—Code of Criminal Procedure (Act V of 1898), S. 537—Failure of justice—Right of private defence. *Pures Nath Sticar v. Emperor*.

3 Cr. L. J. 153 :
2 C. L. J. 516 : I. L. R. 23 Cal. 295.

———S. 147—Rioting—Common object—Evidence—Proof.

The alleged common object of an assembly which renders it unlawful must be established by evidence; it is not a matter that can be inferred. In the absence of a clear finding as to how a fight originated, a conviction for rioting cannot be maintained. *Jadubar Singh v. Emperor*.

20 Cr. L. J. 670 :
52 I. C. 494 : A. I. R. 1919 Pat. 375.

———S. 147—Rioting—Conviction of less than 5 persons, legality.

The mere fact that 14 out of 17 men charged with being members of an unlawful assembly, are acquitted as they were not satisfactorily identified does not vitiate the conviction of the others for being members of an unlawful assembly. *Ekadashi v. Emperor*.

28 Cr. L. J. 107 :
99 I. C. 235 : A. I. R. 1927 Oudh 85.

———S. 147—Rioting—Damage to property of another, if mischief and rioting.

In a Collectorate partition a certain building which was in the possession of the complainant fell to the share of one A. Subsequently, there was a compromise between A and the complainant whereby the former agreed to give up the building to the latter in exchange for a plot of land. This compromise was filed before the Collector who gave effect to it in the Collectorate partition. Complainant continued in possession of the building. Accused, a servant of A, along with others demolished the building and ploughed up the site asserting that the building belonged to his mother A, and that the compromise was ineffective as no deed of Exchange has been drawn up in accordance therewith : *Held*, (1) that the compromise having been given effect to by the Collector in the partition, the title in the building had passed to the complainant, (2) that the accused was, therefore, guilty of mischief, and consequently of rioting. *Tanak Chaudhry v. Emperor*.

24 Cr. L. J. 542 :
73 I. C. 158 : 1 P. L. R. 242 Cr. :
A. I. R. 1923 Pat. 361.

PENAL CODE ACT (XLV OF 1860)

———S. 147—Rioting—Duty of court.

Where an assembly lawful in its origin subsequently becomes unlawful and rioting takes place, it is the duty of the trying Magistrate to determine which party was the aggressor and how the riot actually arose. *In re: Mukha Muthrian.* 16 Cr. L. J. 743 : 31 I. C. 343 : A. I. R. 1916 Mad. 1062.

———S. 147—Rioting, ingredients of—Unlawful assembly—Number reduced below five—Conviction, whether can be maintained.

In order to sustain a conviction under S. 147, it is necessary to find that the person accused of that offence was a member of an unlawful assembly and that he used force or violence in prosecution of the common object of such assembly. Where out of five men alleged to have formed unlawful assembly and committed a riot, two are acquitted as not having been members of the unlawful assembly, the conviction of the remainder under S. 147 cannot be maintained and each of them can be held responsible only for what he himself did. *Ala Mahammad v. Emperor.* 25 Cr. L. J. 494 : 77 I. C. 894 : 5 L. L. J. 475 : A. I. R. 1923 Lah. 692.

———S. 147—Rioting—Intention—Rioting—Determination to settle quarrel by force—Private defence, right of, whether exists.

Where two parties which are at enmity with each other come to a certain place armed with the full determination to settle their quarrels by force and have a fight, they are both guilty of rioting and no right of private defence exists. *Mulla v. Emperor.* 26 Cr. L. J. 1294 : 89 I. C. 158 : 2 O. W. N. 332 : 12 O. L. J. 337 : 29 O. C. 92 : A. I. R. 1925 Oudh 438.

———S. 147—Rioting—Persons joining assembly after common object ceases to exist, whether guilty.

Accused were convicted of an offence under S. 147, the common object of the unlawful assembly being to assault one K. It was found that some of the accused did not join the unlawful assembly till after K had retired, but that they joined the other accused in beating some other person: *Held*, that the accused who had joined the assembly after K had retired, could not be convicted under S. 147. *Shafayet Khan v. Emperor.* 25 Cr. L. J. 1018 : 81 I. C. 794 : A. I. R. 1925 Pat. 152.

———S. 147—Rioting—Prosecution of members of crowd—Matters to be proved.

In a charge for rioting in the case of a confused riot, all that the prosecution needs to establish is that the accused were voluntarily members of the crowd of rioters who committed the offence alleged. *Ramadin Brahmin v. Emperor.* 29 Cr. L. J. 963 : 112 I. C. 51 : A. I. R. 1929 Nag. 36.

———S. 147—Rioting—Resistance to illegal attachment—Conviction.

A bailiff, acting under an illegal warrant of

PENAL CODE ACT (XLV OF 1860)

attachment, seized the cattle of one of the accused and was proceeding to remove them, whereupon the accused resisted the removal, and in doing so, inflicted slight injuries on the companions of the bailiff: *Held*, that the accused were not guilty of any offence under S. 147. *Allah Dad v. Emperor.* 25 Cr. L. J. 43 : 75 I. C. 731 : A. I. R. 1924 Lah. 667.

———S. 147—Rioting—Two parties attacking each other—Justification, absence of—Responsibility of each party.

Where two parties are guilty of rioting, and in the course of the riot, each inflicts injuries on the other, but individual responsibility for the injuries inflicted cannot be fixed upon any one, and neither party is able to establish any justification for its attack upon the other, there is no ground for discriminating between them and both should be dealt with in the same manner. *Saadullah v. Emperor.* 25 Cr. L. J. 983 : 81 I. C. 631 : 6 L. L. J. 170 : A. I. R. 1924 Lah. 482.

———S. 147—Rioting—Unlawful assembly, finding as to, whether necessary—Conviction, whether maintainable.

In the absence of a finding as to the existence of an unlawful assembly, a conviction under S. 147 cannot be maintained. *Mahesh Dutt Singh v. Emperor.* 21 Cr. L. J. 165 : 54 I. C. 773 : 1920 Pat. 127 : 1 P. L. T. 606 : A. I. R. 1920 Pat. 244.

———S. 147—Rioting.

Unlawful assembly—Original object only to beat opponents—Rioting assuming serious complexion—Robbing of ornaments of women—Murder of Police Inspector—Wounding of constable—Acts constitute same transaction—One charge and one trial of all in respect of all offences is enough. *Bishunath v. Emperor.* 153 I. C. 978 : 1935 O. W. N. 145 : 7 R. O. 423 : A. I. R. 1935 Oudh 190.

———S. 147—Rioting.

Unpremeditated fight as a result of abuse and sudden quarrel: *Held*, there was no unlawful assembly but accused were guilty of rioting. *Machlia v. Emperor.* 35 Cr. L. J. 301 : 147 I. C. 109 : 6 R. L. 335 : A. I. R. 1933 Lah. 928.

———S. 147—Rioting—Use of violence, necessity of.

In order to punish the accused for rioting, it should also be made out that force or violence was used by any member thereof, in prosecution of the common object of such assembly. *Kuppuswami Mudali v. Emperor.* 33 Cr. L. J. 598 : 138 I. C. 383 : 1932 M. W. N. 431 : 36 L. W. 407 : 1 R. 1932 Mad. 563 (1) : A. I. R. 1932 Mad. 501.

———S. 147—Rioting, what is.

Assaulting a religious procession with the

PENAL CODE ACT (XLV OF 1860)

common object of disturbing it, amounts to rioting. *Sengodan v. Emperor*.

13 Cr. L. J. 534 :
15 I. C. 806.

———S. 147—*Rioting, what is—Resisting act contrary to decree of Civil Court—If offence.*

In a suit for injunction to which the Secretary of State was a party, a decree was made restricting the defendants, including the Secretary of State, from cutting a certain embankment, subject to the condition that if certain works were not carried out by the plaintiff by a certain date, the injunction would be cancelled, and the defendant would be entitled to cut the embankment. On plaintiff's failure to carry out the works mentioned in the decree, one of the defendants made an application to the Collector who passed an order under S. 144, Cr. P. C., directing the plaintiff and the public jointly to abstain from interfering with the cutting of the embankment. The defendants and the Police then proceeded to cut the embankment and the plaintiff and certain other persons resisted such cutting with the result that a riot ensued in which persons belonging to both parties were injured and one of them was killed: *Held*, (1) that the injunction granted by the Civil Court not having been recalled by that Court was still in force and that, therefore, nobody had any authority lawfully to cut the embankment; (2) that, consequently, the plaintiff and his party in resisting the cutting of the embankment were not acting in pursuance of any unlawful common object and could not, therefore, be convicted of an offence under S. 147. *Abdul Jalil v. Emperor*.

26 Cr. L. J. 279 :
84 I. C. 343 : 28 C. W. N. 732 :
A. I. R. 1924 Cal. 996.

———S. 147—*Rioting.*

When a number of men who were assembled at a certain place ran away on being attacked by the opposite party, they were not guilty of rioting, and their conviction under S. 147, Penal Code, was bad. *Mohammad Ishaq Khan v. Emperor*.

1 Cr. L. J. 1057 :
1 A. L. J. 602.

———S. 147—*Scope.*

But S. 147 of the Code creates a substantive offence in itself and makes a person guilty of the offence of rioting as distinct from actually causing any injury or hurt. *Chhidda v. Emperor*.

27 Cr. L. J. 287 :
92 I. C. 463 : 24 A. L. J. 178 :
A. I. R. 1926 All 225.

———S. 147—*Sentence—Assault in furtherance of common object—Separate sentences under—Legality of.*

Separate convictions are legal under Ss. 147, 353, Penal Code, even when assault is committed in furtherance of the common intention of the unlawful assembly. *Gendo Uraon v. Emperor*.

29 Cr. L. J. 79 :
106 I. C. 591 : 6 Pat. 828 :
9 P. L. T. 167 : A. I. R. 1928 Pat. 115.

PENAL CODE ACT (XLV OF 1860)

———S. 147—*Sentence—Fight not very serious—Slight hurt.*

Title to and possession over a certain *chur* land were claimed by a *zemindar* and a *talugdar* under him. The Magistrate issued an order under S. 144, Cr. P. C., on both the parties not to go on the land. The *talugdar's* party having attempted to go on the land, the fact was reported to the Magistrate and it was prayed that the standing crops might be attached. Accordingly an attachment order was made, and the petitioners, representing the party of the *zemindar* accompanied a Police Officer deputed to attach the land, and pointed out the plots on which the crops stood. Then the party of the *talugdar* appeared and there was some sort of fight which was not very serious, as only a few men on both sides received slight hurts. Subsequently, in a decision of the Settlement Court it was found that the *zemindar* was in possession of all culturable area of the *chur*: *Held*, that for the breach of the peace on the part of the *zemindar*, a small term of imprisonment with fine would amply vindicate the law. *Araz Sarkar v. Emperor*.

15 Cr. L. J. 473 :
24 I. C. 561 : 18 C. W. N. 646 :
A. I. R. 1914 Cal. 797.

———S. 147—*Sentences.*

In charges for "riot" and "obstruction of the Police" against the accused, which were not proved and which were of a trivial and venial character, all the accused were ordered to undergo 3 years and 9 months' rigorous imprisonment, bound over for a further year in their own bonds of Rs. 200 and two sureties of Rs. 100 each and fined Rs. 100 each, and in default of payment of the fine, they were ordered to undergo 3 months' further rigorous imprisonment: *Held*, setting aside the convictions, that under the circumstances of the case, these savage sentences were the combined result of erroneous views of the law, unjustifiable and perverse findings of fact and misconduct in procedure. *Badri Prasad v. Emperor*.

17 Cr. L. J. 343 :
35 I. C. 519 : A. I. R. 1916 All. 175.

———S. 147—*Sentence.*

The accused convicted in a very serious riot case are not entitled to reduction of their sentences in revision on the ground that men on their side sustained a certain number of injuries. *Noor Mohammed v. Emperor*.

17 Cr. L. J. 300 :
35 I. C. 172 : A. I. R. 1916 All. 297.

———S. 147—*Seven persons charged with rioting—Four acquitted—Rest, if can be convicted.*

For a conviction under S. 147 it is necessary to find that the accused was a member of an unlawful assembly. Where four out of seven accused charged with rioting are acquitted, the rest do not form an

PENAL CODE ACT (XLV OF 1860)

unlawful assembly and consequently must be acquitted. *In re : Gopalkrishnan.*

39 Cr. L. J. 687 (A) :
176 I. C. 40 : 47 L. W. 323 :
11 R. M. 27 : 1938 M. W. N. 224 (1) :
A. I. R. 1938 Mad. 392.

———S. 147—Single motive — *Series of attacks, if one offence, or several.*

A continuous series of attacks made with the same common object by the members of a crowd actuated by a single motive, constitutes a single riot and not a number of separate riots, even though the composition of the crowd may vary. *Prag v. Emperor.*

25 Cr. L. J. 1169 :
82 I. C. 33 : 11 O. L. J. 693 :
1 O. W. N. 473 :
A. I. R. 1925 Oudh 65.

———S. 147—Trial of offence under—*Mode of.*

The trial of two cross-cases of rioting simultaneously but separately is not bad unless the accused can show some prejudice. *Shafayet Khan v. Emperor.*

25 Cr. L. J. 1018 :
81 I. C. 794 : A. I. R. 1925 Pat. 152.

———S. 147—Unlawful assembly—*Charge—Statement of principal common object, necessity of—Common object stated not proved—Acquittal.*

In all cases of unlawful assembly, the principal and the prominent common object should form the subject of the charge and not the incidental happenings. Where the charge against the accused in a prosecution under S. 147 was that the accused had formed into an unlawful assembly with the common object of assaulting the accused, and it was found that the common object was to set fire to the accused's house and not to assault him : *Held*, that the accused should be acquitted inasmuch as the charge, as laid down, was not proved. *Aklu Mian v. Emperor.*

29 Cr. L. J. 390 :
108 I. C. 421 : A. I. R. 1928 Pat. 405.

———S. 147—Unlawful assembly—*Proprietor of land, whether can claim wild animal shot on his land and seizing by force the animal, if offence.*

If a person kills a wild animal or wild bird on the property of another person, such dead creature does not belong to the killer but to the proprietor of the property ; and such proprietor either himself or by his duly authorised agent can lawfully demand, and if refused, seize such dead creature from the possession of the killer ; and such persons as help him to exercise his right are doing no wrong ; but, as against any person other than the proprietor of the estate or his duly authorized agent or those lawfully helping the proprietor or his agent, the killer has a right to retain possession of the dead creature which he has thus killed. *Emperor v. Arju Rautra.*

25 Cr. L. J. 594 :
81 I. C. 82 : 3 Pat. 549 :
A. I. R. 1924 Pat. 564.

PENAL CODE ACT (XLV OF 1860)

———S. 147—*Unlawful assembly, what is.*

An assembly lawfully exercising their lawful rights would not become unlawful by repelling an attack made on them by persons who had no right to obstruct them nor by exceeding the lawful use of their right of private defence. *In re : Mukka Muthrian.*

16 Cr. L. J. 743 :
31 I. C. 343 : A. I. R. 1916 Mad. 1062.

———S. 147—*Unlawful assembly, what is.*

An assembly lawful in itself does not become unlawful merely by reason of its lawful acts exciting others to do unlawful acts. *In re : Mukka Muthrian.*

16 Cr. L. J. 743 :
31 I. C. 343 : A. I. R. 1916 Mad. 1062.

———S. 147—What constitutes offence—*Police Officer wishing to make arrest—Crowd assembling with lathis, if offence.*

A Sub-Inspector of Police came to a village to arrest a certain person and effected his arrest. The person arrested, however struggled, got free and ran away. While the Sub-Inspector was thinking of re-arresting him a crowd carrying lathis began to assemble and the Sub-Inspector considered their appearance so formidable that he desisted from his intention of re-arresting the escaped person : *Held*, that as no force was used, the members of the crowd were not guilty of the offence of rioting. *Lalji v. Emperor.*

26 Cr. L. J. 766 :
86 I. C. 350 : 23 A. L. J. 32 :
A. I. R. 1925 All. 308.

———Ss. 147, 148—*Accused armed with lathis—Offence.*

Where the accused are found to be armed with lathis, and not with deadly weapons, they can be convicted only under S. 147 and not under S. 148. *Ratan Lal v. Emperor.*

35 Cr. L. J. 45 :
146 I. C. 381 : 10 O. W. N. 557 :
8 Luck. 570 : 6 R. O. 107 :
A. I. R. 1933 Oudh 333.

———Ss. 147 and 148—*Rioting where the parties of the complainant and accused engaged in a free fight.*

When a body of men go out armed to exercise a right or a supposed right, knowing that they will be resisted by another body of men, in their act, and when the former is engaged in the exercise of that right or supposed right, the latter resisting, a free fight ensues between the rival parties in defiance of the remonstrances of Police constables present on the spot with the result that a man is killed and others wounded, questions of right and who are the aggressors and who are the defending party, do not arise for consideration. *Kabir-ud-Din v. Emperor.*

7 Cr. L. J. 256 :
12 C. W. N. 384 : 35 Cal. 368 :
7 C. L. J. 359 : 3 M. L. T. 385.

PENAL CODE ACT (XLV OF 1860)

———Ss. 147, 148—*Rioting with common object of causing obstruction to measurement of khas mahal land—Burden of proof—Possession of disputed land not affirmatively proved, effect of.*

The common object of the unlawful assembly of which the petitioners were said to have been members and for which they were convicted by the lower Court under Ss. 147 and 148 was to cause obstruction to measurement and demarcation of *khas mahal* land by a *Kanungo* and a *khas mahal Tahsildar*. The land in question had lain fallow up to the date of the occurrence, and there was considerable doubt whether the prosecution had established that on the date of the occurrence, actual possession of the land was with the Government: *Held*, that having regard to the condition of the land and the nature of the acts of possession on which the parties relied, it was not established affirmatively that the land on which the alleged riot took place was in the actual possession of the Government, and that, therefore, the charge as alleged was not proved, and the petitioners were not guilty of rioting with the common object stated in the charge. *Panchanon Bose v. Emperor*.

20 Cr. L. J. 721 (b) :
52 I. C. 881 : 23 C. W. N. 693 :
30 C. L. J. 19 : A. I. R. 1919 Cal. 305.

———Ss. 147, 148, 149—*Principles relating to conviction on different charges.*

The real test of whether a conviction can be upheld on a charge which was not expressly formulated is whether the facts which it was necessary to prove and on which evidence was given on the charge upon which the accused is actually tried are the same as the facts upon which he is to be convicted of the substantive offence. If they are and if the accused is put to no disadvantage and would have had to adduce no further evidence, then he may be rightly convicted of the substantive offence notwithstanding that the charge was originally framed under Ss. 147, 148 or 149 and the prosecution has failed to prove an unlawful common object. *Bhundu Das v. Emperor*.

30 Cr. L. J. 205 :
113 I. C. 676 : 7 Pat. 758 :
I. R. 1929 Pat. 68 : 11 P. L. T. 111 :
A. I. R. 1929 Pat. 11.

———Ss. 147, 148, 149—*Seven named culprits alleged to have participated in riot—Three given benefit of doubt—Effect.*

Where seven culprits are named but three of them get the benefit of the doubt regarding their participation in the riot, the effect is that such persons are entitled to an acquittal and that their co-accused are entitled to have it found in determining their case that the acquitted persons were not there. In this view of the finding, there are only four persons left and therefore in such a case neither S. 147 nor S. 148 nor S. 149 can be applied. Before S. 149 can come into operation, there must

PENAL CODE ACT (XLV OF 1860)

be five or more culprits to constitute an unlawful assembly. *Mustqim Jagga v. Emperor*.

40 Cr. L. J. 874 :
184 I. C. 208 : 12 R. L. 180 (2) :
A. I. R. 1939 Lah. 416.

———Ss. 147, 149—*Sentence—Rioting and some other offence committed in its connection—Separate sentences.*

Separate sentences may be passed under S. 147 and any other section which becomes applicable to the accused with reference to the terms of S. 149. *Mahpal Singh v. Emperor*.

15 Cr. L. J. 625 :
25 I. C. 633 : 1 O. L. J. 328 :
17 O. C. 184 : A. I. R. 1914 Oudh 205.

———Ss. 147, 149—*Separate sentences for rioting and other offences.*

As a rule, it is unsound to pass cumulative sentences under S. 147 and some other section of the Penal Code, where the latter of the two sections can only be applied by the aid of the provisions of S. 149. *Kure v. Emperor*.

20 Cr. L. J. 517 :
51 I. C. 677 : 16 A. L. J. 615 :
A. I. R. 1919 All. 379.

———Ss. 147, 149, 304, 325—*Unlawful assembly—Common intention to cause grievous hurt—Death caused—Members causing death not ascertainable—Liability of members—Offence.*

Where the members of an unlawful assembly animated with the common intention of causing grievous hurt caused death and it is impossible to ascertain by which of the members of the assembly death was caused, but it is found that one of them was immediately responsible for one of the deaths caused, that member is guilty of the offences of rioting under S. 147 and of culpable homicide under S. 304, Penal Code, and the remainder are guilty of rioting and causing grievous hurt under S. 325 read with S. 149. *Barkau Singh v. Emperor*.

22 Cr. L. J. 279 :
60 I. C. 679 : 7 O. L. J. 671 :
A. I. R. 1920 Oudh 152.

———Ss. 147, 149, 323—*Liability of members of unlawful assembly.*

S. 323 creates a distinct offence in itself. Where, therefore, more injuries than one are caused by the members of an unlawful assembly, they can be convicted of offences both under S. 147 and under S. 323, read with S. 149. In such a case, as soon as the first injury is caused to any person, force is used and the offence of rioting is complete. Subsequent injuries though inflicted in pursuance of the same common object would be distinct injuries justifying a conviction under S. 323. *Chhidda v. Emperor*.

27 Cr. L. J. 287 :
92 I. C. 463 : 24 A. L. J. 178 :
A. I. R. 1926 All. 225.

———Ss. 147, 149, 323, 325—*Riot and hurt—Conviction for both offences.*

Where the object of an unlawful assembly is to cause hurt, a member of that assembly, if he is convicted under S. 147, cannot be convicted also under S. 323 or S. 325 read

PENAL CODE ACT (XLV OF 1860)

with S. 149, except that such of the accused as are proved themselves to have caused hurt in the riot, would be rightly convicted of the offence of hurt in addition to the offences of rioting. *Krishna Ayyar v. Emperor*.

20 Cr. L. J. 145 (b) :
49 I. C. 337 : 24 M. L. T. 96 :
1918 M. W. N. 526 : 8 L. W. 225 :
A. I. R. 1919 Mad. 353.

———Ss. 147, 149, 325—*Rioting and causing grievous hurt—Separate convictions and sentences, legality of.*

In addition to a conviction under S. 147, Penal Code, an accused who himself caused grievous hurt to the opposite party cannot be separately convicted under S. 325 of the Code. Separate convictions and sentences, therefore, under S. 325 read with S. 149 of the Penal Code and S. 147 of the Code are illegal. *Pattu Singh v. Emperor*.

20 Cr. L. J. 37 :
48 I. C. 677 : 3 P. L. J. 641 :
A. I. R. 1918 Pat. 227.

———Ss. 147, 149, 325—*Rioting and hurt—Separate convictions.*

Where five men armed with deadly weapons assembled and proceeded to where their enemies were sleeping and caused them injuries which were grievous in the case of two and simple in the case of one: *Held*, that it was not permissible to convict them all under Ss. 147, 149 and 325, Penal Code, inasmuch as that would be convicting them twice over for the same offence. *Bula v. Emperor*.

31 Cr. L. J. 82 :
120 I. C. 283 : A. I. R. 1929 Lah. 498.

———Ss. 147, 149, 325—*Rioting—Jury, verdict of—Physical condition—Testimony.*

In a case under Ss. 147 and 325 read with S. 149, Penal Code, the accused put in a written statement that as he was a man of nearly 75 years of age, infirm and old, he had lost full vigour and was incapable of taking a part in a riot. There were witnesses who proved that the accused had given orders to beat. The Jury saw the physical condition of the accused and came to the conclusion that he was incapable of taking part in a riot and declared him not guilty. *Emperor v. Kamar Ali*.

6 Cr. L. J. 359 :
6 C. L. J. 253.

———Ss. 147, 149, 325—*Separate sentences for rioting and hurt.*

Separate sentences cannot be passed for an offence punishable under S. 147, Penal Code, and one punishable under Ss. 149 and 325 or any constructive offence with reference to S. 149 arising out of the same facts, though separate convictions can be made in respect of such offences. *In re : Ponniah Lopes*.

35 Cr. L. J. 1226 :
150 I. C. 977 : 1934 M. W. N. 8 :
66 M. L. J. 572 : 39 L. W. 566 :
57 Mad. 643 : 7 R. M. 61 :
A. I. R. 1934 Mad. 388.

PENAL CODE ACT (XLV OF 1860)

———Ss. 147, 149, 325, 352—*Conviction and sentence for offences under Ss. 325 and 352—Acquittal under S. 325—Sentence, whether must be reduced—Offence under S. 147, whether necessarily embraces one under S. 352.*

Where an accused person is convicted of an offence under S. 325 and also under S. 352 read with S. 149, Penal Code, but on appeal the conviction under S. 325 is set aside, the sentence must be reduced. It cannot be said that an offence under S. 147 necessarily embraces an offence under S. 352, inasmuch as persons may riot without actually committing an offence under S. 352. *In re : Srinivasulu Naicken*.

29 Cr. L. J. 2 :
106 I. C. 338 : 39 M. L. T. 409 :
A. I. R. 1928 Mad. 21.

———Ss. 147, 149, 326—*Rioting and grievous hurt—Separate convictions and sentences, legality of.*

It is illegal to pass separate sentences for the offences of rioting and grievous hurt upon persons who are not proved to have individually committed any act which amounts to voluntarily causing hurt. *Sahadev Ahir v. Emperor*.

1 Cr. L. J. 199 :
8 C. W. N. 344.

———Ss. 147, 149, 332—*Conviction and sentences—Constable interfering with wrestling match—Assault on members of Police force—Rioting—Sentence.*

(One of the constables deputed to keep order at a wrestling match interfered with the wrestling, whereupon several members of the audience set upon the members of the Police force present, hustled them and tore their uniforms: *Held*, (1) that the assailants of the Constable were guilty of offences under Ss. 147 and 332/149, Penal Code; (2) that in the circumstances of the case, severe sentences were not called for. *Miran v. Emperor*.

27 Cr. L. J. 240 :
92 I. C. 224 : 23 A. L. J. 1027 :
A. I. R. 1926 All. 168.

———Ss. 147, 186—*What constitutes offence—Assembly of five or more—Common object being resisting process of law.*

If there is an assemblage of five or more men with the common object of resisting by force or show of force the execution of processes of law, every one of them is guilty of being a member of an unlawful assembly whether resistance is offered or not. Being member of an unlawful assembly and resisting the process of law are two separate offences though they may be committed in the course of the same transaction. *Sheo Ahir v. Emperor*.

40 Cr. L. J. 71 :
178 I. C. 487 : 19 P. L. T. 665 :
5 B. R. 104 : 11 R. P. 261 :
17 Pat. 680 : A. I. R. 1938 Pat. 548.

———Ss. 147, 296—*Separate conviction and sentences.*

Where the common object of the members of an unlawful assembly is to insult and attack *Tazias* and they commit a riot in

PENAL CODE ACT (XLV OF 1860)

prosecution of that object, they commit one offence only and not two and are not liable to be punished separately under Ss. 147 and 296. *Prag v. Emperor*. 25 Cr. L. J. 1169 :

82 I. C. 33 : 11 O. L. J. 693 :
1 O. W. N. 473 : A. I. R. 1925 Oudh 65.

———Ss. 147, 304—Common object—Individual act causing death—Liability of others.

Where one member of an unlawful assembly does an act which causes the death of a person and there is not sufficient ground for holding that that act was done in pursuance of the common object, the member who alone caused the death, is guilty of an offence under S. 304, the other being guilty merely of rioting under S. 147. *Ranga Koravan v. Emperor*.

12 Cr. L. J. 124 :
9 I. C. 727 : 1911, 2 M. W. N. 130 :
9 M. L. T. 362.

———Ss. 147, 304, 323—Rioting.

Resistance to attachment under illegal warrant—Common object not unlawful—Offence—Intention, proof of—Grievous hurt—C. P. C. (Act V of 1908), O. XXI, r. 24—Attachment warrant not sealed, legality of—Warrant signed by *Shrestadar*, legality of—Burden of proof—Evidence Act (I of 1872), S. 114, Ill. (c). *Khidir Bux v. Emperor*.

20 Cr. L. J. 139 :
49 I. C. 171 : 3 P. L. J. 636 :
A. I. R. 1919 Pat. 404.

———Ss. 147, 304-A—Sentence—Rioting—Person armed with gun causing injury.

A person who goes into riot with a gun loaded with a ball cartridge is apt to cause serious injuries to some one person or persons and it is a practice which cannot be looked upon lightly by the Court of Justice when determining the sentence to be passed upon such person. *Emperor v. Mofizel Peada*.

26 Cr. L. J. 1298 :
89 I. C. 242 : 29 C. W. N. 842 :
A. I. R. 1925 Cal. 909.

———Ss. 147, 323—Sentence—Rioting, charge and conviction of—Appellate Court, power of, to set aside conviction of rioting and convict under S. 323.

Where the accused were originally charged under S. 147 and convicted and sentenced under that section, but on appeal the Appellate Court held that there was no case under S. 147, but that there was a case against them under S. 323, and accordingly set aside the conviction and sentence under S. 147, and convicted the accused under S. 323, although no charge was originally framed against them under that section: *Held*, that as no charge was framed against the accused of an offence under S. 323, they were not prepared for any defence against that charge; and, unless the facts of the case brought it under S. 236, Cr. P. C., they could not be lawfully convicted of any other offence under S. 237 of the Code. *Genu Manjhi v. Emperor*.

15 Cr. L. J. 704 :
26 I. C. 152 : 18 C. W. N. 1276 :
A. I. R. 1915 Cal. 219.

PENAL CODE ACT (XLV OF 1860)

———Ss. 147, 323—Separate sentences for riot and hurt, legality of.

Separate sentences may be passed for riot and hurt caused during such riot. *Fagiria v. Emperor*. 30 Cr. L. J. 295 :
114 I. C. 331 : I. R. 1929 Lah. 251.

———Ss. 147, 323, 325—Riot and hurt—Joint trial.

Offence under S. 147, Penal Code, is substantive. Accused can be charged in addition to S. 147, under Ss. 323 and 325, Penal Code. *Manni Lall v. Emperor*.

39 Cr. L. J. 341 :
173 I. C. 386 : 1938 O. W. N. 218 :
1938 O. L. R. 117 : 10 R. O. 222 :
A. I. R. 1938 Oudh 95.

———Ss. 147, 323, 71—Separate—Conviction and sentences.

Accused assaulting person—All convicted under Ss. 147 and 323 and separate sentence under each section awarded—Offences under Ss. 147 and 323, held were separate and S. 71 did not apply. *Parmeshwar v. Emperor*.

41 Cr. L. J. 775 :
189 I. C. 648 : 1940 O. W. N. 659 :
1940 O. L. R. 491 : 13 R. O. 101 :
A. I. R. 1940 Oudh 419.

———Ss. 147, 323, 325—Lawful acts and private defence—Right of private defence—Exceeding the right—Unlawful assembly.

The fact of exceeding the right of private defence, which a man has, cannot make him a member of an unlawful assembly, and he can only be convicted and punished for the individual act which he himself has done in excess of the right of private defence. *Kunja Bhuniya v. Emperor*.

13 Cr. L. J. 481 :
15 I. C. 481 : 16 C. W. N. 1053 :
39 Cal. 896.

———Ss. 147, 323, 325—Separate sentences for hurt and rioting, legality.

Under S. 35, Cr. P. C., separate sentences for rioting and hurt are legal although in practice it is better to give a single sentence for all the offences or to order the sentences to run concurrently. *Ali Akbar v. Emperor*.

30 Cr. L. J. 575 :
116 I. C. 216 : I. R. 1929 Lah. 472 :
A. I. R. 1929 Lah. 670.

———Ss. 147, 323, 448—Rioting—Acquittal—Conviction for criminal trespass and hurt, legality of.

Eleven persons were charged with rioting and being members of an unlawful assembly before a second class Magistrate. They were convicted of offences under S. 147, Penal Code. On appeal, the Appellate Magistrate acquitted seven of them and convicted the remaining four of offences under Ss. 448 and 323, Penal Code: *Held*, that the conviction was illegal and must be set aside. *In re : Mongalu Aorodhono Hathi*.

18 Cr. L. J. 860 :
41 I. C. 828 : A. I. R. 1918 Mad. 496.

PENAL CODE ACT (XLV OF 1860)

—Ss. 147, 324, 325, 342, 149—*Separate sentences—Award of separate sentences under S. 147 and Ss. 324, 325 and 342 read with S. 149, is illegal.*

The award of separate sentences under S. 147 and Ss. 324, 325 and 342 read with S. 149, Penal Code, is illegal. *In re : Mekraj Ali Sahib.* 41 Cr. L. J. 17 (c) :

184 I. C. 452 : 1939 M. W. N. 609 :
1939, 2 M. L. J. 36 (1) : 50 L. W. 918 :
12 R. M. 454 (1) : A. I. R. 1939 Mad 787.

—Ss. 147, 325—*Conviction for riot and grievous hurt.*

In pursuance of the common object of an unlawful assembly, grievous hurt is caused by some members of the party. They are guilty of an offence under S. 325 as also under S. 147. *Deoji v. Emperor.* 27 Cr. L. J. 830 :

95 I. C. 606 : A. I. R. 1926 Nag. 459.

—Ss. 147, 325—*Conviction under both sections—Appeal—Judge disbelieving whole of evidence whether can convict under one section.*

Accused were convicted by a Magistrate under Ss. 147 and 325. On appeal the Sessions Judge, disbelieving the whole of the prosecution evidence, set aside the conviction under S. 147 but confirmed the conviction under S. 325 : *Held*, that on the view taken by the Sessions Judge of the evidence, the conviction under S. 325 was illegal. *Shcobans Singh v. Emperor.* 19 Cr. L. J. 37 :

42 I. C. 997 : 15 A. L. J. 350 :
A. I. R. 1918 All. 355.

—Ss. 147, 325—*Riot and grievous hurt—Separate sentences, whether legal.*

Separate sentences under S. 325 and S. 147 are not illegal, but the sentences imposed ought not to be heavier than are justifiable in the circumstances of the case. *Ramnath Rai v. Emperor.* 22 Cr. L. J. 460 :

61 I. C. 844 : 2 P. L. T. 549 :
A. I. R. 1921 Pat. 374.

—Ss. 147, 325—*Rioting—Grievous hurt—Implication of innocent persons—First report to Police, whether safe guide.*

The first reports made to the Police in riot cases are not safe guides to charge the persons named therein, for friends and relations of the real culprits are more often than not promiscuously implicated. An accused person who bears no injury should be convicted of having taken part in a fight only on very cogent evidence. *Bagri v. Emperor.* 17 Cr. L. J. 450 :

36 I. C. 130 : 107 P. L. R. 1916 :
43 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 215.

—Ss. 147, 325—*Separate sentences.*

Where the use of violence and the causing of hurt is the thing which turns an assembly into an unlawful assembly, and that unlawful assembly into a riot, double sentences under Ss. 147 and 325, Penal Code, should not be inflicted. *Mangal Singh v. Emperor.* 18 Cr. L. J. 372 :

38 I. C. 756 : 31 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 358.

PENAL CODE ACT (XLV OF 1860)

—Ss. 147, 325—*Conviction and sentences—Rioting and grievous hurt—Rioting not complete without hurt—Separate sentences.*

Separate sentences for the offences of rioting and grievous hurt cannot legally be imposed upon a member of an unlawful assembly where the offence of rioting is not itself complete until the grievous hurt is actually inflicted, that is to say, where the causing of the hurt is itself the form of the force or violence which constitutes the offence of rioting. *Bishua v. Emperor.* 24 Cr. L. J. 629 :

73 I. C. 517 : A. I. R. 1922 Lah. 405.

—Ss. 147, 332—*Riot—Constable struck while quieting riot—Discrepant evidence.*

Where a public servant is struck with a stick while trying to quiet a riot, but the evidence as to who actually struck him is discrepant, it is not necessary to frame a separate charge under S. 332, Penal Code, against any one of the rioters in particular. *Sundar Singh v. Emperor.* 13 Cr. L. J. 490 :

15 I. C. 92 : 14 P. W. R. 1912 Cr. :
11 P. L. R. 1912.

—Ss. 147, 332—*Separate sentences—Legality—Unlawful assembly—Conviction of less than five accused.*

Separate sentences under Ss. 147 and 332, Penal Code, are not illegal. Where some of the five persons charged with an offence under S. 147 are acquitted on the ground that it is not proved to the satisfaction of the Court that they were present, the rest may yet be convicted under the section. But in such a case, the Court should give a finding that the persons convicted and others who have been acquitted formed an unlawful assembly. *Rahman v. Emperor.* 27 Cr. L. J. 824 :

95 I. C. 600 : A. I. R. 1926 Lah. 521.

—Ss. 147, 341, 352, 366, 498—*Cr. P. C. (Act V of 1898), Ss. 238, 297—Rioting with intent to abduct married woman for purposes of forced marriage or illicit intercourse—Conviction based on finding of simple abduction, legality of—Charge to Jury—Misdirection.*

Certain persons were charged with an offence under S. 147, Penal Code, and the charge stated that they were members of an unlawful assembly, and in prosecution of the common object of the assembly, namely, to abduct a certain woman with intent that she would be compelled, or knowing it to be likely that she would be compelled to marry somebody else against her will, committed rioting and thereby committed an offence under S. 147 of the Penal Code. They were also separately charged with offences under Ss. 366 and 498, Penal Code, in respect of the same occurrence. The Jury found that the accused were not guilty under S. 366 or S. 498 of the Penal Code but they found them guilty of having committed an offence punishable under S. 147 of the Penal Code : *Held*, that, the provisions of S. 238 of the Cr. P. C. applied to the case and it could not be said that the conviction of the accused under S. 147 of the Penal Code was illegal. *Torap Ali v. Emperor.* 27 Cr. L. J. 1314 :

98 I. C. 386 : 53 Cal. 599 :
44 C. L. J. 239 : A. I. R. 1926 Cal. 1059.

PENAL CODE ACT (XLV OF 1860)

—Ss. 147, 347—*Separate conviction and sentences.*

Separate convictions and sentences for offences under Ss. 147 and 347 are legal but aggregate sentences should not exceed that for the graver offence. *Balisa Singh v. Emperor.* 34 Cr. L. J. 81 :

140 I. C. 752 : 13 P. L. T. 588 :

I. R. 1933 Pat. 19 :

A. I. R. 1932 Pat. 335.

—Ss. 147, 352—*Arrest by Police Officer in good faith and under colour of office—Assault on Police—Offence—Persons attempting to rescue by use of criminal force—Offence.*

Where the accused who were arrested by Police Officers in good faith under colour of their office assault them, there is no right of private defence against such an act of a public servant, and accused who attempted to rescue such accused by use of criminal force will unquestionably be guilty under S. 147, I. P. C. *Public Prosecutor v. Amirtham Servat.* 41 Cr. L. J. 250 :

186 I. C. 103 : 1939 M. W. N. 1004 :

50 L. W. 763 : 1939, 2 M. L. J. 776 :

12 R. M. 611 : A. I. R. 1940 Mad. 18.

—Ss. 147, 353—*Procedure—Charge of rioting—Common object wrongly stated, effect of—Acquittal—Conviction under another section, whether sustained—Proper course.*

Where in an appeal against conviction for rioting, a Sessions Judge acquits the accused finding that there has been an error or omission in the statement of the common object as set out in the charge, but convicts them of an offence under another section, which the accused were not called upon to answer, he commits a manifest error and the conviction cannot be sustained, as the accused are prejudiced thereby. In such a case, the order of acquittal made by the Sessions Judge should also be set aside and the accused should be ordered to be retried on charges properly framed. *Harnarain Sardar v. Emperor.* 16 Cr. L. J. 42 :

26 I. C. 634 : 18 C. W. N. 1274 :

A. I. R. 1915 Cal. 181.

—Ss. 147, 353—*Rioting—Separate sentence.*

A separate sentence should not be passed upon people convicted of rioting for the offence which is specifically stated to have been the common object of the assembly, unless a specific charge is laid against the individual members of committing such an offence. Therefore, persons who are shown to have committed a separate offence under S. 353, should receive a separate punishment, even although the common object of the riot was to commit that offence. *Prakash Chandra Kundu v. Emperor.*

15 Cr. L. J. 251 :

23 I. C. 203 : 18 C. W. N. 918 : 41 Cal. 836 :

A. I. R. 1914 Cal. 675.

—Ss. 147, 353—*Sentence—Separate sentences under, legality.*

Separate sentences under Ss. 147 and 353

PENAL CODE ACT (XLV OF 1860)

are not permissible where the act which converts the accused into an unlawful assembly is, the same as renders them liable for punishment under S. 353. *Manak Chand v. Emperor.* 27 Cr. L. J. 834 : 95 I. C. 754 : A. I. R. 1926 Lah. 581.

—Ss. 147, 355—*Offences committed in same transaction—Separate sentences, legality of.*

In order to carry out a sentence imposed by a private *panchayat* upon the complainant, the accused blackened the complainant's face and made him ride a donkey round the village. They were convicted of offences under Ss. 147 and 355 and separate sentences were awarded in respect of each offence: *Held*, that the acts committed by the accused formed part of the same transaction and that, therefore, separate convictions and separate sentences under S. 147 and S. 355 were illegal. *Karam Singh v. Emperor.* 23 Cr. L. J. 457 :

67 I. C. 729 : A. I. R. 1923 Lah. 91.

—Ss. 147, 379—*Sentence—No finding as to who removed property—Separate sentences, whether legal.*

Where it is found that the common object of an unlawful assembly was to commit theft, but there is no finding as to which of the persons composing the unlawful assembly removed the property stolen, it is illegal to convict them both under S. 147 and under S. 379, Penal Code, and to pass separate sentences for each offence. *Chandra Mohan Singh v. Emperor.* 21 Cr. L. J. 480 :

56 I. C. 512 : 1 P. L. T. 623 :

A. I. R. 1920 Pat. 196.

—Ss. 147, 395—*Communal riot—Common object to hurt Hindus and rob their shops and houses—Persons joining disturbance whether guilty both of rioting and dacoity.*

Where it is established that the common object of certain Muhammadan rioters was both to hurt any member of the Hindu community whom they might happen to find and to rob the shops and houses of the Hindus, any person who is proved to have taken a part in the disturbance is guilty not only of the offence of rioting but also of the offence of dacoity. *Daulat Nai v. Emperor.*

28 Cr. L. J. 110 :

99 I. C. 238 : 3 O. W. N. 304 Sup. :

2 Luck. 264 : A. I. R. 1927 Oudh 70.

—Ss. 147, 395—*Sentence—Proper sentence—What is.*

In awarding sentence in a case of riot and dacoity committed while the accused were smarting with indignation against the outrages upon their sacred places, every allowance should be made for their feelings and a comparative leniency shown, though they must be punished adequately, it being also taken into consideration that the persons injured in the riot and robbed had no share in desecrating the holy places and were

PENAL CODE ACT (XLV OF 1860)

made to suffer for the sins of others.
Daulat Nai v. Emperor. 28 Cr. L. J. 110 :
 99 I. C. 238 : 3 O. W. N. 304 Sup. :
 2 Luck. 264 : A. I. R. 1927 Oudh 70.

———Ss. 147, 447—*Rioting and trespass—Proper conviction.*

Where the accused was convicted under Ss. 147 and 447, Penal Code, and the common object of the accused was to prevent complainant from entering into possession of the land: *Held*, that the conviction under S. 147 was right. *In re: Kesireddi.* 11 Cr. L. J. 727 :
 8 I. C. 880 : 9 M. L. T. 167.

———Ss. 147, 447—*Rioting and trespass—Separate convictions and sentences, legality of.*

Where the accused, who had entered upon the land of the complainant with the common object of cutting crops standing on it, were convicted and sentenced both for rioting under S. 147 and criminal trespass under S. 447: *Held*, that the common object for rioting and the intention for criminal trespass being substantially the same in this case, separate convictions under both sections were illegal. *Bhup Singh v. Emperor.* 1 Cr. L. J. 139 :
 8 C. W. N. 305.

———Ss. 147, 447—*Rioting—Common object, not trespass—Conviction for trespass, whether legal.*

Where the accused were charged only under S. 147 and the common object stated in the charge was to take forcible possession of the complainant's land and to assault him and they were convicted only under S. 447, Penal Code: *Held*, that the common object did not make out a case of trespass, as the criminal intention necessary to be made out in the case of a trespass was not established, and in the absence of any charge and complaint under S. 447, the conviction of the accused under S. 447 was illegal. *Ariff Munshi v. Emperor.* 15 Cr. L. J. 188 :
 22 I. C. 764 : 18 C. W. N. 992 :
 A. I. R. 1914 Mad. 149.

———Ss. 147, 447—*Sentence—Accused entering land for cutting crops—Separate conviction and sentences under Ss. 147 and 447—Legality.*

Where accused have entered upon the land with the common object of cutting crops standing on it, their conviction and passing of sentences both under Ss. 147 and 447 separately is illegal as the common object for rioting and intention for criminal trespass are substantially the same. *Bhup Singh v. Emperor.* 1 Cr. L. J. 139 :
 8 C. W. N. 305.

———Ss. 147, 452—*Separate sentences, legality of.*

The members of an unlawful assembly formed for the purpose of committing an offence under S. 452, Penal Code, can, where they commit such an offence, be separately sentenced under Ss. 147 and 452, Penal Code. *Sheo Nath v. Emperor.* 27 Cr. L. J. 1172 :
 97 I. C. 804 : 3 O. W. N. 92 Sup.

PENAL CODE ACT (XLV OF 1860)

———S. 148.

See also (i) Cr. P. C., 1898, Ss. 162, 297.

(ii) Penal Code, 1860, Ss. 96, 97, 99, 147.

———S. 148—*Charge—Contents of.*

The Magistrate should state the particular common object in a charge under S. 148, I. P. C., and make its proof a special point of determination in the case, but, where the common object is a matter of inference, which is conclusively supported by all the surrounding circumstances, the point is of no material importance. *In re: Koli Moti Hari.* 8 Cr. L. J. 41.

———S. 148—*Common object—Riot—Unlawful assembly—Charge, omission to state common object in, effect of.*

A conviction under S. 148 is not invalidated by reason of the charge containing no specific allegation of any common object, if from the evidence it can be clearly established what the common object was. If two common objects are alleged, and one is clearly proved upon the evidence, then the fact that the other common object has not been proved, will not exonerate the accused from liability. *Harinder Singh v. Emperor.* 18 Cr. L. J. 911 :
 42 I. C. 143 : 2 P. L. J. 541 :
 A. I. R. 1917 Pat. 453.

———S. 148—*Conviction.*

Only those members of unlawful assembly actually armed with deadly weapons are punishable under S. 148. *Fordil v. Emperor.* 36 Cr. L. J. 296 :
 153 I. C. 132 : 35 P. L. R. 518 :
 7 R. L. 391 : A. I. R. 1934 Lah. 632.

———S. 148—*Conviction—Proof.*

In order to maintain a conviction under S. 148, it must be proved that he was carrying a deadly weapon. A crowbar or spade may well be a deadly weapon if used as a weapon for offence, but if it is merely used to destroy a bridge, it cannot be described as a weapon of any sort. *Mir Bayyan Khan v. Emperor.* 36 Cr. L. J. 933 :
 156 I. C. 239 : 7 R. Pesh. 120 :
 A. I. R. 1935 Pesh. 65 (2).

———S. 148—*Conviction and sentences.*

Conviction under S. 326/148—Conviction under S. 148 set aside—They can be convicted under S. 326/149. *Nadumogru Ammu Shetty v. Bapa.* 35 Cr. L. J. 75 :
 146 I. C. 478 : 65 M. L. J. 797 :
 1933 M. W. N. 109 :
 39 L. W. 63 : 6 R. M. 265 :
 A. I. R. 1933 Mad. 842.

———S. 148—*Defence.*

A plea of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession and who opposes the entry. *Ali Mohammad Jumo v. Emperor.* 35 Cr. L. J. 257 :
 147 I. C. 70 : 27 S. L. R. 433 :
 6 R. S. 119 : A. I. R. 1933 Sind 386.

PENAL CODE ACT (XLV OF 1860)

—S. 148—Evidence.

Where there is conflicting and perjured evidence brought before Court, one sure ground for conviction or acquittal is to proceed by marks of injury on person of the accused. *Emperor v. Ram Adhin Singh*.

A. I. R. 1931 All. 439.

—S. 148—Lawful acts and private defence.

Site belonging to villagers generally and set apart for public purposes—Complainant building walls on it—Removal of walls does not amount to criminal offence. *In re : Gollakotta Suryanarayanamurthi*.

41 Cr. L. J. 807 :
189 I. C. 827 : 1939 M. W. N. 1254 :
1940, 1 M. L. J. 571 : 13 R. M. 372 :
A. I. R. 1940 Mad. 747.

—S. 148—Rioting—Existence of common object before fight, unnecessary.

To sustain a charge of rioting under S. 148, Penal Code, it is not necessary that all the accused should have had a common object before fighting begins. It is quite enough if some of the accused adopted the object of other accused when they joined the latter. And it is immaterial that the idea of inflicting injury was conceived suddenly after the accused went to the scene of offence. *Golla Hanumappa v. Emperor*.

12 Cr. L. J. 269 :
10 I. C. 372 : 10 M. L. T. 66 :
1911, 2 M. W. N. 106 : 21 M. L. J. 805.

—S. 148—Rioting.

The mere fact that the party which had no right was able to get on the land a few minutes before the rightful owners could get to the spot for protecting their crop; could not make their entry otherwise than unlawful and would not make the defenders other than persons acting in lawful exercise of their right. The taking of possession in these circumstances would not confer any legal right; it would not be possession in the eye of the law. In such a case, it is, therefore, absolutely necessary to determine to whom the crop belonged, and incidentally to determine in whose possession the land was prior to the occurrence, because that would assist the determination of the ownership of the crop. It is the duty of the Court to determine whether as a matter of fact, the land was in possession of the accused and the crop belonged to them, because if that contention were made out, there could be no conviction even for rioting. *In re : Mahideen Pichai Rowther*.

41 Cr. L. J. 337 :
186 I. C. 525 : 1939 M. W. N. 879 :
50 L. W. 557 : 12 R. M. 671 :
A. I. R. 1940 Mad. 43.

—S. 148—Separate sentences.

Where the convictions are under S. 321, Penal Code, and under S. 148, only one sentence should be passed under either one or the other of the section. *Kehar Singh v. Emperor*.

36 Cr. L. J. 294 :
153 I. C. 198 (1) : 35 P. L. R. 587 :
7 R. L. 396 : A. I. R. 1934 Lah. 614 (1).

PENAL CODE ACT (XLV OF 1860)

—S. 148—Person disarmed before formation of unlawful assembly—Conviction.

Where an accused is disarmed by a constable, before he forms a member of an unlawful assembly, he cannot properly be convicted of an offence under S. 148, Penal Code. *Bansropan Singh v. Emperor*.

39 Cr. L. J. 2 :
171 I. C. 894 : 18 P. L. T. 760 :
4 B. R. 85 : 10 R. P. 258 :
A. I. R. 1937 Pat. 603.

—Ss. 148, 149—Evidence—Evidence judicially recorded—Judge's duty to believe or disbelieve witness before him—Finding, when irrelevant.

It is the Judge's duty to make up his mind while the witness is before him whether he is a witness of truth or falsehood; and it is only when the Judge sees any reason to distrust his evidence that omissions in a Police record can become of any importance. Such findings as this: "It is not clear whether the name of Mahabir appears in the Police papers or not," are wholly irrelevant. *Jang Rai v. Emperor*.

16 Cr. L. J. 313 :
28 I. C. 649 : 19 C. W. N. 217 :
A. I. R. 1915 Cal. 702.

—Ss. 148, 149—Sentence.

Where there has been acquittal of the accused for some of the offences of which they were convicted, there must be a proportionate reduction in the sentences also. *In re : Choitano Ranto*.

16 Cr. L. J. 446 :
29 I. C. 78 : A. I. R. 1916 Mad. 788.

—Ss. 148, 149—Unlawful assembly—Deadly weapon carried by member of assembly—Liability of other members of assembly.

Where an assembly is an unlawful assembly, S. 149 makes every one of the members of the assembly guilty of any offence which is committed in prosecution of the common object of the assembly. If a deadly weapon is carried by a member of such assembly without the knowledge of the other members of the assembly for his private ends, the other members of the assembly would not be guilty of an offence under S. 148 of the Code. But where the fact is not made out and it is shown that one or more of the members of the assembly carried a deadly weapon, it cannot be said that the weapon was not carried in prosecution of the common object of the assembly, and all the members of the assembly are in such a case, guilty of an offence under S. 148. *In re : Mudurupayalagadu*.

27 Cr. L. J. 894 :
96 I. C. 158 : 50 M. L. J. 559 :
A. I. R. 1926 Mad. 741.

—Ss. 148, 149—Unlawful assembly—Only one member possessed of gun—Conviction of others.

Where of the several persons charged with rioting armed with a deadly weapon only one is proved to have been possessed of a gun, it is illegal to convict

PENAL CODE ACT (XLV OF 1860)

others who had no such dangerous weapon of an offence under S. 149, Penal Code. *In re : Chaitano Ranto*.

16 Cr. L. J. 446 :
29 I. C. 78 : A. I. R. 1916 Mad. 788.

———Ss. 148, 302—*Rioting*.

Accused, five in number, assembled at the canal water-head to divert water by force and armed themselves with deadly weapons to strike and vanquish anybody who should stand in their way and prevent them from accomplishing their purpose. The party of the deceased remonstrated with the accused, whereupon the accused assaulted them with their weapons and caused the death of the deceased : *Held*, (1) that the accused constituted an unlawful assembly and became guilty of rioting when they used their weapons in pursuance of their common object. *Hari Singh v. Emperor*.

27 Cr. L. J. 233 :
92 I. C. 217 : 7 L. L. J. 576 :
A. I. R. 1926 Lah. 4.

———Ss. 148, 325, 149—*Conviction and sentences—Separate sentences for hurt and rioting—Member causing grievous hurt, conviction*.

Infliction of separate sentences for offences under S. 148, and S. 325, I. P. C., read with S. 149, I. P. C., on all the accused who are the members of an unlawful assembly except the member who causes the grievous hurt, this specific offence being beyond the common object of the assembly, are not according to law. *Baldosingh v. Emperor*.

41 Cr. L. J. 360 :
186 I. C. 681 : 1940 N. L. J. 46 :
12 R. N. 254 : A. I. R. 1940 Nag. 120.

———Ss. 148, 325, 326—*Rioting and causing grievous hurt—Prosecution story as to rioting disbelieved—Duty of Court*.

Where the Judge of an Appellate Court finds that the case put forward by the prosecution is untrue to the extent that he is not inclined to believe the prosecution story of "rioting and loot," it behoves him to examine the residue of the evidence with care and scrutinise the same with caution for the purpose of considering the criminal responsibility of the accused for injuries alleged to have been inflicted. It is for the Judge acting as a Juror, within his discretion, to determine whether he believes the evidence of the witnesses upon whom he is asked to rely in convicting the accused, even though he may have believed that the prosecution case in substance was partly unfounded. *Ramprasad Mahton v. Emperor*.

20 Cr. L. J. 375 :
50 I. C. 983 : 4 P. L. J. 289 :
1919 Pat. 262 : A. I. R. 1919 Pat. 534.

———Ss. 148, 326—*Sentence—Rioting armed with deadly weapons Grievous hurt—Separate sentences*.

S. 35, Cr. P. C., empowers a Magistrate to pass separate sentences in respect of convictions under Ss. 148 and 326 subject to

PENAL CODE ACT (XLV OF 1860)

provisions of S. 71. *Piru Rama Havaldar v. Emperor*.

27 Cr. L. J. 113 :
91 I. C. 689 : 49 Bom. 916 :
27 Bom. L. R. 1371 :
A. I. R. 1926 Bom. 64.

———Ss. 148, 326—*Separate punishments for rioting and grievous hurt*.

There can be two separate punishments under Ss. 148 and 326, I. P. C. *In re : Koli Moti Hari*.

8 Cr. L. J. 41.

———S. 149.

See also (i) Cr. P. C., 1898, Ss. 106, 164-A, 200, 238 (1), 297, 307.

(ii) Penal Code, 1860, Ss. 34, 71, 96, 97, 99, 143, 147, 148, 149, 302, 304, 326, 395, 398.

———S. 149—*Applicability—Unlawful assembly armed with spears—Death caused—Offence*.

The two parts of S. 149, Penal Code, are quite distinct though the same act may, and frequently does, fall under both. The first class of acts are those committed in prosecution of the common object of the assembly. The act may be that of one individual accused, but if it is committed in furtherance of the end which they all have in view, all the accused are liable for it. The second class of acts are those which the accused knew to be likely to be committed in connection with the carrying out of their common purpose. *Behari v. Emperor*.

26 Cr. L. J. 154 :
83 I. C. 714 : A. I. R. 1924 All. 670.

———S. 149—*Application of*.

The one essential point which must be established before S. 149 applies, is that the act must be an act committed in the prosecution of the common object of the unlawful assembly or must be such as the members knew to be likely to be committed in prosecution of that object. *Emperor v. Mahmud-khan*.

5 Cr. L. J. 168 :
9 Bom. L. R. 153.

———S. 149—*Assault—Death caused by assault—Liability of all*.

In an attempt to rescue certain cattle from being driven to the pound, one of the persons of the accused party ordered the others to use their lathis and beat the other party. The lathis were at once used, with the result that one of the opponents died : *Held*, that the offence was committed in furtherance of the common object of the party and each one of the accused was guilty of an offence under S. 302, Penal Code. *Rasul Khan v. Emperor*.

16 Cr. L. J. 459 :
29 I. C. 91 : 13 A. L. J. 470 :
A. I. R. 1915 All. 281.

———S. 149—*Assembly not unlawful—Offence committed by one—Liability of others*.

S. 149 does not operate to make all the members of an assembly which is not unlawful,

PENAL CODE ACT (XLV OF 1860)

equally guilty of an offence committed by one of them. *Mihan Singh v. Emperor*.

16 Cr. L. J. 60 :
26 I. C. 652 : 26 P. R. 1914 Cr. :
24 P. L. R. 1916 : A. I. R. 1914 Lah. 557.

—S. 149—Charge—Conviction for different offence, legality of.

Under Ss. 236 and 237, Cr. P. C., where the series of acts committed are of such a nature that it is doubtful which of the offences the facts proved will constitute, the accused may be convicted of an offence under S. 352, Penal Code, if he is found to have committed such an offence even though he was charged with an offence under S. 149, Penal Code, provided the accused has not been misled in his defence. *Mallu Gope v. Emperor*.

30 Cr. L. J. 891 :
118 I. C. 323 : 10 P. L. T. 875 :
I. R. 1929 Pat. 515 :
A. I. R. 1929 Pat. 712.

—S. 149—Common object—Inference.

If a mob armed with deadly weapons goes to achieve a particular object by force or show of force, it is reasonable to infer that all the members of the assembly know that grievous hurt, if not murder, is likely to be caused in prosecution of that object. *Ambika Thakur v. Emperor*.

41 Cr. L. J. 191 :
185 I. C. 529 : 18 Pat. 544 :
21 P. L. T. 45 : 6 B. R. 203 :
12 R. P. 389 : A. I. R. 1939 Pat. 611.

—S. 149—Common object—Liability of rioters.

An assault is a crime except under certain special circumstances. But in one sense criminal force is a continuing wrong and there is a limit where the plea of justification ceases to operate and the liability to punishment revives; if one member in prosecution of the common object of an assembly exceeds that limit, every other member shares with him the guilt of his act. *Lalji Singh v. Emperor*.

25 Cr. L. J. 1228 :
82 I. C. 156 : 2 Pat. 595 :
6 P. L. J. 87 : A. I. R. 1924 Pat. 388.

—S. 149—"Common object," meaning of.

The expression 'offence committed in prosecution of the common object' must be confined to something immediately connected with the common object. *Ahmed v. Emperor*.

28 Cr. L. J. 61 :
99 I. C. 93 : A. I. R. 1927 Sind 108.

—S. 149—Common object—Presumption.

If a person is found amongst rioters, presumption is, that he shares their common object and intention. If he does not share that common object and intention, onus is on him to prove his innocence. *Ramhit v. Emperor*.

35 Cr. L. J. 919 :
149 I. C. 210 : 4 A. W. R. 191 :
6 R. A. 872 : A. I. R. 1934 All. 776.

PENAL CODE ACT (XLV OF 1860)

—S. 149—Construction.

S. 149, Penal Code, must be construed strictly. *Ahmed v. Emperor*.

28 Cr. L. J. 61 :
99 I. C. 93 : A. I. R. 1927 Sind 108.

—S. 149—Conviction of some only.

It is not necessary that all the members of an unlawful assembly should be found guilty of and convicted for, an offence of which the principal offender is convicted or else that all the accused must be acquitted. It is permissible to convict some of them of a minor offence which is included in the offence for which the principal is convicted. *Ahmed v. Emperor*.

28 Cr. L. J. 61 :
99 I. C. 93 : A. I. R. 1927 Sind 108.

—S. 149—Evidence.

The opinion or the impression of a witness that it appeared to him from the conduct of a mob that they had appeared for an unlawful purpose is not admissible in evidence to prove the object of the assembly although statements as to what he actually saw and heard are admissible. *Jogi Raut v. Emperor*.

28 Cr. L. J. 906 :
105 I. C. 234 : 9 P. L. T. 260 :
A. I. R. 1928 Pat. 98.

—S. 149—Free fight, inference of—Aggressor not known—Effect.

The fact that equal number of injuries are sustained on either side is not sufficient to show that there was a free fight. Where there is no evidence to justify a finding as to a free fight, the Court should look for evidence to see which party was the aggressor, and in the absence of reliable evidence to arrive at a finding on this point, the accused are entitled to an acquittal. *Piran Ditta v. Emperor*.

35 Cr. L. J. 69 :
146 I. C. 321 : 34 P. L. R. 950 (2) :
6 R. L. 208 : A. I. R. 1933 Lah. 808.

—S. 149—Interpretation—"Offence", meaning of.

The word "offence" in S. 149, Penal Code, being confined to offences under the Penal Code, the conviction of an accused person under S. 128 of the Railways Act with reference to that section is illegal. *In re : Vasudeva Mudali*.

30 Cr. L. J. 869 :
118 I. C. 68 : 30 L. W. 108 :
57 M. L. J. 114 : 52 Mad. 882 :
1929 M. W. N. 522 :
I. R. 1929 Mad. 756 :
A. I. R. 1929 Mad. 880.

—S. 149—Interpretation—"Knew," meaning of—Unlawful assembly—Liability of rioters.

The word *knew* in S. 149 indicates a state of mind at the time of the commission of the offence and not knowledge acquired in the light of subsequent events. The offence, for which members of an unlawful assembly can be convicted as being in pursuance of the common object of the assembly, must so probably flow from the prosecution of the common object that each member might

PENAL CODE ACT (XLV OF 1860)

antecedently expect it to happen. *Imperator v. Khamiso*.
13 Cr. L. J. 776 (a):

17 I. C. 408 : 6 S. L. R. 101.

—S. 149—Lawful acts and private defence—*Assembly for exercising lawful right—Some members exceeding right of private defence—Absence of evidence to identify actual culprits—Conviction.*

It is not unlawful for five or more persons to assemble together to exercise a lawful right and, if necessary, to resist opposition in the exercise of that right, provided they do not exceed the limits of the right of private defence of their person or property. If, however, some of them exceed that right, but there is no evidence to identify them, no member of the assembly, including the actual culprits, can be held guilty of the offence committed by the latter. *Suba Ahir v. Emperor*.

27 Cr. L. J. 1078 :
97 I. C. 54 : A. I. R. 1927 Pat. 27.

—S. 149—Miscellaneous.

Act must be one which, upon the evidence of the prosecution witnesses, appears to have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. *Raghuandan v. Emperor*.

36 Cr. L. J. 268 :
153 I. C. 96 : 11 O. W. N. 1456 :
7 R. O. 296 : A. I. R. 1935 Oudh 52.

—S. 149—Murder committed by unlawful assembly, liability of all.

Several persons armed with weapons gathering with common object of assaulting a person—Death being likely result of assault, all persons are responsible and guilty by virtue of S. 149. *Rahman Smail v. Emperor*.

40 Cr. L. J. 712 :
182 I. C. 900 : 41 P. L. R. 443 :
12 R. L. 83 : I. L. R. 1939 Lah. 77 :
A. I. R. 1939 Lah. 245.

—S. 149—Murder—Liability.

Common object of members of an unlawful assembly—Death ensuing from use of spears—Conviction under S. 302 read with S. 149 is proper. *Mehdi v. Emperor*.

35 Cr. L. J. 250 :
146 I. C. 949 : 35 P. L. R. 238 :
6 R. L. 291 : A. I. R. 1933 Lah. 661.

—S. 149—Offence—Meaning of.

In S. 149 the word "offence" only covers offences punishable under the Penal Code. Therefore, an offence under S. 126, Railways Act, or S. 7 (c) of the Malabar Martial Law Regulation is not an "offence" within the meaning of S. 149, Penal Code. *In re : Pavanur Athamu*.

26 Cr. L. J. 747 :
86 I. C. 283 : 20 L. W. 914 :
A. I. R. 1925 Mad. 239.

—S. 149—"Offence," meaning of.

The definition of "offence" in S. 149 does not include offences under special acts, *Aydras v. Emperor*.

24 Cr. L. J. 360 :
72 I. C. 360 : 1922 M. W. N. 800 :
17 L. W. 21 : A. I. R. 1923 Mad. 187.

PENAL CODE ACT (XLV OF 1860)

—S. 149—Riot cases—Conviction of un-injured persons.

In riot cases, there is a tendency for the rival parties to implicate as many members as possible belonging to the party of their adversaries. When there has been a pitched and fierce fight, a Court should be cautious in convicting persons bearing no injuries. *Ujagar Singh v. Emperor*.

28 Cr. L. J. 593 :
102 I. C. 769 : A. I. R. 1927 Lah. 740.

—S. 149—Riot—Liability of individual rioters.

The liability of individual members of an unlawful assembly under S. 149 depends on the intention or knowledge of the members. *Bhagwat Singh v. Emperor*.

37 Cr. L. J. 630 :
162 I. C. 563 : 17 P. L. T. 350 :
2 B. R. 471 : 8 R. E. 549 :
A. I. R. 1936 Pat. 481.

—S. 149—Riot—Murder—Liability of rioters.

A conviction of a principal offender for murder and the other members of an unlawful assembly for grievous hurt is not illegal. *Ahmed v. Emperor*.

28 Cr. L. J. 61 :
99 I. C. 93 : A. I. R. 1927 Sind 108.

—S. 149—Riot—Party committing first assault, whether entitled to right of private defence—Death caused by member of party—Liability of other members.

When a quarrel takes place between two parties, the party who starts the fight by striking the first blow has no right of private defence of any kind. Where as the result of the blow or blows inflicted by a member or members of such party, a member of the opposite party is killed, every member of the aggressive party is equally responsible for the death of the deceased under the provisions of S. 149, Penal Code. *Gurdin v. Emperor*.

27 Cr. L. J. 846 (b) :
95 I. C. 766 : 13 O. L. J. 204 :
1 Luck. 180 : A. I. R. 1927 Oudh 102.

—S. 149—Rioting—Conviction.

Where a number of persons take part in an assault with lathis on a particular individual, then all the persons, taking part in that assault, are equally guilty. *Rahat Hussain v. Emperor*.

35 Cr. L. J. 208 :
146 I. C. 896 : 6 R. A. 370 :
A. I. R. 1933 All. 582.

—S. 149—Rioting—Liability of rioters.

Common object to abduct and murder—Injuries inflicted by individual acts of some rioters—Other rioters are not constructively liable for offence under S. 325. *Ratan v. Emperor*.

34 Cr. L. J. 498 (2) :
143 I. C. 55 : 10 O. W. N. 7 :
8 Luck. 301 : I. R. 1933 Oudh 154 :
A. I. R. 1933 Oudh 148.

—S. 149—Rioting and murder—Joint assault—Death—No evidence to prove who dealt fatal blow—Conviction of all for murder.

If the victim of an assault by several persons

PENAL CODE ACT (XLV OF 1860)

dies as a result thereof and it is not proved who among the assailants struck the fatal blow, all the assailants are liable to be convicted of murder and not merely of hurt. *Kisan Das v. Emperor*. 30 Cr. L. J. 944 :

118 I. C. 473 : I. R. 1929 Nag. 265 :
A. I. R. 1929 Nag. 325.

———S. 149—Scope.

S. 149, Penal Code, creates no substantive offence in itself. It is merely declaratory of the law and makes a person who has been a member of an unlawful assembly liable for the offences committed by any other member of it. *Chhidda v. Emperor*.

27 Cr. L. J. 287 :
92 I. C. 463 : 24 A. L. J. 178 :
A. I. R. 1926 All. 225.

———S. 149—Scope.

S. 149, Penal Code, does not define any definite offence but merely provides that in certain circumstances person may be convicted of an offence under the Penal Code provided always that certain conditions are complied with, and an accused person can be convicted under that section of a substantive offence even though no reference is made in the charge to that section. *Ramnaray Ahir v. Emperor*.

29 Cr. L. J. 648 :
110 I. C. 104 : 7 Pat. 484 :
9 P. L. T. 738 : A. I. R. 1928 Pat. 454.

———S. 149—Scope of.

Per *obiter dicta*.—S. 149, Penal Code, creates no offence, but is, like S. 34, merely declaratory of a principle of the common law, and its object is to make it clear that an accused who comes within that section cannot put forward as a defence that it was not his hand which actually committed the offence. A person could not be tried and sentenced under S. 149 alone, as no punishment is provided by the section. *Theethumalai Gounder v. Emperor*. (F. B.)

25 Cr. L. J. 1297 :
82 I. C. 465 : 47 Mad. 746 : 47 M. L. J. 221 :
20 L. W. 261 : 35 M. L. T. 21 :
A. I. R. 1925 Mad. 1.

———S. 149—Unlawful assembly—Act in prosecution of common object.

After people have formed themselves into an unlawful assembly, and decided upon their common object, preparation towards that common object is prosecution or following up, and if the preparation happens to be an offence, then they are all equally liable. *Ramaraju Tevan v. Emperor*.

32 Cr. L. J. 30 :
127 I. C. 654 : 1930 M. W. N. 377 :
I. R. 1930 Mad. 1038 : 32 L. W. 894 :
59 M. L. J. 945 : 53 Mad. 937 :
A. I. R. 1930 Mad. 857.

———S. 149—Unlawful assembly—Individual liability.

Members of an unlawful assembly may have a common object only up to a certain point and the criminality of each varies according to the information at his command and also to the extent to which he shares

PENAL CODE ACT (XLV OF 1860)

the community of object. The effect of S. 149 may be different on different members of the same unlawful assembly. *Adil Mohamed v. Emperor*. 9 Cr. L. J. 32 :

8 C. L. J. 561.

———S. 149—Unlawful assembly—Individual liability.

Where a number of men make an attack with *lathis* on certain men and one of the latter is killed, all the men making the attack are guilty under S. 149 and other sections. It is not a matter of importance whose *lathi* blow actually injures the deceased. *Goverdhana v. Emperor*.

37 Cr. L. J. 85 :
159 I. C. 409 : 1935 A. L. J. 1114 :
1935 A. W. R. 1064 : 8 R. A. 448 :
A. I. R. 1935 All. 930.

———S. 149—Unlawful assembly—Individual liability.

Where the principal offender of an unlawful assembly is convicted of one offence, the remaining members of that assembly cannot be convicted of another offence. *Ram Parsad Singh v. Emperor*. 24 Cr. L. J. 65 :

71 I. C. 113 : 1 Pat. 753 : 4 P. L. T. 213 :
A. I. R. 1923 Pat. 50.

———S. 149—Unlawful assembly—Liability of all for offence committed by some.

Where the whole of a party setting out from a particular town must have known that the common intention was to commit dacoity, that the party was going heavily armed, that there was every likelihood of something occurring either on their way or at the scene of dacoity to interfere with their highly criminal plans, and that their deliberate intention was to use their arms whenever necessary, either to effect the object in view or to avoid the risk of capture at any stage in the adventure, every one of them would be liable equally with others for the murders committed for which they were prepared beforehand and which they knew to be likely to occur. *Dhian Singh v. Emperor*.

16 Cr. L. J. 689 :
30 I. C. 737 : 16 P. R. 1915 Cr. :
17 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 418.

———S. 149—Unlawful assembly—Liability of rioters.

Ordinarily if accused persons go armed with spears in superior force intending to carry out by force a purpose which they know others will resist, each of the accused must be taken to have known at least that a death caused by one of the party was likely to be caused. *Behari v. Emperor*.

26 Cr. L. J. 154 :
83 I. C. 714 : A. I. R. 1924 All. 670.

———S. 149—Unlawful assembly—Liability of rioters.

Per *Boys, J.*—An individual in an unlawful assembly (a) may share a positive common purpose to kill, or (b) may be reckless, whether there is killing or not, without actually intending it, or (c) may reasonably

PENAL CODE ACT (XLV OF 1860)

understand that the definite intention is not to cause death. In the first two cases, S. 302 read with S. 149, Penal Code, is applicable; in the third case, if and when established, it is not. *Behari v. Emperor*.

26 Cr. L. J. 154 :
83 I. C. 714 : A. I. R. 1924 All. 670.

—S. 149—*Unlawful assembly, what is.*

The petitioners assembled in an orchard at some distance from a village with a view to protect the Hindus of that place in case they were attacked by the Muhammadans and remained there from a little after midday to 4-30 p. m. in a defensive manner without committing or attempting to commit any unlawful act, and when the Police Officers and the Deputy Magistrate arrived and assured petitioners that they would protect the Hindus of that village in case any danger arose, the petitioners at once dispersed and retired but one of them was found provoking the mob and directing them not to retire and some of them were seen dancing about and flourishing their sticks and saying something. No other specific overt act of the mob was proved though witnesses gave vague statements that it appeared from the conduct of the mob that the mob had collected for unlawful purposes: *Held*, that the conduct of the mob was not inconsistent with the lawful object with which they said they had assembled, *viz.*, to protect the Hindus in case of any attack by the Muhammadans and that the members of the assembly could not be convicted under S. 149, Penal Code. *Jogi Raut v. Emperor*.

28 Cr. L. J. 906 :
105 I. C. 234 : 9 P. L. T. 260 :
A. I. R. 1928 Pat. 98.

—Ss. 149, 34—*Interpretation.*

The words 'common intention' in S. 34 and 'common object' in S. 149 are not synonymous. The object of an assembly as a whole may not be the same as the intention which several persons may have when in pursuance of that intention they perform a criminal act and it may well be that the object of the assembly was lawful whereas the intention common to those of the assembly who jointly committed a criminal act was in itself criminal and the joint criminal act must be equally imputed to all of them. *Bhodu Das v. Emperor*.

30 Cr. L. J. 205 :
113 I. C. 676 : 7 Pat. 758 :
I. R. 1929 Pat. 68 : 11 P. L. T. 111 :
A. I. R. 1929 Pat. 11.

—Ss. 149, 34—*Miscellaneous sections, if can overlap in some cases.*

It is true that S. 34 and S. 149, Penal Code, are not identical in terms but there are cases in which they do overlap. Even where S. 149 is found not to be applicable, yet if the accused are found to have the common intention of 'causing hurt to their victim, and if hurt is caused by any of them, they are all liable under S. 34 for it. *Mohammad Nawaz v. Emperor*.

39 Cr. L. J. 781 :
176 I. C. 678 : 40 P. L. R. 850 :
I. L. R. 1938 Lah. 603 : 11 R. L. 226 :
A. I. R. 1938 Lah. 543.

PENAL CODE ACT (XLV OF 1860)

—Ss. 149, 34—*Unity of criminal behaviour, if essential.*

Both under S. 149 and S. 34, Penal Code, a unity of criminal behaviour is essential. *Gangabisan v. Emperor*.

38 Cr. L. J. 442 :
167 I. C. 748 : 19 N. L. J. 18 :
9 R. N. 206.

—Ss. 149, 300—*Murder committed by unlawful assembly—Proof.*

Before any one of the accused could, as a member of an unlawful assembly, be held guilty of a murder alleged to have been committed by any other member or members of that assembly, it is essential in the first place that the act or acts alleged to have constituted the murder should be proved to have been done with an intention such as is specified in S. 300, and that none of the exceptions contained in that section should be applicable to the case. If any member of an unlawful assembly causes death with the intention specified in S. 300, it does not necessarily follow that every member of that assembly will, under S. 149, be guilty of murder. *Emperor v. Mahmudkhan*.

5 Cr. L. J. 168 :
9 Bom. L. R. 153.

—Ss. 149, 300, 302, 325—*Unlawful assembly—Fatal assault by some members—Common intention—Sudden quarrel—Sentence.*

The deceased, a village goldsmith, who was obstructing the view of a proprietor in the village at a wrestling match was abused by the latter and returned the abuse. On this the proprietor asked his relations to kill (*mar do*) "these goldsmith dogs." On this four of his relations stood up, two out of whom belaboured the goldsmith with *dangs* causing fatal injuries in the head, of which the goldsmith died the next morning. The other two beat a person who tried to stop the assault. The proprietor continued shouting to his relations but did not strike any blow himself: *Held*, (1) that when at the behest of the proprietor the four relations arose for the assault, they intended at least to inflict grievous hurt on the goldsmith, and being five in number, including the proprietor, they all were guilty under Ss. 325, 149; (2) that the two relations who struck *dangs* on the head of the goldsmith were in addition guilty of murder in that their attack on the goldsmith was made either with the intention of causing death or such bodily injury as they knew to be likely to cause death, but that as the elements of preparation and premeditation were absent, the ends of justice would be met by a sentence of transportation for life. *Nihal Singh v. Emperor*.

29 Cr. L. J. 35 :
106 I. C. 451 : 9 L. L. J. 262 :
28 P. L. R. 674 : A. I. R. 1927 Lah. 516.

—Ss. 149, 302—*Assault by less than five persons resulting in death—Accused, whether guilty of murder.*

Where it is not proved that five persons took part in an assault resulting in death, the accused cannot be held constructively guilty of

PENAL CODE ACT (XLV OF 1860)

murder under S. 149, read with S. 302, Penal Code, because S. 149 only applies where there is an unlawful assembly. *Maulu v. Emperor*.

26 Cr. L. J. 531 :
85 I. C. 371 : 6 L. L. J. 434 :
A. I. R. 1925 Lah. 532.

—Ss. 149 and 302—Murder by one member—Liability of others.

Each member of an unlawful assembly is guilty of murder, if murder was committed in prosecution of the common object of the assembly. *Allah Ditta v. Emperor*.

A. I. R. 1923 Lah. 441.

—Ss. 149, 302—Murder—Common object of a mob—Likelihood of murder being committed.

At the annual Sivaratri festival at Kottappa Konda, which was attended by innumerable people, a constable *S* and the 6th accused got drunk and grew disorderly. Both fell down unconscious. The Sub-Inspector with other constables came to the spot and arrested the 6th accused as a murderer. A crowd collected round them. On the way, constable *S* was struck with a stick, and he in return, killed one of the crowd with a bayonet. This inflamed the crowd which arrived at the Police Station and demanded the release of the 6th accused which was refused. The 1st accused took a prominent part in the riot from the attack on the Police Station, when he incited the crowd to throw stones and beat the police, to the burning of the tents, the final act in the riot. The constable *S* then got into the hands of the mob and was murdered and burnt : *Held*, that the 1st accused was guilty under Ss. 302 and 149 because it was a common object of the mob to take vengeance on *S*, who had bayoneted one of their number and the 1st accused must be taken to have known that *S* was likely to be murdered if the mob caught him. *Gade Chennappa Reddi v. Emperor*. 11 Cr. L. J. 645 : 8 I. C. 399 : 1 M. W. N. 522 : 8 M. L. T. 326.

—Ss. 149, 302—Murder—Expedition to abduct woman—Members of gang armed with shooting weapons—Death caused in effecting abduction—Liability of members.

When a number of persons set out to abduct a woman, and some of them are armed with shooting weapons, the inference to be drawn is that the weapons were intended to be used, if necessary, to overcome any resistance that might be offered. The members of the gang must, in such a case, be presumed to know that murder was very likely to be committed, and if in carrying out the object of the gang a person is killed, the members of the gang are guilty of murder. *Mansha Singh v. Emperor*.

26 Cr. L. J. 763 :
86 I. C. 347 : 7 L. L. J. 51 :
A. I. R. 1925 Lah. 371.

—Ss. 149, 302—Punishment.

Accused saddled with vicarious liability under S. 149—Intention to cause death not clearly established—Accused should be sen-

PENAL CODE ACT (XLV OF 1860)

tenced to transportation for life and not to death. *Rahman Smail v. Emperor*.

40 Cr. L. J. 712 :
182 I. C. 900 : I. L. R. 1939 Lah. 77 :
41 P. L. R. 443 : 12 R. L. 83 :
A. I. R. 1939 Lah. 245.

—Ss. 149, 302—Rioting.

Common object to beat opposite party—Some armed—One member without premeditation killing one member of opposite party—Other members are not guilty of murder. *Raghunandan v. Emperor*.

36 Cr. L. J. 268 :
153 I. C. 96 : 7 R. O. 296 :
11 O. W. N. 1456 :
A. I. R. 1935 Oudh 52.

—Ss. 149, 302, 304—Conviction—Unlawful assembly—Individual liability.

Members of an unlawful assembly who are not proved to have had knowledge that it was likely that the offence of murder would be committed in the prosecution of the common unlawful object, cannot be made liable for the acts of other members of the assembly who cause a fatal injury and cannot be convicted of the offence of murder on account of their constructive liability under S. 149. *Umed Hussain v. Emperor*.

30 Cr. L. J. 307 :
114 I. C. 449 : I. R. 1929 Nag. 65 :
A. I. R. 1929 Nag. 14.

—Ss. 149, 302, 304, Part 2, 325, 326—Unlawful assembly—Object—Death of one person by injuries caused—Murder—Death by rash act.

Certain persons who were reaping their crops were assaulted by the accused with sharp-edged weapons and heavy sticks, the object being to prevent the latter by force from carrying away the produce. As the result of the injuries inflicted on the attacked party, one of them died. It was not proved that the intention of the accused was to cause the death of any person or to inflict such bodily injuries as were likely to result in death : *Held*, (a) that the accused constituted an unlawful assembly, (b) that the offence of causing fatal injury was such as the members of the assembly knew to be likely to be committed in prosecution of their common object, (c) that each of the accused was, therefore, guilty of an offence under S. 304, Part 2, read with S. 149, Penal Code, (d) that none of the accused was guilty of an offence under S. 302. *Wadhawa Singh v. Emperor*.

13 Cr. L. J. 742 :
17 I. C. 54 : 7 P. R. 1912 Cr.
39 P. W. R. 1912 Cr. : 243 P. L. R. 1912.

—Ss. 149, 304—Unlawful assembly—Gul-pable homicide by one—Conviction of others.

B reported to the Police that she had been assaulted by *F* and others. The Police declined to take action and referred her to a Magistrate. The accused *F* and his companions went to *B*'s house to taunt her on her failure to obtain any satisfaction from the Police. A tenant of *B*, who was in *B*'s house at the time, took up a stick and came

PENAL CODE ACT (XLV OF 1860)

out and abused and threatened the intruders but *F* struck him on the head with a *chhavi* from which he died. *F* was convicted under S. 304, Penal Code, and his companions under S. 149 read with S. 304, Penal Code: *Held*, that *F* was rightly convicted but that his companions must be acquitted, because none of them took any part in the assault at *B*'s house. Their going to *B*'s house to jeer at her did not make them members of an unlawful assembly. *Chimman Lal v. Ghulam Mohi-ud-Din*. 12 Cr. L. J. 189 : 10 I. C. 646 : 59 P. L. R. 1911.

———Ss. 149, 304, 325—*Charge of culpable homicide of one person—Grievous hurt caused to other persons—Conviction in respect of grievous hurt, whether can be maintained.*

Accused were charged with an offence under S. 324 (ii) read with S. 149, Penal Code, and the charge stated that they had in prosecution of the common object of the unlawful assembly caused grievous hurt to *M* and others, but the others were not named and the liability of the accused was confined to the causing of the death of *M*. It was held that the accused had not taken part in the assault on *M*: *Held*, that the accused could not be convicted in respect of an assault on other persons, who were mentioned generally in the charge with which they had not been specifically charged. *Rohela v. Emperor*.

26 Cr. L. J. 320 :
86 I. C. 468 : 6 L. L. J. 630 :
A. I. R. 1925 Lah. 286.

———Ss. 149, 304, 325—*Riot and grievous hurt—Death resulting from grievous hurt—Conviction, separate for grievous hurt and culpable homicide, legality of.*

Accused assaulted the party of the complainants and caused injuries to several members of that party. Some of the injuries were grievous, and in one case, they proved fatal. All the accused were convicted of offences under Ss. 304, 149 and 325/149, Penal Code, and were awarded separate sentences in respect of each offence: *Held*, that a conviction under Ss. 325/149, was not legal in the face of the conviction under Ss. 304/149, as the major offence included the minor. *Qadir Bakhsh v. Emperor*. 27 Cr. L. J. 132 : 91 I. C. 804 : 7 L. L. J. 368 : A. I. R. 1925 Lah. 539.

———Ss. 149, 304-A, 325—*Separate conviction and sentences—Causing death by rash or negligent act—Grievous hurt—Sentences, separate, legality of.*

Accused, members of an unlawful assembly, were convicted under S. 304-A, Penal Code, for causing death by a rash and negligent act in the following circumstances: Armed with *lathis* they attacked the complainants; in the course of the affray, a little girl, who was near by, received a couple of blows on the head, from the effect of which she died shortly after. The accused were also convicted under Ss. 147 and 323, Penal Code, and for the two offences, were awarded separate sentences to run consecutively: *Held*, that

PENAL CODE ACT (XLV OF 1860)

the conviction under S. 301-A, could not be maintained and that the conviction should have been under S. 325 read with S. 149, Penal Code. *Kure v. Emperor*. 20 Cr. L. J. 517 : 51 I. C. 677 : 16 A. L. J. 615 : A. I. R. 1919 All. 379.

———Ss. 149, 304-(ii)—*Members of unlawful assembly assailing their victim—One of them causing death—Liability of others.*

Where the members of an unlawful assembly assailed their victim, and one of them, a Sikh was wearing a *kirpan*, unsheathed it and caused a fatal blow: *Held*, that all the members of the unlawful assembly could not be constructively held liable for the causing of death simply because one of them was wearing a *kirpan*, a weapon which is carried by most Sikhs as an emblem of their religion and not for the purposes of offence or defence. *Gian Singh v. Emperor*.

31 Cr. L. J. 448 :
122 I. C. 721 : A. I. R. 1930 Lah. 532.

———Ss. 149, 304 (ii), 325, 342—*Attempt to carry away woman by force—Rescue—Death and grievous hurt caused by rescuers—Liability of all members.*

Two years prior to the occurrence, the wife of the complainant had been abducted by one of the accused with whom she was living. On the day of the occurrence, complainant organized a raid and arrived with his party at the house of the accused who had abducted his wife and attempted to carry her off by force in the absence of her paramour. She resisted, and one of the party of the complainant struck her and proceeded to drag her away. On hearing her cries the accused came up to her rescue and proceeded to attack the party of the complainant with the result that they killed one of them and inflicted grievous hurts on another. They subsequently proceeded to put the members of the complainant's party in wrongful confinement: *Held*, (1) that although the accused were justified in attempting to rescue the woman from the party of the complainant, they constituted an unlawful assembly because their common object was to commit an offence, namely, to cause hurt or grievous hurt; (2) that the accused were guilty of offences under Ss. 304 (ii), 325, 342 read with S. 149, Penal Code. *Rahman v. Emperor*.

26 Cr. L. J. 621 :
85 I. C. 845 : A. I. R. 1923 Lah. 322.

———Ss. 149, 305, 323—*Unlawful assembly, individual liability.*

Eight persons assaulted the deceased. None of the accused carried *lathis* and death was caused by the breaking of a large number of ribs through pressure applied on the chest by three of the accused who sat upon the body of the deceased and pressed him down. All the eight accused were convicted under S. 304, Penal Code: *Held*, that the accused other than the three who actually caused the breaking of the ribs could not be convicted under S. 304 in the absence of evidence on the part of the prosecution to prove that the common object

PENAL CODE ACT (XLV OF 1860)

of all the accused was the breaking of the ribs or that the breaking of the ribs was such an act as the members of that assembly knew to be likely to be committed. *Jwala v. Emperor*.

30 Cr. L. J. 903 :
118 I. C. 369 : I. R. 1929 All. 849 :
A. I. R. 1929 All. 575.

———Ss. 149, 306 — *Abetment of sati — Belief in divine origin of fire, whether good defence.*

To a prosecution for abetment of suicide by committing *sati*, the mere fact that the accused were expecting a miracle and that there was no evidence to show that any one in particular fired the pyre is not a good defence. *Emperor v. Vidyasagar Pande*.

29 Cr. L. J. 1035 :
112 I. C. 363 : 9 P. L. T. 683 :
8 Pat. 74 : A. I. R. 1928 Pat. 497.

———Ss. 149, 323—*Rioting—Element of hurt if necessarily included in rioting.*

Rioting belongs to the class of offences against the public tranquility, whereas the offence of voluntarily causing hurt falls in the category of offences affecting the human body. Force or violence is an ingredient of rioting, and causing bodily pain is the essential element of hurt. The latter cannot, therefore, be included in the former. *Gangabisan v. Emperor*.

38 Cr. L. J. 442 :
167 I. C. 748 : 19 N. L. J. 18 :
9 R. N. 206.

———Ss. 149, 325—*Charge—Charge for rioting with common object of causing hurt—Conviction for hurt, legality of—Absence of charge, effect of.*

Where the accused were originally charged generally that some one or other of them caused hurt and all were guilty by reason of S. 149 from the fact that they were rioting and hurt was likely to be committed in prosecution of their common object, and the Appellate Court found that they did not riot and had no common object, but convicted them severally of hurt : *Held*, that the omission to frame a direct charge of hurt must have occasioned failure of justice and the conviction of the accused for hurt was bad. *Vonti Kommu Rami Reddy v. Emperor*.

31 Cr. L. J. 1197 :
127 I. C. 298 : A. I. R. 1930 Mad. 631.

———Ss. 149, 325—*Grievous hurt caused by some members of assembly—Unlawful assembly, not established.*

An old man who was being attacked by the deceased with a stick cried out for help and a large number of persons went to his rescue. Some of them inflicted grievous injuries on the deceased as the result of which he died : *Held*, (1) that as there was no unlawful assembly, only those persons who had actually inflicted the injuries on the deceased were liable for them ; (2) that as the persons who had actually inflicted the injuries could not be ascertained, there could be no conviction in the case.

Ambika Singh v. Emperor. 25 Cr. L. J. 431 :
77 I. C. 607 : 1 Pat. 212 :
A. I. R. 1922 Pat. 498.

PENAL CODE ACT (XLV OF 1860)

———Ss. 149, 325—*Riot and grievous hurt—Separate convictions and sentences.*

In a case of rioting resulting in grievous hurt, convictions and separate sentences under S. 325 read with S. 149, Penal Code, are legal against all those accused who actually joined in the assaults, though some assaults resulted in simple hurt and others in grievous hurt. *Nga San Min v. Emperor*.

25 Cr. L. J. 1305 :
82 I. C. 473 : 3 Bur. L. J. 49 :
A. I. R. 1924 Rang. 291.

———Ss. 149, 325—*Rioting and grievous hurt—Separate convictions.*

If an accused person is charged with grievous hurt under S. 325 read with S. 149, he cannot be convicted of the substantive offence under S. 325, such a course not being warranted by the provisions of Ss. 236, 237 and 238, Cr. P. C. *Partap Rai v. Emperor*.

21 Cr. L. J. 439 :
56 I. C. 231 : A. I. R. 1920 Pat. 260.

———Ss. 149, 326—*Acquittal on charge under S. 326 read with S. 149—Accused separately tried under S. 326—Conviction, whether legal.*

Petitioners with nine others were charged with an offence under S. 326 read with S. 149, Penal Code, and acquitted, but the petitioners on being separately charged under S. 326 were convicted and the conviction was upheld by the Sessions Judge. They applied to the High Court in revision : *Held*, that although in the previous case the petitioners were acquitted owing to the fact that the elements constituting a riot had not been established, nevertheless, inasmuch as they had by using cutting weapons caused grievous hurt in circumstances to which the right of private defence of property did not extend, they were rightly convicted in this case. *Rillal Singh v. Emperor*.

24 Cr. L. J. 813 :
74 I. C. 717 : 5 P. L. T. 198 :
A. I. R. 1924 Pat. 275.

———Ss. 149, 326—*Unlawful assembly to cause injury to any Hindu—One of the members stabbing a Hindu—Some members armed with knives to the knowledge of the others—Nature of offence committed by members of the assembly.*

Where the members of an unlawful assembly whose object is to cause injury to any Hindu who at the time is unfortunate enough to be singled out, single out a Hindu as the object of the attack and one of their number stabs him, a certain number of them being armed with knives to the knowledge of the others, the stabbing would be an offence committed by a member of the unlawful assembly by inflicting the injury in prosecution of the common object of the assembly, and as all the members composing the assembly must be held to have known that such an offence was likely to be committed in the prosecution of the object, they all are constructively

PENAL CODE ACT (XLV OF 1860)

gulty of the offence under S. 326, Penal Code.
Bashir v. Emperor. 28 Cr. L. J. 453 :

101 I. C. 485 : 4 O. W. N. 313 :
A. I. R. 1927 Oudh 609 (2).

—S. 151—Applicability.

Assembly unlawful from its inception, S. 151
does not apply. *M. Mohammad Abdullah v.*
Emperor. 35 Cr. L. J. 1094 :

150 I. C. 24 : 36 P. L. R. 126 :
15 Lah. 610 : 6 R. L. 835 :
A. I. R. 1934 Lah. 243.

—S. 151—Conviction under—Proof.

On a charge under S. 151, Penal Code, it is
not sufficient to establish merely that in the
opinion of the Magistrate, who ordered the
particular assembly to disperse, such assembly
was likely to cause a disturbance of the
public peace ; it is necessary to establish by
evidence to the satisfaction of the Court
that the assembly was in fact likely to cause
such disturbance. *Girdhara Singh v. Emperor.*

23 Cr. L. J. 5 :
64 I. C. 373 : 4 U. P. L. R. Lah. 11 :
3 L. L. J. 529 : 21 P. L. R. 1922 :
A. I. R. 1922 Lah. 135.

—S. 151—What constitutes offence.

A Sub-Inspector of Police on receiving in-
formation that a certain procession of Hindus
playing music was about to pass before a
mosque, hurried to the scene and ordered
the persons forming the procession, who were
being led by the accused, to refrain from
proceeding in the direction of the mosque
with music playing, as there was apprehen-
sion of a serious riot if they did so. The
accused refused to obey this order and
advanced towards the direction of the mosque
at the head of the procession playing music :
Held, that the accused were guilty of an offence
under S. 151, Penal Code. *Emperor v. Raghu-*
nath. 76 Cr. L. J. 599 :

85 I. C. 823 : 22 A. L. J. 1049 :
47 All. 205 : A. I. R. 1925 All. 165.

—S. 152.

See also Cr. P. C., 1898, S. 190-A.

—S. 153.

See also (i) Bombay District Police
Act, 1890, S. 53 (1) (a)
(b).

(ii) Penal Code, 1860, S. 124.

—S. 153—Applicability.

S. 153 applies to such provocative words or
acts as do not constitute instigation or abet-
ment and involves some act of origination of a
riot, by doing an illegal act infuriating to the
feelings of those who ultimately come to
riot. *Emperor v. Ahmed Hasham.*

34 Cr. L. J. 559 :
143 I. C. 273 : 57 Bom. 329 :
35 Bom. L. R. 240 :
I. R. 1933 Bom. 264 :
A. I. R. 1933 Bom. 162.

—S. 153—Applicability.

S. 153, Penal Code, cannot possibly apply un-

PENAL CODE ACT (XLV OF 1860)

less there has been "doing anything which is
illegal." If the act done is illegal then, if the
other conditions laid down in the section
are fulfilled, the case would be governed
by it. *Jasnami v. Emperor.*

37 Cr. L. J. 866 :
163 I. C. 866 : 9 R. A. 88 :
1936 A. L. J. 579 :
1936 A. W. R. 424 :
A. I. R. 1936 All. 534.

—S. 153—Illegal act—What is.

There is no village custom having the
force of law which prevents people from
going over village sites in palanquins or
dandies. The act of taking out a bride and
bridegroom in palanquins in a marriage pro-
cession through a village is not illegal.
Consequently, it cannot be said that persons
who take out such a procession committed
an illegal act because they acted in defiance
of any such custom having the force
of law. *Jasnami v. Emperor.*

37 Cr. L. J. 866 :
163 I. C. 866 : 9 R. A. 88 :
1936 A. L. J. 579 :
1936 A. W. R. 424 :
A. I. R. 1936 All. 534.

—S. 153—"Wantonly," meaning of.

Where certain persons taking part in a
religious procession gratuitously disobeyed the
orders of the Police concerning the manner
in which such procession was to be con-
ducted with the result that a riot was only
averted by bringing armed Police upon the
scene, it was held that the persons con-
cerned acted—Though not "malignantly"—
yet "wantonly" within the meaning of S. 153,
Penal Code, and were properly convicted under
that section. *Emperor v. Husain Bakhsh.*

6 Cr. L. J. 14 :
27 A. W. N. 171 : I. L. R. 29 All. 569.

—S. 153—What constitutes offence—
Accused deliberately throwing stones at temple to
cause enmity between Hindus and Mussalmans,
is not guilty.

The accused's act did not fall under S. 153,
Penal Code, inasmuch as it was not an 'illegal'
act within the meaning of the said section.
Gaya Prasad v. Emperor. 29 Cr. L. J. 1088 :
112 I. C. 592 : 1929 A. L. J. 175 :
A. I. R. 1928 All. 745.

—S. 153 — What constitutes offence—
Muhammadian killing cow—Intention Offence.

No conviction under S. 153, Penal Code, can
be had unless it is proved, *inter alia*, that the
act of the accused was done either malignantly
or wantonly. *Abdullah v. Emperor.*

20 Cr. L. J. 216 :
49 I. C. 776 : 17 A. L. J. 200 :
1 U. P. L. R. All. 85 :
A. I. R. 1919 All. 307.

—S. 153—What constitutes offence.

The accused, a Muhammadian, killed a cow in
a village sometime before sunrise. The act
was observed by one or two Muhammadans,
who sent a *chaukidar* to the Police Station to

PENAL CODE ACT (XLV OF 1860)

make a report. The Police took cognisance of the matter and the accused was convicted of an offence under S. 153 of the Penal Code : *Held*, that there being no evidence of malice or wantonness on the part of the accused, the conviction was bad in law. *Abdullah v. Emperor*.

20 Cr. L. J. 216 :
49 I. C. 776 : 17 A. L. J. 200 :
1 U. P. L. R. All. 85 :
A. I. R. 1919 All. 307.

—S. 153-A—*Attack on religious leader when offence under.*

While it is not correct to say that any and every criticism of a religious leader, whether dead or alive, falls within the ambit of S. 153-A, Penal Code, there can be no doubt that the writing of a scurrilous and foul attack on such a religious leader would *prima facie* fall under the section and it would require a considerable amount of explanation to take it out of the substantive part of S. 153-A, Penal Code, and bring it within the four corners of the explanation. *Emperor v. Devi Sharan Sharma*.

28 Cr. L. J. 794 :
104 I. C. 234 : 28 P. L. R. 497 :
A. I. R. 1927 Lah. 594.

—S. 153-A—*Attack on religion—Limits of.*

Preachers are at liberty to descant on the errors of other religions and to extol their own faith to the skies. But they may not consciously inflame the minds of their hearers by holding up the ministers and followers of other religions to public execration. *Dharmaloka v. Emperor*.

12 Cr. L. J. 248 :
10 I. C. 789 : 4 Bur. L. T. 84.

—S. 153-A—*Bona fide beliefs of accused—Effect of.*

A writer cannot be convicted of an offence under S. 153-A, Penal Code, where it is possible that he may have, without any malicious intention and honestly, though wrongly in the opinion of the Court, thought that he should express himself in the manner in which he did with a view to the removal of causes which, according to him, were promoting or had a tendency to promote feelings of enmity or hatred between different classes of His Majesty's subjects. *Iswari Prashad Sharma v. Emperor*.

28 Cr. L. J. 897 :
105 I. C. 225 : 46 C. L. J. 154 :
A. I. R. 1927 Cal. 747.

—S. 153-A—*Book dealing with capitalism and labour, if objectionable under.*

Where a book contains passages in it which might be construed to create some distant feeling of disaffection against the rich and the wealthy, but it is not easy to hold that they have the direct effect of actual promotion of any ill-feeling or hatred, particularly as the theme is a contrast between capitalism and labour throughout the world, and in all the stages of history, it cannot be said that the book contains objectionable matter within the scope of S. 153-A, Penal Code, and the

PENAL CODE ACT (XLV OF 1860)

benefit of doubt should be given. *M. L. Goutum v. Emperor*. (S. B.) 37 Cr. L. J. 943 :
164 I. C. 253 : 1936 A. L. J. 786 :
9 R. A. 135 : 1936 A. W. R. 638 :
[A. I. R. 1936 All. 561.

—S. 153-A—*Book within scope.*

Original book, a manifesto of the Communist Party—Working classes incited to overthrow Capitalists even with use of force—Translation falls within S. 153-A, Penal Code. *M. L. Goutum v. Emperor*. (S. B.) 37 Cr. L. J. 943 :
164 I. C. 253 : 1936 A. L. J. 786 :
9 R. A. 135 : 1936 A. W. R. 638 :
A. I. R. 1936 All. 561.

—S. 153-A—*Class Capitalist, whether a class.*

Capitalist is altogether too vague a phrase to denote a definite and ascertainable class so as to come within S. 153-A, Penal Code. It is very easy to use the word 'capitalist' in making speeches, but before such a speech can be made the basis of a prosecution under this section, it is necessary to attach some clear and definite meaning to the term. If in using the word 'capitalist' a person has described a class, and has referred to world-wide economic conditions, the class in question cannot possibly be a class of His Majesty's subjects, so as to bring the speech within S. 153-A. *Nepal Chandra Bhattacharya v. Emperor*.

40 Cr. L. J. 628 :
181 I. C. 1007 : 43 C. W. N. 300 :
69 C. L. J. 99 : 11 R. C. 885 :
I. L. R. 1939, 1 Cal. 299 :
A. I. R. 1939 Cal. 306.

—S. 153-A—*Classes—Joint stock company or its shareholders as distinct from employees, if "classes of His Majesty's subjects."*

Bearing in mind the ordinary meaning of the word "class" or "classes," it is impossible to designate a joint stock company as a "class of His Majesty's subjects" or to designate the shareholders of a company, as distinct from the employees or labourers of the company, and the latter respectively, as "classes of His Majesty's subjects." Therefore, even if the speech be regarded as being calculated to create hatred or enmity against the Burma Oil Company or the Indo-Burma Petroleum Company or the shareholders of these companies, the making of the speech is not punishable under S. 153-A, Penal Code. *Thakin Lay Maung v. The King*.

40 Cr. L. J. 668 :
182 I. C. 361 : 1939 Rang. 239 :
12 R. Rang. 8 : A. I. R. 1939 Rang. 169.

—S. 153-A—*Classes—Meaning of.*

The word "classes" as used in S. 153-A, Penal Code, includes 'religious denominations' and should not be restricted in its meaning to 'races'. *Raj Pal v. Emperor*.

28 Cr. L. J. 721 :
103 I. C. 769 : 28 P. L. R. 514 :
9 L. L. J. 379 : A. I. R. 1927 Lah. 590.

—S. 153-A—*Classes.*

Words must point to a well-defined and readily ascertainable group of people. Some element of permanence is necessary. Thirdly,

PENAL CODE ACT (XLV OF 1860)

group must be sufficiently numerous. Word 'capitalist' does not denote definite class. *Maniben Liladhar Kara v. Emperor*.

34 Cr. L. J. 231 :
141 I. C. 780 : 34 Bom. L. R. 1642 :
57 Bom. 253 : I. R. 1933 Bom. 153.
A. I. R. 1933 Bom. 65.

———S. 153-A—*Criticism of error if offence under.*

Article containing criticism of British Imperialism—No promotion of class hatred—Charge under S. 153-A is not sustainable. *A. M. Azaman v. Emperor*.

34 Cr. L. J. 305 (1) :
142 I. C. 299 : I. R. 1933 Cal. 252 :
A. I. R. 1933 Cal. 139.

———S. 153-A—*Evidence as to truth of statements by accused—Relevancy of.*

Evidence given to show that the statements made by the accused are true or believed by him to be true even if insufficient to prove his innocence are relevant on the question of sentence to be passed in the event of his conviction. *Emperor v. Raj Pal*.

27 Cr. L. J. 556 :
93 I. C. 1052 : 27 P. L. R. 207 :
7 Lah. 15 : A. I. R. 1926 Lah. 195.

———S. 153-A—*Evidence—Prosecution of author for promoting class enmity—Book proscribed during pendency of trial.*

Where, during the pendency of a prosecution of an author of a book for an offence under S. 153-A, Penal Code, the Government proscribed the book under S. 99-A, Cr. P. C., and the accused, instead of facing out his trial, adopted the shorter course under S. 99-B, Cr. P. C., and his application to the High Court under that section to set aside the order of the Government was dismissed on the ground that the book contained matter falling within S. 153-A of the Penal Code: *Held*, (1) that the judgment of the High Court dismissing the application under S. 99-A was admissible in evidence in the criminal trial. *Kali Charan Sharma v. Emperor*.

28 Cr. L. J. 785 :
104 I. C. 225 : 25 A. L. J. 846 :
A. I. R. 1927 All. 654.

———S. 153-A—*Freedom of religious discussion—Limits of.*

While it must be recognised that in countries where there is religious freedom, a certain latitude must, of necessity, be conceded in respect of the free expression of religious opinions together with a certain measure of liberty to criticise the religious beliefs of others, it is contrary to all reasons to hold that liberty to criticise includes a licence to resort to vile and abusive language. *Emperor v. Devi Sharan Sharma*.

28 Cr. L. J. 794 :
104 I. C. 234 : 28 P. L. R. 497 :
A. I. R. 1927 Lah. 594.

———S. 153-A—*Intention—Evidence of.*

Proceedings under S. 108, Cr. P. C., for speeches offending against S. 153-A—Previous

PENAL CODE ACT (XLV OF 1860)

speeches made by the speaker are admissible under S. 14, Evidence Act, in determining the speaker's 'intention'. *Jagannath Prasad v. Emperor*.

41 Cr. L. J. 713 :
189 I. C. 74 : 1940 N. L. J. 31 :
13 R. N. 39 : A. I. R. 1940 Nag. 134.

———S. 153-A—*Intention—Evidence—Promoting class enmity—Article in newspaper—Malicious intention.*

In a prosecution under S. 153-A, Penal Code, where the articles can bear a meaning only that they are calculated to produce hatred and enmity between two classes, the natural inference from the publication of such articles and writings is that the person who published them had the malicious intention that they should produce such hatred and enmity. *Kanchanlal Chunilal v. Emperor*.

31 Cr. L. J. 1103 :
126 I. C. 875 : 32 Bom. L. R. 585 :
A. I. R. 1930 Bom. 177.

———S. 153-A—*Intention—Evidence of.*

Words having intention of promoting or attempting to promote feelings of enmity or hatred—Facts and circumstances of time are admissible as evidence of intention. *Chamupati v. Emperor*.

34 Cr. L. J. 473 :
142 I. C. 792 : 13 Lah. 152 :
33 P. L. R. 431 : I. R. 1933 Lah. 297 :
A. I. R. 1932 Lah. 99.

———S. 153-A—*Intention—How gathered.*

In estimating the intention and probable effect of a man's public utterances, it is proper to consider not only the personality of the speaker but the tone and spirit of the speeches and also the circumstances in which he spoke. *Dhammaloka v. Emperor*.

12 Cr. L. J. 248 :
10 I. C. 789 : 4 Bur. L. T. 84.

———S. 153-A—*Intention—How gathered—Promoting class enmity—Tests—Intention to be gathered from article as a whole—Bona fide belief of accused, effect of—Benefit of doubt.*

The intention of the writer of an article which is made the subject of a charge under S. 153-A, Penal Code, must be gathered from the article as a whole, and a person cannot, therefore, be convicted under S. 153-A of the Code where the article as a whole does not show any such intention as is referred to in that section even though isolated portions of the article may, taken by themselves, fall within the section. *Iswari Parshad Sharma v. Emperor*.

28 Cr. L. J. 897 :
105 I. C. 225 : 46 C. L. J. 154 :
A. I. R. 1927 Cal. 747.

———S. 153-A—*Intention—How gathered.*

The question of intention is to be collected in most cases from the internal evidence of the words themselves but other evidence is also admissible. But the words used and their true meaning are never more than evidence of intention and it is the real

PENAL CODE ACT (XLV OF 1860)

intention of the accused that is the test.
P. K. Chakravarty v. Emperor.

27 Cr. L. J. 1154 :
97 I. C. 738 : 30 C. W. N. 953 :
44 C. L. J. 172 : 54 Cal. 69 :
A. I. R. 1926 Cal. 1133.

———S. 153-A—Intention—How gathered.

Whether or not the promoting of enmity is the intention, is to be collected in most cases from the internal evidence of the words themselves. But there is no warrant for the proposition that other evidence cannot be looked at. In any matter on which other evidence could assist, it may be taken. If the words used, naturally, clearly and indubitably have such a tendency, then it must be presumed that the publisher intended that which is the natural result of the words used. But the words used and their meaning are never more than evidence of intention and it is the real intention of the accused that is the test and it is not permissible to have recourse to the doctrine of constructive intention. *Emperor v. Devi Sharan Sharma.*

28 Cr. L. J. 794 :
104 I. C. 234 : 28 P. L. R. 497 :
A. I. R. 1927 Lah. 594.

———S. 153-A—Intention—If material.

Intention is an element in the offence under S. 153-A, Penal Code, and unless it is established that the accused had a conscious intention of promoting, causing or exciting enmity or hatred, no conviction is possible and the evidence to prove that the statements are based on facts is relevant as showing the intention of the accused. *Emperor v. Raj Pal.*

27 Cr. L. J. 556 :
93 I. C. 1052 : 7 Lah. 15 : 27 P. L. R. 207 :
A. I. R. 1926 Lah. 195.

———S. 153-A—Intention—If material.

The words used in S. 153-A connote a successful or unsuccessful attempt to promote feelings of enmity, and in order that a case may be brought under the section, it must be the purpose or part of the purpose of the accused to promote such feelings. *P. K. Chakravarty v. Emperor.*

27 Cr. L. J. 1154 :
97 I. C. 738 : 30 C. W. N. 953 :
44 C. L. J. 172 : 54 Cal. 59 :
A. I. R. 1926 Cal. 1133.

———S. 153-A—Intention—If material.

Words sufficient to create mischief under S. 153-A—Intention of writer to promote hatred need not be established—Words are conclusive in themselves—Whenever question of intention is necessary, it should be gathered from the words used. *M. L. G. Gupta v. Emperor.* (S. B.)

37 Cr. L. J. 599 :
162 I. C. 507 : 1936 A. L. J. 165 :
1936 A. W. R. 227 : 8 R. A. 873 :
A. I. R. 1936 All. 314.

———S. 153-A—Intention.

Malice is not to be imputed without

PENAL CODE ACT (XLV OF 1860)

definite and solid reason. *P. K. Chakravarty v. Emperor.*

27 Cr. L. J. 1154 :
97 I. C. 738 : 30 C. W. N. 953 :
44 C. L. J. 172 : 54 Cal. 59 :
A. I. R. 1926 Cal. 1133.

———S. 153-A—Intention—Proof of.

If the words used by a person accused under S. 153-A, Penal Code, naturally and indubitably have the tendency to promote ill-feeling or hatred between two classes of His Majesty's subjects, it must be presumed that the accused intended to create the natural result of the words used ; but each case must be decided on its own facts. *Satya Ranjan Bakshi v. Emperor.*

31 Cr. L. J. 318 :
121 I. C. 682 : 56 Cal. 1090 :
A. I. R. 1929 Cal. 309.

———S. 153-A—Miscellaneous.

What may be harmless when merely printed in an English book may be highly inflammatory when translated into an Oriental language and served out with spicy comments. *Dharmaloka v. Emperor.*

12 Cr. L. J. 248 :
10 I. C. 789 : 4 Bur. L. T. 84.

———S. 153-A—News likely to create bad feelings—Publication of—Liability for.

Where a newspaper gives its readers in the ordinary way a legitimate and sensible piece of news without any intention to utilise that piece of news for the purpose of promoting or furthering class hatred, the mere fact that the news is of such a character that it is possible to suppose that some people reading it may momentarily or foolishly be induced to entertain unreasonable feelings towards a class of people is not enough to bring it within the mischief of S. 153-A, Penal Code. *Hemendra Prasad Ghose v. Emperor.*

28 Cr. L. J. 205 :
99 I. C. 941 : 31 C. W. N. 168 :
45 C. L. J. 432 : A. I. R. 1927 Cal. 215.

———S. 153-A—Object.

S. 153-A, Penal Code, is intended to prevent persons from making attacks on a particular community as it exists at the present time and is not meant to stop polemics against deceased religious leaders, however scurrilous and in bad taste such attacks might be, and the fact that the followers of such a leader happen to be quick to resent an insult on their leader makes no manner of difference. *Raj Pal v. Emperor.*

28 Cr. L. J. 721 :
103 I. C. 769 : 28 P. L. R. 514 :
9 L. L. J. 379 : A. I. R. 1927 Lah. 590.

———S. 153-A—Offence under.

Article printed in a periodical exclusively subscribed by Hindus under signature of correspondent which had effect of causing excitement among Muhamedans—Editor held responsible and liable under Ss. 153-A and 205-A, irrespective of fact how it came to the notice of the Muhamedans. *Chida Nand v. Emperor.*

32 Cr. L. J. 962 :
132 I. C. 840 : 31 P. L. R. 880 :
I. R. 1931 Lah. 680 :
A. I. R. 1930 Lah. 350.

PENAL CODE ACT (XLV OF 1860)

———S. 153-A—*Offence under.*

On 8th December, 1899, one Rafat Ali, a police constable, died from laceration of the brain and haemorrhage caused by a violent blow on the back of the head which was due to a fall from a horse. The issue of the "Punjabee" newspaper, dated 11th April 1906, contained two paragraphs headed, respectively :—"How Misunderstandings Occur" and "A Deliberate Murder." The first paragraph proceeds : "Has the 'Telegraph' then such a great confidence in the panacea of enquiry? And are instances of manslaughter, yea! even of deliberate murders of Indians at the hands of European Officers so rare in India that our contemporary should be ready to pin his trust to the impartiality of an enquiry? How many poor Indians have been mercilessly launched into eternity in the past, for being mistaken for bears, monkeys, or for having so called enlarged spleens?" The 2nd runs as follows :—"As to deliberate murders, unpremeditated, of course of Indians by irate, irascible officers, instances though rare, are not wanting. Only the other day, two European Officers of a district not very far from Lahore, went out shooting on horseback, with a mounted orderly. Amongst other denizens of the Forest which fell to their gun shots was a boar. As soon as the animal was despatched they asked their mounted orderly to carry the carcass secured to his saddle. The man who was a follower of the Prophet, however, refused point blank to do their bidding, or even to touch the unclean animal. He (one of the Sahibs) aimed at the poor Indian and shot him dead without compunction or remorse. *Held*, that both the proprietor, who is also the publisher, and the editor of the "Punjabee" consciously intended to promote enmity and hatred on the part of Indians towards Europeans by publishing the above articles and have been rightly convicted of an offence under S 153-A, Penal Code. *Jaswant Rai v. Emperor.* 5 Cr. L. J. 439 : 2 P. W. R. 27 Cr.

———S. 153-A.

Promoting class enmity—Malicious intention—Honesty of purpose, inference of—Newspaper Editor's duties—News likely to create bad feelings, publication of—Criminal liability. *Henendra Prasad Ghose v. Emperor.*

28 Cr. L. J. 205 :
99 I. C. 941 : 45 C. L. J. 432 :
31 C. W. N. 168 :
A. I. R. 1927 Cal. 215.

———S. 153-A—*Scope.*

A malicious satire on the personal life of the founder of a religion, which does not attack his religion as such or tend to create enmity or hatred between the followers of that religion and others does not come within the scope of S. 153-A, Penal Code. *Raj Paul v. Emperor.* 28 Cr. L. J. 721 :

103 I. C. 769 : 28 P. L. R. 514 :
9 L. L. J. 379 : A. I. R. 1927 Lah. 590.

PENAL CODE ACT (XLV OF 1860)

———S. 153-A—*Scope.*

Limits of person's freedom of speech stated. *Jagannath Prasad v. Emperor.*

41 Cr. L. J. 713 :
189 I. C. 74 : 1940 N. L. J. 31 :
13 R. N. 39 : A. I. R. 1940 Nag. 134.

———S. 153-A—*Scope.*

S. 99-A, Cr. P. C., is wider than S. 153-A. *M. L. C. Gupta v. Emperor.* (S. B.)

37 Cr. L. J. 599 :
162 I. C. 507 : 8 R. A. 873 :
1936 A. L. J. 165 :
1936 A. W. R. 227 :
A. I. R. 1936 All. 314.

———S. 153-A—*Scope.*

S. 153-A, Penal Code, means that no subject of the Crown is entitled to write or say or do anything whereby the feelings of one class of His Majesty's subjects will be inflamed against another class of his subjects. *Emperor v. Bal Gangadhar Tilak.*

8 Cr. L. J. 281 :
10 Bom. L. R. 848.

———S. 153-A—*Tendency to promote class enmity—Tests of.*

Where a book ridiculing the life of the Prophet Mohammad is written in the prosecution of a propaganda started by a class of people who are not Muhammadans, from the hatred of the author, an ordinary Muhammadan would proceed to hate the class to which the author belonged and who instigated him, the author would undoubtedly be guilty of an offence under S. 153-A, Penal Code. *Kali Charan Sharma v. Emperor.*

28 Cr. L. J. 785 :
104 I. C. 225 : 25 A. L. J. 846 :
A. I. R. 1927 All. 654.

———S. 153-A—*What constitutes offence—Libel on particular individuals or institutions, whether can come under S. 153-A.*

If an article is intended to create ill-feeling between Indians and Europeans, neither the fact that the statements complained of amount to a libel upon the particular individuals concerned nor the fact that they are intended to reflect upon and do damage to any particular institution, e. g., a Railway Administration, militates against or in any way detracts from the further fact that they were calculated to promote hatred between Indians and Europeans and were published with the intention to subserve his purpose. *Satya Ranjan Bakshi v. Emperor.*

31 Cr. L. J. 318 :
121 I. C. 682 : 56 Cal. 1090 :
A. I. R. 1929 Cal. 309.

———S. 153-A—*What constitutes offence.*

Obiter dictum—To constitute an offence under S. 153-A, there must clearly be an intention to promote or attempt to promote feelings of enmity or hatred between differ-

PENAL CODE ACT (XLV OF 1860)

ent classes of His Majesty's subjects. *Sital Prasad v. Emperor*. 17 Cr. L. J. 254 : 34 I. C. 974 : 20 C. W. N. 199 : 23 C. L. J. 105 : 43 Cal. 591 : A. I. R. 1916 Cal. 921.

———S. 153-A—*What constitutes offence.*

Origin of community sought to be traced—Adherence to history even if improbable, is no offence—Language used, malicious and bound to annoy members of that community—Remarks applicable to present members of community and degrading them in the eyes of the other community—Offence is committed. *M. L. C. Gupta v. Emperor*. (S. B.)

37 Cr. L. J. 599 : 162 I. C. 507 : 8 R. A. 873 : 1936 A. L. J. 165 : 1936 A. W. R. 227 : A. I. R. 1936 All. 314.

———S. 153-A—*What constitutes offence.*

The essence of an offence under S. 153-A, Penal Code, is malicious intention. Where there is no malicious intention, honesty of purpose may be inferred. *Hamendra Prasad Ghose v. Emperor*.

28 Cr. L. J. 205 : 99 I. C. 941 : 45 C. L. J. 432 : 31 C. W. N. 168 : A. I. R. 1927 Cal. 215.

———S. 153-A (Expl.)—*Scope.*

The explanation to S. 153-A cannot be used to enlarge the provisions of the substantive section. *P. K. Chakravarty v. Emperor*.

27 Cr. L. J. 1154 : 97 I. C. 738 : 30 C. W. N. 953 : 44 C. L. J. 172 : 54 Cal. 59 : A. I. R. 1926 Cal. 1133.

———Ss. 153-A, 505 (c)—*Hatred and enmity—Sober comment complaining of conduct of rival community, if offence.*

The act of recalling to the minds of the members of a community the painful experiences of people of their community in other places at the hands of another community would naturally have the effect of embittering their feelings against the alleged oppressors, but those who suffer have the right to complain, and if the complaint is made in a sober language and is free from exaggerations and incisive comments, it can lawfully be published for the consideration of public officers and others concerned with a view to their taking necessary action to prevent a repetition of what has previously taken place. Such conduct does not amount to an offence either under S. 153-A or under S. 505 (c) of the Penal Code. *Deshbandhu Gupta v. Emperor*.

25 Cr. L. J. 976 : 81 I. C. 624 : 6 L. L. J. 162 : A. I. R. 1924 Lah. 502.

———S. 154—*Ingredients.*

In order to convict an accused person of an offence under S. 154, Penal Code, the following facts must be established:—(1) that an unlawful assembly or riot has taken place on the land owned or occupied by the accused or in which he claims an interest; (2) that he,

PENAL CODE ACT (XLV OF 1860)

knowing that such an offence is being or has been committed or having reason to believe that it is likely to be committed, does not give the earliest notice thereof to the principal officer in the nearest Police Station; (3) in the case of his having reason to believe that it was about to be committed, he does not use all lawful means in his power to prevent it; and (4) in the event of its taking place, he does not use all lawful means in his power to disperse or suppress the riot or unlawful assembly. *Raja Bhagwan Bakhsh v. Emperor*.

3 Cr. L. J. 27 : 8 O. C. 418.

———S. 154—*Ingredients — Owner of land failing to give information of riot—Ingredient of offence.*

The ingredients necessary for a prosecution under S. 154, Penal Code, are the following:—(a) Unlawful assembly or riot; (b) Accused is the owner or occupier of the land or has or claims to have an interest in the land; (c) With such knowledge that the offence was being or had been committed, or having reason to believe that it was likely to be committed, the accused did not give notice to the nearest Police Station; (d) The accused having reason to believe that the offence was about to be committed, did not use all lawful means in his power to prevent the offence. *Nripendra Bhusan v. Gobinda Bandhu*.

25 Cr. L. J. 1258 : 82 I. C. 266 : 39 C. L. J. 236 : A. I. R. 1924 Cal. 1018.

———S. 154—*Offence under—Liability of owner of land for riot got up by agent—Appointment of agent—Owner responsible for appointment of agent, is responsible for riot—More than one owner—Joint liability—Separate sentence.*

The responsibility under S. 154, Penal Code, must depend upon the fact of the person who caused the riot being himself the person who has an interest in land or an agent or manager of such person, and one of the facts to be proved is whose agent or manager the person who fomented the riot is. The person who is responsible for the appointment of the agent or manager is the person liable under S. 154 if the agent or manager gets up the riot. If there are more persons than one, responsible for the appointment of the agent or manager, they must be considered to be jointly liable, although separate sentences have to be passed against each of them. *Siva Sundari Chowdhurani v. Emperor*.

13 Cr. L. J. 221 : 14 I. C. 317 : 16 C. W. N. 768 : 39 Cal. 834.

———Ss. 154, 155 — *What constitutes offence—Riot in accused's khalyan—Dispute as to right to collect rents—Offence.*

A riot took place in the accused's *khalyan* not, however, in respect of the *khalyan*, but with respect to the right to collect rents from the tenants, that is to say, the real dispute was as to who should remain in possession of the village: *Held*, that the accused was guilty of

PENAL CODE ACT (XLV OF 1860)

offences under Ss. 154 and 155 of the Penal Code. *Doma Sahu v. Emperor*.

18 Cr. L. J. 447 :
38 I. C. 1007 : 2 P. L. J. 83 :
A. I. R. 1917 Pat. 523.

—S. 155.

See also Cr. P. C., 1898, Ss. 236, 239.

—S. 155—"Claims interest in land"—*What is.*

The mother of the two petitioners and the wife of one of them had interest in certain land. The petitioners demanded *kabulyats* from certain persons but there was no evidence to prove that the petitioners demanded them for themselves. They were convicted under S. 155, Penal Code : *Held*, that the petitioners could not be held to have claimed an interest in the land and that, therefore, they could not be convicted under S. 155, Penal Code. *Pramatha Nath Roy Chowdhury v. Emperor*.

15 Cr. L. J. 191 (b) :
22 I. C. 767 : 17 C. W. N. 1247 :
A. I. R. 1914 Cal. 634.

—S. 155—Evidence—Record of riot case *if to be excluded.*

In a case under S. 155 the record of the riot case should be excluded from evidence. *Pramatha Nath Roy Chowdhury v. Emperor*.

15 Cr. L. J. 191 (b) :
22 I. C. 767 : 17 C. W. N. 1247 :
A. I. R. 1914 Cal. 634.

—S. 155—Landholder's liability.

When there is no evidence to show that an absentee co-sharer in a *zamin-dari* takes an active part in the management, and a resident co-sharer has been sentenced to pay a fine under S. 155, the non-resident *Zamindar* ought not to be convicted under S. 155, I. P. C. *Harendra Lal Roy v. Emperor*.

1 Cr. L. J. 866 :
8 C. W. N. 809.

—S. 157—Harbouring persons forming unlawful assembly in past, if offence.

Accused cannot be convicted under S. 157 for harbouring persons who had formed unlawful assembly in the past. *Radharaman Shah v. Emperor*.

33 Cr. L. J. 62 (1) :
134 I. C. 1278 (b) : 58 Cal. 1401 :
35 C. W. N. 720 : I. R. 1932 Cal. 62 (b) :
A. I. R. 1931 Cal. 712.

—S. 157—Hired, etc.—Meaning of.

Volunteers engaged in preparing salt cannot be said to have been hired, engaged or employed by their leader. *C. Samuel Aaron v. Emperor*.

32 Cr. L. J. 664 :
131 I. C. 159 : 33 L. W. 571 :
1931 M. W. N. 326 :
I. R. 1931 Mad. 495 :
A. I. R. 1931 Mad. 440.

—S. 159—Affray—Meaning of—*Mere quarrelling or abusing does not constitute affray—There must be assault or breach of peace.*

There is a difference between an "affray" and an "assault"; the offence of affray, as defined

PENAL CODE ACT (XLV OF 1860)

in S. 159 of the Penal Code, postulates the commission of a definite assault or a breach of the peace. Mere quarrelling or abusing in a street without exchange of blows is not sufficient to attract the application of this section. *Jagannath Sah v. Emperor*.

38 Cr. L. J. 169 :
166 I. C. 280 (2) : 1937 O. L. R. 7 :
9 R. O. 300 : 1937 O. W. N. 37 :
A. I. R. 1937 Oudh 425.

—S. 159—"Affray", meaning of—*Mere quarrelling without exchange of blows, whether affray.*

The offence of affray as defined in S. 159, Penal Code, postulates the commission of a definite assault or breach of the peace. Mere quarrelling in a street over money matters without exchange of blows is not sufficient to attract the application of the section. *Ganesh Das v. Emperor*.

30 Cr. L. J. 571 :
116 I. C. 180 : I. R. 1929 Lah. 452 :
A. I. R. 1928 Lah. 813.

—S. 159—Affray—*What is.*

Where one person attacks and the other defends, the case comes under the definition of affray in S. 159 *Emperor v. Babu Ram*.

32 Cr. L. J. 1269 :
134 I. C. 834 : 53 All. 229 :
1931 A. L. J. 891 : I. R. 1931 All. 850 :
A. I. R. 1931 All. 8.

—S. 159—Disturbing public peace—*Proof—Evidence that particular member of public was alarmed—Whether necessary for conviction for affray.*

It is not necessary that any particular member of the public must give evidence to the effect that he was alarmed or frightened before a conviction can be had for an offence punishable under S. 159, Penal Code. If it is likely that such alarm would have been caused to the public or members of the public, the necessary ingredient is established. *In re: Muthusamy Ayyar*.

38 Cr. L. J. 588 (b) :
168 I. C. 729 : 9 R. M. 632 :
1937 M. W. N. 23 : 45 L. W. 251 :
A. I. R. 1937 Mad. 286.

—S. 159—Gist of offence—*What is.*

The gist of the offence consists in the terror it causes the public. *Emperor v. Babu Ram*.

32 Cr. L. J. 1269 :
134 I. C. 834 : 53 All. 229 :
1931 A. L. J. 891 : I. R. 1931 All. 850 :
A. I. R. 1931 All. 8.

—S. 159—Ingredients.

For a charge under S. 159, there must be two or more persons concerned. *In re: Baluchami Pillai*.

35 Cr. L. J. 76 :
146 I. C. 475 : 38 L. W. 760 :
65 M. L. J. 723 : 6 R. M. 266 :
1933 M. W. N. 718 :
A. I. R. 1933 Mad. 843.

—S. 159—Public place, *what is*—*Open field with no compound walls, if public place.*

Whether a place is public or not, does not necessarily depend on the right of the public

PENAL CODE ACT (XLV OF 1860)

as such to go to the place, though of course a place to which the public can go as of right must be a public place. The place where the public are actually in the habit of going must be deemed to be public for the purpose of the offence of affray. An open field with no compound walls is a public place. *In re : Muthusamy Ayyar*.

38 Cr. L. J. 588 (b) :
168 I. C. 729 : 45 L. W. 251 :
1937 M. W. N. 23 : 9 R. M. 632 :
A. I. R. 1937 Mad. 286.

—Ss. 159, 160—*Affray, what constitutes—Struggle between two parties—One side aggressive but other passive—Offence of affray, if committed.*

To constitute an affray, there must be a fight; fighting connotes necessarily a contest or struggle for mastery between two or more persons against one another. A struggle or a contest necessarily implies that there are two sides, each of which is trying to obtain the mastery, so that unless there is some violence offered or threatened against one another, there could be no fight but only a mere assault or beating. It is, therefore, not a fight constituting an affray when one side is aggressive and the other is passive. *Rami Reddy v. Chintha Chinna Narasi Reddy*.

40 Cr. L. J. 86 :
178 I. C. 523 : 48 L. W. 378 :
1938 M. W. N. 975 : 11 R. M. 465 :
1938, 2 M. L. J. 583 (2) :
A. I. R. 1938 Mad. 924.

—S. 160.

See also Cr. P. C., 1898, Ss. 235, 236, 239, 408.

—S. 160—*Charge or hurt—Conviction of offence under S. 159 without fresh charge—Legality of.*

Where an accused is charged with causing grievous hurt or hurt, he cannot be convicted of the offence of affray under S. 160, without a fresh charge being framed. *In re : Baluchami Pillai*.

35 Cr. L. J. 76 :
146 I. C. 475 : 1933 M. W. N. 718 :
38 L. W. 760 : 65 M. L. J. 723 :
6 R. M. 266 : A. I. R. 1933 Mad. 843.

—S. 160—*Conviction—Conviction without charge or trial.*

A complaint of assault was preferred against two persons. The Magistrate convicted the complainant as guilty of affray: *Held*, on revision, that as the complainant was not called upon as an accused person to an answer to charge, or placed on his trial, his conviction was illegal. *In the matter of : Doraswami Pillai*.

9 Cr. L. J. 316 :
12 M. C. C. R. 63.

—S. 160—*Conviction under—Propriety of—Fight between two factions—Absence of finding of common intention or of who struck whom—Conviction based on presumption, legality of.*

Where two factions engage in a fight, and injuries are caused to persons on both sides, in the absence of a finding as to who actually

PENAL CODE ACT (XLV OF 1860)

caused the injuries and who beat whom, or of a common intention, a conviction under S. 323 of the Penal Code, based on a mere presumption that the persons convicted must have caused hurt, cannot be maintained. In such a case, a conviction under S. 160 of the Penal Code would be more appropriate. *Sabir Husain v. Emperor*. 22 Cr. L. J. 621 : 63 I. C. 157 : 19 A. L. J. 487 : 3 U. P. L. R. All. 101 : A. I. R. 1921 All. 261.

—S. 160—*Exchange of abuse—Offence, nature of—Criminal procedure—Technical objections by Crown.*

An ordinary exchange of abuse in a public street where neither side is armed and no blows are struck, is an offence too trivial to be taken notice of. The Crown does not usually take technical objections either on the criminal or the civil side where by thus doing substantial justice may be defeated. *Emperor v. Atma Singh*.

27 Cr. L. J. 696 :
91 I. C. 888 : 8 L. L. J. 82 :
27 P. L. R. 176 : A. I. R. 1926 Lah. 412.

—S. 161.

See also (i) *Accomplice*.
(ii) Penal Code, 1860, S. 21, Cl. (9), 116, 120-B, 161, 220.

—S. 161—*Abetment of offence.*

Offer of bribe to public servant for rendering service as such amounts to abetment of offence under S. 161. *Emperor v. Allaudin Ahmed Fakharudin Ahmed*.

37 Cr. L. J. 20 :
158 I. C. 992 : 8 R. S. 62 :
A. I. R. 1935 Sind 7.

—S. 161—*Abetment of offence under—What constitutes.*

A mere statement by a person to a Judicial Officer that the plaintiff in a certain case would be willing to pay a certain sum of money to him as bribe if he decides the case in favour of the plaintiff, does not amount to the abetment of an offence under S. 161. *Emperor v. Dinkar Rao*.

34 Cr. L. J. 623 :
143 I. C. 661 : 1933 A. L. J. 1481 :
I. R. 1933 All. 306 :
A. I. R. 1933 All. 513.

—S. 161—*Abettors and accomplices of offence under—Who are—Bribery—Evidence Act (I of 1872), S. 114 (b)—Evidence of accomplices—Admissibility—Corroboration—Bribe-giver and witnesses to payment of bribe.*

The person who gives the bribe is an abettor of the offence under S. 161, I. P. C., and as such, an accomplice. But all persons coming technically within the category of accomplices cannot be treated as precisely on the same footing and no general rule on the subject can be laid down. The witnesses to the payment of a bribe are not accomplices unless they had co-operated in the payment of the bribe, or were instrumental

PENAL CODE ACT (XLV OF 1860)

in the negotiations for its payment. *Dēonandan Pershad Singh v. Emperor*.

3 Cr. L. J. 452 :
10 C. W. N. 669 ; I. L. R. 33 Cal. 649.

———S. 161—Accomplices of offence under—*Who are*.

Persons who were either instrumental in negotiating the bribe or in arranging for its payment are in the position of accomplices. *Mangal Sain v. Emperor*.

35 Cr. L. J. 452 :
147 I. C. 557 : 34 P. L. R. 836 :
6 R. L. 417.

———S. 161—Burden of proof.

The fact that a certain tract of country has been notorious for bribe-giving and bribe-taking, does not relieve the prosecution of the duty of producing strict and conclusive proof of the guilt of an accused person who is charged with the offence of taking a bribe. When, however, a bribe has been proved to have been given, it is not necessary to ask what, if any, effect the bribe had on the mind of the receiver ; the receipt of the bribe is an offence even when the act done for the bribe given is a just and proper one. *Anant Wasudeo Chandekar v. Emperor*.

26 Cr. L. J. 1467 :
89 I. C. 1035 : 8 N. L. J. 138 :
A. I. R. 1925 Nag. 313.

———S. 161—Evidence.

In order to establish a charge of bribery against a public servant, or of his having committed an offence in the discharge of his duties as such, the evidence should be conclusive. *Mehr Itahi v. Emperor*.

12 Cr. L. J. 485 :
12 I. C. 93 : 26 P. W. R. 1911 Cr.

———S. 161—Gist of offence under.

The gist of the offence is a public servant taking gratification other than legal remuneration in respect of an official act. *Anant Wasudeo Chandekar v. Emperor*.

26 Cr. L. J. 1467 :
89 I. C. 1035 : 8 N. L. J. 138 :
A. I. R. 1925 Nag. 313.

———S. 161—Ingredients—*Proof*.

Acceptance of money by a public servant as a motive for showing disfavour to a person, not in the exercise of, but entirely outside his official functions, does not amount to an offence under S. 161, Penal Code. In order to convict a person of that offence, it must be proved that he accepted a gratification as a motive or reward for doing or forbearing to do any of the acts specified in S. 161, Penal Code. *Upendra Nath v. Emperor*.

18 Cr. L. J. 565 (a) :
39 I. C. 805 : 21 C. W. N. 552 :
A. I. R. 1917 Cal. 850.

———S. 161—Ingredients.

It is not necessary for the commission of an offence under the section that the gratification need actually be produced or that the gratification must be accepted by

PENAL CODE ACT (XLV OF 1860)

the official sought to be bribed. *In re : Vanu Ramachandriah*.

28 Cr. L. J. 1005 :
105 I. C. 829 : 1927 M. W. N. 764 :
26 L. W. 529 : 53 M. L. J. 723 :
39 M. L. T. 615 : 51 Mad. 86 :
A. I. R. 1927 Mad. 1011.

———S. 161—Ingredients.

S. 161, Penal Code, is not confined to cases in which the gratification is taken for doing an official act. It is an offence if a public servant accepts any gratification other than legal remuneration as a motive or reward for rendering or attempting to render any service to any one with any public servant as such. *In re : Vanu Ramachandriah*.

28 Cr. L. J. 1005 :
105 I. C. 829 : 1927 M. W. N. 764 :
26 L. W. 529 : 53 M. L. J. 723 :
39 M. L. T. 615 : 51 Mad. 86 :
A. I. R. 1927 Mad. 1011.

———S. 161—Ingredients.

Where the accused made an offer to the complainant, the Manager of a Municipal Office, of a reward of Rs. 200 for using his influence with the Chairman and other Municipal Councillors as such to get from them a contract for a third person which contract was in their gift, and gave a personal undertaking that he will, if necessary, pay the amount when the contract is obtained: *Held*, that the accused was guilty of an offence under S. 161, Penal Code. *In re : Vanu Ramachandriah*.

28 Cr. L. J. 1005 :
105 I. C. 829 : 1927 M. W. N. 764 :
26 L. W. 529 : 53 M. L. J. 723 :
39 M. L. T. 615 : 51 Mad. 86 :
A. I. R. 1927 Mad. 1011.

———S. 161—Intention, if material.

Where there is nothing to show that the illegal gratification was received with one of the intents specified in S. 161, Penal Code, the conviction must be set aside. *Ajudhia Parshad v. Emperor*.

26 Cr. L. J. 1367 :
89 I. C. 455 : 1 Lah. Cas. 227.

———S. 161—Liability of bribe-givers.

Bribe-givers are not exonerated merely because Judge takes money without any guilty intention but with the object of trapping a litigant. *Emperor v. Dinkar Rao*.

34 Cr. L. J. 623 :
143 I. C. 661 : 1933 A. L. J. 1481 :
I. R. 1933 All. 306 :
A. I. R. 1933 All. 513.

———S. 161—Motive or reward—*Proof of*—*Public servant taking illegal gratification—Bribery*—“*In the exercise of his official function?*”

S. 161, Penal Code, requires proof that an official has obtained as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official, and therefore may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be

PENAL CODE ACT (XLV OF 1860)

that of the official obtaining it. *Emperor v. Bhagwandas*. 5 Cr. L. J. 309 : 9 Bom. L. R. 331 : I. L. R. 31 Bom. 335.

-----S. 161—Offence under.

A village headman, finding certain persons setting cocks to fight near a public road, threatened them with a prosecution and subsequently took money as a consideration for not prosecuting them: *Held*, that S. 161, Penal Code, was inapplicable and that the offence fell under S. 384 only. *Emperor v. Nga Kan Tha*. 14 Cr. L. J. 413 : 20 I. C. 237 : 6 Bur. L. T. 82.

-----S. 161—Offer of bribe to officer in charge of hospital to retain patient in hospital—If offence.

The petitioner went to the house of a doctor in charge of a Government Hospital and there offered him money to induce him to retain in the hospital as an in-patient a brother of the petitioner who had been injured in a fracas, with the object of making out that the injury caused was grievous hurt and not simple hurt. The officer refused the offered bribe: *Held*, that the facts proved clearly came within S. 161, Penal Code, as they amounted to an offer of illegal gratification to a public servant as a motive or reward for showing favour to a patient in the discharge of that public servant's official duties. As the offence was not completed by reason of the refusal of the offered bribe, the case came strictly within the *Illus. (a)*, S. 116, Penal Code, and was covered by it. *Burham Sahib v. Emperor*. 31 Cr. L. J. 1088 : 126 I. C. 603 : 32 L. W. 17 : A. I. R. 1930 Mad. 671.

-----S. 161—Offer to pay illegal gratification to public servant—Attempt to bribe.

A mere offer to pay an illegal gratification to a public servant is an attempt to bribe. *Rameshwar Singh v. Emperor*.

26 Cr. L. J. 119 : 83 I. C. 679 : 3 Pat. 647 : A. I. R. 1925 Pat. 48.

-----S. 161—Offering bribe to public servant *functus officio*, if offence.

No offence under S. 161 is committed where the public servant to whom the bribe is offered is *functus officio* as to the matter in respect of which the bribe is offered. *Rahimullah v. Emperor*.

36 Cr. L. J. 626 : 154 I. C. 910 : 7 R. Pesh. 91 : A. I. R. 1935 Pesh. 26.

-----S. 161—Requiring offenders to show cause against prosecution under.

As it appeared from the admission of the parties that both the parties were guilty of an offence under S. 161, in having taken bribes by looting the public dishonestly, the High Court directed that they be ordained to show cause why they should not be pro-

PENAL CODE ACT (XLV OF 1860)

secuted for an offence under S. 161. *Pearey Lal v. Mahesh Chandra*.

149 I. C. 396 : 3 A. W. R. 415 : 1934 A. L. J. 1256 : 6 R. A. 893 : A. I. R. 1934 All. 493.

-----S. 161—Sanction of Court for prosecution—When necessary—Bribery of Panchayat—Complaint against member—Sanction of Government—Madras Village Courts Act (II of 1920).

A member of a village *Panchayat*, constituted under the Madras Village Courts Act, is a Judge, and the sanction of the Government is an essential precedent to the prosecution of such member of an offence under S. 161 or S. 171-E. *In re Ponnusami Thevan*.

23 Cr. L. J. 148 : 65 I. C. 612 : 15 L. W. 199 : 1922 M. W. N. 122 : 42 M. L. J. 139 : 30 M. L. T. 351 : A. I. R. 1922 Mad. 62.

-----S. 161—Taking bribe by public servant.

A convict warder who accepts gratification from a prisoner to carry an article outside Jail premises against the Jail rules is guilty of an offence under S. 161, Penal Code. *Saifin Rasul v. Emperor*. 25 Cr. L. J. 1382 : 83 I. C. 342 : 26 Bom. L. R. 267 : A. I. R. 1924 Bom. 385.

-----S. 161—Taking money for no official act, if offence.

Where a village *Karnam* receives a bribe from a villager for recommending and getting him land on *darkhast*, no offence under S. 161, Penal Code, is committed, since neither recommending nor getting him *darkhast* is an official act of a *Karnam*. *Pulipati Venkiah v. Emperor*.

26 Cr. L. J. 396 : 84 I. C. 940 : 20 L. W. 618 : 47 M. L. J. 662 : 1924 M. W. N. 894 : A. I. R. 1924 Mad. 851.

-----S. 161—What constitutes offence—Bribe paid to accused meant for his officer, if offence.

R desiring to get employment in the Court of the District and Sessions Judge, was approached by a *jamadar* of *chaprasis* to the District Judge, who advised him to make a present to the Clerk of the Court. The sum of Rs. 20 was settled between them and was subsequently paid by *R* to the *jamadar* in the presence of *R*'s cousin and *D*, a Pleader, who was present in the Sessions Court on his business as a Pleader. It was known that the money was to be paid to the Clerk of the Court: *Held*, (1) that the *jamadar* was guilty of an offence under S. 161, Penal Code; (2) that *R* and his cousin were accomplices, but as there was no proof of any *animus* on their part against the *jamadar*, the fact of their being accomplices did not lessen the value of their evidence. *Ghulam Muhammad v. Emperor*.

18 Cr. L. J. 536 : 39 I. C. 680 : 9 P. R. 1917 Cr. : A. I. R. 1917 Lah. 323.

PENAL CODE ACT (XLV OF 1860)

—S. 161—*What constitutes offence—Bribery by public servant—“Official act,” what is—Karnam promising to get land for villager.*

In a charge under S. 161, Penal Code, it must be shown that the accused took the bribe as a motive for doing an official act. There is a nice distinction between what is criminal and what is departmentally reprehensible. A public servant can only be punished under the Penal Code when his act fulfils all the conditions of an offence as therein defined. *Pulipati Venkiah v. Emperor.*

26 Cr. L. J. 396 :
84 I. C. 940 : 20 L. W. 618 :
47 M. L. J. 662 : 1924 M. W. N. 894 :
A. I. R. 1924 Mad. 851.

—S. 161—*What constitutes offence—Demand of pusturi by a Civil Court peon, if offence.*

Where a Civil Court peon demanded *pusturi* as a motive or reward for serving Summons without an identifier : *Held*, that the request for *pusturi* constituted an attempt to obtain an illegal gratification within the meaning of S. 161, Penal Code. *Ratan Moni Dey v. Emperor.*

2 Cr. L. J. 204 :
I. L. R. 32 Cal. 292 : 9 C. W. N. 547.

—S. 161—*What constitutes offence—Present accepted by Judge from litigant, if offence.*

Accused, who was a Subordinate Judge, went in company with a litigant in his Court to a cloth-shop and accepted a present of cloth which was to be paid for by that litigant, and it was found that the litigant consented to be responsible for the payment for the cloth to gain favour with the accused in his suit : *Held*, that the accused was guilty of an offence under S. 161, Penal Code, and that it was not necessary to prove that favour was actually shown to the litigant as the result of the present ; it was sufficient if the litigant was led to believe that the case would go against him if he failed to give the accused a present. *Bhimrao Narsimha Hublikar v. Emperor.*

26 Cr. L. J. 696 :
86 I. C. 72 : 27 Bom. L. R. 120 :
A. I. R. 1925 Bom. 261.

—S. 161—*What constitutes offence.*

Where a Head Constable accepted two rupees on condition that he would send for and give a thrashing to a certain person : *Held*, that he was not guilty of an offence under S. 161, Penal Code. *Upendra Nath v. Emperor.*

18 Cr. L. J. 565 (a) :
39 I. C. 805 : 21 C. W. N. 552 :
A. I. R. 1917 Cal. 850.

—Ss. 161, 116, 107—*Public servant, offer of bribe to—Offence—Abetment.*

By S. 107, Penal Code, a person may abet the doing of a thing not merely by instigating a person to do it but by intentionally aiding by any act the doing of it. If a public servant solicits a bribe and the person solicited complies with the demand and hands him money, he intentionally aids by his act and, therefore, abets the taking of the bribe by the public

PENAL CODE ACT (XLV OF 1860)

servant ; the fact that the bribe was solicited at most renders the abetment less culpable than it would otherwise be. *Emperor v. Nga Hnin.*

18 Cr. L. J. 327 :
38 I. C. 439 : 9 L. B. R. 52 :
A. I. R. 1917 L. Bur. 33.

—Ss. 161, 384—*Evidence—Offences under Ss. 161, 384—Proof, nature of—Witnesses, position of—Accomplice—Evidence.*

In a charge under S. 161, Penal Code, the principal witnesses for the prosecution are necessarily guilty of abetment of the offence with which the accused person is charged and their evidence must be put on the footing of the evidence of an accomplice. If, however, the prosecution witnesses seek to evade this position by representing themselves as helpless victims of extortion committed by a person in a position of authority, then what they are seeking to prove is, not an offence under S. 161, Penal Code, but an offence under S. 384, Penal Code, and it becomes material for the Court to satisfy itself that the person accused did put the complainant or complainants in fear of injury with the object of inducing them to pay him money. *Tapeswari Prasad v. Emperor.*

18 Cr. L. J. 317 :
38 I. C. 429 : 15 A. L. J. 127 :
A. I. R. 1917 All. 81.

—S. 162—*Motive—Motive essential to constitute offence.*

Where it was simply found that a certain sum was handed to the accused to be delivered by him as bribe to the Subordinate Magistrate : *Held*, that this was insufficient to support a conviction under S. 162 without a finding that the money was accepted or obtained by the accused as a motive or reward for tampering with the Subordinate Magistrate. *Chinnaswami Iyengar v. Emperor.*

11 Cr. L. J. 696 :
8 I. C. 668 : 1 M. W. N. 776.

—S. 163.

See also Penal Code, 1890, S. 120-B.

—S. 166—*What constitutes offence—Notice represented as warrant—Offence.*

Where a peon, whose duty it was to require the signatures of persons on whom notices are served, represented the notice to be a warrant and actually arrested the complainant : *Held*, that he had disobeyed a direction of law and that his conviction for such disobedience was right. *In re : Rangasami Naidu.*

11 Cr. L. J. 400 :
6 I. C. 773 : 7 M. L. T. 429.

—S. 166—*What constitutes offence—Public servant—Disobedience of law.*

The protection given by S. 135, C. P. C., to a witness against arrest “while returning from such Tribunal” cannot be availed of by a witness to return by any route he pleases. His return must be straight from the Court to the place whence he came in obedience to the summons. It is not open to him to dictate as to how far out of the straight route he may or may not go. Therefore if a witness

PENAL CODE ACT (XLV OF 1860)

while returning to his destination adopts a different route and stops in the way, his arrest is no offence under S. 166, Penal Code. *Behari Singh v. Emperor*. 26 Cr. L. J. 240 :

84 I. C. 64 : 22 A. L. J. 638 :

46 All. 663 : A. I. R. 1924 All. 676.

—S. 167—Offence of making incorrect document and forgery—*Accused if can be convicted of forgery also—Forgery—Public servant framing incorrect document—Conviction under S. 167 and Ss. 467 and 471, legality of.*

A public servant who frames an incorrect document with intent to cause injury, cannot be convicted both under Ss. 167 and 471, Penal Code, inasmuch as the offence under S. 167 is included in the offence of forging a document and using it as genuine under S. 467 and 471. *Gulzari Lal v. Emperor*. 28 Cr. L. J. 90 :

99 I. C. 122 : 3 O. W. N. 760 :

13 O. L. J. 817 : A. I. R. 1926 Oudh 615.

—S. 167—Sentence—*Framing false document—Sentence.*

An official, however humble, who deliberately tampers with official records and issues false copies, whatever his motives may be, deserves severe punishment, not merely for his own conduct but as a deterrent to others who may be tempted to follow his example. *Sukhnandan Lal v. Emperor*. 28 Cr. L. J. 31 :

99 I. C. 63 : A. I. R. 1926 All. 719.

—S. 167—What constitutes offence—*Process-server employed to conduct sale in contravention of rules making false report—If offence.*

Where a process-server who was conducting a sale of attached movables, made a false report relating the sale : *Held*, that he was guilty of an offence under S. 167, Penal Code, notwithstanding the fact that according to the Rules and Orders of the High Court, a process-server could be employed for conducting a sale only under certain conditions and all of these conditions did not exist in the case. *Dalip Singh v. Emperor*.

31 Cr. L. J. 656 :

124 I. C. 320 : A. I. R. 1930 Lah. 92.

—S. 167—What constitutes offence—*Station House Officer making a false entry in his diary if guilty.*

A Station House Officer, in order to support an Inspector, made a false entry in his diary that "four cartmen stated to him as they had said before the Inspector". It appeared from the evidence that he took no action on the complaint of the cartmen, and his statement that no complaint of dacoity was made to him, was falsified by his own witnesses : *Held*, that he was guilty of intentionally framing an incorrect public record. *Pasupuleti Ramdoos v. Emperor*.

12 Cr. L. J. 502 :

12 I. C. 222 : 1911, 2 M. W. N. 64.

—S. 168.

See also (i) Berar Municipal Law, S. 146.

(ii) Police Act, 1861, S. 10.

(iii) U. P. District Boards Act, 1922, S. 34.

PENAL CODE ACT (XLV OF 1860)

—S. 168—Offence under—*Sanction under S. 197, Cr. P. C., if necessary.*

No previous sanction under S. 197, Cr. P. C., is necessary. *Dulloomiyan v. Tularam*.

34 Cr. L. J. 70 :

140 I. C. 711 : 28 N. L. R. 156 :

I. R. 1933 Nag. 10 : A. I. R. 1932 Nag. 133.

—S. 168—What constitutes offence—*Member of Municipality becoming interested in contract with Municipality, commits offence under S. 168.*

A member of a Municipal Committee who becomes directly or indirectly interested in a contract with the Committee in violation of S. 146, Berar Municipal Law, commits an offence under S. 168, Penal Code. *Narayan v. Emperor*.

11 Cr. L. J. 613 :

8 I. C. 274 : 6 N. L. R. 114.

—S. 168—What constitutes offence—*Police Officer carrying on shop—If offence.*

The conduct of a Police servant carrying on a shop comes within the prohibition contained in S. 10 of the Police Act and he is, therefore, liable to be convicted under S. 168, Penal Code. *Emperor v. Sagar Singh*.

19 Cr. L. J. 152 :

43 I. C. 440 : A. I. R. 1918 Cal. 150.

—S. 170.

See also Cr. P. C., 1898, S. 435.

—S. 170—Ingredient.

A dishonest intention is not expressly made an essential ingredient of the offence punishable under S. 170, Penal Code. *Emperor v. Umakant*.

6 Cr. L. J. 70 :

9 Bom. L. R. 706.

—S. 170—Ingredients.

The mere assumption of a false character without any attempt to do an official act, is not sufficient to bring the offender within the meaning of S. 170, Penal Code. *Sukhdeo Pathak v. Emperor*.

19 Cr. L. J. 209 (a) :

43 I. C. 785 : 4 P. L. W. 39 :

3 P. L. J. 389 : 1918 Pat. 287 :

A. I. R. 1918 Pat. 653.

—S. 170—Interpretation.

The phrase "an act under colour of such office" points to acts which could not have been done without assuming official authority or responsibility, and would not connote acts of a ministerial or mechanical character, which might be done without requiring the justification of office in the person doing them. *Emperor v. Umakant*.

5 Cr. L. J. 211 :

9 Bom. L. R. 222.

—S. 170—What constitutes offence.

Accused avoided paying a one-anna platform charge by pretending upon entering the station platform that he was a C. I. D. Officer : *Held*, that this did not constitute an offence under S. 170, Penal Code. *Sukhdeo Pathak v. Emperor*.

19 Cr. L. J. 209 (a) :

43 I. C. 785 : 4 P. L. W. 39 :

3 P. L. J. 389 : 1918 Pat. 287 :

A. I. R. 1918 Pat. 653.

PENAL CODE ACT (XLV OF 1860)

———S. 170—*What constitutes offence.*

Mere personation is insufficient to justify conviction under S. 170, Penal Code. The section further requires that the offender should be shown to have attempted to do or to have done in such assumed character some act under colour of such office. *Emperor v. Umakant*.
5 Cr. L. J. 211 :
9 Bom. L. R. 222.

———S. 170—*What constitutes offence.*

The accused, a C. I. D. Constable, pretended to be a Police Officer, and as such, demanded the production of the *rahdari* papers from people who had cattle with them: *Held*, that he was guilty under S. 170. *Roshan v. Emperor*.
37 Cr. L. J. 81 :
159 I. C. 353 : 8 R. L. 379 :
A. I. R. 1935 Lah. 92.

———S. 170—*What constitutes offence.*

To constitute the offence provided for by S. 170, Penal Code, it is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. *Emperor v. Aziz-ud-Din*.
1 Cr. L. J. 913 :
24 A. W. N. 232 : I. L. R. 27 All. 294 :
1 A. L. J. 604.

———Ss. 170, 175—*Offences under—Joint trial, if legal.*

A trial of the two offences under Ss. 170 and 175 together is illegal and contrary to the provisions of Ss. 233 and 235, Cr. P. C. *Muthusami Pillai v. The Government Tahsildar of Ramnad*.
34 Cr. L. J. 1183 :
146 I. C. 195 : 6 R. M. 220 (1) :
A. I. R. 1933 Mad. 434 (1).

———S. 171—*Offence under—Wearing garb used by public servant—When offence.*

The accused was found carrying a Police jacket under his arm with intent that it should be believed that he was a Police constable: *Held*, that he had not committed an offence under S. 171, Penal Code. *Emperor v. Nga Po Kyaw*.
1 Cr. L. J. 554 :
U. B. R. 1904 1st Qr. P. C. 3.

———S. 171-B—*Offence under.*

Candidate for election offering money to rival candidate for withdrawing candidature—His conduct comes within the meaning of 'bribery'. *Ahmed Kabir Chowdhury v. Emperor*.
39 Cr. L. J. 483 :
174 I. C. 808 : 10 R. C. 725 :
A. I. R. 1938 Cal. 274.

———S. 171-C—*Offence under—What is.*

Preventing candidate for election from canvassing is no offence. *Ram Saran Das v. Emperor*.
27 Cr. L. J. 468 :
93 I. C. 692 : 7 Lah. 218 :
27 P. L. R. 190 : A. I. R. 1926 Lah. 297.

———S. 171-C *What constitutes offence.*

Candidate remarking that *gosha* woman need not vote: *Held*, that no offence under S. 171-C was committed. *Bijli Sahib v. Mahomed Asan*.
146 I. C. 572 : 39 L. W. 466 :
6 R. M. 283 : A. I. R. 1934 Mad. 27.

PENAL CODE ACT (XLV OF 1860)

———S. 171-D—*Abetment of offence under—Sentence.*

Per Mears, C. J. and Walsh, J.—That there was a deliberate offence of abetment of false personation and that the sentence in the circumstances of the case was too lenient and ought to be enhanced into one of imprisonment. *Emperor v. Badan Singh*.
30 Cr. L. J. 933 :
118 I. C. 577 : I. R. 1929 All. 881 :
A. I. R. 1928 All. 150.

———S. 171-D—*Personation, if implies corruption.*

It may well be argued that the word "personation" itself implies some corruption or fraud. *Mulchand v. Emperor*.
38 Cr. L. J. 306 :
166 I. C. 640 : 9 R. S. 152 :
30 S. L. R. 425 : A. I. R. 1937 Sind 21.

———S. 171-D—*Personation through mistake, if offence.*

Where a man's name had been wrongly included in the register of two divisions and he voted twice being ignorant of the law and had acted conscientiously by mistake: *Held*, that there was no corrupt intention and the offence of personation could not be said to have been committed. *In re : Pantam Venkayya*.
31 Cr. L. J. 329 (a) :
121 I. C. 763 : 31 L. W. 71 :
58 M. L. J. 111 : 1930 M. W. N. 174 :
53 Mad. 444 : A. I. R. 1930 Mad. 246.

———S. 171-D—*Two names similar—Personation, if offence—Proof.*

S. 171-D, Penal Code, is wide enough in its terms to cover the case of a man who knowing that he has no vote and knowing that another person bearing the same name as himself has a vote, applies for a voting paper in the name of that person, though that name be the same name as his own. But before he can be convicted under such circumstances, the prosecution must prove, as in all other cases in which the burden lies upon them, the facts which bring the accused within the particular provisions of the section. *Mulchand v. Emperor*.
38 Cr. L. J. 306 :
166 I. C. 640 : 9 R. S. 152 :
30 S. L. R. 425 : A. I. R. 1937 Sind 21.

———S. 171-D—*What constitutes offence—Accused asking for ballot paper—Accused's father's name different from that recorded in register—Accused, whether guilty of personation.*

In the electoral roll of a certain Municipality, one M D, son of F M was recorded as a person entitled to vote. The accused M D whose father's name was admittedly A, asked for a ballot paper in the name of M D, son of F M and when questioned, he asserted more than once that his father's name was F M. There was no evidence on the record that the officer who prepared the electoral roll intended to put the accused on the register and that M D, son of F M had no existence at all:

PENAL CODE ACT (XLV OF 1860)

Held, that the accused was guilty of the offence of personation. *Muhammad Din v. Emperor*.

30 Cr. L. J. 853 :
117 I. C. 883 : I. R. 1929 Lah. 707 :
A. I. R. 1929 Lah. 52.

———S. 171-D—*What constitutes offence.*

To constitute the offence of personation at an election as defined in S. 171-D, Penal Code, *mens rea* is an essential ingredient. Unless there be corruption and a bad mind and intention in personating, no offence is committed. *In re : Pantam Vankayya*.

31 Cr. L. J. 329 (a) :
121 I. C. 763 : 31 L. W. 71 :
58 M. L. J. 111 : 53 Mad. 444 :
1930 M. W. N. 174 :
A. I. R. 1930 Mad. 246.

———S. 171-F—*Abetment of offence under S. 171-D—What constitutes.*

Where a candidate at an election who is not aware of the fact that a person who professes to be a particular voter is not that voter and that he is falsely personating such voter, attests his voting slip but does not profess to do so on his personal knowledge and the polling officer is aware that the candidate is not attesting on personal knowledge, the candidate cannot be held guilty under S. 171-F, Penal Code, of intentionally aiding the commission of an offence as defined under S. 171-D of the Code. *Ram Nath v. Emperor*.

27 Cr. L. J. 705 :
94 I. C. 897 : 24 A. L. J. 180 :
A. I. R. 1926 All. 231.

———S. 171-F—*Attempts to obtain voting paper, what is.*

It is the application for a voting paper by a wrong person that has been made punishable under S. 171-F, Penal Code. An application for a "signature slip" which would entitle the voter to obtain a voting paper, would not amount to an attempt to obtain a voting paper within the meaning of S. 171-F. *Malkhan Singh v. Emperor*.

26 Cr. L. J. 359 (b) :
84 I. C. 711 : 22 A. L. J. 1102 :
A. I. R. 1925 All. 226.

———S. 171-F—*Interpretation.*

The expression "abets the voting by any person in any such way" in S. 171-F, Penal Code, means abetment of voting at an election in the name of another person living at that date, or in a fictitious name, or a second time. *Ram Nath v. Emperor*.

27 Cr. L. J. 705 :
94 I. C. 897 : 24 A. L. J. 180 :
A. I. R. 1926 All. 231.

———S. 171-F—*Quantum of punishment.*

The fact that the accused is a man of some education, position and a member of the Legislative Council, cannot be urged in his favour as an argument for the infliction of a fine only. These considerations cut the other way. *Emperor v. Badan Singh*.

30 Cr. L. J. 933 :
118 I. C. 577 : I. R. 1929 All. 881 :
A. I. R. 1928 All. 150.

PENAL CODE ACT (XLV OF 1860)

———S. 171-F—*Sanction to prosecute—Necessity of.*

In the absence of a sanction by the Local Government, a Court is not competent to try an accused person for an offence under S. 171-F, Penal Code. Where, therefore, an accused person who is charged with an offence under S. 171-F is acquitted on the ground of want of sanction, such an acquittal does not bar a subsequent trial for the same offence after the necessary sanction is obtained. *Ram Nath v. Emperor*.

27 Cr. L. J. 705 :
94 I. C. 897 : 24 A. L. J. 180 :
A. I. R. 1926 All. 231.

———S. 171-F—*Sentence.*

Per Mears, C. J. agreeing with Walsh, J.—An offence of personation at elections is a most serious one and deserves a severe sentence. *Emperor v. Badan Singh*.

30 Cr. L. J. 933 :
118 I. C. 577 : I. R. 1929 All. 881 :
A. I. R. 1928 All. 150.

———Ss. 171-F, 465—*Offences under—Conviction of which.*

Under certain circumstances, an offence under S. 171-F, Penal Code, may also fall under S. 465, but where this is so, the offence should be treated as one under the former section and not as one under the latter section. *Ram Nath v. Emperor*.

26 Cr. L. J. 362 :
84 I. C. 714 : 22 A. L. J. 1106 :
47 All. 268 : A. I. R. 1925 All. 230.

———S. 171-G—*Prosecution, if obligatory.*

The prosecution under S. 171-G is not obligatory when the offence committed is also one under S. 500. *Bhagolelal v. Emperor*.

41 Cr. L. J. 734 :
189 I. C. 382 : 13 R. N. 47 :
1940 N. L. J. 309 :
A. I. R. 1940 Nag. 249.

———S. 171-G—*Sanction for prosecution—Necessity of.*

Defamatory statements about persons not candidates at election—Sanction is not necessary. *Narayanswamy Naicker v. D. Devaraja Mudaliar*.

37 Cr. L. J. 629 :
162 I. C. 494 : 8 R. M. 998 :
1935 M. W. N. 1164 :
A. I. R. 1936 Mad. 316.

———S. 171-G—*Sanction to prosecute—Necessity of.*

Accused publishing document during election—Document giving out some statements of fact against candidate—Bulk taken up with general imputation of misconduct—Sanction of Government for prosecution held not needed. *In re : A. S. Radhakrishna Ayyar*.

33 Cr. L. J. 665 :
138 I. C. 604 : 35 L. W. 753 :
1932 M. W. N. 1086 :
63 M. L. J. 380 : 55 Mad. 791 :
I. R. 1932 Mad. 598 :
A. I. R. 1932 Mad. 511.

PENAL CODE ACT (XLV OF 1860)

———S. 171-G—Scope.

It cannot be said that S. 171-G is a species of the more general offence of defamation or is carved out of S. 499. *Bhagolal v. Emperor*.

41 Cr. L. J. 734 :
189 I. C. 382 : 13 R. N. 47 :
1940 N. L. J. 309 :
A. I. R. 1940 Nag. 249.

———S. 171-G—Statements of fact—What are.

General charges of misconduct are not statements of fact within S. 171-G : *Held*, statement was only general imputation of misconduct. *Narayanswamy Naiker v. D. Devanaja Mudaliar*.

37 Cr. L. J. 629 :
162 I. C. 494 : 8 R. M. 998 :
1935 M. W. N. 1164 :
A. I. R. 1936 Mad. 316.

———S. 171-G—What constitutes offence—Essentials.

In order to constitute an offence under S. 171 (g) something must be stated as a fact and not as a general imputation or as a matter of opinion. *In re : A. S. Radhakrishna Ayyar*.

33 Cr. L. J. 665 :
138 I. C. 604 : 35 L. W. 753 :
1932 M. W. N. 1086 :
63 M. L. J. 380 : 55 Mad. 791 :
I. R. 1932 Mad. 598 :
A. I. R. 1932 Mad. 511.

———S. 171-G—What constitutes offence—Publication by one of the candidates to election that other one is a leper, knowing it to be false, whether offence under S. 171 (g).

Publication by one of the candidates to an election against the other candidate that he is a leper, knowing it to be untrue, with the *mala fide* intention of injuring his reputation and humiliating him before the public, does not constitute an offence under S. 171 (g), I. P. C. *Mohammad Kadir Sheriff v. Rahimatulla Sahib*.

41 Cr. L. J. 577 :
188 I. C. 327 : 13 R. M. 79 :
1939 M. W. N. 610 :
A. I. R. 1940 Mad. 230.

———S. 172.

See also Penal Code, 1860, S. 406.

———S. 172—Avoiding summons, etc., defective in substance or form, if offence.

When the order of the District Magistrate is not one which can be considered to be, in substance or form, an order under S. 552, Cr. P. C., and he does not in that connection issue any summons, notice or order for service on the applicant and no attempt is or could be made to serve on him such summons, notice or order, S. 172, Penal Code, cannot apply. *Abdul Jalil Khan v. Emperor*.

37 Cr. L. J. 713 :
162 I. C. 755 : 1936 A. L. J. 373 :
1936 A. W. R. 210 : 8 R. A. 903 :
A. I. R. 1936 All. 354.

———S. 172—Scope—Absconding from warrant for arrest, whether falls within S. 172.

A warrant addressed to a Police Officer to apprehend an offender and to bring him before

PENAL CODE ACT (XLV OF 1860)

the Magistrate is not a summons, notice or order within the meaning of S. 172 of the Penal Code, and the offence of absconding by an offender against whom a warrant has been issued is not punishable under that section. *Sheo Jangal Prasad v. Emperor*.

30 Cr. L. J. 203 :
113 I. C. 740 : 26 A. L. J. 443 :
50 All. 666 : I. R. 1929 All. 164 :
A. I. R. 1928 All. 232.

———S. 172—Scope—Running away to avoid arrest under a warrant is no offence.

S. 172, Penal Code, has no application in the case of a warrant which is not a 'summons, notice or order' and a conviction under that section for absconding in order to avoid being served with a warrant is bad in law. *Majhi Mamud v. Emperor*.

3 Cr. L. J. 117 :
2 C. L. J. 625.

———S. 172—What constitutes offence—Property placed in custody of accused, non-production of, on demand.

Certain movable property was attached in execution of a decree. The officer of the Court who made the attachment placed the property in charge of the accused. When the time for auction-sale of the property arrived, notice was issued to the accused to produce the property. They evaded service of the notice on several occasions and the property was not produced : *Held*, that the accused were guilty of contempt of Court under S. 172, Penal Code. *Harnam Singh v. Emperor*.

19 Cr. L. J. 975 (a) :
47 I. C. 875 : 16 A. L. J. 600 :
A. I. R. 1918 All. 406.

———S. 172—What constitutes offence—Refusal to accept summons, if offence.

The mere refusal to accept a summons does not amount to an offence under S. 172, Penal Code. *Banwari v. Emperor*.

27 Cr. L. J. 142 :
91 I. C. 814 : 24 A. L. J. 216.

———S. 173.

See also (i) Cr. P. C., 1898, Ss. 69 (1), 144.

(ii) Police Regulation Act, 1860, S. 17.

(iii) U. P. Land Revenue Act, 1901, S. 147.

———S. 173—Citation to appear and pay revenue—Declining to receive and sign and return duplicate, if offence.

A citation was issued against A, under S. 147 of the Land Revenue Act. A declined to accept the citation and refused to sign its duplicate : *Held*, that this was no offence under S. 173, Penal Code. Refusal to sign and return the duplicate is not an act which prevents the service of the citation within the meaning of S. 173. *Emperor v. Ahmad Husain Khan*.

10 Cr. L. J. 435 :
3 I. C. 965 : 6 A. L. J. 777.

———S. 173—Offence under—Proof—Refusal to accept summons, whether offence.

In order to obtain a conviction under S. 173

PENAL CODE ACT (XLV OF 1860)

Penal Code, it is necessary to prove that the accused prevented the process-server from tendering the summons. Mere refusal to accept a summons when tendered does not amount to intentionally preventing service of summons, since under both the Civil and Criminal Codes of Procedure service can be effected by tender. *Zapanlis v. Emperor*.

21 Cr. L. J. 688 :
57 I. C. 928 : 3 U. B. R. 1920, 202 :
A. I. R. 1920 U. Bur. 18.

—S. 173—"Preventing personal service", meaning of.

A man who gets away from the serving officer with the obvious intention of not allowing him to hold any communication with him at all and shuts himself in his house, is intentionally preventing service either by tender or by delivery, and is guilty of an offence under S. 173, Penal Code. *Budhua v. Emperor*.

29 Cr. L. J. 263 :
107 I. C. 663 : 26 A. L. J. 107 :
A. I. R. 1928 All. 118.

—S. 173—Refusal to accept summons, if offence.

A Police constable took a summons to the accused for the purpose of serving it on him. Accused refused to take the summons and sign an acknowledgment : *Held*, that the act of the accused did not amount to an offence under S. 173, Penal Code, inasmuch as the summons had been sufficiently served within the meaning of S. 60, Cr. P. C., and the conduct of the accused did not amount to prevention of service of summons. *Debigir Tapdhari v. Emperor*.

26 Cr. L. J. 909 :
86 I. C. 973 : 23 A. L. J. 148 :
A. I. R. 1925 All. 322.

—S. 173—Refusal to receive summons—Offence.

A refusal to receive a summons is not an offence under S. 173 of the Penal Code. What seems to be required under the section is some act of opposition offered to the officer serving the process. *Thudamarawara v. Emperor*.

24 Cr. L. J. 737 :
74 I. C. 65 : 1 Rang. 49 :
2 Bur. L. J. 22 : A. I. R. 1923 Rang. 146.

—S. 173—What constitutes offence—Notice to attend inquiry, refusal to accept, if offence.

Refusal to accept a notice issued by a Police Officer under S. 160, Cr. P. C., requiring attendance at an inquiry does not amount to an offence under S. 173, Penal Code. *Bahadur v. Emperor*.

27 Cr. L. J. 284 :
92 I. C. 460 : 24 A. L. J. 215 :
A. I. R. 1926 All. 304.

—S. 173—What constitutes offence—Refusal to receive summons, whether offence.

Under the Cr. P. C. the mere tender of a summons is sufficient to effect service. A refusal to receive the summons does not, therefore, expose a person to the penalty

PENAL CODE ACT (XLV OF 1860)

provided by S. 173, Penal Code. *Sahdeo Rai v. Emperor*.

19 Cr. L. J. 746 :
46 I. C. 522 : 16 A. L. J. 453 :
40 All. 577 : A. I. R. 1918 All. 409.

—S. 173—What constitutes offence—Refusal to take subpoena, whether offence.

A mere refusal to accept a subpoena issued under S. 160, Cr. P. C., does not constitute an offence under S. 173, Penal Code. *Chandika Prasad v. Emperor*.

19 Cr. L. J. 801 (a) :
46 I. C. 817 : 21 O. C. 150 :
A. I. R. 1918 Oudh 412.

—S. 174.

See also (i) Contempt.

(ii) Contempt of Court.

(iii) Legal Practitioners Act, 1879, S. 30.

(iv) Madras Revenue Summons Act, 1809, S. 1.

(v) U. P. Land Revenue Act, 1901, Ss. 114, 147, 193.

—S. 174—Citation to appear issued under S. 147, U. P. Revenue Act, whether summons, notice or order.

Per Sen, J.—Where a citation has been issued to a person who is in arrear of Government revenue under S. 147, U. P. Land Revenue Act, the said citation is a summons within the meaning of S. 174, Penal Code. *Emperor v. Himanchal Singh*. (F.B.) 31 Cr. L. J. 546 :

123 I. C. 673 : 1930 A. L. J. 354 :
14 R. D. 566 : 52 All. 568 :
A. I. R. 1930 All. 265.

—S. 174—Complaint of offence under, if can be made under S. 476, Cr. P. C.

An order of a District Magistrate making a complaint for an offence under S. 174 of the Penal Code, is not appealable under S. 476-B, Cr. P. C. inasmuch as the offence under S. 174 of the Penal Code is not one of the offences for which a Court can make a complaint under S. 476 of the Cr. P. C. *P. J. Money v. Emperor*.

29 Cr. L. J. 912 :
111 I. C. 672 : 6 Rang. 529 :
A. I. R. 1928 Rang. 296.

—S. 174—Non-appearance by Advocate—Engagement in another Court if sufficient excuse for non-attendance.

Accused, an Advocate, was summoned to appear before a Magistrate to answer a charge under the Motor Vehicles Act. The summons was served on him the evening before he was required to appear. The next morning he was engaged in arguing a case in the High Court and sent another Advocate to the Magistrate's Court to explain his absence and ask for an adjournment. An adjournment was granted and he appeared before the Magistrate on the adjourned date : *Held*, that there was no intention to disobey the summons issued for the previous date of hearing and the accused could not, therefore, be convicted of an offence under S. 174, Penal Code. *J. R. Das v. Emperor*.

25 Cr. L. J. 229 :
76 I. C. 693 : 2 Bur. L. J. 146 :
1 Rang. 549 : A. I. R. 1924 Rang. 35.

PENAL CODE ACT (XLV OF 1860)

—S. 174—Non-attendance under illegal summons, if offence.

Under Rule 44 of the rules framed by the Local Government in regard to the sale of of ancestral land, a Collector is empowered to delegate his powers only to an Assistant Collector of the 1st class. He cannot delegate his authority to an Assistant Collector of the 2nd class, and therefore, the latter is not legally competent to issue summons, the disobedience of which would be no offence under S. 174, Penal Code. *Shiam Lal v. Emperor*.

15 Cr. L. J. 595 :
25 I. C. 347 : 12 A. L. J. 680 :
A. I. R. 1914 All. 519.

—S. 174—Offence under—Citation to defaulter, whether summons—Non-appearance, whether an offence.

The issue of a citation to an alleged defaulter under S. 147 of the U. P. Land Revenue Act, does not involve him in any legal liability to attend, and no offence under S. 174, Penal Code, is therefore, committed by non-appearance. *Banwari Lal v. Emperor*.

28 Cr. L. J. 153 :
99 I. C. 409 : 25 A. L. J. 38 :
49 All. 215 : A. I. R. 1927 All. 49.

—S. 174—Offence under—Complainant ordered to attend Court—Failure to attend—Case not taken up, if offence.

The complainant was ordered to attend Court on the date fixed for hearing of the case. He failed to attend but the Magistrate did not take up the case owing to other demands on his time : *Held*, that the complainant could not, under the circumstances, be convicted of an offence under S. 174, Penal Code. *Emperor v. Lalu*.

10 Cr. L. J. 576 :
4 I. C. 410 : 3 S. L. R. 155.

—S. 174—Offence under—Disobedience of summons—Illegal summons—Conviction, legality of—U. P. Land Revenue Act (III of 1901), Ss. 114, 193.

Where a Collector proceeded to decide the question of the confirmation of a partition proceeding submitted to him by an Assistant Collector under S. 114, Land Revenue Act, before the expiry of the term of appeal and issued summons to a person for attendance which was disobeyed : *Held*, that, inasmuch as the Collector was not legally competent to issue the summons under S. 193, Land Revenue Act before the expiry of the term of appeal, the person could not be convicted under S. 174, Penal Code. *Waris Ali v. Emperor*.

17 Cr. L. J. 471 :
36 I. C. 151 : 14 A. L. J. 1069 :
A. I. R. 1916 All. 96.

—S. 174—Offence under—Failing to appear and explain refusal to serve as coolies under illegal summons, if offence.

Certain persons in the district of Kumaun were summoned to appear before a *Tahsildar* to explain why they had refused to serve as coolies. Upon their failing to appear, they were prosecuted and convicted under S. 174, Penal Code : *Held*, the conviction was bad as

PENAL CODE ACT (XLV OF 1860)

they were not legally bound to appear before the *Tahsildar* who had no authority to issue the summonses. *Gopia v. Emperor*.

1 Cr. L. J. 497 :
24 A. W. N. 122.

—S. 174—Offence under—Legality of—Summons—If material.

In order to sustain a conviction under S. 174, Penal Code, it must be shown that the summons issued was issued by a public servant legally competent as such public servant to issue the same and the accused intentionally omitted to attend in pursuance of the summons. *Shiam Lal v. Emperor*.

15 Cr. L. J. 595 :
25 I. C. 347 : 12 A. L. J. 680 :
A. I. R. 1914 All. 519.

—S. 174—Omission to appear under, summons under U. P. Revenue Act, S. 147, if offence.

Per *Boys and Young, JJ.*—(*Sen, J.*, dissenting).—A citation to appear issued under S. 147, U. P. Land Revenue Act III of 1901, is not a summons, notice or order which the recipient is legally bound to obey within the meaning of S. 174, Penal Code. *Emperor v. Himanchal Singh*. (F. B.)

31 Cr. L. J. 546 :
123 I. C. 673 : 1930 A. L. J. 354 :
14 R. D. 566 : 52 All. 568 :
A. I. R. 1930 All. 265.

—S. 174—Procedure.

A Magistrate in whose Court the accused has failed to appear cannot try it. The prohibition is absolute and the consent or otherwise of the accused is immaterial. *Muhammad Din v. Emperor*.

36 Cr. L. J. 407 (2) :
153 I. C. 514 (1) : 35 P. L. R. 454 :
7 R. L. 442 (1) : A. I. R. 1934 Lah. 545 (1).

—S. 174—Procedure—Witness not attending in obedience to summons—Court to give opportunity of explaining his absence.

Before convicting a witness under S. 174, Penal Code, the Court is bound to decide whether there was an intentional disobedience to the summons after giving him an opportunity of explaining his absence. *Ramun v. Emperor*.

7 Cr. L. J. 226 :
2 P. W. R. Cr. 85.

—S. 174—Sanction to prosecute by Court whose order is disobeyed—Necessity of.

S. 174, Penal Code, is one of the sections referred to in S. 195, Cr. P. C., and having regard to the provisions of S. 487 of the Code, therefore, an offence under S. 174 cannot be tried by the officer whose order is disobeyed. Accused failed to appear in obedience to a lawful summons issued by a Magistrate, whereupon the Magistrate tried and convicted him under S. 174 of the Penal Code : *Held*, that the proceeding was illegal and must be set aside. *Deo Saran Tewari v. Emperor*.

19 Cr. L. J. 688 :
46 I. C. 48 : 16 A. L. J. 432 :
A. I. R. 1918 All. 320.

PENAL CODE ACT (XLV OF 1860)

—S. 174—What constitutes offence—
Failure to attend in obedience to illegal order of, whether offence.

Petitioner, who was the agent of bungalows in a Cantonment was, by a verbal order, required by the Cantonment Magistrate to attend his office in connection with the acquisition of bungalows for military purposes. Petitioner failed to obey this order and was convicted under S. 174, Penal Code; *Held*, that there was nothing to show that the order was one which the Magistrate issued in his capacity as a Magistrate, or which he was legally empowered to issue or which the petitioner was legally bound to obey, and that, therefore, the petitioner could not be convicted of an offence under S. 174, Penal Code. *Ram Chand v. Emperor*. 23 Cr. L. J. 230 : 66 I. C. 70.

—S. 174—What constitutes offence—
Failure of person called 'Munsif' in the Mianwali District to attend in obedience to an illegal order from a Tahsildar—If offence.

The Tahsildar is not legally competent to issue summons for the attendance in Courts of the persons who prepare and attest a list of cattle in the Mianwali District in order to make the Revenue authorities able to distribute the revenue over waste lands, and these persons called 'Munsifs' cannot be convicted for their non-attendance under S. 174, Penal Code. *Khola Ram v. Emperor*. 6 Cr. L. J. 107 : 4 P. R. Cr. 1907 : 8 P. L. R. 220 : 2 P. W. R. 81.

—S. 174—What constitutes offence—
Intentional disobedience of citation issued under Revenue Act, if offence.

A citation, issued under S. 174, U. P. Land Revenue Act, is an order to the defaulter to appear at the time and place named therein within the meaning of S. 174, Penal Code, and intentional disobedience of it is an offence under that section. *Ram Bali Singh v. Emperor*. 11 Cr. L. J. 250 : 5 I. C. 805 : 13 O. C. 55.

—S. 174—What constitutes offence—
Madras Revenue Summons Act (Mad. Act III of 1869), S. 1—Disobedience to summons issued by Tahsildar—Revenue enquiry held by Revenue Inspector under Tahsildar's order—Offence.

Accused, a Karnam, was summoned by the Tahsildar under S. 1 of Madras Act III of 1869 to appear before him on a certain day for enquiring into the correctness of the sub-divisions of fields. Accused failed to appear and was convicted under S. 174, Penal Code; *Held*, that the accused was guilty of an offence under S. 174, Penal Code, and that his conviction was right. *In re ; Venkatrao*. 11 Cr. L. J. 566 : 8 I. C. 133 : 8 M. L. T. 373.

—S. 174—What constitutes offence—
Non-attendance, due to illness, if offence.

If a person is sufficiently incapacitated by

PENAL CODE ACT (XLV OF 1860)

illness to have given up his ordinary avocations, this is sufficient excuse for him not to attend a Court in obedience to a summons. If he is so ill that his absence cannot be regarded as a wilful disobedience to the Court's order, the fact that he does not send a man to inform the Court of his illness does not render him liable to punishment. *Bohra Birbal v. Emperor*.

23 Cr. L. J. 208 :
65 I. C. 864 : 20 A. L. J. 192 :
A. I. R. 1922 All. 82.

—S. 174—What constitutes offence.

Non-attendance, therefore, in obedience to a summons issued by a Sub-Inspector of Police and served personally on an *Amin* requiring him to give evidence at a Police investigation constitutes an offence under S. 174, Indian Penal Code. *In re ; Gumpartai Venkataramiah*. 18 Cr. L. J. 733 : 40 I. C. 733 : A. I. R. 1918 Mad. 815.

—S. 174—What constitutes offence—
Subpoena, defective, failure to comply with, if offence.

A subpoena requiring a person to attend either at the *Thana* or wherever the Inspecting Officer might happen to be, is not legal subpoena as it does not require attendance at a definite place, and an omission to comply with it is not an offence punishable under S. 174, Penal Code. *Hukum Singh v. Emperor*. 27 Cr. L. J. 697 : 94 I. C. 889 : 24 A. L. J. 536 : A. I. R. 1926 All. 474.

—S. 174—What constitutes offence—
Summons not issued according to law—Accused's failure to appear, if offence.

Upon receipt of a petition complaining that accused had constructed a temple which, owing to its proximity to a mosque and graveyard, was objected to by the Muhammadans, and suggesting the likelihood of a breach of the peace, the Sub-Divisional Magistrate directed a Tahsildar to make inquiries, to record the statements of the persons complained against and to return the papers for orders. The Tahsildar sent his peon to fetch these persons, but as they failed to come, he issued a summons to them to appear, written on a form provided for cases under S. 193, Land Revenue Act, and not purporting to be under any section of the Cr. P. C., and on their failure to appear, he convicted them under S. 174, Penal Code; *Held*, that the proceedings were illegal *ab initio*. *Behari Lal v. Emperor*.

22 Cr. L. J. 79 :
59 I. C. 335 : A. I. R. 1920 All. 304.

—S. 174—What constitutes offence—
Warrant issued by Court without jurisdiction—Disobedience, if offence.

Disobedience to a warrant issued by a Court is not an offence where the Court had no jurisdiction to issue the warrant. *Pahawan Singh v. Emperor*. 27 Cr. L. J. 1344 : 98 I. C. 416.

PENAL CODE ACT (XLV OF 1959)

—S. 174—*What constitutes offence—Willful disobedience is gist of offence.*

Obiter.—What is made punishable by the law under S. 174, Penal Code, is an intentional disobedience to the summons of a Court, that is to say, non-attendance which amounts to wilful disobedience. *Mul Singh v. Emperor.*

24 Cr. L. J. 433 :

72 I. C. 593 : A. I. R. 1923 Lah 163.

—S. 175.

See also (i) C. P. C., 1908, O. XI, r. 21.

(ii) Cr. P. C., 1898, Ss. 94, 96, 157.

—S. 175—Omission to produce unnecessary document, if offence.

Where an accused was called upon to produce a book in Court and he failed to do so, and the Court thought that the production of book was not necessary for the decision of the case, it would be improper to prosecute the accused for intentionally disobeying the Court's order. *Mithan Lal v. Emperor.*

11 Cr. L. J. 20 :

5 I. C. 17.

—S. 175 — Punishment — Disobeying order for production or inspection of documents — C. P. C. (Act V of 1908), O. XI, R. 21.

A party to a suit failing to comply with an order for production or inspection of documents can be dealt with only in the manner prescribed by Order XI, R. 21, C. P. C., 1908, and is not punishable under S. 175, or any other section of the Penal Code. *Ram Chand v. Emperor.*

11 Cr. L. J. 386 :

6 I. C. 623 : 15 P. W. R. 1910 Cr. :

15 P. R. 1910 Cr.

—S. 175—What constitutes offence—Failure to produce unnecessary documents called for under S. 91, Cr. P. C., when offence.

Where production of a document is not necessary for the decision of the case in which the document is called for, the person failing to produce the document is not guilty under S. 175. *Damri Ram v. Emperor.*

19 Cr. L. J. 217 :

43 I. C. 793 : 4 P. L. W. 65 :

A. I. R. 1918 Pat. 590.

—S. 175 — What constitutes offence — Omission to produce document by an accused on trial, if offence.

Where an accused, while on his trial for offences under Ss. 471 and 193, I. P. C., being directed to produce a certain incriminating document, did not produce the document, and in consequence, the prosecution against him failed : *Held*, the accused could not be convicted under S. 175, I. P. C., for his omission to produce the document. *Iskwar Chandra Ghoshal v. Emperor.*

8 Cr. L. J. 224 :

12 C. W. N. 1016 : 8 C. L. J. 320.

—S. 175—What constitutes offence—Search warrant, illegally addressed to accused on trial—Failure to comply, if offence.

PENAL CODE ACT (XLV OF 1860)

A search warrant under S. 96, Cr. P. C., cannot be addressed to an accused person on his trial and he cannot be prosecuted under S. 175 for failure to produce the document mentioned in the warrant. *Raj Chandra v. Hara Kishore.*

12 Cr. L. J. 98 :

9 I. C. 564.

—S. 175—What constitutes offence—Sub-Registrar, power of, to order production—Party, if legally bound to produce it—Non-production, if an offence.

A person called upon by a Sub-Registrar to produce the original document which was registered in his office to enable him to compare it with the copy of the deed in the Registration Office Register, which, it was suspected, was tampered with, is not legally bound to produce it, and he cannot, on his failure to do so, be convicted under S. 175, Penal Code. *Asmatullah v. Emperor.*

3 Cr. L. J. 114 .

2 C. L. J. 621.

—S. 176.

See also (i) Cr. P. C., 1898, Ss. 45, 87, 403, 505, 565 (3).

(ii) N.-W. P. and Ondh Land Revenue Act, 1901, S. 46.

(iii) Punjab Jail Manual, R. 404 (2).

(iv) U. P. Land Revenue Act, 1901, S. 46.

—S. 176—Co-existent obligation of another, if excuse.

The mere fact that another person was also present at the time of the occurrence and was under a similar obligation to report, does not justify omission to report. *In re : Pavallimanakkal Narayan Nampudripad.*

16 Cr. L. J. 219 :

27 I. C. 843 : 17 M. L. T. 263 :

1915 M. W. N. 276 : A. I. R. 1916 Mad. 493.

—S. 176—Conviction of some only—Persons legally bound to give information to Police—Omission by some of such persons, whether offence.

The fact that some persons bound to give information have given that information while other persons who might be bound to give that information have omitted to do so, is no ground for their prosecution and conviction under S. 176, Penal Code. *Bhagwantrao v. Emperor.*

26 Cr. L. J. 1489 :

90 I. C. 145 : A. I. R. 1926 Nag. 217.

—S. 176 — "Intentionally," meaning of.

Where a person is under a legal duty to report certain facts and fails to report them, he must be presumed to intend to conceal them, unless he can show that he had reason to suppose that the authority to which the report was due had the information from other sources. *In re : Pavallimanakkal Narayan Nampudripad.*

16 Cr. L. J. 219 :

27 I. C. 843 : 17 M. L. T. 263 :

1915 M. W. N. 276 :

A. I. R. 1916 Mad. 493.

PENAL CODE ACT (XLV OF 1860)

———S. 176—"Official Register," meaning of—Refusing to furnish information to the Patwari regarding collections made by a zamindar—Land Revenue Act (United Provinces), Ss. 32, 46 and 234.

The words "official register" in S. 176, I. P. C., do not refer exclusively to registers prescribed by S. 82 of N.-W. P. and Oudh Land Revenue Act, III of 1901. A *jamabandi* prepared under rules made under S. 234 of the same Act is a register answering this description. *Emperor v. Suraj Bakhsh Singh*.

6 Cr. L. J. 301 :
10 O. C. 238.

———S. 176—Sentence.

A sentence passed under S. 176, Penal Code, should commence at once according to the rule contained in R. 404 (2) of the Punjab Jail Manual and should not be postponed till the expiry of the term of imprisonment which the accused is undergoing in default of furnishing security. *Emperor v. Chet Singh*.

20 Cr. L. J. 316 (a) :
50 I. C. 492 : 97 P. L. R. 1918 :
A. I. R. 1919 Lah. 136.

———S. 176—What constitutes offence—Failure to give information not bound to give, if offence.

The mere fact that a *zamindar* raised more than the recorded rent from his tenant for a long time without giving information about it to the officials concerned, does not render him liable to be convicted for an offence under S. 176, Penal Code, read with S. 46 of the U. P. Land Revenue Act, inasmuch as under the latter provision, he is not legally bound to give the information to the public servants concerned in the absence of a requisition for such information from a public servant. *Buddh Singh v. Emperor*.

27 Cr. L. J. 1367 :
98 I. C. 487 : A. I. R. 1927 All. 111.

———S. 176—What constitutes offence—Mukaddam receiving information of non-bailable offence—Agent omitting to report, Mukaddam, duty of, to report.

When a *Mukaddam* receives information that a non-bailable offence has been committed in a village of which he is the *Mukaddam* and he knows that his agent has not reported the offence, it is his duty to report the offence under S. 45, Cr. P. C., an omission to do so, will constitute an offence under S. 176, Penal Code. *Local Government v. Maniharsingh*.

12 Cr. L. J. 441 :
11 I. C. 785 : 7 N. L. R. 101.

———S. 176—What constitutes offence.

Under certain specified circumstances covered by S. 45, Cr. P. C., 1898, the concealment of suspicious death is punishable under S. 176, Penal Code, but mere servants who are entirely dependent on their master in whose house the death takes place do not come within the category of persons who are bound to communicate an occurrence of this sort. *Thakri v. Emperor*.

12 Cr. L. J. 425 :
11 I. C. 609 : 17 P. W. R. 1911 Cr.

PENAL CODE ACT (XLV OF 1860)

———S. 176—What constitutes offence—Village Magistrate receiving information of loss or theft of jewel—Failure to report to Police—Conviction—Legality of.

A Village Magistrate was convicted under S. 176, Penal Code, for omitting to furnish to the Police information that a jewel of the daughter of a certain person was either stolen or lost : *Held*, that as the information did not relate to the commission of the non-bailable offence of theft, which the Village Magistrate was bound to communicate to the Magistrate or Police, under S. 45 (1) (c), Cr. P. C., his conviction under S. 176, I. P. C., was illegal. *In re: Vemi Reddi Lacha Reddi*.

9 Cr. L. J. 224 :
1 I. C. 245 : 5 M. L. T. 257.

———S. 176—What constitutes offence.

Where a *zamindar* refuses to give the *patwari* of the village information as to the collection of rent made by him, he is liable to be convicted of an offence under S. 176, I. P. C. *Emperor v. Suraj Bakhsh Singh*.

6 Cr. L. J. 301 :
10 O. C. 238.

———Ss. 176, 189—Charge and trial under S. 189—Conviction altered on appeal to one under S. 176—Legality of.

The conviction of a person tried for an offence under S. 189, Penal Code, and not called upon in the trial Court to answer a charge under S. 176 of that Code, cannot be altered on appeal to a conviction under the latter section, inasmuch as (i) the offence under S. 176 is one of a different nature from the offence under S. 189 and is constituted by an entirely different set of facts, and (ii) a prosecution for an offence under S. 176 requires sanction under S. 195, Cr. P. C., while such sanction is not necessary for a prosecution for an offence under S. 189. *Arjan Mal v. Emperor*.

23 Cr. L. J. 709 :
69 I. C. 437 : 3 Lah. 440 :
A. I. R. 1923 Lah. 260.

———S. 177.

See also (i) Cr. P. C., 1898, S. 45.

(ii) Income Tax Act; 1922,
S. 22.

(iii) N.-W. P. and Oudh Land
Revenue Act. 1901, S. 46.

———S. 177—Applicability—Person must be legally bound to give information.

S. 177, Penal Code, has no application to a case in which a false statement has been made to the Police by a person who was under no legal obligation or who was not legally bound to give that information. Such a person may be liable for prosecution under S. 182, Penal Code. *Lakhan v. Emperor*.

38 Cr. L. J. 57 :
165 I. C. 769 : 9 R. A. 312 :
I. L. R. 1937 All. 162 :
1936 A. L. J. 1064 :
1936 A. W. R. 905 :
A. I. R. 1936 All. 788.

PENAL CODE ACT (XLV OF 1860)

———S. 177—False report to Revenue Surveyor for securing mutation of name, if offence.

By reporting falsely that his father had died, the petitioner induced the Revenue Surveyor to enter his name in the Revenue Register as owner of certain gardens and paddy lands in succession to his father: *Hrid*, that the petitioner had not committed an offence under Ss. 199, 177 or 193, but that he had committed an offence under S. 182, Penal Code. *Ismail v. Emperor*.

15 Cr. L. J. 603 :
25 I. C. 515 : A. I. R. 1914 L. Bur. 30.

———S. 177—Giving false information when not bound, if offence.

Contract between Government and Municipality under which Municipal doctor is to furnish certain information - In the absence of contract with doctor, he is not legally bound to furnish information. *Ganpat Subran Kashyapi v. Emperor*.

35 Cr. L. J. 1429 :
151 I. C. 867 : 36 Bom. L. R. 373 :
58 Bom. 401 : 7 R. B. 85 :
A. I. R. 1934 Bom. 202.

———S. 177—Ingredients.

To bring a case under S. 177, Penal Code, it is absolutely necessary to prove that the informant was legally bound to give the information, which is proved to be false, to the Police. *Lakhan v. Emperor*.

38 Cr. L. J. 57 :
165 I. C. 769 : 9 R. A. 312 :
1936 A. L. J. 1064 :
I. L. R. 1937 All. 162 :
1936 A. W. R. 905 :
A. I. R. 1936 All. 788.

———S. 177—Interpretation.

The words "any subject" occurring in S. 177, Penal Code, have reference to the matters enumerated in S. 45, Cr. P. C., or to matters about which a person is "legally bound" to give information under some other law, and to no other subjects. *Lakhan v. Emperor*.

38 Cr. L. J. 57 :
165 I. C. 769 : 1936 A. L. J. 1064 :
9 R. A. 312 : I. L. R. 1937 All. 162 :
1936 A. W. R. 905 : A. I. R. 1936 All. 788.

———S. 177—Sentence—*Fine, quantum of.*

Where an accused person is convicted for having made a false return, it is not proper to fine him the amount which the Income-tax Authorities might have levied as penal assessment. In a case of this nature the Courts might well confine themselves to inflicting a penalty of imprisonment, if they think that is necessary, together with making the accused contribute reasonably towards the costs of his own prosecution. *K. C. V. Reddy v. Emperor*.

31 Cr. L. J. 793 :
125 I. C. 266 : 8 Rang. 25 :
A. I. R. 1930 Rang. 201.

———S. 177—Sentence.

Lawyer assessee deliberately keeping assessable income out of return—Assessee persisting in maintaining defence which is false to his

PENAL CODE ACT (XLV OF 1860)

knowledge—Punishment of Rs. 1,000 plus one month's simple imprisonment, held deterrent and fitting. *P. D. Patel v. Emperor*.

35 Cr. L. J. 131 :
146 I. C. 653 : 6 R. Rang. 113 :
A. I. R. 1933 Rang. 292.

———S. 177—What constitutes offence.

A mukhia of a village who had taken away a girl from the village, signed a *panchayatnama* stating that a certain girl had died by having been drowned and sent it to the Police. The accused was prosecuted under S. 177, Penal Code: *Held*, Per Sulaiman, C. J. and Raghpal Singh, J. Benoit, J., (contra), that as none of the events enumerated in Cl. (d) of S. 45, Cr. P. C., had happened, it could not be said that the accused was legally bound to give any information to the Police and that the false information which he gave to the Police did not bring his case within the four corners of S. 177, Penal Code. *Lakhan v. Emperor*.

38 Cr. L. J. 57 :
165 I. C. 769 : 1936 A. L. J. 1064 :
9 R. A. 312 : I. L. R. 1937 All. 162 :
1936 A. W. R. 905 : A. I. R. 1936 All. 788.

———S. 177—What constitutes offence—Giving false information when not bound to give, if offence.

Furnishing false information to public officer when not legally bound, is not an offence under S. 177—Person filing false return as to income, without being served under Income Tax Act, S. 22 (2), is not guilty under S. 177. *Hari Chaud v. Emperor*.

36 Cr. L. J. 176 :
152 I. C. 682 : 35 P. L. R. 544 :
15 Lah. 832 : 7 R. L. 319 :
A. I. R. 1934 Lah. 626.

———S. 177—What constitutes offence—Person not legally bound to furnish information—Giving false information, if offence.

The decree-holder in a certain case received satisfaction of the decree before the warrant of attachment was executed, and, when the *Amin* went to execute the warrant, endorsed on it that the warrant need not be executed since he had given time to the judgment-debtor, but did not mention that the decree was satisfied. He, however, certified satisfaction to the Court. On the facts becoming known to the judgment-debtor-petitioner he applied to the Munsif to sanction the counter-petitioner's prosecution for giving false information to a public servant under S. 177, Penal Code. The Munsif refused sanction. The petitioner preferred this petition to the Chief Court: *Held*, that the counter-petitioner was not under any legal obligation to furnish information to the *Amin* and was not, therefore, guilty of an offence under S. 177, Penal Code, and that the order of the Munsif refusing sanction was right. *Narasimmayya v. Achayya Setty*.

9 Cr. L. J. 328 :
12 M. C. C. R. 80.

———S. 177—What constitutes offence.

Where the petitioner in a return represented rent payable to him in respect of his subordinate holding to be in excess of that which

PENAL CODE ACT (XLV OF 1860)

the Magistrate found that the tenant was actually bound to pay: *Held*, that as under S. 95 of the Act, such a return is admissible in evidence against the petitioner and not in his favour, and as he did not undervalue his property, he could not be convicted under S. 177, Penal Code. *Mahommad Wasil v. Emperor*.

11 Cr. L. J. 11 :

4 I. C. 578 : 13 C. W. N. 191 :

5 M. L. T. 93.

———S. 178—Refusing evidence in civil cases—*When not paid expenses, if offence.*

A witness in a civil case is entitled to payment of his expenses before he gives evidence. If he is not paid, he is not bound to appear at all in answer to the summons, and it is no offence to refuse to give evidence on the ground of insufficient payment of expenses before the Judge has decided that the payment made was sufficient. *Nga Pyo v. Emperor*.

7 Cr. L. J. 208 :

U. B. R. Cr. 1907—1909 Cr. Vol. I, Penal Code, p. 9 : 14 Bur. L. R. 216.

———S. 179.

See also (i) Cr. P. C., 1898, Ss. 161, 195, 480.

(ii) Madras Panchayat Courts Act, 1920, S. 781.

(iii) Penal Code, 1860, Ss. 178, 228.

———S. 179—Applicability—*Refusal to answer questions put by Police Officer during investigation, whether punishable under S. 179, Penal Code.*

Refusal to answer questions put by a Police Officer making an investigation under Chap. XIV of the Cr. P. C. is not punishable under S. 179, Penal Code. *Muwzangayi v. Emperor*.

32 Cr. L. J. 201 :

128 I. C. 833 : 8 Rang. 511.

I. R. 1931 Rang. 49 : A. I. R. 1931 Rang. 26.

———S. 179—Conviction.

Complainant examined as prosecution witness—Examination relevant—Refusal to answer questions touching a subject on which he is bound to state the truth—Conviction under S. 179 is legal. *Moti Lal v. Emperor*.

36 Cr. L. J. 446 :

153 I. C. 907 : 1935 A. W. R. 123 :

1935 A. L. J. 299 : 7 R. A. 652 :

A. I. R. 1935 All. 267.

———S. 179—Conviction.

Cross-examination of witness—Question as to the result of a case—Witness denying knowledge—Subsequent answer that case was dismissed—Conviction under S. 179 is not maintainable. *Bhardul Kurmi v. Emperor*.

35 Cr. L. J. 1036 (1) :

149 I. C. 1061 (1) : 4 A. W. R. 542 :

1934 A. L. J. 427 : 6 R. A. 1015 (1) :

A. I. R. 1934 All. 136.

———S. 179—Offence under—Cr. P. C. (Act V of 1898), S. 480—*Witness refusing to answer question—Offence under S. 179 or S. 228, Penal Code.*

PENAL CODE ACT (XLV OF 1860)

During a trial in the Court of Session, accused was examined as a witness, and in answer to repeated questions by the Court as to what a certain other witness has told him regarding the occurrence, the accused persisted in saying: "He named no one," and refused to give any further answer. He was convicted of an offence under S. 228, Penal Code, on proceedings taken under S. 480, Cr. P. C. : *Held*, that the conduct of the accused did not fall under S. 228, Penal Code, but came under S. 179, Penal Code, and as the Sessions Judge could have taken action under that section, the conviction could, on appeal, be altered to one under S. 179, Penal Code. *Har Narain v. Emperor*.

26 Cr. L. J. 354 :

84 I. C. 706 : 22 A. L. J. 1100 :

A. I. R. 1925 All. 239.

———S. 179—Offence under S. 178—*Accused if can be convicted under S. 179 also—Refusing to answer questions.*

Quære. Whether a person who has once committed an offence under S. 178, Penal Code, can be held to have committed a further offence under S. 179, Penal Code, when he refuses to answer the questions put to him. *Bepin Chandra Pal v. Emperor*. 7 Cr. L. J. 95 :

7 C. L. J. 63 : 35 Cal. 161.

———S. 180.

See also (i) Cr. P. C., 1908, S. 151.

(ii) Cr. P. C., 1898, S. 364.

———S. 180—Offence under.

Accused's refusal to answer questions and refusal to sign constitutes obstruction to process of Court rendering him liable to punishment under S. 180. *Moti Lal v. Emperor*.

36 Cr. L. J. 1098 :

157 I. C. 146 : 1935 A. L. J. 1058 :

8 R. A. 106 : 1935 A. W. R. 800 :

A. I. R. 1935 All. 652.

———S. 180—Offence under.

An accused person who refuses to sign the record of his examination, does not commit an offence punishable under S. 180, Penal Code. *Emperor v. Ba Tin*. 4 Cr. L. J. 205 :

3 L. B. R. 199 : 12 Bur. L. R. 315.

———S. 180—Refusal to sign—*Statement recorded under S. 364, Cr. P. C., if offence.*

Cl. 2 of S. 364, Cr. P. C., is mandatory. An accused person is not bound to make any statement whatsoever, but if he does make and if he is examined by the Magistrate and replies to the Magistrate's questions, the Court is bound to reduce the statement to writing in the form of questions and answers and the Magistrate is bound to sign it, as also is the accused ; and if the latter refuses to do so, he is guilty of an offence under S. 180, Penal Code. *Umar Khan v. Emperor*. 18 Cr. L. J. 559 :

39 I. C. 703 : 15 A. L. J. 291 :

39 All. 399 : A. I. R. 1917 All. 48.

———S. 180—*Refusing to sign when entitled to refuse under Cr. P. C., if offence.*

There is no legal obligation upon witnesses in civil cases to sign or thumb-mark their deposi-

PENAL CODE ACT (XLV OF 1860)

tion. Courts cannot order but can doubtless ask them to do so, and if they refuse, they cannot be compelled, and are not liable to prosecution for an offence under S. 180, Penal Code, S. 151; C. P. C., does not authorize a Judge to force a witness to sign his deposition. *Emperor v. Fateh Ali*. 13 Cr. L. J. 713 : 16 I. C. 521 : 8 P. R. 1912 Cr. : 26 P. W. R. 1912 Cr. : 245 P. L. R. 1912.

—S. 181.

See also (i) Cr. P. C., 1898, Ss. 195, 423.

(ii) Oaths Act, 1873, S. 4.

(iii) Penal Code, 1860, S. 193.

—S. 181—Conviction—Alteration of—Prosecution under S. 181—Power of Appellate Court to change it to one under S. 193.

Where prosecution is legally instituted by the Civil Court under S. 181, Penal Code, the Appellate Court can under S. 423, Cr. P. C., alter the finding to S. 193, Penal Code, and convict under it. Even if the prosecution has been launched under an inappropriate section, the Appellate Court has power to do this. *Nathusingh v. Emperor*.

38 Cr. L. J. 455 :
167 I. C. 845 : I. L. R. 1937 Nag. 102 :
9 R. N. 222 : A. I. R. 1936 Nag. 263.

—S. 181—Ingredients—False statement made in good faith, if offence.

A witness may in good faith say what in fact is incorrect ; but this will not expose him to the penalty of perjury. *Ghanshamdas Pursumal v. Emperor*.

35 Cr. L. J. 519 (2) :
147 I. C. 1019 : 6 R. S. 171 :
A. I. R. 1933 Sind 412.

—S. 181—Offence under—Person making false statement in affidavit, if guilty under S. 181.

The Magistrate does not satisfy the definition in S. 4, Oaths Act, of a Court or a person authorized to administer oaths and affirmations. Consequently, a person making a false statement in such affidavit is not guilty of an offence under S. 181, Penal Code. *Kamahshya Prasad Dalal v. Emperor*.

41 Cr. L. J. 21 :
184 I. C. 468 : I. L. R. 1939, 2 Cal. 459 :
43 C. W. N. 1033 : 12 R. C. 235 :
A. I. R. 1939 Cal. 657.

—S. 182.

—Applicability.

—Burden of proof.

—Cognizance.

—Conviction under.

—Evidence. :.

—'False report', what amounts to.

—Give information.

—Ingredients.

—Interference by High Court.

—Interpretation.

—Knowledge.

—Offence under.

—Place of trial.

—Power of Police to start proceedings under.

—Procedure.

PENAL CODE ACT (XLV OF 1860)

—Sanction to prosecute.

—Sanction under S. 193, Cr. P. C., necessity of.

—Scope.

—S. 182.

See also (i) Cr. P. C., 1898, Ss. 154, 161, 195, 195 (1), 195 (1) (a), 195 (1) (a) (b), 195 (1) (b), 195 (b), 249, 342, 439, 476, 517, 532, 537.

(ii) Penal Code, 1860, Ss. 107, 211.

—S. 182—Applicability—Applicability of S. 182 to cases of false information given during investigation.

If a witness answers questions because he is compelled to answer by reason of the powers of the Police, that in itself may well be sufficient to negative the guilty intent or knowledge necessary for a conviction under S. 182, Penal Code. The information is then not so much given as taken. But to hold that S. 182, Penal Code, can never apply to false information given to the Police during the course of an investigation, is to go further than the words of S. 182, Penal Code, or the public interest properly allows. *Jhamatmal Alumat v. Emperor*.

41 Cr. L. J. 8 :
184 I. C. 243 : 12 R. S. 100 :
A. I. R. 1939 Sind 274.

—S. 182—Applicability—Inquiry under S. 161, Cr. P. C. (Act V of 1898), by Police Officer—Information given during such investigation—Whether comes under S. 182.

A reasonable interpretation of the words of S. 182, Penal Code, is to include information even if it is given to a Police Officer in the course of an investigation under S. 161, Cr. P. C., in reply to questions put by him. There is no reason to insert in the statutory provisions of S. 182 words that are not there and thus to restrict unduly the meaning of the words and to reduce the efficacy of the section in dealing with the mischief with which it was designed to deal. The section is not confined to information which is volunteered and which falls under S. 154, Cr. P. C. *Emperor v. Gopal-das Khemchand*.

37 Cr. L. J. 870 :
163 I. C. 910 : 30 S. L. R. 75 :
9 R. S. 24 : A. I. R. 1936 Sind 94.

—S. 182—Applicability—Petition to District Magistrate to unlock house containing false allegations, whether falls within scope of section.

S. 182, Cl (a) of the Penal Code, applies to a case in which it is intended that a public servant should do or omit to do something which he ought to do or omit to do if he knew the true facts, that is, which he would be legally justified in doing or omitting to do if he knew the true facts. Asking a Magistrate to do an act which would be an illegal act even if the true facts were stated to him, would not come within the purview of the section. Accused petitioned the District Magistrate praying that as certain tenants occupying his house had absconded leaving the house locked up, the

PENAL CODE ACT (XLV OF 1860)

house might be unlocked to enable him to execute the necessary repairs. His application was sent for compliance and report to the Police, who reported that the allegations contained in the petition were untrue, upon which the District Magistrate sanctioned his prosecution under S. 182 of the Penal Code: *Held*, that the section was inapplicable to the circumstances of the present case. *Manohar v. Emperor*.

19 Cr. L. J. 895 :

47 I. C. 91 : 16 A. L. J. 614 :
A. I. R. 1918 All. 85.

-----S. 182—*Applicability*.

S. 182 applies to a statement made during the investigation of a case. *Bodhan Garain v. Emperor*.

34 Cr. L. J. 1216 :

146 I. C. 234 : 14 P. L. R. 541 :
6 R. P. 246 (1) : A. I. R. 1933 Pat. 555 (1).

-----S. 182—*Burden of proof*.

In a prosecution under S. 182, Penal Code, for giving false information, the burden lies on the prosecution to prove that the accused knew or believed the information to be false. *Gopal Kahar v. Emperor*.

22 Cr. L. J. 347 :

61 I. C. 171.

-----S. 182—*Burden of proof—On whom lies*.

In a prosecution for an offence under S. 182, Penal Code, the burden of proof cannot be laid upon the accused. It is for the prosecution to show that the information given was false, not for the accused to show that it was true. *Nga Lu Po v. Emperor*.

10 Cr. L. J. 12 :

U R. R. Cr. 1908.

-----S. 182—*Cognizance*.

A prosecution under S. 182, Penal Code, cannot be permitted whether the offence committed amounts to one under S. 211, Penal Code. *Rambrose v. Emperor*.

30 Cr. L. J. 342 :

114 I. C. 685 : 6 Rang. 578 :

I. R. 1929 Rang. 77 :

A. I. R. 1928 Rang. 254.

-----S. 182—*Cognizance—Acquittal of charge under S. 211—No subsequent trial under S. 182*.

Once a person is acquitted of a charge under S. 211, he cannot be subsequently tried on the same facts for an offence under S. 182. *Ganpati Bhatta v. Emperor*.

14 Cr. L. J. 214 (b) :

19 I. C. 310 : 24 M. L. J. 463 :

13 M. L. T. 360 : 36 Mad. 308.

-----S. 182—*Cognizance—False information to Police followed by complaint to Magistrate—Police Officer, whether competent to prefer complaint under S. 182*.

M gave information to a Police Officer that certain persons had stolen his property, subsequently he made a complaint to a Magistrate to the same effect. The Police in their investigation came to the conclusion that the information given by M was false. The Magistrate also called upon the Police for a report. The Police reported that the complaint was false.

PENAL CODE ACT (XLV OF 1860)

But as M asked for an opportunity to produce his witnesses, the Magistrate after examining the witnesses fixed a date and issued summons to the accused to appear. On the date fixed, M and his witnesses did not appear. So the Magistrate discharged the accused. Upon this the Police Officer to whom the false information was given laid a complaint against M under S. 182, Penal Code: *Held*, that the bare fact that M had subsequently made a complaint to a Magistrate and then dropped proceedings was no bar to the Police Officer, to whom the false information had been given, making a complaint of an offence under S. 182, Penal Code. *Mula v. Emperor*.

20 Cr. L. J. 114 :

49 I. C. 98 : 17 A. L. J. 32 :

A. I. R. 1919 All. 159.

-----S. 182—*Cognizance*.

Where a person gives false information to the Police and subsequently makes a complaint in Court, the fact of his having made a complaint is no bar to the Court proceeding with the trial of the offence under S. 182, Penal Code. *Bakshi v. Emperor*.

25 Cr. L. J. 729 :

81 I. C. 217 : 21 A. L. J. 805 :

46 All. 43 : A. I. R. 1924 All. 187.

-----S. 182—*Conviction under—Legality of—False information—False charge—Procedure*.

Where there have been Court proceedings in consequence of a false report to the Police, S. 211, Penal Code, is the appropriate section to apply and is so in any event, where the case is a serious one, but this does not make a prosecution under S. 182, of the Code illegal. *Ma Saw Yin v. Emperor*.

23 Cr. L. J. 55 :

64 I. C. 839 : 11 L. B. R. 43 :

A. I. R. 1921 L. Bur. 43.

-----S. 182—*Evidence—Giving false information of threatened breach of peace—Proof of*.

Where proceedings are initiated against a person under S. 182, Penal Code, for giving false information of a threatened breach of the peace, it is necessary for the prosecution to prove not merely an absence of a reasonable and probable cause for giving the information but a positive knowledge or belief of the falsity of the information given. *Brindaban v. Emperor*.

20 Cr. L. J. 791 :

53 I. C. 695 : 6 O. L. J. 457 :

A. I. R. 1919 Oudh 348.

-----S. 182—*'False report'—What amounts to*.

The accused said to an officer, "I find there has been a theft, I suspect the persons named and I want an enquiry to be made": *Held* (1) that the statement did not amount to a charge, but that if it was false, it amounted to a false report within the meaning of S. 182, Penal Code; (2) that in dealing with the case under S. 182, the Court must be satisfied beyond doubt that the accused had no reasonable ground at all for believing that an attempt

PENAL CODE ACT (XLV OF 1860)

had been made upon his property and that the whole story was an invention. *Mathura Parsad v. Emperor*. 18 Cr. L. J. 1017 :

42 I. C. 761 : 15 A. L. J. 767 : 39 All. 715 :
A. I. R. 1917 All. 223.

————S. 182—Give information—Meaning of.

A statement made under S. 161, Cr. P. C. 1898, in answer to questions put by the Police Officer investigating the case, does not amount to giving information within the meaning of S. 182, Penal Code. The expression "give information" in the latter section means to volunteer information and is not intended to apply to a statement made in answer to questions put by a public servant. *Mangu v. Emperor*.

15 Cr. L. J. 650 :
25 I. C. 978 : 35 P. W. R. 1914 Cr. :
227 P. L. R. 1914 : A. I. R. 1914 Lah. 360.

————S. 182—Ingredients — Accused's act mala fide or malicious—Effect of.

To constitute the offence punishable under S. 182, Penal Code, it is necessary that the information given should be information which the accused person knows or believes to be false. It is not sufficient that he had reason to believe it to be false or that he did not believe it to be true but there must have been positive knowledge or belief that it was false. *Sardar Khan v. Emperor*.

30 Cr. L. J. 1008 :
119 I. C. 230 : I. R. 1929 Lah. 838 :
30 P. L. R. 655 : 11 L. L. J. 495 :
A. I. R. 1930 Lah. 54.

————S. 182—Ingredients — Intention or knowledge, if material.

S. 182, Penal Code, requires that information which is false or which is believed to be false, should be given to a public servant with a particular intention or knowledge and if the information is known to be false and is given with the intention of causing a public servant to do or omit to do anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him or to use the lawful powers of such public servant to the injury or annoyance of any person, then the offence is committed. The fact that the public servant did not in fact do or omit to do anything or did not use his lawful power in consequence is not a deciding factor. The guilt of the accused lies in his intention or knowledge and a man's intention or knowledge must be judged from his acts and the surrounding circumstances. *Emperor v. Gopaldas Khemchand*. 37 Cr. L. J. 870 :

163 I. C. 910 : 30 S. L. R. 75 :
9 R. S. 24 : A. I. R. 1936 Sind 94.

————S. 182—Ingredients of.

To bring a case within S. 182, Penal Code, it is necessary for the prosecution to establish not merely that the information given by the respondents was in fact false, but that the circumstances in which the information was given were such that the

PENAL CODE ACT (XLV OF 1860)

only reasonable inference to be drawn is that they knew or believed it to be false. *Emperor v. Kartar Singh*. 29 Cr. L. J. 753 :
110 I. C. 785.

————S. 182—Ingredients.

S. 182, Penal Code, relates only to cases of information given to officials with the intention of causing or with knowledge that it is likely to cause that official to do or omit to do something, which he ought not to do, or omit to do, or to use his lawful power to the injury or annoyance of any person. *Emperor v. Ram Krishna*.

5 Cr. L. J. 105 :
9 Bom. L. R. 33 : I. L. R. 31 Bom. 204.

————S. 182—Ingredients.

The allegations in complaint under S. 182 should contain the ingredients of an offence, for it is essential, in order to secure a conviction under this section, that the information given by the accused must have been known or believed to be false by him at the time when he gave it. *Maung Bo Ni v. Emperor*. 37 Cr. L. J. 9 (2) :

159 I. C. 95 : 8 R. Rang. 248 (1) :
A. I. R. 1935 Rang. 97.

————S. 182—Interference by High Court.

It is a question of expediency whether the High Court will quash a conviction under S. 182 and direct a trial under S. 211, Penal Code. *Ma Saw Yin v. Emperor*.

23 Cr. L. J. 55 :
64 I. C. 839 : 11 L. B. R. 43 :
A. I. R. 1921 L. Bur. 43.

————S. 182—Interpretation.

A statement made by a witness to the Police under the provisions of S. 161, Cr. P. C., is not "an information given to a public servant", within the meaning of S. 182. *Maung Bo Ni v. Emperor*. 37 Cr. L. J. 9 (2) :

159 I. C. 95 : 8 R. Rang. 248 (1) :
A. I. R. 1935 Rang. 97.

————S. 182—Interpretation—"Give information", meaning of.

The words "give information" in S. 182, Penal Code, should not be interpreted as necessarily meaning "volunteer information", in the sense that must be information on some matter which is not already under inquiry by a public servant. *Biswanath Singh v. Emperor*.

28 Cr. L. J. 872 :
104 I. C. 712 : A. I. R. 1928 Pat. 56.

————S. 182—Interpretation—"Give", whether means "volunteer".

Obiter. The word "give" in S. 182, Penal Code, does not bear the restricted meaning of the word "volunteer". *Sullan v. C. De M. Wellbourne*. 26 Cr. L. J. 1532 :

90 I. C. 316 : 3 Rang. 577 :
4 Bur. L. J. 261 : A. I. R. 1925 Rang. 364.

PENAL CODE ACT (XLV OF 1860)

———S. 182—*Interpretation*—‘Give information’, meaning of—Statement to Police Officer in inquiry under S. 161, Cr. P. C. (Act V of 1898)—Statement of witness called by defence in Departmental enquiry—Whether can form basis of conviction.

The expression ‘gives information,’ in S. 182, Penal Code, means to volunteer information, and is not intended to apply to a statement made in answer to questions put by a public servant. Statements made by witnesses to Police Officers under S. 161, Cr. P. C., cannot, except in very special circumstances, be regarded as ‘gives information to a public servant’ within the meaning of S. 182, Penal Code. If a statement made by a witness to a Police Officer under S. 161, Cr. P. C., cannot, in general, form the basis of a conviction under S. 182, Penal Code, still less can a statement of a witness called for the defence at a departmental inquiry. *U Halng v. R. P. Abigail*. 38 Cr. L. J. 980 : 170 I. C. 854 : 10 R. Rang. 109 : A. I. R. 1937 Rang. 232.

———S. 182—*Interpretation*.

Per *Fort, J.*—The expression ‘omit’ in S. 182 (a) of the Penal Code, indicates an operation on the mind of the officer which has a result of making that officer give up a purpose which he otherwise would have pursued. It does not indicate placing an obstacle in the way of the officer performing the duty and thus preventing or making it more difficult for him to carry out an intention which was in his mind. In making a false statement to a public servant merely with a view to escape a prosecution, there is no intention to cause the officer to ‘do’ something within the meaning of S. 182 (a), Penal Code. *Emperor v. Lachman Singh*. 30 Cr. L. J. 177 : 113 I. C. 587 : 7 Pat. 715 : I. R. 1929 Pat. 59 : 10 P. L. T. 244 : A. I. R. 1929 Pat. 4.

———S. 182—*Interpretation*—“Public servant” whether covers Police Officer.

The words “public servant” in S. 182, Penal Code, sufficiently cover a Police Officer. *Emperor v. Gopaldas Khemchand*.

37 Cr. L. J. 870 : 163 I. C. 910 : 30 S. L. R. 75 : 9 R. S. 24 : A. I. R. 1936 Sind 94.

———S. 182—*Interpretation*.

The words ‘gives information’ in S. 182, Penal Code, should not be interpreted as necessarily meaning ‘volunteers information’. They apply to statements made in answer to questions put by a public servant. *Emperor v. Lachman Singh*. 30 Cr. L. J. 177 : 113 I. C. 587 : 7 Pat. 715 : I. R. 1929 Pat. 59 : 10 P. L. T. 244 : A. I. R. 1929 Pat. 4.

———S. 182—*Knowledge*—Circumstances must be shown that only inference is that person giving information knew or believed it to be false.

To constitute an offence under S. 182, Penal

PENAL CODE ACT (XLV OF 1860)

Code, it must be shown that the person giving the information knew or believed it to be false or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. *Sakhichand Kandu v. Emperor*.

38 Cr. L. J. 289 : 166 I. C. 738 : 9 R. P. 343 : 3 B. R. 219 : A. I. R. 1937 Pat. 6.

———S. 182—*Offence under*.

Complaint to Superintendent of Police of non-cognizable offence under S. 498—Police cannot take action and prosecution under S. 182, cannot be legally maintained in respect of such information. *Ganga Dayal v. Emperor*.

34 Cr. L. J. 1149 : 145 I. C. 819 : 10 O. W. N. 755 : 6 R. O. 73 : A. I. R. 1933 Oudh 374.

———S. 182—*Offence under*—*Conspiracy to make false report*—*Liability of conspirators*.

Where two persons enter into a conspiracy to make a false report to the Police, and a false report is made by one of them in pursuance of the conspiracy, the one who makes the report is guilty of an offence under S. 182, of the Penal Code, and the other is guilty of abetment of that offence. *Emperor v. Ramjiawan*. 27 Cr. L. J. 822 :

95 I. C. 598 : 3 O. W. N. 96 Sup. : A. I. R. 1926 Oudh 442.

———S. 182—*Offence under*—Cr. P. C. (Act V of 1898), S. 195 (1)—*False Report to Police*—*Police reporting for action under S. 182—Complaint*.

One Saidu, at the instance of one Umrao Singh made a false report at the *thana*. The Sub-Inspector made a report asking that both Saidu and Umrao be prosecuted under S. 182, Penal Code. The Assistant Inspector of Police forwarded this report to the Sub-Divisional Officer who taking the report as a complaint under S. 195 (1), Cr. P. C., took cognizance of the offence against both the accused : *Held*, that under the provisions of S. 195 (1), Cr. P. C., the Sub-Divisional Officer, was not justified in treating the report as a complaint ; *Held*, further, that Umrao Singh not having made the report himself could not be tried under S. 182, Penal Code. *Umrao Singh v. Emperor*.

9 Cr. L. J. 518 : 2 I. C. 200 : 6 A. L. J. 236.

———S. 182—*Offence under*—*False identification, when offence under S. 182*.

A person who wrongly identifies another before a public servant as the payee under a forged cheque drawn in the name of a fictitious person cannot be convicted of an offence under S. 182, Penal Code, in the absence of evidence to show that he knew or had reason to believe that the identification was false. *Emperor v. Chandra Kumar De*.

28 Cr. L. J. 25 : 99 I. C. 57 : 44 C. L. J. 230 : A. I. R. 1927 Cal. 78.

PENAL CODE ACT (XLV OF 1860)

———S. 182 (b)—*Offence under—False information—Petition of resignation containing untrue statements, if offence.*

The accused, a peon of the Court of Wards, had a quarrel with one S., brother of a *zildar* employed by the Court of Wards, and afterwards submitted a petition of resignation to the Collector, the officer in charge of the Court of Wards, in which he gave a distorted version of the whole affair in order to forestall any proceedings which might be taken against him by S. or his brother: *Held*, that the accused was not guilty of an offence under S. 182 of the Penal Code inasmuch as he never intended the Collector to use his powers to the injury or annoyance of the persons mentioned in the petition nor had he any knowledge that such a result was likely. *Debi v. Emperor*.

19 Cr. L. J. 257 :
44 I. C. 183 : 16 A. L. J. 105 :
A. I. R. 1918 All. 265.

———S. 182—*Offence under False information to a Village Magistrate, if offence.*

It constitutes an offence under S. 182, Penal Code, if a false complaint with evil intention is made to a Village Magistrate for the purpose of being passed on to a Station-house Officer, and which it is his bounden duty so to pass on. *Emperor v. Jonnalagadda Venkatrayudu*.

3 Cr. L. J. 108 :
I. L. R. 28 Mad. 565.

———S. 182 — *Offence under — False report at Police Station of non-cognizable offence — Not calling for any action, if offence.*

The mere making of a report, known to contain statements which are not true, at a Police Station of a non-cognizable offence, not calling for any action on the part of the Police Officer to whom it is made, is insufficient to form the basis of a conviction under S. 182 of the Penal Code. *Algo Lal v. Emperor*.

21 Cr. L. J. 576 :
57 I. C. 96 : 18 A. L. J. 636 :
2 U. P. L. R. All. 296 :
A. I. R. 1920 All. 196.

———S. 182—*Offence under.*

False report to Police — When amounts to offence under S. 182, stated. *Fariduddin Khan v. Emperor*.

37 Cr. L. J. 562 (1) :
162 I. C. 338 : 1936 A. L. J. 253 :
1936 A. W. R. 273 : 8 R. A. 861 :
A. I. R. 1936 All. 313.

———S. 182 — *Offence under—False report to public servant calling for action which public servant would take, if offence.*

To sustain a prosecution for an offence under S. 182, Penal Code, it is not necessary that the complaint should have been made to a public servant with the intention of inducing such public servant to take action of a sort which a public servant of the description in question could take and which would not be open to a private individual. *Imandy Appalaswami v. Emperor*.

15 Cr. L. J. 672 :
25 I. C. 1000 : 1 L. W. 847 :
A. I. R. 1915 Mad. 315.

PENAL CODE ACT (XLV OF 1860)

———S. 182—*Offence under—False statements in petition of appeal, whether offence.*

An accused who makes a false statement in his petition of appeal cannot be held to have committed an offence under S. 182, Penal Code, even assuming that the false statement was made with the object of inducing, and that it did induce the Appellate Court to send for the record of the case, as it cannot be said that the Court was thereby induced to do what it ought not to have done. *Amir Ali v. Dukhan Momin*.

29 Cr. L. J. 613 :
109 I. C. 805 : A. I. R. 1928 Pat. 574.

———S. 182—*Offence under.*

Giving false answers to questions put by a Police Officer in the course of investigation of a cognizable offence, is not punishable under S. 182, Penal Code. *Emperor v. Nga Aung Po*.

2 Cr. L. J. 474 :
U. B. R. 1905 I. P. C. 13.

———S. 182—*Offence under.*

Giving false information to Police about missing of animal is not an offence under S. 182. *Mosafir Singh v. Emperor*.

33 Cr. L. J. 314 :
136 I. C. 447 (1) : 13 P. L. T. 83 :
I. R. 1932 Pat. 111 :
A. I. R. 1932 Pat. 170 (1).

———S. 182 — *Offence under — Giving false information to public servant legally entitled to take action—Informant, if liable.*

When a person gives false information to a public servant deliberately asking that public servant to take certain action, it cannot be said that he is not punishable under S. 182, Penal Code, merely because the public servant was not legally entitled to take the action requested. *Sant Ram v. Diwan Chand*.

24 Cr. L. J. 913 :
75 I. C. 289.

———S. 182—*Offence under—Giving wrong name to public servant to escape prosecution, if offence.*

Where the driver of a motor car who was driving without a licence, when asked for his name by a Police Officer, gave a fictitious name: *Held*, Per *Attanson, J.* (agreeing with *Adami J.*, and dissenting from *Wort, J.*) that the driver was guilty of an offence under S. 182, Penal Code. *Emperor v. Lachman Singh*.

30 Cr. L. J. 177 :
113 I. C. 587 : 7 Pat. 715 :
I. R. 1929 Pat. 59 : 10 P. L. T. 244 :
A. I. R. 1929 Pat. 4.

———S. 182 — *Offence under — Motive, if material.*

Accused made a report to the Police that his horse had strayed, when as a matter of fact, he had previously sold it to another, who in turn had sold it to a third person, the report was made to enable him to make a false charge against this last person and this he subsequently made: *Held*, that an offence under S. 182, Penal Code, was made out, as in making the report the accused clearly gave false informa-

PENAL CODE ACT (XLV OF 1860)

tion to the Police which he knew to be false and that he knew that it was likely that he would thereby cause the Police Authorities, if they found the horse answering to his description, to take it from the possession of its rightful owner. *Jacha Ram v. Emperor*.

24 Cr. L. J. 88 :

71 I. C. 216 : 44 All. 647 :

A. I. R. 1922 All. 272.

—S. 182—Offence under—Motive, if material.

The circumstances which are necessary to bring a case within S. 182, involve different considerations from those that arise from S. 211. S. 182 does not necessarily impose upon the person giving information to the officer, criminal liability for mere want of caution before giving that information. There must be positive and conscious falsehood established. *Emperor v. Ramkrishna*.

5 Cr. L. J. 105 :

9 Bom. L. R. 33 : I. L. R. 31 Bom. 204.

—S. 182—Offence under.

Per *Allanson and Adami, JJ.*—The criminality contemplated by S. 182, Penal Code, does not depend upon what is done or omitted to be done by the public servant on such false information, but what was, from the facts, the reasonable intention to be inferred on the part of the person who gave the false information. *Emperor v. Lachman Singh*.

30 Cr. L. J. 177 :

113 I. C. 587 : 7 Pat. 715 :

I. R. 1929 Pat. 59 : 10 P. L. T. 244 :

A. I. R. 1929 Pat. 4.

—S. 182—Offence under—Petition containing information not signed by accused, effect of.

An accused may be convicted of an offence under S. 182, Penal Code, even if the petition containing the information given by him is not actually signed by him. *Emperor v. Gokal*.

11 Cr. L. J. 3 :

4 I. C. 477 : 3 S. L. R. 132.

—S. 182—Offence under—Privilege—False charge against presiding officer of Court with the object of getting case transferred—Penal Code, (Act XLV of 1860), S. 182.

A person on trial before a Court for an offence cannot, with impunity, make a false charge against the presiding officer of the Court, such charges being ordinarily punishable under S. 182, Penal Code, and cannot escape punishment on the ground that his object was to get the case transferred to another Court. *Tribhovan v. Emperor*.

10 Cr. L. J. 509 :

4 I. C. 160 : 12 O. C. 308.

—S. 182—Offence under—Report of assault and obstruction—Subsequent withdrawal of report—Section, whether applicable.

Accused, a post peon, made a report to his superior officer that he had been beaten and obstructed in the discharge of his duties by a *Patwari*. During the course of inquiries, he withdrew the report, saying that it was false. Upon this he was charged under S. 182, Penal Code, and convicted. Neither the original report nor the petition of with-

PENAL CODE ACT (XLV OF 1860)

drawal was on the record, but at his trial the accused stated that his report was absolutely true and that he had been induced by the Sub-Inspector of Police to withdraw it: *Held*, that S. 182 of the Penal Code was not applicable in the absence of evidence that accused gave information knowing it to be false, and that he was not bound to show that the information given was in fact true. *Ali Ahmad v. Emperor*.

22 Cr. L. J. 503 :

62 I. C. 327 : 2 P. L. R. 1922 :

A. I. R. 1922 Lah. 313.

—S. 182—Offence under—Sanction to prosecute when can be granted.

Where a charge against another person is made by a witness not in the course of his evidence or in answer to a question but quite voluntarily and irrelevantly, sanction can be properly granted to prosecute the witness under S. 182 of the Penal Code. *Nga Lu Pe v. Emperor*.

13 Cr. L. J. 59 :

13 I. C. 392 : 4 Bur. L. T. 262.

—S. 182—Offence under—Statement on oath or made in application for transfer by accused person, if offence.

A person cannot be convicted under S. 182, Penal Code, for a statement made by him during his examination on oath by a Magistrate or in the course of an application for transfer of his case pending in the Court of another Magistrate. *Mattan v. Emperor*.

11 Cr. L. J. 537 :

7 I. C. 914 : 7 A. L. J. 1143.

—S. 182—Offence under—Statement volunteered in answer to question—False allegation of bribe made against Sub-Inspector of Police to Deputy Superintendent, if offence.

Any false information given to a public servant with the intention mentioned in S. 182, Penal Code, is punishable under that section whether the information is volunteered by the informant or given in answer to questions put to him. On being questioned by a Deputy Superintendent of Police, petitioner made an allegation against a Sub-Inspector of the latter having accepted a bribe. This allegation was found to be false to the knowledge of the petitioner: *Held*, that the petitioner was guilty of an offence under S. 182 of the Penal Code. *Panna Lal v. Emperor*.

21 Cr. L. J. 818 :

58 I. C. 818 : 1 Lah. 410 :

A. I. R. 1920 Lah. 349.

—S. 182—Offence under—Suspicion, expression of, whether amounts to giving false information.

Accused made a complaint to the Police that a *hukka* had been stolen from his house and that he suspected two persons. It was found that the *hukka* had really been stolen: *Held*, that the stating of his suspicion by the accused did not amount to giving false information. *Ananga Mohan Dulla v. Emperor*.

19 Cr. L. J. 336 (a) :

44 I. C. 352 : 27 C. L. J. 230 :

22 C. W. N. 478 : A. I. R. 1919 Cal. 501.

PENAL CODE ACT (XLV OF 1860)

—S. 182—*Offence under—Transfer application by complainant's Pleader—Affidavit in support of application by third person—False information contained in affidavit—Maker of affidavit, whether guilty of giving false information.*

If an affidavit, containing a statement amounting to false information, made by a third person is given to the Pleader of the complainant in a criminal case and is used by the latter in support of a transfer application on behalf of his client, it cannot be held that the maker of the affidavit gave the false information within the meaning of S. 182, Penal Code, to the public servant to whom the application for transfer was made. *Public Prosecutor v. Katta Prakasam.*

25 Cr. L. J. 1383 :
83 I. C. 343 : 20 L. W. 624 :
47 M. L. J. 658 : 1925 M. W. N. 146 :
A. I. R. 1925 Mad. 123.

—S. 182—*Offence under—When complete.*

S. 182, Penal Code, is for the prosecution of a person who gives any information which he knows or believes to be false, etc., to a public servant. The offence is complete as soon as the information is given. Whether the public servant omits to take a statement subsequently on oath of the person giving the information for the purpose of taking certain action on it, is a matter which will not affect the giving of the information. *Dalpat Rai v. Emperor.*

37 Cr. L. J. 857 :
163 I. C. 609 : 1936 A. L. J. 592 :
9 R. A. 42 : 1936 A. W. R. 396 :
A. I. R. 1936 All. 469.

—S. 182—*Offence under—When complete.*

Offence is completed when the information reaches the public servant. *In re : Rathinam Pillai.*

33 Cr. L. J. 452 (a) :
137 I. C. 333 : 427 : 35 L. W. 451 :
1932 M. W. N. 451 : I. R. 1932 Mad. 379 (2) :
A. I. R. 1932 Mad. 427.

—S. 182—*Offence under—Withholding of information, if punishable.*

S. 182, I. P. C., makes punishable the positive act of giving false information. There is nothing in the section showing that it intends to punish the withholding of information as distinct from the actual giving of information. *Sher Mohammad v. Emperor.*

41 Cr. L. J. 368 :
186 I. C. 703 : I. L. R. 1940 Lah. 396 :
42 P. L. R. 771 : 12 R. L. 430 :
A. I. R. 1940 Lah. 15.

—S. 182—*Place of trial.*

The Court at the place where the letter is written and posted has jurisdiction to try the case. Even if that Court be supposed to have no jurisdiction, S. 537, Cr. P. C., will cover the case. *Emperor v. Narain Das.*

37 Cr. L. J. 157 :
159 I. C. 808 : 1935 A. W. R. 1476 :
1936 A. L. J. 416 : 8 R. A. 516 :
A. I. R. 1936 All. 105.

—S. 182—*Place of trial.*

Case under S. 182 has to be tried at a place

PENAL CODE ACT (XLV OF 1860)

where the public servant received the information. *In re : Rathinam Pillai.*

33 Cr. L. J. 452 (a) :
137 I. C. 333 : 35 L. W. 451 :
1932 M. W. N. 451 : I. R. 1932 Mad 379 (2) :
A. I. R. 1932 Mad. 427.

—S. 182—*Power of police to start proceedings under.*

The power of the Police to institute proceedings under S. 182, Penal Code, in respect of a false report made to them, is not limited by the filing of a similar complaint subsequently before a Magistrate. *Jang Bahadur Singh v. Emperor.*

30 Cr. L. J. 272 :
114 I. C. 189 : 26 A. L. J. 533 :
I. R. 1929 All. 253 :
A. I. R. 1928 All. 342.

—S. 182—*Procedure.*

A petition was presented to a District Magistrate praying that he would proceed under S. 110, Cr. P. C., against a certain person, and gave certain information with regard to such a person. The District Magistrate without holding a judicial investigation believed the information to be false and granted sanction against the petitioner of an offence under S. 182, Penal Code : *Held*, the sanction to prosecute was valid. *Emperor v. Gokal.*

11 Cr. L. J. 3 :
4 I. C. 477 : 3 S. L. R. 132.

—S. 182—*Procedure.*

Accused filing *narazi* petition against Police report—Trial under S. 182 before disposal of petition—Accused is prejudiced and conviction should be set aside. *Shekander Mia v. Emperor.*

34 Cr. L. J. 1077 :
145 I. C. 824 : 37 C. W. N. 399 :
6 R. C. 143 : A. I. R. 1933 Cal. 614.

—S. 182—*Procedure.*

Accused filing *narazi* petition—Although it is better that he is given opportunity to prove its truth, trial is not illegal if he is convicted without giving such opportunity. *Nishikanta Chatterji v. Behari Kahar.*

34 Cr. L. J. 1059 :
145 I. C. 660 : 60 Cal. 656 :
37 C. W. N. 368 : 6 R. C. 130 :
A. I. R. 1933 Cal. 532.

—S. 182—*Procedure.*

Complaint against conduct of Police to District Magistrate—Order 'file' on complaint—Subsequent prosecution of petitioner under S. 182 : *Held*, petitioner could claim that sanction of District Magistrate was necessary for prosecution—Proceedings, held, should be quashed. *Mehroo Vanko Rabari v. Emperor.*

38 Cr. L. J. 951 :
170 I. C. 608 : 10 R. S. 65 :
31 S. L. R. 429 : A. I. R. 1937 Sind 209.

—S. 182—*Procedure—Complaint by public servant—Necessity of.*

The provisions of S. 190 (1) (e), Cr. P. C., are subject to the provisions of S. 195 which follows it and hence a person cannot be prosecuted and convicted under S. 182, I. P. C., without there being a complaint in writing

PENAL CODE ACT (XLV OF 1860)

of a public servant against him as required by S. 195, Cr. P. C. *Ram Prasad Dubé v. King-Emperor*.

41 Cr. L. J. 787 :
189 I. C. 702 : 1940 O. L. R. 498 :
1940 O. W. N. 917 : 13 R. O. 114 :
A. I. R. 1940 Oudh 424.

———S. 182—*Procedure—Complaint in writing, absence of, if irregularity.*

The absence of a complaint in writing as required by S. 195, Cr. P. C., for the institution of a case under S. 182, Penal Code, is an irregularity covered by the provisions of S. 537 of the Cr. P. C. *Lachmi Singh v. Emperor*.

25 Cr. L. J. 972 :
81 I. C. 620 : 1924 Pat. 181 :
5 P. L. T. 505 : A. I. R. 1924 Pat. 691.

———S. 182—*Procedure—Complaint of offence under S. 182—Whether opportunity should be first given to accused to prove truth of complaint.*

When a complaint of an offence under S. 182 or S. 211, Penal Code, (duly sanctioned or not requiring sanction) is presented to a Magistrate, it should be disposed of according to law, and there is no provision of law requiring him to first give the accused person an opportunity of proving the truth of the charge he had made. *Emperor v. Ghansram*.

8 Cr. L. J. 349 :
4 N. L. R. 136.

———S. 182—*Procedure—Complaint of person to be prosecuted must be dealt with according to law first.*

Where a person when called upon to show cause why he should not be prosecuted under S. 182, Penal Code, challenges the Police report and reiterates the charges made before the Police, it is clearly a complaint, and the Magistrate should deal with it under the provisions of S. 203, Cr. P. C. The case under S. 182, Penal Code, cannot be proceeded with until that person's complaint has been dealt with in accordance with law. *Bhagabat Chandra Mandal v. Emperor*.

40 Cr. L. J. 644 :
182 I. C. 235 : 12 R. C. 31 :
A. I. R. 1939 Cal. 271.

———S. 182—*Procedure—False charge to Police of cognizable offence—Summary trial of complainant under S. 182, legality of.*

The accused lodged an information before the Police complaining that he had been unlawfully confined by a certain Police Officer. The accused was tried summarily under S. 182, Penal Code, and convicted: *Held*, that conviction was illegal as the charge amounted to an offence under S. 211, Penal Code, which could not be tried summarily. *Tofazel Hoossein v. H. C. Hunt*.

32 Cr. L. J. 110 :
128 I. C. 208 : 34 C. W. N. 556 :
I. R. 1931 Cal. 64 : A. I. R. 1930 Cal. 711.

———S. 182—*Procedure—False information before Police, offence under S. 182, I. P. C.—Prosecution for laying false information before dismissal of complaint, illegal.*

S. 182 and not merely S. 211, Penal Code,

PENAL CODE ACT (XLV OF 186

applies to cases in which the false charge is made to a Police Officer. Magistrate has no jurisdiction prosecution for making a false complaint that complaint has been finally decided. *Gati Mandal v. Emperor*.

4 Cr.
4 C.

———S. 182—*Procedure.*

It is not permissible for the Magistrate to order an enquiry and to sanction the institution of the applicant under Ss. 182 a where he has not examined him on oath. *Bhagwan Das v. Emperor*. 36 Cr. L. J. 86
155 I. C. 1070 : 1935 A. W. R.
1935 A. L. J. 1067 : 7 R. A. 1
A. I. R. 1935 All.

———S. 182—*Procedure.*

Narazi petition against Police report dismissed under S. 203, Cr. P. C. (Act V of 18). —Trial under S. 182 can proceed, *Kang Molla v. Emperor*. 40 Cr. L. J. 64
182 I. C. 253 : I. L. R. 1939, 1 Cal. 32
12 R. C. 32 (1) : A. I. R. 1939 Cal. 34

———S. 182—*Procedure.*

Narazi petition by complainant — Enquiry into petition before issuing process for false complaint is necessary. *Charles Johns v. Emperor*. 33 Cr. L. J. 724 :
139 I. C. 217 : 36 C. W. N. 794 :
I. R. 1932 Cal. 602 : A. I. R. 1932 Cal. 550.

———S. 182—*Procedure.*

One D purporting to act on behalf of his father G, applied to a Cantonment Magistrate to have two shops opened and the property found in them placed in deposit. G was the owner of these shops and it was alleged that the tenant S had disappeared and that his whereabouts were not known. The application was granted and the shop was opened by the Police under direction from the Magistrate. Subsequently, an application was made by one G D acting on behalf of his brother S objecting that false information had been given and stating that a civil suit was pending regarding the title to the shops. The Magistrate thereupon cancelled his previous order and directed that S should be put in possession. S then applied for sanction to prosecute G under S. 182, Penal Code. The Cantonment Magistrate granted sanction to prosecute both G and S. They appealed to the Sessions Judge who revoked the sanction. S applied for revision: *Held*, that the Magistrate purported to act as a Court and that the Sessions Judge had authority to hear the appeal against that order, and if necessary, to revoke it. *Sant Ram v. Diwan Chand*.

24 Cr. L. J. 913 :
75 I. C. 289.

———S. 182—*Procedure.*

There is no provision in law that before a Magistrate can enquire into a case under S. 182, Penal Code, on the complaint of a Police Officer the accused person

PENAL CODE ACT (XLV OF 1860)

must have an opportunity of proving his case.
Emperor v. Baharali Biswas.

32 Cr. L. J. 1241 :
134 I. C. 919 : 58 Cal. 1065 :
35 C. W. N. 378 : I. R. 1931 Cal. 919.
A. I. R. 1931 Cal. 634.

—S. 182—Sanction to prosecute under
—When can be given—Letter to District Magistrate containing imputations as to conduct of enquiry by Sub-Inspector of Police—Report as to falsity of allegations contained in letter, whether sufficient material for sanction—Sanction to prosecute, when to be granted.

A sanction under S. 195, Cr. P. C., must be based on material on the record before the Court. Where there is nothing to show that the information given by the accused was false to his knowledge or that he believed it to be false, no sanction for prosecution for an offence under S. 182, I. P. C. should be given.
Sunder v. Emperor. 20 Cr. L. J. 618 :
52 I. C. 282 : A. I. R. 1919 Pat. 511.

—S. 182—Sanction to prosecute, whether necessary.

No sanction is necessary for a prosecution in respect of an offence under S. 182, Penal Code.
Bakshi v. Emperor. 25 Cr. L. J. 729 :

81 I. C. 217 : 21 A. L. J. 805 :
46 All. 43 : A. I. R. 1924 All. 187.

—S. 182—Sanction under S. 195, Cr. P. C., necessity of.

A prosecution under S. 182, Penal Code, can be instituted only after sanction has been obtained under S. 195, Cr. P. C., or on the complaint of the public servant to whom the false information is given. *Solaimuthu Pillai v. Murugaih Moopan.* 16 Cr. L. J. 423 :

28 I. C. 999 : 1915 M. W. N. 272 :
A. I. R. 1916 Mad. 639.

—S. 182—Scope—False charge, serious—S. 182, if applies—False charge—False information to Police—Distinction between offences under Ss. 182 and 211, I. P. C.

A prosecution for a false charge may be under S. 182 or S. 211, Penal Code, but if the false charge is a serious one, the graver S. 211 should be applied. *Emperor v. Sardara Prasad Chatterjee.* 2 Cr. L. J. 171 :
I. L. R. 32 Cal. 180.

—S. 182—Scope.

Once a person is acquitted of a charge under S. 211, Penal Code, he cannot subsequently be tried on the same facts for an offence under S. 182, Penal Code.
Ganapathi Bhatta v. Emperor. 14 Cr. L. J. 214 :
19 I. C. 310 : 24 M. L. J. 463 :
13 M. L. T. 360 : 37 Mad. 308.

—S. 182—Scope—Person giving information to Police about non-cognizable offence—Complaint found to be false—Person, if can be convicted under S. 182.

S. 182, I. P. C., makes no distinction between information relating to a cognizable

PENAL CODE ACT (XLV OF 1860)

offence and one relating to a non-cognizable offence nor is there anything in that section to justify the conclusion that it applies only to cases in which the information given to any public servant relates to a cognizable offence. In fact Illus. (a) and (b) to S. 182 show that that section applies as much to information relating to a non-cognizable offence as to one about a cognizable offence. When a false report is made to the Police, the question in deciding as to whether it amounts to an offence under S. 182 is not whether the report is one of a cognizable crime but whether it is of such a nature as might be supposed to lead the Police to make use of their lawful powers to the injury or annoyance of any person. *Emperor v. Thakuri.* 41 Cr. L. J. 778.

189 I. C. 655 : 1940 O. W. N. 655.
1940 O. L. R. 492 : 13 R. O. 103 :
A. I. R. 1940 Oudh 413.

—Ss. 182, 210—"False report" and "false charge," distinction.

If the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the matter to be further investigated by the Police, or leaving the Police to take such course as they think right in the performance of their duty, he may be making a report, but he is not making a charge. But if he takes the further step, without waiting for any official investigation, of definitely alleging his belief in the guilt of a specified person, and his desire that the specified person be proceeded against in Court, that act of his, whether verbal or written, if made to an officer of the law authorised to initiate proceedings based upon the complainant's statement whether amounting to an expression of the complainant's belief in the guilt of the specified person, or his desire that Court proceedings be taken against him, amounts to making a charge. *Kashi Ram v. Emperor.* 25 Cr. L. J. 1239 :

82 I. C. 167 : 22 A. L. J. 829 :
46 All. 906 : A. I. R. 1924 All. 779.

—Ss. 182, 211.

"Charge," what amounts to—Prosecution for giving false information, where can be instituted—Cr. P. C. (Act V of 1898), Ss. 195, 203—Right of complainant to produce witnesses. *Solaimuthu Pillai v. Murugaih Moopan.* 16 Cr. L. J. 423 :

28 I. C. 999 : 1915 M. W. N. 272 :
A. I. R. 1916 Mad. 639.

—Ss. 182, 211—Cognisance—Offences under both—Conviction under which.

Where a person commits an offence which comes both within the purview of Ss. 182 and 211, Penal Code, he should be prosecuted under S. 211, Penal Code, on the complaint of the Court according to the provisions of S. 195 (1) (b) and not under S. 182, Penal Code, merely on the complaint by a public servant. *Ram Chand v. Emperor.* 30 Cr. L. J. 399 :

115 I. C. 313 : I. R. 1929 Sind 73 :
23 S. L. R. 225 : A. I. R. 1929 Sind 115.

PENAL CODE ACT (XLV OF 1860)

———Ss. 182, 211—*Cognizance — Offences under both—Conviction for which.*

Where information to the Police amounting to a false charge within the meaning of S. 211, Penal Code, is followed by a complaint to the Court based on the same allegations, the two complaints may be regarded as so closely connected that independent prosecutions and convictions for two offences are undesirable, and in the ordinary way, if a prosecution takes place, it should be for the more serious of the two offences committed, and this may be a good ground for quashing proceedings under the minor section in their early stages. But when there has been no prosecution for the more serious offence and a person has been prosecuted and convicted for the minor offence and the whole case is complete, there is no reason for holding that the conviction is illegal. *Ma Paw v. Emperor.*

32 Cr. L. J. 202 :
128 I. C. 836 : 8 Rang. 499 :
I. R. 1931 Rang. 52 :
A. I. R. 1931 Rang. 12.

———Ss. 182, 211—*Cognizance.*

There is no reason why even if a Magistrate is disentitled by a statutory bar to take cognizance of any offence under S. 182, Penal Code, cognizance by him of an offence under S. 211, Penal Code, should also be barred without any statutory provision to that effect. A Magistrate may take cognizance of an offence under S. 211 on the complaint of the investigating Police Officer though he is not also an officer referred to under S. 190 (1) (a), but if the charge under S. 211, Penal Code fails, there cannot, by reason of S. 190 (1) (c), Cr. P. C., be a conviction under S. 182, Penal Code. *Kantir Missir v. Emperor.*

30 Cr. L. J. 710 :
117 I. C. 37 : 11 P. L. T. 88 :
I. R. 1929 Pat. 357 :
A. I. R. 1930 Pat. 98.

———Ss. 182, 211—*Conviction — False information to Police—Proceedings pending in Police—Conviction of accused for giving false information, legality of.*

The complainant was arrested for an offence under S. 411, Penal Code, by the Police in consequence of information furnished by the accused and was released on bail the following day. Before any report was made by the Police to the District Magistrate under S. 178, Cr. P. C., or any other proceedings was taken in the matter, the complainant lodged a complaint against the accused under S. 211 of the Penal Code, and the Magistrate convicted the accused on this charge: *Held*, that the conviction was bad as the charge under S. 411 against the complainant had not been enquired into and disposed of; nor could the conviction be altered to one under S. 182. A complaint must be disposed of one way or the other before it can form the subject of a charge under S. 211, or, at the least, the responsibility of instituting proceedings under S. 182 must be assumed by

PENAL CODE ACT (XLV OF 1860)

the Police themselves. *Emperor v. Topan Chatomal.*

11 Cr. L. J. 199 :
4 I. C. 1160 : 3 S. L. R. 189.

———Ss. 182, 211—*Distinction between.*

S. 182, Penal Code, is to be interpreted not in isolation but in association with S. 211. Where the information conveyed to the Police amounts to the false institution of criminal proceedings against a defined person, or amounts to the falsely charging of a defined person with an offence, as "offence" is defined in the Penal Code, then the person giving such information has committed an offence under S. 211. In such a case, S. 211 is, and S. 182 is not, the appropriate section under which to frame the charge. S. 182 when read with S. 211, must be understood as referring to cases where information given to the public servant falls short of amounting to the institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Penal Code. *Per Heaton, J.*—Where a matter does fairly come under S. 211 and where a sanction is needed in order that the prosecution may proceed under that section, to proceed without any Magisterial sanction under S. 182 is to evade the salutary provisions of law. *Apaya Talaba Munde v. Emperor.*

14 Cr. L. J. 491 :
20 I. C. 747 : 15 Bom. L. R. 574.

———Ss. 182, 211—*Offences under—Distinction.*

Unlike a "complaint," "false charging" is not defined by Statute, but it has been repeatedly held to mean a false accusation made to any authority bound by law to investigate it or to take any step in regard to it. Such an accusation may be effectively made in certain cases to a person possessing no Magisterial powers but bound by law to communicate it forthwith to the nearest Magistrate or the officer-in-charge of the nearest Police Station. But a false charge within the meaning of S. 211 must be made to a competent Magistrate or other person with a statutory standing in the matter and must further be made with the object of setting the criminal law in motion. *Banti Pandey v. Emperor.*

32 Cr. L. J. 210 :
129 I. C. 87 : 12 P. L. T. 109 :
I. R. 1931 Pat. 71 :
A. I. R. 1930 Pat. 550.

———Ss. 182, 211—*Offences under S. 211—No complaint by Court—Cognizance of offence under S. 182, if can be taken.*

An offence under S. 211, Penal Code, must always include an offence under S. 182 of the Code. Where a person is prosecuted in respect of an offence under the former section but it appears that the prosecution is illegal owing to the absence of a complaint in writing by the Court before whom the false charge was made, it is open to the Court to convict the accused

PENAL CODE ACT (XLV OF 1860)

under S. 182, Penal Code. *Daroga Gope v. Emperor*.
26 Cr. L. J. 1269 (b) :
88 I. C. 1045 : 6 P. L. T. 515 :
5 Pat. 33 : 1926 Pat. 106 :
A. I. R. 1925 Pat. 717.

———Ss. 182, 211—*Procedure—Separate trial—Validity of.*

A person cannot be tried separately under Ss. 182, 211, Penal Code, when the charge under either section is in respect of the same offence, namely, giving false information to or lodging a false complaint with the Police. *Jaggu v. Pala*.
17 Cr. L. J. 177 :
33 I. C. 817 : U. B. R. 1915, 95 :
A. I. R. 1916 U. Bur. 18.

———Ss. 182, 211—*Procedure.*

The appellant lodged information before a Sub-Inspector of Police that certain persons had beaten him and set fire to a house. The Sub-Inspector on inquiry did not believe the story and recommended that the appellant might be prosecuted under Ss. 182 and 211, Penal Code. The prosecution of the appellant was then directed by a Deputy Magistrate. A preliminary inquiry was made and the appellant was committed to the Court of Session and convicted under S. 211: *Held*, that even if there was any defect in the initiation of the proceedings in the original Court, still when the accused had been committed for trial to the Court of Session, a conviction by that Court could not be set aside simply on the ground of some irregularity in the commitment proceedings, more specially when that point was not raised in the first Court, and that S. 532, Cr. P. C., would cure such a defect. *Dilan Singh v. Emperor*.
13 Cr. L. J. 826 :
17 I. C. 570 : 40 Cal. 360.

———Ss. 182, 211 — *Procedure — Trials different, validity of.*

A person cannot be tried separately under S. 182 and under S. 211, Penal Code, when the charge under either section is in respect of the same offence, namely, giving false information to or lodging a false complaint with the Police. *Jaggu v. Pala*.
17 Cr. L. J. 177 :
33 I. C. 817 : U. B. R. 1915 II, 95.

———Ss. 182, 211—*Scope, distinction between.*

To constitute an offence under S. 182, Penal Code, the information given to a public servant should not only be false in fact but it must be false to the knowledge or to the belief of the informant and it is not sufficient that the accused had reason to believe it to be false, whereas, under S. 211 it is sufficient if the accused makes his complaint without any just grounds and when he acts without due care or caution. *X v. Emperor*.
25 Cr. L. J. 1358 :
82 I. C. 718 : A. I. R. 1925 Sind 184.

———Ss. 182, 211—*Scope—False information to Police, if falls under both.*

The offence of laying false information to the Police falls under the first paragraph of S. 211

PENAL CODE ACT (XLV OF 1860)

as well as under S. 182 of the Penal Code. *Barkatullah v. Sadho Kalwar*.
13 Cr. L. J. 855 :
17 I. C. 791 : 10 A. L. J. 429.

———S. 182, 211—*Scope.*

Ss. 182 and 211 of the Penal Code do not cover and refer to the same class of cases. S. 182 is primarily intended for cases of false information which do not ordinarily involve a particular allegation or charge against a specified and definite person. S. 211 covers cases where there is a definite information or charge with reference to a criminal offence against a particular person. If a complainant confines himself to reporting what he knows of the facts, stating his suspicions and leaving the matter to be further investigated by the Police, he makes a report and not a charge. But if he definitely alleges his belief in the guilt of a specified person and desires that he be proceeded against in Court, the act of his, whether verbal or written, if made to any officer of the law authorized to initiate proceedings, based upon the complainant's statement, whether amounting to an expression of the complainant's belief in the guilt of the specified person or his desire that Court proceedings be taken against him, amounts to making a charge. The former case is covered by S. 182 and the latter by S. 211 of the Penal Code. *Bholu v. Punaji*.
28 Cr. L. J. 934 :
105 I. C. 454 : 10 N. L. J. 191 :
23 N. L. R. 136 :
A. I. R. 1928 Nag. 17.

———S. 182-A — *Conviction—Alteration of Offence not proved under S. 211 but facts establishing offence under S. 182—Duty of Magistrate to convict under S. 182.*

Where on a trial under S. 211, Penal Code, the facts proved do not amount to an offence under that section, but disclose an offence under S. 182 (a), Penal Code, it is the duty of the Magistrate to frame a charge against the accused under the latter section and try him. *The Public Prosecutor v. Thavaslandi Thevan*.
11 Cr. L. J. 154 :
4 I. C. 1039 : 6 M. L. T. 175.

———S. 183.

See also (i) Bengal Tenancy Act, 1885, S. 69, Sub-s. (3).
(ii) Bombay Local Boards Act, 1928, S. 116.
(iii) Cr. P. C., 1898, Ss. 195, 195 (a), 476.
(iv) Penal Code, 1860, S. 186.

———S. 183—*Applicability.*

Operation of section cannot be extended to acts which are not strictly justifiable by law. *Sakharam Rawji Pawar v. Emperor*.
36 Cr. L. J. 1263 :
157 I. C. 859 : 37 Bom. L. R. 362 :
59 Bom 545 : 8 R. B. 88 :
A. I. R. 1935 Bom. 233.

PENAL CODE ACT (XLV OF 1860)

—S. 183—Offence under—*Nakedar laying octroi on goods not landed—Refusal of tandel—Seizure—Resistance to such seizure, if offence*

The accused who was the *tandel* of a country-ship carried goods consigned to various persons in Jaitapur and Rajapur ports. The ship arrived at the port of Jaitapur which is at the mouth of the creek. The goods which were consigned to Jaitapur traders were landed, and octroi was duly paid in accordance with rules made by the District Local Board. There was no separate octroi *Naka* for the port of Rajapur, and the *Nakedar* of the Jaitapur *Naka* went on board the applicant's ship together with a peon and *panchas* and demanded from the *tandel* the amount of octroi duty, about Rs. 60, on the goods which he was proposing to take to Rajapur. The *tandel* declined to pay, firstly because he had not the money to do so, and, secondly because, as he said, the Rajapur merchants objected to pay. On his refusal, the *Nakedar* acting under R. 8, seized part of the cargo. The accused resisted and was prosecuted for an offence under S. 183, Penal Code, that is, for the offence of resistance to the taking of property by the lawful authority of a public servant and was convicted: *Held*, that the prosecution had not established that the jurisdiction of the District Local Board to impose taxes extended to goods on board the ship before the goods were landed or that the Local Board had power to make use of R. 8, providing for collection of octroi in the same manner as is provided in the case of a toll by S. 116, Bombay Local Boards Act. The conviction was, therefore, not maintainable. *Dema Mahadu Amberkar v. Emperor*.

38 Cr. L. J. 37 :
165 I. C. 637 : 38 Bom. L. R. 790 :
9 R. B. 159 : A. I. R. 1936 Bom. 376.

—S. 183—Offence under—*Obstruction to attachment by—Illegal warrant, if offence.*

The petitioner was convicted for obstructing an attachment of his property and the conviction was upheld on appeal. It was objected on revision that the warrant of attachment being illegal, the attaching officer was not duly empowered to effect the attachment and no offence was committed by the petitioner obstructing him. It appeared that the order of the Court was for attachment of the judgment-debtor's property which might be pointed out by the decree-holder, but the petitioner was not the judgment-debtor, and the attaching officer was not provided with a list of the property to be attached as contemplated by Ss. 236 and 486, C. P. C. Further the warrant was not signed by the Court, the provisions of last paragraph of S. 483 of the C. P. C. were not complied with and the parts of the Form used relating to security were left blank: *Held*, that the objections were valid and the conviction must be set aside. *Prabhu Dyal v. Emperor*.

3 Cr. L. J. 75 :
6 P. L. R. 573 : 49 P. R. Cr. 1905.

—S. 183—Offence under—*Removal of property attached by illegal warrant, if offence.*

A warrant for the attachment of property

PENAL CODE ACT (XLV OF 1860)

which is not signed by the Judge or such officer as the Court may appoint in this behalf, is not a legal warrant, and the removal of property directed by such warrant to be attached is not punishable under S. 183 of the Penal Code. *Karamatullah v. Emperor*.

21 Cr. L. J. 372 :
55 I. C. 852 : 18 A. L. J. 284 :
2 U. P. L. R. All. 101 : A. I. R. 1920 All. 51.

—S. 183—Offence under—*Resistance to attachment, if offence.*

A judgment-debtor has no right to offer resistance to the attachment in execution of property which is in his possession. *Emperor v. Dala Ram*.

29 Cr. L. J. 538 :
109 I. C. 362 : A. I. R. 1928 Lah. 844.

—S. 183—Offence under—*Resisting execution of defective warrants, if offence—Resisting or obstructing public servant in discharge of his duty—Execution of warrant of attachment—Civil Procedure Code (Act V of 1908), O. XXI, R. 24 (3)—Warrant, illegal—Officer executing, not authorised—Offence.*

In order to support a conviction for resistance to a public servant in discharge of his duty, the warrant must be a lawful one and the person who executes the warrant must be clothed with lawful authority under the warrant to execute it. A warrant of execution which does not bear a date on or before which it should be executed, is not a good warrant. The *Nazir* of a Court has no lawful authority to execute a warrant directed to the bailiff of the Court. It is no offence to resist the execution of a bad warrant, or to obstruct the execution of a warrant by a person to whom it is not directed. *Mohini Mohan Banerji v. Emperor*.

18 Cr. L. J. 39 :
36 I. C. 871 : 1 P. L. J. 550 :
3 P. L. W. 64 : A. I. R. 1916 Pat. 272.

—S. 183—Offence under—*Warrant not in the possession of the Amin at the time of making the attachment—Resisting such public servant, if offence.*

It is the intention of the law that when a public servant attaches property under a warrant in execution of a decree, he must have the warrant with him, otherwise the taking of the property is not lawful, and resistance to such public servant, is no offence. *Emperor v. Ganesh Lal*.

1 Cr. L. J. 896 :
24 A. W. N. 229 : I. L. R. 27 All. 258 :
1 A. L. J. 595.

—S. 183—Procedure.

Arrest in execution—Judgment-debtor released forcibly—Written complaint described under S. 476 and S. 195, Cr. P. C.—The fact that reference is made to S. 476 will not make it any the less one under S. 195 and complaint is proper. *Jodhi v. Emperor*.

35 Cr. L. J. 990 :
149 I. C. 377 : 11 O. W. N. 720 :
6 R. O. 563 : A. I. R. 1934 Oudh 277.

PENAL CODE ACT (XLV OF 1860)

—S. 184—Authority to sell—Proof of—Necessity of.

To justify a conviction under S. 184, Penal Code, the lawful authority of a public servant offering a property for sale must be proved by the prosecution. *Tara Singh v. Emperor*.

2 Cr. L. J. 90 :
2 A. L. J. 128 : 25 A. W. N. 65.

—S. 184—Obstruction—Nature of.

Obstruction to proceeding, if must be physical—Accused abusing bidders at auction-sale—No further bidding and postponement of sale resulting—Accused, held guilty under S. 184. *Provincial Government, Central Provinces and Berar v. Balaram*.

39 Cr. L. J. 954 :
177 I. C. 819 : 11 R. N. 174 :
1938 N. L. J. 299 :
A. I. R. 1938 Nag. 529.

—S. 184—Obstruction—Posting of placards asserting title, if obstruction.

Where during the sale of some *nazul* land by an Assistant Commissioner, the accused posted up placards asserting title to the land and warning bidders not to go in for it: *Held*, that, as obstruction must be physical, the conduct of the accused did not amount to an obstruction within the meaning of S. 184, Penal Code. *Emperor v. Gopal Rai*.

2 Cr. L. J. 44 :
7 P. R. Cr. 1905 : 6 P. L. R. 374.

—S. 185—Offence under—Bidding for right to sell drugs without intention of performing the obligation, if offence.

A person who bids at a sale held by a Collector of the right to sell drugs in a certain area, without any intention of performing the obligation under which he is laying himself at the time of bidding, and gives a false name, is guilty of an offence under S. 185, Penal Code. *Bishan Prashad v. Emperor*.

16 Cr. L. J. 54 :
26 I. C. 646 : 13 A. L. J. 109 : 37 All. 128 :
A. I. R. 1915 All. 93.

—S. 185—Offence under—Inability to deposit earnest money, if offence.

Bona fide bidder unable to deposit, earnest money cannot be prosecuted under S. 185. *Kali Charan v. Emperor*.

35 Cr. L. J. 789 :
148 I. C. 784 : 6 R. O. 434 (2) :
11 O. W. N. 473 :
A. I. R. 1934 Oudh 186.

—S. 186.

—Accused assaulting Abkari Officers.

—Cognizance.

—Conviction.

—Evidence.

—Interpretation.

—Obstruction.

—Offence under.

—Procedure.

—Resistance to officer carrying out not patently illegal instructions, if offence.

PENAL CODE ACT (XLV OF 1860)

—Restitution of conjugal rights.
—What constitutes offence.

—S. 186.

See also (i) Bengal Food Adulteration Act, 1910, S. 21.

(ii) Bengal Land Revenue Code, 1879, S. 119 (2).

(iii) C. P. C. 1908, O. XXI, Rr. 97, 24 (2).

(iv) Cr. P. C., 1898, Ss. 195, 195 (1) (a), 476.

(v) Penal Code, 1860, Ss. 21, 183, 186, 189, 225-B.

—S. 186—Accused assaulting Abkari Officers and preventing search of person suspected of possessing cocaine—Search—Presence of panel not required—Presumption—Evidence, withholding of—Judgment, delivery of, after passing sentence—Legality—Irregularity—Cr. P. C. (Act V of 1898) Ss. 366, 367, 537.

A Sub-Inspector and a Constable of the Abkari Department were proceeding to search a person *A* who they suspected was in possession of cocaine without a licence. The accused assaulted the officers, as a result of which, *A* absconded and the officers were, therefore, unable to search him: *Held*, that the accused was guilty of offences under S. 186 and S. 358 of the Penal Code. *Emperor v. Thevar Issaji*.

12 Cr. L. J. 457 :
11 I. C. 993 : 13 Bom. L. R. 635.

—S. 186—Cognizance—Complaint by public servant—Necessity of.

No prosecution in respect of an offence under S. 186, Penal Code, can be instituted except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. Neither the report of a process-server on the back of a warrant, to the Civil Court complaining of obstruction nor the report of the Presiding Officer of the Civil Court to the Police is a complaint satisfying the provisions of law. *Darkan v. Emperor*.

29 Cr. L. J. 645 :
110 I. C. 101 : A. I. R. 1928 Lah. 827.

—S. 186—Cognizance—Prosecution under—No sanction, effect.

A prosecution under S. 186 for obstructing a peon is bad when there was no sanction obtained for it. *Ahmud Hussain v. Emperor*.

14 Cr. L. J. 462 :
20 I. C. 622 : 17 C. W. N. 980.

—S. 186—Conviction—Alteration of.

Where a person is wrongly tried and convicted for an offence under S. 186, the conviction can be altered into one under S. 225-B when all the material facts are stated in the complaint and duly deposed to by witnesses and the accused would not be prejudiced by the alteration of the finding. *Jamna Das v. Emperor*.

28 Cr. L. J. 753 :
103 I. C. 833 : 9 L. L. J. 408 :
29 P. L. R. 196 : A. I. R. 1927 Lah. 708.

PENAL CODE ACT (XLV OF 1860)

—S. 186—Conviction — Obstruction to public servant—Warrant, legality of, objection as to, taken in revision.

A search-warrant was addressed to a Police Station and was endorsed by the officer-in-charge of the Police Station to a constable who, when executing the warrant, was obstructed by the accused. The latter were tried for an offence under S. 186, Penal Code, and were convicted. Neither at the time of the search nor during their trial did they take any objection to the legality of the warrant. In revision it was urged that the warrant was illegal inasmuch as it was addressed to a Police Station and not to any Police Officer by name or by description: *Held*, that no objection to the legality of the warrant, having been taken at the time of the search or at the trial, the conviction could not be set aside on that ground, which was merely an *ex post facto* attempt at justification. *Ma Kin v. Emperor*. 26 Cr. L. J. 845 : 86 I. C. 669 : 3 Bur. L. J. 182 : A. I. R. 1924 Rang. 383.

—S. 186—Evidence—Duty of prosecution.

The prosecution have to prove their case when they ask that a person should be convicted for the obstruction of a public servant in the discharge of his public functions. They must show that a public servant was discharging public duties imposed upon him by law. *Jamnadas Tharumal v. Emperor*. 41 Cr. L. J. 401 (b) : 187 I. C. 127 : 12 R. S. 223 : A. I. R. 1940 Sind 142.

—S. 186—Interpretation—'Obstruction', meaning of.

The word 'obstruction' as used in S. 186, Penal Code, means actual obstruction, i. e., actual resistance or obstacle put in the way of a public servant. The word implies the use of criminal force and mere threats or threatening language are not sufficient. *Darkan v. Emperor*. 29 Cr. L. J. 645 : 110 I. C. 101 : A. I. R. 1928 Lah. 827.

—S. 186—Interpretation — Obstruction, what is—Sufficient indication that warrant would be resisted by force—Whether constitutes obstruction.

Where there is sufficient indication that force would have been used if the peon having a warrant of attachment had persisted in executing it, it is quite enough to constitute obstruction. *Dukhan Sahu v. Emperor*. 39 Cr. L. J. 100 : 172 I. C. 168 : 18 P. L. T. 783 : 4 B. R. 115 : 10 R. P. 303 (2) : A. I. R. 1937 Pat. 633.

—S. 186—Interpretation—"Obstruction," what is.

Where the Constable is prevented by the accused from regulating the traffic, the exact means employed by the accused if he acts intentionally do not matter. Even threatening language is sufficient to constitute "obstruction"

PENAL CODE ACT (XLV OF 1860)

tion" within S. 186, Penal Code. *Nanhu v. Emperor*. 39 Cr. L. J. 363 (a) :

173 I. C. 732 : 10 R. A. 507 :

1937 A. L. J. 1344 :

1937 A. W. R. 1179 :

A. I. R. 1938 All. 118.

—S. 186—Interpretation—Public function—Meaning of.

The "public functions" contemplated by S. 186 of the Penal Code mean legal or legitimately authorised public functions, and are not intended to cover any act that a public functionary may choose to take upon himself to perform, and the mere fact of a public servant believing that he is acting in the discharge of his duties, is not sufficient to make resistance or obstruction to him amount to an offence within the meaning of the section. *Jaswant Singh v. Emperor*. 25 Cr. L. J. 721 :

81 I. C. 209 : 1 Lah. Cas. 429 :

A. I. R. 1925 Lah. 139.

—S. 186—Interpretation — Voluntarily, meaning of.

The use of the word "voluntarily" in S. 186, Penal Code, indicates that the Legislature contemplated the commission of some overt act of obstruction, and did not intend to render penal mere passive conduct. *Jaswant Singh v. Emperor*. 25 Cr. L. J. 721 :

81 I. C. 209 : 1 Lah. Cas. 429 :

A. I. R. 1925 Lah. 139.

—S. 186—Interpretation — Voluntary obstruction—What is.

Where a person not only refuses to give up the property but threatens to do harm to the Police Constable if he should venture to carry out the warrant, the threat is an overt act sufficient in law to constitute "voluntary obstruction" within the meaning of S. 186, Penal Code. *Emperor v. Pundlick Krishna Pat*. 1 Cr. L. J. 262 : 6 Bom. L. R. 254.

—S. 186—Obstruction—What is.

By obstruction in S. 186 is meant physical obstruction. *In re : Babulal*. 37 Cr. L. J. 587 :

162 I. C. 308 : 19 N. L. J. 120 :

I. L. R. 1936 Nag. 50 : 8 R. N. 258 :

A. I. R. 1936 Nag. 86.

—S. 186—Obstruction—What is.

Mere threat of violence does not amount to obstruction. Each case must be decided on its own facts. *Nafur Sardar v. Emperor*. 34 Cr. L. J. 181 :

141 I. C. 636 : 36 C. W. N. 1038 :

60 Cal. 149 : I. R. 1933 Cal. 153 :

A. I. R. 1932 Cal. 871.

—S. 186—Obstruction—What is.

Mere verbal threats do not amount to obstruction. *Ah Choung v. Emperor*. 33 Cr. L. J. 175 :

135 I. C. 653 : 9 Rang. 601 :

I. R. 1932 Rang. 61 :

A. I. R. 1932 Rang. 21.

PENAL CODE ACT (XLV OF 1860)

— S. 186—Obstruction—What is—Running away to avoid arrest under warrant of civil Court, whether offence.

A mere running away of a person not charged with any offence, whom an official of a Civil Court tries to arrest under a warrant of that Court, does not amount to obstructing a public servant in the discharge of his functions within the meaning of S. 186, Penal Code, nor does it come within S. 224, Penal Code. *Perru Muhammad Lebhai v. Swaminatha Pillai*. 17 Cr. L. J. 71 : 32 I. C. 663 : A. I. R. 1917 Mad. 182.

— S. 186—Obstruction—What is.

S. 186 does not contemplate constructive obstruction to a judicial officer in the discharge of his judicial functions even when they are of a quasi-executive character or when the proceedings before him are in execution. *Thakur Parsad v. Emperor*.

37 Cr. L. J. 104 (2) :
159 I. C. 503 : 16 P. L. T. 808 :
2 B. R. 95 : 8 R. P. 291 :
A. I. R. 1936 Pat. 74.

— S. 186—Obstruction—What is.

Threats made by a person holding an offensive weapon in his hands must be taken to be just as much an obstruction as that caused by a person actually blocking a gateway or handling a public servant in a manner calculated to prevent him from executing his duty. *Emperor v. Tohfa*.

34 Cr. L. J. 1211 :
146 I. C. 183 : 1933 A. L. J. 952 :
55 All. 985 : 6 R. A. 272 :
A. I. R. 1933 All. 759.

— S. 186—Obstruction—What is.

Where an octroi officer is acting within his authority in asking the accused to show the goods, refusal to show them amounts to obstruction offered in the discharge of the public functions of the officer which would be punishable under S. 186. *Sajan v. Emperor*.

37 Cr. L. J. 140 :
159 I. C. 665 : 29 S. L. R. 54 :
8 R. S. 91 : A. I. R. 1935 Sind 245.

— S. 186—Offence under—Act No. VIII of 1873 (Northern Indian Canal and Drainage Act), Ss. 45, 47.

Where under a written order signed by a Tahsildar, the Naib-Nazir was directed to realise certain canal dues, and he, on attempting to do so by attachment and sale of the defaulter's property, was resisted by the owners of the property, in was held that the conviction was good. *Emperor v. Abdullah*.

2 Cr. L. J. 183 :
25 A. W. N. 74 : 27 All. 499 : 2 A. L. J. 219.

— S. 186—Offence under—Assault on persons summoned by public servant to aid in investigation.

A Naib-Tahsildar of Income-tax visited the village of the accused where he was told by the Lambardars that the accused kept several shops and ought to be assessed to Income-tax. A dispute thereupon took place between

PENAL CODE ACT (XLV OF 1860)

the Lambardars and the accused, and in the course of the quarrel, the latter assaulted and beat the former, who, as a result, declined to render any help to the Naib-Tahsildar in his investigation : Held, that the action of the accused did not amount to obstructing the Naib-Tahsildar in the discharge of the public functions within the meaning of S. 186, Penal Code. *Matu Ram v. Emperor*.

24 Cr. L. J. 594 :
73 I. C. 338 : A. I. R. 1924 Lah. 238.

— S. 186—Offence under—Attachment under distress warrant—Property made over to surety—Second warrant to realise amount by sale of property attached and on failure to attach other properties—Surety denying suretyship—Attachment of other properties—Obstruction—If offence.

The petitioner was assessed to income-tax and a distress warrant was issued. The peon attached a bullock and left it in the custody of a surety. A second peon was then deputed to realise the amount under warrant by sale of the bullock and failing that by attachment and sale of other properties. The surety denied that he had received charge of the former bullock. The peon attached two more bullocks and the petitioner forcibly prevented their removal : Held, that the peon was acting within the scope of the directions given to him in the second warrant in attaching the two bullocks and the petitioner was guilty of an offence under S. 186, Penal Code. *Pichit Lal Missir v. Emperor*.

30 Cr. L. J. 1099 :
119 I. C. 886 : I. R. 1929 Pat. 614 :
A. I. R. 1929 Pat. 503.

— S. 186—Offence under—Constable entering house to remove stolen goods—Door shut on Constable, if offence.

A Head Constable entered the house of the accused to remove certain articles alleged to have been stolen. The accused shut the door of the room on the Constable and threatened to kill him if he removed the articles : Held, that the accused was guilty of obstruction to a public servant in the discharge of his public functions and had, therefore, committed an offence under S. 186, Penal Code. *In re : Gottumukkula Narayanaraju*.

26 Cr. L. J. 97 :
83 I. C. 657 : 1924 M. W. N. 438 :
20 L. W. 717 : 35 M. L. T. 126 :
A. I. R. 1924 Mad. 760.

— S. 186—Offence under—Escape from custody of process-server, if offence.

A person who escapes from the custody of a process-server after he is arrested, and shuts himself up in a room and refuses to come out, does not commit the offence of obstructing a public servant in the discharge of his duties under S. 186 of the Penal Code. *Jamna Das v. Emperor*.

28 Cr. L. J. 753 :
103 I. C. 833 : 9 L. L. J. 408 :
29 P. L. R. 196 : A. I. R. 1927 Lah. 708.

— S. 186—Offence under—Execution of decree—Illegal warrant for delivery of possession—Obstruction, whether offence.

Where obstruction is offered by a third person

PENAL CODE ACT (XLV OF 1860)

to delivery of possession by the *Amin* in execution of a decree, the proper course is for the decree-holder to apply under O. XXI, R. 97, C. P. C., for an order to remove the obstruction and to deliver possession of the property. Where, however, instead of doing that the decree-holder applies for a second order for delivery of actual possession and later his Pleader asks only for symbolical delivery, but an order to the *Amin* for actual delivery is erroneously drawn up, the warrant for delivery of actual possession must be held to be illegal. In such a case, it is open to the third person in possession of the property and not bound by the decree, to obstruct the *Amin*. *Murugappa Naicker v. Rex*.

26 Cr. L. J. 750 :
86 I. C. 286 : 21 L. W. 82 :
48 M. L. J. 97 : A. I. R. 1925 Mad. 613.

—S. 186—Offence under.

Issue of warrant of attachment under O. XXI, R. 22 (1), C. P. C.—Reasons not recorded under O. XXI, R. 22 (2)—Resistance to such warrant is an offence. *Bechan Mahlon v. Emperor*.

37 Cr. L. J. 319 :
160 I. C. 450 (a) : 16 P. L. T. 872 :
2 B. R. 214 : 8 R. P. 369 :
A. I. R. 1936 Pat. 37.

—S. 186—Offence under—Obstructing a public servant not in the discharge of his public functions, if offence.

The accused who was a spectator at a dramatic performance smoked in contravention of a condition in the handbills issued by the dramatic company. The accused was thereupon asked by a Police Officer on duty at the theatre to desist, which order the accused disputed. The Police charged him under Ss. 290, 504 and 505, Penal Code. The Magistrate convicted the accused of an offence under S. 186, Penal Code : *Held*, that the conviction was illegal and that the words 'public functions' in S. 186, Penal Code, meant legal or legitimately authorized public functions and that the Police Officer acted in excess of his powers when he gave the order and was, therefore, not discharging his public functions. *Dod Basappa v. Government of Mysore*.

10 Cr. L. J. 269 :
12 M. C. C. R. 285.

—S. 186—Offence under — Obstructing Munsif to pass through accused's own property for making local inspection, whether offence.

The accused, who were no parties to a suit in which a public right of way was claimed, did not allow a Munsif, in whose Court the suit was pending, to pass in a boat through a ditch which was their private property, when the Munsif wanted to pass through it for the purpose of making a local inspection in connection with the suit : *Held*, that the accused did not commit any offence under S. 186, Penal Code. *Nishi Kanta Pat v. Emperor*.

18 Cr. L. J. 62 :
37 I. C. 46 : 20 C. W. N. 857 :
A. I. R. 1917 Cal. 180.

PENAL CODE ACT (XLV OF 1860)

—S. 186—Offence under — Obstructing public servant in discharge of public function—Written order, whether must be shown to accused.

In order to constitute an offence under S. 186, Penal Code, it is not necessary to prove that the written order under which the public servant was acting was actually shown to the accused. It is enough if it is found that the public servant had the order with him and could show it to anybody who wanted to see the same or question his authority. *Tribhuvan v. Emperor*.

19 Cr. L. J. 641 (a) :
45 I. C. 833 : 5 O. L. J. 112 :
A. I. R. 1918 Oudh 162.

—S. 186—Offence under—Obstruction to person acting under orders of public servant, if offence.

A Circle Inspector went to the compound of the accused with a servant under the orders of the District Deputy Collector in order to remove an encroachment. When he ordered the servant to remove the encroachment and the latter placed a scythe on the fence, the accused caught hold of the same with a view to restrain him from removing the fence. The accused was charged with an offence under S. 186, Penal Code : *Held*, that the obstruction offered by the accused to the servant amounted to an obstruction to the Circle Inspector himself and the accused was guilty of an offence under S. 186 of the Penal Code. *Bhaga Mana v. Emperor*.

29 Cr. L. J. 529 :
109 I. C. 353 : 30 Bom. L. R. 364 :
52 Bom. 286 : A. I. R. 1928 Bom. 135.

—S. 186—Offence under—Obstruction to public servant acting ultra vires, if offence.

If the order under which a public servant acts is illegal or *ultra vires*, any obstruction caused to him would not be punishable under S. 186, Penal Code. *Morshwar Janardan Gogate v. Emperor*.

30 Cr. L. J. 353 :
114 I. C. 854 : 30 Bom. L. R. 1255 :
I. R. 1929 Bom. 262 : A. I. R. 1928 Bom. 497.

—S. 186—Offence under—Obstruction to servant acting under orders of public servant, if offence.

Where a cadastral surveyor, on receiving an application from the District Inspector of Land Records for measuring and demarcating certain lands went to the spot and when he was measuring the land, the accused snatched the crowbar from one of the surveyor's servants who was digging a hole for fixing a stone : *Held*, that the accused was guilty under S. 186, Penal Code, inasmuch as the surveyor was performing his legitimate functions under the rules of the Land Revenue Code and the obstruction offered by the accused was tantamount to an obstruction of the surveyor. *Limba Tayya Kasid v. Emperor*.

31 Cr. L. J. 401 :
122 I. C. 418 : 31 Bom. L. R. 800 :
A. I. R. 1929 Bom. 385.

—S. 186—Offence under—Officer acting without jurisdiction—Obstruction, whether offence. S. 186 of the Penal Code, does not cover the case of a public servant who, instead of

PENAL CODE ACT (XLV OF 1860)

acting in the discharge of his public functions as there contemplated, is acting wholly outside his jurisdiction or authority. The question whether a public servant was acting in the discharge of his public functions is a question of fact and not a matter of the public servant's intentions. His intentions may be perfectly honest, but, if in fact and in law the functions in discharge of which he is obstructed are 'not public functions, no offence can be committed under S. 186, Penal Code. *Emperor v. Kadarbhai Usufalli Bohri*.

28 Cr. L. J. 705 :
103 I. C. 593 : 29 Bom. L. R. 987 :
51 Bom. 896 : A. I. R. 1927 Bom. 483.

—S. 186—Offence under.

Peon entrusted with warrant of attachment satisfying that goods belonged to person concerned—Execution resisted by son of such person: *Held*, son committed offence under S. 186. *Dukhan Sahu v. Emperor*.

39 Cr. L. J. 100 :
172 I. C. 168 : 18 P. L. T. 783 :
4 B. R. 115 : 10 R. P. 303 (2) :
A. I. R. 1937 Pat. 633.

—S. 186—Offence under — Process-server violently obstructed.

The persons seriously obstructing, insulting and jostling a process-server in the execution of his duty are guilty of the offence under S. 186, Penal Code. *Jatto v. Emperor*.

16 Cr. L. J. 700 :
30 I. C. 748 : 30 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 456.

—S. 186—Offence under—Proof—Municipality trying to remove goods from a strip of land—Bona fide dispute—Bombay District Municipalities Act (III of 1901), S. 122—Practice—Theory of guilt and innocence equally likely.

Before an offence under S. 186, Penal Code, can be said to be established against any person, it is requisite, as the section itself expressly recites, to prove that the public servant obstructed was obstructed in the discharge of his public functions. That is a matter of fact and not a matter of the public servant's intentions. His intentions may have been perfectly honest, but if in fact and in law the function in the discharge of which he was obstructed were not public functions, then no offence can be committed under S. 186. The functions would not be public functions if they fall wholly outside the jurisdiction or authority which a public officer possessed. *Emperor v. Shivdasomkar Marwadi*.

14 Cr. L. J. 251 :
19 I. C. 507 : 15 Bom. L. R. 315.

—S. 186—Offence under—Receiver appointed by Court taking possession of corn of third party—Third party retaking possession peacefully and not allowing Receiver to make illegal *batai*—Offence, if committed.

Where the Receiver appointed by Court takes possession of corn in possession of a third party who subsequently retakes its possession peacefully and does not allow the

PENAL CODE ACT (XLV OF 1860)

Receiver to make *batai* of the corn, the third party cannot be punished under S. 379, Penal Code, because it takes possession only peacefully of its own property. Further since what the Receiver is trying to do is expressly forbidden by Sub-r. (2) of r. 1, O. XL, C. P. C., it cannot be said that the third party obstructed a public servant, even though a Receiver be a public servant within the meaning of S. 186, Penal Code. S. 186, Penal Code, contemplates that the public servant obstructed should be discharging his public functions lawfully, but when there was no legal basis for his acts, the section does not apply. *Abdulkabir Muhammad Sidik Ujan v. Emperor*.

41 Cr. L. J. 103 :
184 I. C. 799 : 1940 Kar. 105 :
12 R. S. 134 : A. I. R. 1939 Sind 333.

—S. 186—Offence under—Refusal of subordinate to allow superior to check books, if criminal offence.

The refusal of a *Patwari* to allow a *Kanungo* to go through his books and to check them, is only an act of insubordination and is not a criminal act falling within the purview of S. 186, Penal Code. *Kishori Lal v. Emperor*.

26 Cr. L. J. 597 :
85 I. C. 821 : A. I. R. 1925 All. 409.

—S. 186—Offence under—Refusal to sit on panchayat with certain members, belonging to depressed class, whether offence.

The accused when asked by the Sub-Divisional Officer to sit on a *panchayat* with a member of the depressed classes refused to do so and told the Sub-Divisional Officer that the *panchayat* would cease to exist and instigated his fellow *panchas* and other persons not to sit with members of the depressed classes in the *panchayat*: *Held*, that the accused was guilty of bad manners, and was not a good citizen or a useful member of the community but that there was nothing in his conduct which would bring him within the purview of S. 186, Penal Code. *Ram Ghulam Singh v. Emperor*.

26 Cr. L. J. 978 :
87 I. C. 514 : 23 A. L. J. 352 :
47 All. 579 : A. I. R. 1925 All. 401.

—S. 186 — Offence under — Resistance of illegal warrant, if offence.

Resistance or obstruction to the execution of an illegal warrant is not an offence under S. 186. *Emperor v. Tohfa*.

34 Cr. L. J. 1211 :
146 I. C. 183 : 55 All. 985 :
1933 A. L. J. 952 : 6 R. A. 272 :
A. I. R. 1933 All. 759.

—S. 186—Offence under—Resistance to execution of time-barred warrant, whether offence.

When the date fixed in a warrant of attachment has expired, the warrant is no longer in force and capable of execution, and if any person offers resistance to execution purporting to be made under the time-expired warrant,

PENAL CODE ACT (XLV OF 1860)

he is not guilty of an offence under S. 186, Penal Code. *Mahadeo v. Emperor*.

28 Cr. L. J. 157 :
99 I. C. 413 : 4 O. W. N. 43 :
2 Luck. 40 : A. I. R. 1927 Oudh 91.

———S. 186—Offence under—Resistance to execution of illegal warrant, if offence.

A warrant issued under the Public Demands Recovery Act was returnable on July 26. The accused resisted its execution on August 2nd. The prosecution alleged that it was extended to August 8th: *Held*, that as that date did not appear on the warrant, the accused were not guilty in resisting its execution, as on the face of it, it was not a good warrant. A warrant issued under the Chowkidari Act was directed to the *Naib-Nazir* and he delegated its execution to his subordinate peon whose name did not appear on the warrant: *Held*, the warrant could not be lawfully executed by the peon, and resistance to such execution is no offence. *Sheikh Nasser v. Emperor*.

11 Cr. L. J. 128 :
5 I. C. 409 : 14 C. W. N. 282.

———S. 186—Offence under.

Resistance to public servant—Goods sought to be attached in physical possession of third party—Obstruction by third party—Resistance not more than what was justifiable to resist an unlawful proceeding—Conviction is not legal. *Nagarmal Marwadi v. Emperor*.

33 Cr. L. J. 883 :
139 I. C. 834 : 11 Pat. 493 :
13 P. L. T. 689 : I. R. 1932 Pat. 257 :
A. I. R. 1932 Pat. 279.

———S. 186—Offence under—Resistance to process-server of illegal warrant, if offence.

Illegal warrant—Resistance to process-server. Question of private defence held does not arise—Conviction under S. 186, held illegal. *Thithi Suryanarayana v. Thota Sinhadri*.

36 Cr. L. J. 111 :
152 I. C. 481 : 67 M. L. J. 510 :
40 L. W. 594 : 1934 M. W. N. 1230 :
7 R. M. 234 (1) : A. I. R. 1934 Mad. 664 (2).

———S. 186—Offence under.

Resisting execution of bad warrant if offence—Warrant issued by Assessor *Panch* under S. 27, Chaukidari Act (VI of 1870)—Omission of any authorization to any one to execute it—Assessor *Panch* executing it himself—Warrant held bad—Defect held could not be cured by S. 34, Chaukidari Act—Accused rescuing cattle attached under such warrant held not guilty under S. 186. *Gopal Mahton v. Emperor*.

41 Cr. L. J. 819 :
190 I. C. 98 : 21 P. L. T. 716 :
6 B. R. 914 : 13 R. P. 182 :
A. I. R. 1941 Pat. 161.

———S. 186—Offence under—Resisting execution of writ of attachment after expiry of date of its return, if offence.

The execution of a writ of attachment after expiry of the date fixed for its return is

PENAL CODE ACT (XLV OF 1860)

illegal, and resistance to such execution is not an offence under S. 186, Penal Code. *Tanuklal Mandar v. Emperor*.

22 Cr. L. J. 222 :
60 I. C. 334 : 1920 Pat. 235 :
1 P. L. T. 654.

———S. 186—Offence under—Resisting illegal warrant, if offence

Person is not guilty of an offence under S. 186 where the warrant was directed by Munsif to a place beyond his jurisdiction. *Sarbeswar Nath v. Emperor*.

39 C. L. J. 33 :
A. I. R. 1924 Cal. 501.

———S. 186—Offence under—Resisting removal of encroachment, not proved, if offence.

A owned a shop. Between the shop and the public road there was a small strip of land which A had been using for forty years for the purpose of depositing his bales and other goods. A dispute arose between himself and the Municipality with reference to the title to this strip of land. The Municipality prosecuted A under the Municipal Act, for an alleged encroachment but the prosecution was unsuccessful. After this, the Chief Officer of the Municipality accompanied by a posse came to A's shop and attempted to remove his goods. A obstructed the officer: *Held*, that A was not guilty of an offence under S. 186, Penal Code. *Emperor v. Shivdas Onkar Marwadi*.

14 Cr. L. J. 251 :
19 I. C. 507 : 15 Bom. L. R. 315.

———S. 186—Offence under—Tearing away receipt of registered article after taking delivery, if offence—Mischief.

When the accused, addressee of a registered article, after taking delivery of the article from a Postmaster, tore the receipt given for the article and was convicted of an offence under S. 186, Penal Code: *Held*, that the act of the accused was not calculated to obstruct the Postmaster in the discharge of his public functions and the conviction under S. 186, I. P. C., was not right. *Emperor v. Sukha Singh*.

2 Cr. L. J. 242 :
6 P. L. R. 265 : 24 P. R. Cr. 1905.

———S. 186—Offence under—Writ of attachment without seal of Court—Properly attached under—Rescue of it from Court peon, if offence.

A person who rescues his cattle from a Court peon who has attached them under a writ which does not bear the seal of the Court, under O. XXI, R. 24 (2), C. P. C., without assaulting the peon, commits no offence under S. 186, Penal Code. The fact that the person had no knowledge of the invalidity of the writ at the time of the rescue of the cattle does not disentitle him to rely on its invalidity at his trial. *Badri Gope v. Emperor*.

27 Cr. L. J. 418 :
93 I. C. 146 : 7 P. L. T. 30 :
5 Pat. 216 : A. I. R. 1926 Pat. 237.

PENAL CODE ACT (XLV OF 1860)

———S. 186—*Offence under—Warrant of attachment illegal—Obstruction to execution of such warrant, if offence.*

An obstruction to the execution of an illegal or *ultra vires* warrant of attachment is not an offence under S. 186, Penal Code. *Emperor v. Himayat Ali.* 2 Cr. L. J. 64 : 10 P. R. Cr. 1905 : 6 P. L. R. 256.

———S. 186—*Offence under.*

Where a person ran into his house to avoid his arrest in execution of Civil Court's warrant, held that his mere running away did not amount to intentional resistance. There must be some overt act of resistance or obstruction to justify conviction under S. 186. *Emperor v. Gajadhar.*

11 Cr. L. J. 721 (a) : 8 I. C. 823 : 7 A. L. J. 1174.

———S. 186—*Procedure — Complaint by public officer—Necessity of.*

Cognizance of an offence under S. 186 cannot be taken in the absence of a written complaint by the public officer concerned. *Ram Singh v. Emperor.*

36 Cr. L. J. 714 : 155 I. C. 421 (2) : 16 P. L. T. 295 : 7 R. P. 580 : A. I. R. 1935 Pat. 214.

———S. 186—*Resistance to officer carrying out not patently illegal instructions, if offence.*

Public officer only carrying out official instructions—Instructions not patently illegal—Resistance to him amounts to an offence. *Birdhi Chand Jaipuria v. Darbari Jayaswal.*

34 Cr. L. J. 263 : 142 I. C. 144 : 13 P. L. T. 480 : I. R. 1933 Pat. 122 : A. I. R. 1932 Pat. 276.

———S. 186—*Restitution of conjugal rights—Decree for restitution of conjugal rights—Warrant to seize wife, legality of—Resistance to warrant, if offence.*

In execution of a decree for restitution of conjugal rights, a warrant was issued directing the executing peon to seize the wife and deliver her bodily over to her husband, failing which, to bring her under arrest before the executing Court: Held, that the warrant was illegal, so that resistance to its execution was not an offence under S. 186, Penal Code. *Gohar Mahammad v. Pitambar Das.*

19 Cr. L. J. 968 : 47 I. C. 868 : 22 C. W. N. 814 : A. I. R. 1918 Cal. 4.

———S. 186—*Restitution of conjugal rights, decree for—Warrant for execution, legality of—Obstruction to warrant, if offence.*

A decree in a contested suit for restitution of conjugal rights passed on 3rd March 1917, directed the wife to return to her husband within 3 months of its date. The wife not having obeyed the decree, on the 15th September 1917, a warrant was issued against her without giving her any previous notice: Held, that the wife was not entitled to a notice

PENAL CODE ACT (XLV OF 1860)

before the warrant was issued, and that obstruction to the execution of the warrant was an offence punishable under S. 186 of the Penal Code. *Abdul Wazed v. Emperor.*

19 Cr. L. J. 976 : 47 I. C. 876 : A. I. R. 1919 Cal. 914.

———S. 186—*What constitutes offence—Sanitary Inspector not authorized to seize article seeking to seize—Owner of shop declining to allow removal, if offence.*

When a Sanitary Inspector is not authorized to seize the oil which is unfit for human consumption, the owner of the shop will be within his rights in declining to allow the oil to be taken from his shop. Conviction of the owner of the shop under S. 186, Penal Code will, therefore, be illegal. *Emperor v. Bharat Prosad Singh.*

154 I. C. 187 : 1 B. R. 286 (2) : 7 R. P. 431 : A. I. R. 1935 Pat. 73.

———S. 186—*What constitutes offence—Warrant addressed to Nazir personally—Nazir, whether can delegate execution to Naib-Nazir—Resistance to execution of, if offence.*

Although it is improper for a Nazir to depute one of his assistants to execute a warrant for the delivery of possession which is directed to the Nazir himself, yet the assistant is sufficiently clothed with authority to execute the warrant, and any person offering resistance or obstruction to its execution is guilty of an offence under S. 186, Penal Code. *Doman Mahto v. Emperor.*

21 Cr. L. J. 193 : 54 I. C. 977 : A. I. R. 1920 Pat. 482.

———S. 186—*What constitutes offence.*

Where the warrant is in order and the officer does not go beyond fulfilment of the instructions given to him in the writ, then a resistance to the public servant is an offence punishable under S. 186, Penal Code. *Dukhan Sahu v. Emperor.*

39 Cr. L. J. 100 : 172 I. C. 168 : 18 P. L. T. 783 : 4 B. R. 115 : 10 R. P. 303 (2) : A. I. R. 1937 Pat. 633.

———Ss. 186, 188, 332—*Warrant of attachment—Resistance to execution—Assault—Court issuing warrant acting in excess of its jurisdiction, if offence.*

Where in execution of a warrant of attachment before judgment in a civil case, the officer entrusted with the warrant is assaulted and resisted in the discharge of his duty, the fact that the Court which issued the warrant had exceeded its jurisdiction, is no defence to the assault committed on the Court's officer as that officer was acting in good faith under colour of his office. *Durga Kumar De v. Samedur Raza Chaudhuri.*

22 Cr. L. J. 343 : 61 I. C. 167.

———S. 187—*Omission to assist public servant—Failure to assist Salt-Inspector in making search—Offence—Cr. P. C. (Act V of 1898), S. 103, Cl. (2), scope of.*

Cl. (2) of S. 108, Cr. P. C., suggests that

PENAL CODE ACT (XLV OF 1860)

while the rendering of assistance to a public servant in making a search is imperative on the persons called upon to assist, they are not compellable to attend Court to give evidence without a summons in that behalf. Failure, therefore, to assist a Salt-Inspector in making a search, after being requisitioned by the latter to do so, is an offence punishable under S. 187, Penal Code. *Ispili Magatha v. Emperor.*

21 Cr. L. J. 33 (a) :
54 I. C. 241 : 11 L. W. 58 :
38 M. L. J. 27 : 1920 M. W. N. 110 :
A. I. R. 1920 Mad. 286.

————S. 187—Omission to assist public servant.

Person arrested lying down on ground and refusing to move—Police asking assistance from accused—Refusal of accused to offer the aid makes him liable for conviction. *Ambika Prasad v. Emperor.*

33 Cr. L. J. 736 :
139 I. C. 106 : I. R. 1932 All. 527 :
A. I. R. 1932 All. 506.

————S. 187—Omission to assist public servant—Refused to join Police in search of person whose whereabouts are unknown, if offence.

A person who declines to join a Police Officer in a search for the whereabouts of certain persons with a view to their arrest in the event of the search proving successful, does not thereby incur any criminal liability. *Joti Prasad v. Emperor.*

21 Cr. L. J. 801 :
58 I. C. 673 : 18 A. L. J. 169 :
2 U. P. L. R. All. 88 : 42 All. 314 :
A. I. R. 1920 All. 265.

————S. 187—Omission to assist public servant.

Search witnesses on whom written order to attend and witness search, is not issued, attending and witnessing search but refusing to sign search list are not guilty under S. 187. *Ram Prasad v. Emperor.* (F. B.)

39 Cr. L. J. 796 :
176 I. C. 787 : 19 P. L. T. 461 :
4 B. R. 772 : 11 R. P. 107 : 17 Pat. 632 :
A. I. R. 1938 Pat. 403.

————S. 188.

————Appeal.

————Applicability.

————Complaint.

————Complaint of sanction.

————Consequences of disobedience is gist of offence.

————Conviction.

————Disobedience of order.

————Duty of prosecution.

————Evidence.

————Ingredients.

————Interpretation.

————Legality of promulgation of order.

————Miscellaneous.

————Offence.

————Offence under.

————Procedure.

————Promulgation.

————Promulgation of order.

————Public servant.

PENAL CODE ACT (XLV OF 1860)

————Sanction to prosecute.

————Scope.

————What constitutes offence.

————S. 188.

See also (i) Calcutta Police Act, 1866,
Ss. 62, 62-A, 62-B.

(ii) Cr. P. C., 1898, Ss. 144, 195,
195 (1) (a), 487, 550.

(iii) Epidemic Diseases Act,
1897, S. 3.

(iv) Madras Abkari Act, 1886,
S. 81.

————S. 188—Appeal—Refusal to file complaint under—Appcal, if lies.

No appeal lies against the refusal of a public servant to file a complaint under S. 188, Penal Code. *Maruda Pillai v. Narayanaswami Pillai.*

40 Cr. L. J. 568 (b) :
181 I. C. 557 : 1939 M. W. N. 119 :
49 L. W. 387 (1) : 11 R. M. 830 :
A. I. R. 1939 Mad. 336.

————S. 188—Applicability—Disobedience of prohibitory order under S. 268, C. P. C. is not punishable.

The disobedience of a prohibitory order issued under S. 268, C. P. C., 1882, (corresponding to O. XXI, R. 46 of the Code of 1908) is not punishable under S. 188, Penal Code. S. 188 does not apply to orders in civil suits between party and party. *Yaung Hon v. Emperor.*

11 Cr. L. J. 56 :
4 I. C. 824 : U. B. R. 1907—09 II, P. C. p. 23.

————S. 188—Complaint—Unlawful assembly to disobey lawful order—Complaint from public servant, whether necessary.

If an accused person is charged for an offence under S. 188, Penal Code, the Court cannot take cognizance of the offence except on the complaint of the public servant whose order was disobeyed, but if the offence charged is unlawful assembly to commit an offence under S. 188, Penal Code, no such complaint is necessary. *Bhalchandra Trimbak Ranadive v. Emperor.*

31 Cr. L. J. 495 :
123 I. C. 497 : 31 Bom. L. R. 1151 :
54 Bom. 35 : A. I. R. 1929 Bom. 433.

————S. 188—Complaint of sanction—Cr. P. C. (Act V of 1898), S. 195—Disobedience of order promulgated by public servant—Sanction to prosecute, whether necessary—Knowledge of accused, proof of.

In order to obtain a conviction under S. 188, Penal Code, it is necessary that either there should be a complaint by the public servant, whose order has been disobeyed or sanction under S. 195, Cr. P. C. *Emperor v. Abdullah.*

22 Cr. L. J. 705 :
63 I. C. 865 (b).

————S. 188—Consequences of disobedience is gist of offence—Disobedience to order duly promulgated by public servant—Contempt of Court.

Where a person, who had unsuccessfully sued for a declaration of his right to make a window, and who had been restrained by

PENAL CODE ACT (XLV OF 1860)

a civil Court's order in his first attempt to make openings in his wall, having again made holes, the defendant applied to prosecute him under S. 188, I. P. C.: *Held*, that disobedience to a lawful order was not an offence under that section, unless such disobedience caused or tended to cause some of the specific consequences stated in that section; that that section applied to orders made by public functionaries for public purposes and not to an order made in a civil suit between party and party: *Held*, also that, as the wording of the application indicated that the Court was moved as a Criminal Court, the application could not be treated as a civil one, as both the functions being distinct, there was grave risk involved in their confusion or combination; but that the civil Court was still open to the applicant. *Memon Haji Habib Faridsheikh v. Memon Haji Jusab Habib*. 3 Cr. L. J. 151.

—S. 188—Conviction—Proclamation and attachment issued against absconding member of joint Hindu family—Attachment of family land—Other member cultivating land—Conviction, whether proper.

Where a proclamation and attachment were issued against an absconder under S. 87, Cr. P. C., attaching some undivided land of the joint family to which the absconder belonged, but one of the other members of the family cultivated the lands in spite of the order and was prosecuted and convicted under S. 188, Penal Code: *Held*, that both the conviction under S. 188, Penal Code, and the attachment under S. 87, Cr. P. C., were bad and liable to be set aside. *Bisi Bihari v. Emperor*.

18 Cr. L. J. 1037 :
42 I. C. 781 : 2 P. L. W. 179 .
A. I. R. 1917 Pat. 505.

—S. 188—Conviction under—Proof.

It is not necessary for a conviction under S. 188 that there should be a definite finding of the Magistrate that the action of each accused led to or caused a breach of the peace. *Emperor v. Niaz Khan*.

35 Cr. L. J. 699 :
148 I. C. 518 : 11 O. W. N. 384 : 6 R. O. 419 :
A. I. R. 1934 Oudh 162.

—S. 188—Disobedience of order.

A number of young men, including the accused, were found preaching and patrolling the roads near the liquor shops in the Belgaum City, some shouting "Don't drink," and using offensive language in addition to those words. The District Magistrate thereupon issued orders under S. 144 of the Cr. P. C., prohibiting these acts, but the persons warned continued to do them from the verandah of a private house adjoining a public place: *Held*, that objectionable language such as "If you drink, you will be drinking the blood of your children," speaks for itself; no further evidence than the words used is required to prove that it has a tendency to cause annoyance to

PENAL CODE ACT (XLV OF 1860)

persons lawfully employed, under S. 188, Penal Code. *Emperor v. Govind Venkatesh Yalgi*.

8 Cr. L. J. 431 :
4 M. L. T. 363 : 10 Bom. L. R. 1047.

—S. 188—Disobedience of order and abetment of disobedience—Common object.

Where certain persons jointly enter on certain land in defiance of an order that has been passed under S. 144, Cr. P. C., though some of them may be guilty of an offence under S. 188, Penal Code, and others of abetment of that offence, nevertheless the common object of them all is one and the same. *Nayan Ullah v. Emperor*.

26 Cr. L. J. 594 :
85 I. C. 818 : A. I. R. 1925 Cal. 903.

—S. 188—Disobedience of order.

Breach of order of Commissioner of Police under S. 62-A (4), Calcutta Police Act, and S. 93-A, Calcutta Suburban Police Act, is an offence under S. 188. *Ramendra Chandra Ray v. Emperor*.

32 Cr. L. J. 844 :
132 I. C. 174 : 35 C. W. N. 716 :
58 Cal. 1303 : I. R. 1931 Cal. 558 :
A. I. R. 1931 Cal. 410.

—S. 188—Disobedience of order under—C. P. Tenancy Act, S. 219—Summary ejectment—Order of Deputy Commissioner—Disobedience of order—Punishment.

A person who disobeys the order of the Deputy Commissioner, made under S. 219, C. P. Tenancy Act, for his summary ejectment is liable to be punished under S. 188, Penal Code, for disobedience of that order. *Hirasingh v. Emperor*.

23 Cr. L. J. 19 :
64 I. C. 499 : 17 N. L. R. 88 :
A. I. R. 1922 Nag. 209.

—S. 188—Disobedience of order—If in itself an offence.

Under S. 188, mere disobedience of an order does not constitute an offence in itself, it must be shown that the disobedience has a certain consequence or tends to some result. *Mst. Lachmi Devi v. Emperor*.

32 Cr. L. J. 511 :
130 I. C. 241 : 35 C. W. N. 257 :
53 C. L. J. 461 : I. R. 1931 Cal. 369 :
A. I. R. 1931 Cal. 122.

—S. 188—Disobedience of order—What is.

Person ordered under S. 147, Cr. P. C., not to proceed with wall being built—He neither proceeding to build nor demolishing it—He cannot be convicted under S. 188. *Usman Ali v. Emperor*.

39 Cr. L. J. 584 :
175 I. C. 234 : 1938 N. L. J. 139 :
I. L. R. 1938 Nag. 580 : 10 R. N. 440 :
A. I. R. 1938 Nag. 297.

—S. 188—Duty of prosecution—Accused's knowledge of order, duty of prosecution to prove—Promulgation of order, whether sufficient.

It is the duty of the prosecution in a case under S. 188, Penal Code, to prove by positive

PENAL CODE ACT (XLV OF 1860)

evidence that the accused had knowledge of the order with the disobedience of which he is charged and the proof of general notification promulgating the order does not satisfy the requirements of the section. *Ram Das Singh v. Emperor*.

28 Cr. L. J. 4 :
99 I. C. 36 : 44 C. L. J. 250 :
54 Cal. 152 : A. I. R. 1927 Cal. 28.

—S. 188—Duty of prosecution.

It is the duty of the prosecution in every case under S. 188 to prove by positive evidence that the accused had knowledge of the order with the disobedience of which he is charged. The proof of general notification promulgating the order does not satisfy the requirements of the section. *Emperor v. Abdullah*.

22 Cr. L. J. 705 (b) :
63 I. C. 865.

—S. 188—Evidence—Knowledge of accused, evidence of—Promulgation.

It is not sufficient in order to affect a person with the knowledge of an order under S. 144 and to render him liable to conviction under S. 188 to show that the order had been duly promulgated. It is necessary to prove by positive evidence that he has the knowledge that the order has been made. *Sheikh Abdul v. Emperor*.

28 Cr. L. J. 350 :
100 I. C. 830 : 31 C. W. N. 340 :
45 C. L. J. 202 : A. I. R. 1927 Cal. 306.

—S. 188—Evidence—Want of evidence that disobedience will likely lead to a breach of the peace—Effect of.

Where there is no definite evidence on the record to show that the disobedience to an order under S. 144, Cr. P. C., would likely cause a breach of the peace, a conviction under S. 188, I. P. C., is wrong and cannot be sustained. *Ram Gopal Daw v. Emperor*.

2 Cr. L. J. 760 :
I. L. R. 32 Cal. 793.

—S. 188—Ingredients—Conviction under S. 188, requirements of—Mere presence of accused in disturbed place, whether sufficient.

In order to justify a conviction under S. 188, Penal Code, for the disobedience of a lawfully promulgated order of a Magistrate, there must be a finding that the presence of the accused was likely to cause or tended to cause obstruction, annoyance or injury to any person or any one of the things mentioned in Cl. (3) of the section. The mere presence of the accused in the disturbed area without going away when ordered, is insufficient to bring them under S. 188, Penal Code. *Paramasiva Moopan v. Emperor*.

29 Cr. L. J. 590 :
109 I. C. 606 : 1928 M. W. N. 70 :
A. I. R. 1928 Mad. 591.

—S. 188—Ingredients—Essentials for conviction under S. 188.

For a conviction under S. 188, I. P. C., there must clearly be something more than mere disobedience of the order. It must also be shown that obstruction, annoyance or injury, danger to human life, etc., have been caused or

PENAL CODE ACT (XLV OF 1860)

might have been caused. Where there is a finding that the disobedience of the order was risky to the public peace, the conviction of the accused under S. 188 is justified. *In the matter of : Madan Kishore*.

41 Cr. L. J. 414 :
187 I. C. 135 : 21 P. L. T. 231 :
6 B. R. 424 : 12 R. P. 578 :
A. I. R. 1940 Pat. 446.

—S. 188—Ingredients—Knowledge of order is a necessary ingredient.

Knowledge of the order is a necessary ingredient of the offences punishable under S. 188, Penal Code, and S. 32, Police Act. There is no foundation for a distinction between S. 188, Penal Code, and S. 32 of the Police Act so far as the element of knowledge as an essential ingredient of the offence is concerned. *In re : Sundara Mudaliar*.

38 Cr. L. J. 620 :
168 I. C. 848 : 9 R. M. 650 :
1937 M. W. N. 172 : 45 L. W. 400 :
1937, 1 M. L. J. 473 :
A. I. R. 1937 Mad. 535.

—S. 188—Ingredients.

Per Sulaiman, J.—A conviction cannot be sustained under S. 188, Penal Code, unless it is found that the order of which disobedience is alleged was (a) promulgated by a public servant to the knowledge of the accused, (b) that that public servant was legally empowered to promulgate such an order, and (c) its disobedience caused or tended to cause obstruction, annoyance or injury or risk of it to a person lawfully employed, or danger to human life, health or safety, or tended to cause a riot or affray. *Emperor v. Raghunath*.

26 Cr. L. J. 599 :
85 I. C. 823 : 22 A. L. J. 1049 :
47 All. 205 : A. I. R. 1925 All. 165.

—S. 188—Ingredients—Refusal by crowd to disperse, if offence.

To attract the application of S. 188, Penal Code, it is not enough to find that the accused, while one of a crowd, refused to disperse when ordered to do so under S. 144, Cr. P. C., but it must also be found that the disobedience of the crowd of which the accused constituted a member tended to cause danger to human life, health or safety or caused or tended to cause a riot or an affray. *Din Muhammad v. Emperor*.

29 Cr. L. J. 877 :
111 I. C. 461 : 29 P. L. R. 647 :
10 Lah. 231 : A. I. R. 1929 Lah. 378.

—S. 188—Ingredients.

Requirements of S. 188 when satisfied stated. *Lalchand v. Emperor*.

34 Cr. L. J. 362 :
142 I. C. 591 : I. R. 1933 Sind 103 :
A. I. R. 1933 Sind 93 (1).

—S. 188—Interpretation—'Promulgated', import of.

The word 'promulgated' in S. 188, Penal Code, refers to orders passed under the Cr. P. C., and disobedience to an injunction issued by a Civil Court is not punishable under that

PENAL CODE ACT (XLV OF 1860)

section. *Vanimkandy Thazha v. Thazhithattath Kutti*. 16 Cr. L. J. 592 : 30 I. C. 144 : 2 L. W. 410 : 17 M. L. T. 391 : A. I. R. 1916 Mad. 640.

—S. 188—Legality of promulgation of order.

An order by a District Magistrate directing that certain plots of land are not to be cultivated is not such an order that its disobedience is punishable under S. 188, Penal Code. *Dhan Singh v. Emperor*. 1 Cr. L. J. 987 : 1 A. L. J. 615.

—S. 188—Legality of promulgation of order.

Certain inhabitants of village K having extended their cultivation on the side of the neighbouring village D to the injury, or alleged injury, of the rights of pasturage of the inhabitants of village D, were forbidden by an order issued by Deputy Commissioner to extend their cultivation in the direction of village D: *Held*, that no legal authority existed for the promulgation of such an order and that consequently no conviction could be had under S. 188, Penal Code, for disobedience thereto. *Emperor v. Kalian Singh*. 1 Cr. L. J. 916 : 24 A. W. N. 233.

—S. 188—Miscellaneous.

To be justified in directing a certain act to be done or not to be done is one thing and to be legally empowered to order its commission or omission with the consequence of the disobedience being punishable under S. 188, Penal Code, is quite another. *Emperor v. Raghunath*. 26 Cr. L. J. 599 : 85 I. C. 823 : 22 A. L. J. 1049 : 47 All. 205 : A. I. R. 1925 All. 165.

—S. 188—Offence, essentials.

Under S. 188 of the Penal Code if the Court finds that the order, disobedience of which is sought to be punished, was a legal order, it has only to see whether the accused disobeyed the order, and, if so, whether such disobedience caused or tended to cause the effects specified in the second and third paragraphs of the section. *Bhure Mol v. Emperor*. 24 Cr. L. J. 689 : 73 I. C. 801 : 45 All. 520 : A. I. R. 1923 All. 606.

—S. 188—Offence under—Disobedience of illegal order granted to one person, if offence.

An order directing persons other than the grantee of certain land to take certain order with buildings thereon is not authorised by the Burma Land and Revenue Act or the rules thereunder. Therefore, where land was granted to A but was built on by B, the failure of B to remove the building in obedience to an order, promulgated by the Deputy Commissioner, would not render him liable under S. 188, Penal Code. *Ba Nyun v. Emperor*. 15 Cr. L. J. 22 : 22 I. C. 166 : 7 L. B. R. 75 : 7 Bur. L. T. 25 : A. I. R. 1914 L. Bur. 134.

PENAL CODE ACT (XLV OF 1860)

—S. 188—Offence under—Disobedience to order not duly promulgated by a Magistrate, if offence.

Disobedience to Magistrate's order not duly promulgated and directed to the accused in writing is not an offence under S. 188, I. P. C. *Mul Raj v. Emperor*. 2 Cr. L. J. 719 : 36 P. R. 1905 Cr.

—S. 188—Offence under—Disobeying illegal order, if offence.

An order forbidding persons to enter railway quarters except for bona fide purposes of travelling is an illegal order, for the public have a right to go to the railway premises for many purposes other than travelling. Therefore, where certain Pandas were forbidden to go on to the Railway Station except for purposes of travelling, but they went to the platform and importuned the pilgrims: *Held*, that the Pandas could not be convicted of an offence under S. 188, Penal Code. *Rama v. Emperor*. 14 Cr. L. J. 122 : 18 I. C. 682 : 11 A. L. J. 92 : 35 All. 136.

—S. 188—Offence under—Illegal order issued by Police Sub-Inspector to Station Master to detain certain logs lying on trucks suspected to be stolen property—Disobeying which, if offence.

Where a Police Sub-Inspector suspected that certain logs, which were lying on trucks at a Railway Station, were stolen property and, instead of seizing them under S. 550, Cr. P. C., issued an order to the Station Master directing him to detain the same: *Held*, that the order was irregular and objectionable. The Station Master, after detaining the logs for some time, forwarded the consignment under express orders from the Traffic Superintendent: *Held*, that under these circumstances, the conviction of the Station Master under S. 188, Penal Code, could not be sustained. *Emperor v. Bithal Nath*. 15 Cr. L. J. 177 : 22 I. C. 453 : 16 O. C. 371 : A. I. R. 1914 Oudh 230.

—S. 188—Offence under—Landlord collecting suspended rent by distraint, if commits offence.

A landlord endeavouring to collect suspended arrears of rent by distraint is not guilty of an offence under S. 188, Agra Tenancy Act. S. 51 provides special remedy for disobedience of order. *Emperor v. Ram Sarup*. 16 Cr. L. J. 674 : 30 I. C. 722 : 13 A. L. J. 619.

—S. 188—Procedure.

A question as to the validity of the final order made in proceedings under S. 188, Cr. P. C., cannot be raised at the trial of the accused for an offence under S. 188 for disobedience of the order. *Superintendent v. Khoda Baksh Shah*. 35 Cr. L. J. 778 : 148 I. C. 808 : 60 Cal. 1336 : 6 R. C. 484 : A. I. R. 1934 Cal. 242 (1).

PENAL CODE ACT (XLV OF 1860)

————S. 188—*Procedure—Cr. P. C., S. 144, order under, legality of, whether can be questioned.*

The mere fact that an application to revise an order under S. 144, Cr. P. C., was rejected by the High Court on the ground that when the application was made, the period of the order had elapsed, would not preclude a Magistrate in a trial, under S. 188, Penal Code, from questioning the legality of the order under S. 144, Cr. P. C. *Jairaldin Mohammad v. Emperor.* 23 Cr. L. J. 376 : 67 I. C. 200 : 34 C. L. J. 578 : A. I. R. 1921 Cal. 258.

————S. 188—*Promulgation—Meaning of.*

Per *Walsh, Actg. G. J.*—The word “promulgate” in S. 188, Penal Code, seems to indicate, if not a formal document printed or written, at any rate, some form of publication. The promulgation need not be in printing or writing, and where a Sub-Inspector definitely conveys an order in a loud voice to a crowd in the street to stop, so that those who are addressed may understand it to be a definite order promulgated by a public officer in authority, and the order is disobeyed, the case would fall within the purview of S. 188, Penal Code. *Emperor v. Raghunath.*

26 Cr. L. J. 599 :
85 I. C. 823 : 22 A. L. J. 1049 :
47 All. 205 : A. I. R. 1925 All. 165.

————S. 188—*Promulgation of order—Absence of—Effect of.*

Where there is nothing on the record to show that any order was promulgated by a public servant lawfully empowered to promulgate such order, a conviction under S. 188 of the Penal Code would be set aside, although the conviction has been obtained at a summary trial. *Rama v. Emperor.*

14 Cr. L. J. 122 :
18 I. C. 682 : 11 A. L. J. 92 : 35 All. 136.

————S. 188—*Promulgation of order—Irregularities—Effect—Accused having knowledge of order under S. 144, Cr. P. C. (Act V of 1898), disobeying it—Irregularity in promulgation of order—Effect—Knowledge of accused of order which he is charged with disobeying must be proved.*

Even if there has been irregularity in the method of promulgation of the order under S. 144, Cr. P. C., that in itself would not make it *ultra vires*, so as to prevent the conviction of any person who, being proved to have had knowledge of the order, nevertheless disobeyed it. It is not enough in such cases to prove that the order has been duly promulgated. There must also be positive evidence that the accused had knowledge of the order which he is charged with disobeying. *In the matter of : Madan Kishore.*

41 Cr. L. J. 414 :
187 I. C. 135 : 21 P. L. T. 231 :
6 B. R. 425 : 12 R. P. 578 :
A. I. R. 1940 Pat. 446.

————S. 188—*Public servant—Who is—Overseer of the P. W. D. not a public servant*

PENAL CODE ACT (XLV OF 1860)

lawfully empowered to promulgate an order—Disobedience thereto—No offence under S. 188.

The accused, *ryots* of a certain village, were convicted by the Deputy Magistrate of offences under Ss. 430 and 188, Penal Code, for damaging a certain *odai* and feeding the tank in contravention of an order issued by the P. W. D. Overseer. The Sessions Judge reversed the conviction under S. 430 but confirmed the conviction under S. 188, Penal Code. It was contended on behalf of the accused that the Overseer's order did not come within S. 188 : *Held*, that the contention was valid. The order of the Overseer could not operate to make an act unlawful which was lawful before its promulgation. *Maina Servai v. Emperor.* 11 Cr. L. J. 621 : 8 I. C. 302 : 1 M. W. N. 616.

————S. 188—*Sanction to prosecute—Sanction to prosecute, under S. 195, Cr. P. C., essentials for.*

A Magistrate should not sanction a prosecution under S. 188, Penal Code, unless he thinks that all the elements necessary for a conviction are present, and where there is nothing to show that a disobedience of an order under S. 144, Cr. P. C., caused or tended to cause annoyance, injury, obstruction, or a riot, the sanction should not be given. *Projapat Jha v. Emperor.* 11 Cr. L. J. 49 (b) : 5 I. C. 154 : 14 C. W. N. 234.

————S. 188—*Scope—Civil Court, order of, disobedience of, if offence.*

S. 188, Penal Code, is intended to apply to orders passed by public functionaries in the public interest or to prevent a breach of the peace or other unlawful disturbance, and not to orders made in a civil suit between party and party for the breach of which a remedy has been provided by the C. P. C. A person to whom property has been entrusted by an attaching Court and who fails to produce it when directed to do so by the Court, cannot be convicted under S. 188, Penal Code. *Hira Lal v. Emperor.*

22 Cr. L. J. 381 :
61 I. C. 237 : 24 O. C. 18 :
A. I. R. 1921 Oudh 123.

————S. 188—*Scope—Order directing guardian not to marry minor girl in his charge, if within scope.*

Operation of S. 188, Penal Code, is limited to the promulgation by public servants of public orders relating to the safety, the health or the convenience of the public. Therefore, the disobedience of an injunction directing a guardian not to marry a minor girl in his charge cannot fall within the purview of the section. *Mallapa Mallapa Tavargi v. Emperor.*

16 Cr. L. J. 668 :
30 I. C. 652 : 17 Bom. L. R. 676 :
A. I. R. 1915 Bom. 22.

————S. 188—*What constitutes offence.*

After the town of Davangere was evacuated on account of an outbreak of plague and after it was notified by beat of tom-tom that no person should reopen his house without permission, the petitioner opened his house in

PENAL CODE ACT (XLV OF 1860)

the town and entered it: *Held*, that as no particular regulation was contravened by the accused, the offence cannot fall under S. 188, I. P. C. *Chenuccappa v. Government of Mysore*.

9 Cr. L. J. 550 :
13 M. C. C. R. 115.

—S. 188—What constitutes offence.

Cr. P. C. (Act V of 1898), S. 144—Order under, directing petitioner to cut *bundh* or show cause against order—Magistrate not satisfied on cause shown—Failure to comply with order—Prosecution under S. 188: *Held*, order was not without jurisdiction. *Balaram Dey v. Pran Ram Chatterjee*.

38 Cr. L. J. 915 :
170 I. C. 499 : 41 C. W. N. 897 :
65 C. L. J. 460 : I. L. R. 1937, 2 Cal. 475 :
10 R. C. 150 : A. I. R. 1937 Cal. 406.

—S. 188—What constitutes offence—Disobeying illegal order, if offence—Verbal order to remove obstruction, whether legal—Disobeying such order, whether offence—Cr. P. C. (Act V of 1898), Ss. 133, 137.

A verbal order to remove an obstruction has not the effect of a final order under S. 137, Cr. P. C., and is not lawful, and a person disobeying such an order is not guilty of an offence under S. 188, Penal Code. *Janaki Nath Chakravarti v. Jnanendra Nath Chakravarti*.

16 Cr. L. J. 24 :
26 I. C. 328 : A. I. R. 1915 Cal. 741.

—S. 188—What constitutes offence.

To support a conviction under S. 188, I. P. C., there must be some evidence to show that the disobedience is likely to lead to a breach of the peace. *Shamanand Das Paharaj v. Emperor*.

1 Cr. L. J. 778 :
8 C. W. N. 781 : I. L. R. 31 Cal. 990.

—S. 189—Interpretation—Injury, meaning of.

Injury implies an illegal harm and a mere threat to bring a legal complaint either before a Court or before the superiors of the public servant concerned, is no injury within the meaning of S. 189, Penal Code, unless the threat is to bring a false complaint. *Shahdad Khan v. Emperor*.

27 Cr. L. J. 400 :
93 I. C. 48 : 6 Lah. 558 : 27 P. L. R. 87 :
A. I. R. 1926 Lah. 139.

—S. 189—Threat of injury—What is.

Mere threat uttered as exhibition of bad temper is not necessarily an offence under S. 189: *Held*, that offence under S. 503, was committed. *Muhammad Ahmad Khan v. Emperor*.

37 Cr. L. J. 212 :
160 I. C. 17 : 1936 A. L. J. 195 :
8 R. A. 557 : 1936 A. W. R. 28 :
A. I. R. 1936 All. 171.

—S. 189—What constitutes offence.

Police constables deputed to look up persons under surveillance going to accused's house calling his brother who was under surveillance—Accused abusing and threatening to break

PENAL CODE ACT (XLV OF 1860)

their heads: *Held*, conviction under S. 189 was right. *Emperor v. Yar Muhammad*.

32 Cr. L. J. 1181 :
134 I. C. 536 : 58 Cal. 392 :
I. R. 1931 Cal. 840 : A. I. R. 1931 Cal. 448.

—S. 189—What constitutes offence.

Where a person arrested in execution of a decree refuses to follow the peon arresting him and threatens to use violence, the whole occurrence amounts to one offence under S. 189 and conviction for two offences under Ss. 180, 189 is not justified. *Jagannath v. Emperor*.

25 Cr. L. J. 1237 :
82 I. C. 165 : A. I. R. 1925 Pat. 183.

—S. 190.

See also Penal Code, 1860, S. 44.

—S. 190—Interpretation—Threat to institute civil suit, whether threat of "injury".

A threat to institute a civil suit for a declaration of right against any person who is objecting to such right does not amount to a threat of "injury" within the meaning of S. 190, Penal Code. *Mulai Rai v. Emperor*.

27 Cr. L. J. 351 :
92 I. C. 863 : 24 A. L. J. 314 :
A. I. R. 1926 All. 277.

—S. 191.

See also (i) Cr. P. C., 1898, Ss. 164, 165, 407, 520.

(ii) Penal Code, 1860, S. 103.

—S. 191—Deliberation—False allegations in written statement and false verification, whether punishable.

S. 101, Penal Code, is applicable to the case of deliberate false allegations made in a written statement and false verification. *Emperor v. Padam Singh*.

31 Cr. L. J. 954 :
126 I. C. 5 : 1930 A. L. J. 955 :
A. I. R. 1930 All. 490.

—S. 191—Deposition not read to witness—Conviction.

A deposition which is not read over to the witness in accordance with the requirements of the law under which it was taken, cannot be used against him on a charge of perjury. *Taj Mahmud v. Emperor*.

29 Cr. L. J. 212 :
107 I. C. 100 : 29 P. L. R. 14 :
I. L. T. 40 Lah. 36 :
A. I. R. 1928 Lah. 125.

—S. 191—Falsity.

A person who has made two contradictory statements cannot be convicted for perjury on that ground unless it is clearly proved that the two statements are wholly irreconcilable. The mere fact that a person had on a previous occasion made an inconsistent statement does not necessarily prove that the previous statement was true and that the latter statement is false, and does not, therefore, afford a basis in itself for a

PENAL CODE ACT (XLV OF 1860)

conviction of perjury in respect of the latter statement. *Taj Mahmud v. Emperor.*

29 Cr. L. J. 212 :
107 I. C. 100 : 29 P. L. R. 14 :
I. L. T. 40 Lah. 36 :
A. I. R. 1928 Lah. 125.

-----S. 191—*Falsity—Indefinite statement in examination.*

Where an accused, who had, when filling up a kind of form, antedated it, said in his examination as a witness before a Court, that it might have been filled up on the date it bore, and though that kind of forms were new and supplied to him several months later, he said that that form might have been in the office that day : *Held*, that as both the statements in the charge were in an indefinite form, they could not be taken to amount to a false declaration of the witness's belief ; that as the Gujarati word *hashe* was used in the expressions, they conveyed not exactly doubt but want of knowledge and did not amount to a definite statement of fact or of belief. *Makanji v. Anandji.* 1 Cr. L. J. 486.

-----S. 191—*Ingredients.*

In order to sustain an indictment for perjury, the prosecution must establish, *inter alia*, two things : (1) that the statement was false, and (2) that it was known or believed to be false or not believed to be true ; in other words, the statement must be intentionally false. *Taj Mahmud v. Emperor.*

29 Cr. L. J. 212 :
107 I. C. 100 : 29 P. L. R. 14 :
I. L. T. 40 Lah. 36 :
A. I. R. 1928 Lah. 125.

-----S. 191—*Judicial proceeding—Case exclusively triable by Sessions Court—Third Class Magistrate recording statement under S. 164, Cr. P. C.—Contradictory statement before Magistrate holding preliminary inquiry.*

A Third Class Magistrate not being empowered to commit for trial, cannot deal judicially with any stage of the proceedings in a case exclusively triable by a Court of Session. If such Magistrate records a statement under S. 164, Cr. P. C., in a case of that nature, such statement would not be evidence in a stage of judicial proceedings within the meaning of Ss. 191, 193 of the Penal Code. In a case triable exclusively by a Court of Session, one A was examined as a witness under S. 164, Cr. P. C. When the case came up for preliminary inquiry before a First Class Magistrate, A made a statement contradicting his former statement recorded under S. 164. A was convicted of making false statement in a judicial proceeding ; *Held*, that A could not be convicted of giving false evidence in a judicial proceeding. *Emperor v. Shetlepa Satapa Mudanar.* 13 Cr. L. J. 709 :
16 I. C. 517 : 14 Bom. L. R. 753.

-----S. 191—*Judicial proceeding—Land Registration Act (VII of 1876, Bengal), Ss. 52, 53, 84—Cr. P. C. (Act V of 1898), S. 195—Whether witness bound to state the truth in proceeding under the Land Registration Act—Sanction to prosecute.*

PENAL CODE ACT (XLV OF 1860)

In a proceeding held by a Sub-Deputy Collector under Ss. 52 and 84, Land Registration Act (VII B. C. of 1876) a witness is bound to state the truth. And even if the proceeding be not considered a judicial proceeding within the meaning of S. 191, I. P. C., the case of a person making a false statement would fall under the second part of S. 193, Penal Code. *Hiranand Ojha v. Emperor.* 2 Cr. L. J. 15 :
9 C. W. N. 127, 983 : 2 C. L. J. 149.

-----S. 191—*Lawfully sworn.*

In order that a person making a statement to a Revenue Officer may be legally bound to speak the truth, it is necessary that the Revenue Officer should be acting in the discharge of some duty or in the exercise of some power imposed or conferred on him by law. A Revenue Officer to whom an application for a grant of land is made and who enquires into matters not specified in r. 8 or r. 46 of the Rules under the (Lower) Burma Land and Revenue Act, or a Revenue Officer enquiring into an objection to the issue of an order of eviction under r. 52 of these Rules is not proceeding in the discharge of a duty imposed, or in the exercise of a power conferred by law ; and a charge of giving false evidence in respect of statements made in such enquiries will, therefore, not lie. *Emperor v. Pakiri.* 1 Cr. L. J. 1004 :
2 L. B. R. 272.

-----S. 191—*Lawfully sworn.*

When the law prohibits the administration of an oath or solemn affirmation to an accused person, there can be no perjury. But where the law does not prohibit the administration of an oath or solemn affirmation and where in fact the practice of the Court directs that an oath or solemn affirmation must be administered before the affidavit is accepted, there cannot be any protection for an accused person who commits perjury in such a document. *Prag Datt v. Emperor.* 31 Cr. L. J. 600 :
123 I. C. 854 : 7 O. W. N. 9 :
A. I. R. 1930 Oudh 62.

-----S. 191—*Legally bound—Cr. P. C. (Act V of 1898), Ss. 174, 175—Death under suspicious circumstances—Inquest—False charge—False evidence—"Institution" of proceedings, meaning of.*

The offence of a person accusing another falsely of murder to a Police Officer in an enquiry under S. 174 of the Cr. P. C., would not fall under S. 194 of the Penal Code, the reason being that it is difficult to affirm the existence of an intention to cause, or of knowledge that the false evidence is likely to cause, a person to be convicted of a capital offence, when the proceeding in which the evidence is given is one in which such a conviction is not legally possible. A person who comes forward without being summoned and volunteers information at an enquiry under S. 174, Cr. P. C., is not bound to answer truly questions put to him under S. 175 of the Code and not being so bound, his answers, if false, cannot form the basis of a charge of perjury, having regard to

PENAL CODE ACT (XLV OF 1860)

the definition of that offence in S. 101 of the Penal Code. *Muhammad Hayat v. Emperor*.

23 Cr. L. J. 82 :
65 I. C. 434 : 6 P. W. R. 1922 Cr. :
A. I. R. 1922 Lah. 33.

—S. 191—*Legally bound—False evidence—False verification—Application for mutation of names—Land Registration Act (VII B. C. of 1876), Ss. 42, 52, 88—Board of Revenue Rules, Chap. V, r. (5).*

The Rules passed by the Board of Revenue under S. 88 of Bengal Land Registration Act, referring to the procedure as to verification of an application for registration, have the force of law by reason of the express enactment of S. 88 itself. Therefore, a claimant asking for land registration is bound by law to make a true declaration upon the subject of his application, and if he makes a false statement in it, he is punishable under Ss. 191 and 193, Penal Code. *Naloo Patra v. Emperor*.

12 Cr. L. J. 412 :
11 I. C. 595 : 38 Cal. 368.

—S. 191—Materiality.

It is not strictly necessary that the statement should be material to the inquiry, so long as it was made by a person who was bound by oath to state the truth. *Durga Prasad v. Emperor*.

34 Cr. L. J. 686 :
144 I. C. 194 : I. R. 1933 All. 397.
A. I. R. 1933 All. 318.

—S. 191—Materiality—Materiality of statement not necessary.

A person making a false statement in a judicial proceeding is guilty under S. 191, Penal Code, although the particular false statement may not have been material for the decision of any issue in the case in which it was made. *Babu Ram v. Emperor*.

1 Cr. L. J. 434 :
1 A. L. J. 236 : I. L. R. 26 All. 509 :
24 A. W. N. 115.

—S. 191—Materiality—Statement not material to the case—Not going to the credit of the witness.

In sanctioning proceedings for perjury against a witness, the Magistrate should remember that the statement must be intentionally false in order to justify a prosecution. When the question is neither material to the issue in the case, nor goes to the credit of the witness, (scmble) he is not liable to prosecution. Some allowance ought to be made to a witness seeking to evade some matter relating to, for instance, his past history. *Sheodahin Singh v. Bandhan Singh*.

3 Cr. L. J. 45 :
2 A. L. J. 836.

—S. 191.

Perjury—Statement not shown to be intentionally false—Deposition not read over to witness—Conviction for perjury, legality of—Deposition of witness, whether should be signed by all the presiding Officers—Contradictory statements—Prosecution in respect of later statement alone, maintainability of—Defence of India Act (IV of 1905), S. 5—Duty

PENAL CODE ACT (XLV OF 1860)

of Commissioner to read over deposition of witness. *Taj Mahanud v. Emperor*.

29 Cr. L. J. 212 :
107 I. C. 100 : I. L. T. 40 Lah. 36 :
29 P. L. R. 14 : A. I. R. 1928 Lah. 125.

—S. 191—What constitutes offence—False statement by accused in affidavit to support transfer application.

An accused person who makes a false statement in an affidavit to support an application for transfer can be prosecuted for perjury. *Prag Dall v. Emperor*.

31 Cr. L. J. 600 :
123 I. C. 854 : 7 O. W. N. 9 :
A. I. R. 1930 Oudh 62.

—S. 192.

See also (i) Cr. P. C., 1898, S. 430.
(ii) Penal Code, 1860, Ss. 21, 20,
182, 383.

—S. 192—Causing circumstance to exist.

A person who attempts to cause a circumstance to exist, intending that such circumstance may appear in evidence in a judicial proceeding or proceeding taken by law before a public servant or before an arbitrator, and such circumstance, so appearing in evidence may cause a person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion on any point material to the result of the proceeding, would be guilty of an attempt to fabricate false evidence within the meaning of S. 192 of the Penal Code, but his act would not fall within the purview of S. 417 of the Code. *Tula Ram v. Emperor*.

26 Cr. L. J. 209 :
83 I. C. 993 : 21 A. L. J. 865 :
A. I. R. 1924 All. 205.

—S. 192—Fabricating false evidence—What is—Suborning of false evidence, whether amounts to fabrication of false evidence.

The tutoring of a man to give false evidence amounts to fabricating false evidence under S. 192, Penal Code. *Sur Nath Bhaduri v. Emperor*.

28 Cr. L. J. 950 :
105 I. C. 662 : 25 A. L. J. 1077 :
A. I. R. 1927 All. 721.

—S. 192—False entry—Document, antedating of, whether offence.

Accused was a clerk whose duty was to register sales of cattle at a market. Two persons brought some cattle in the market on March 21st, but omitted to obtain receipts for them, and on leaving the market, they were asked by a Sub-Inspector of Police to produce receipts for the cattle. On March 27th they produced the receipts, which bore date the 21st of March but were in fact prepared by the accused on the 27th: *Held*, that the accused was not guilty of the offence of fabricating false evidence inasmuch as the receipts so far from causing the Sub-Inspector to entertain an erroneous opinion touching a point material to the result of the enquiry he was making,

PENAL CODE ACT (XLV OF 1860)

might have caused him to form a correct opinion. *Badri Prasad v. Emperor*.

19 Cr. L. J. 2 :
42 I. C. 914 : 15 A. L. J. 819 :
40 All. 35 : A. I. R. 1918 All. 326.

————S. 192—*False entry and intention—False entry or statement—Intention.*

A petition praying that a fishery lease might be transferred from A to B, and purporting to be signed by A and B, was presented to the Deputy Commissioner by A. B was not present but his son was, and admitted having signed his father's name. He was subsequently prosecuted, although no attempt was made to show that he had acted fraudulently and without his father's authority, and was convicted of fabricating false evidence under S. 192, Penal Code: *Held*, that the conviction was bad, because (1) the writing of B's name by his son did not, under the circumstances, constitute a false entry or a false statement, and (2) there was no intention that it should appear in evidence in any proceeding. *Emperor v. Po Shin*.

6 Cr. L. J. 283 :
4 L. B. R. 45.

————S. 192—*False evidence, fabrication of.*

A sale under a *kobala* written out by one N on a stamp paper of Rs. 5 and dated the 23rd May having fallen through, it became necessary to apply to the Collector for a refund of the stamp duty. N was told by one M that as no refund could be made after two months, the date in the document might be altered from 23rd May to 23rd September. Accordingly the alteration was made, although it was quite unnecessary as the period for getting refund was not two months but six months: *Held*, that N and M were respectively guilty of fabricating and abetting the fabrication of false evidence. *Mohesh Chandra v. Emperor*.

19 Cr. L. J. 971 :
47 I. C. 871 : 28 C. L. J. 213 :
A. I. R. 1918 Cal. 61.

————S. 192—*Giving false evidence when that evidence is not admissible, if offence.*

The weight of authority is in favour of the view that there can be no fabrication of false evidence within the meaning of S. 192, Penal Code, if the evidence is not admissible in itself. *Fazl Ahmad v. Emperor*.

15 Cr. Cr. J. 344 :
23 I. C. 696 : 1 P. R. 1914 Cr. :
139 P. L. R. 1914 : A. I. R. 1914 Lah. 433.

————S. 192—*Inadmissibility of false entry effect of.*

A person is guilty of fabricating false evidence when he makes a false entry in a document intending that it shall appear in evidence and mislead the Judge or Magistrate, and the mere fact that the entry is not legally admissible in evidence cannot affect his guilt. *Amolak Ram v. Emperor*.

19 Cr. L. J. 141 :
43 I. C. 429 : 13 P. W. R. 1918 Cr. :
56 P. L. R. 1918 : A. I. R. 1918 Lah. 192.

PENAL CODE ACT (XLV OF 1860)

————S. 192—*Ingredients.*

The essence of the offence under S. 192, Penal Code, consists in this: that a false entry must be under S. 192, Penal Code, made in a book or record or a false statement must be made in a document. Secondly, that a false entry or false statement must be made with a certain intention, namely, that the false entry or false statement may appear in evidence in a judicial proceeding or any other proceeding taken by law before a public servant. Thirdly, a false entry or statement so appearing in evidence may cause any person in such proceeding who has to form an opinion upon the evidence to entertain an erroneous opinion. Fourthly, the erroneous opinion must be touching upon a material point, that is to say, a point material to the result of the said proceeding. An entry or a statement in a record or document would be false if it does either by reason of some false additions or of some material omissions misrepresent the truth. The omission may be illegal or may not be illegal. The thing to consider is what is the effect of the omission on the entry as made or on the statement as occurring in a document. *Jatindra Nath Sahu v. Emperor*.

38 Cr. L. J. 700 :
169 I. C. 64 : 9 R. C. 893 :
A. I. R. 1937 Cal. 42.

————S. 192—*Intention.*

False dying declaration made without seeking redress from authorities does not come under S. 192 or 194 as the intent to use it in a judicial proceeding cannot be presumed. *Banti Pande v. Emperor*.

32 Cr. L. J. 210 :
129 I. C. 87 : 12 P. L. T. 109 :
I. R. 1930 Pat. 71 : A. I. R. 1930 Pat. 550.

————S. 192 — *Intention, if material—Intention and not admissibility creates criminal offence.*

Under S. 192, Penal Code, it is the intention that creates the criminal offence and not the fact as to whether, under the terms of the law, the document is admissible in evidence. *Baroda Kanla Sarkar v. Emperor*.

16 Cr. L. J. 620 :
30 I. C. 444 : A. I. R. 1916 Cal. 553.

————S. 192 — *Judicial proceedings—Execution proceedings whether judicial proceedings.*

Execution proceedings are judicial proceedings for the purpose of Ss. 192 and 193, Penal Code. It is not essential for the purpose of these sections that the judicial proceedings in which the person intends to use the false evidence must be pending at the date of the fabrication. *In re : Govind Pandurang*. 22 Cr. L. J. 49 (b) :

50 I. C. 193 : 22 Bom. L. R. 1239 :
45 Bom. 668 : A. I. R. 1921 Bom. 366.

————S. 192 — *Judicial proceeding—Judicial proceeding not pending, effect of.*

It is not essential for the purpose of S. 192, Penal Code, that there should be any judicial proceeding pending at the time of the fabrication. It is enough that there is a reasonable

PENAL CODE ACT (XLV OF 1860)

prospect of such a proceeding having regard to the circumstances of the case, and that the document in question is intended to be used in such a proceeding. *Rajaram Bhavanishankar v. Emperor.* 22 Cr. L. J. 23 : 59 I. C. 135 : 22 Bom. L. R. 1229 : A. I. R. 1920 Bom. 319.

———S. 192 — Making false document—*Recitals in document implying false statements.*

The accused fabricated a *zaminnam*, in which he made certain false recitals implying that two excise licensees had executed a sub-lease in his favour, which if they had done so, would have rendered their licence liable to be cancelled. After fabricating the *zaminnama* the accused petitioned the Excise Collector stating execution of the sub-lease. On enquiry, all this was found to be false and the *zaminnama* a fabrication. Action was taken accordingly and the accused was convicted under S. 192, I. P. C.: *Held*, that a document containing recitals, implying a false statement, is fabricated falsely within the meaning of S. 192, I. P. C. *Mahadeo Misser v. Narayan Ram Sha.* 3 Cr. L. J. 196 : 10 C. W. N. 220.

———S. 192—Offence under—*Intention, if material.*

While a false dying declaration may, in certain circumstances, go in as evidence, the intent that it may appear in evidence in a judicial proceeding and cause an erroneous opinion to be entertained touching a point material to the result of such a proceeding, which is an essential ingredient in the definition of the offence of fabricating false evidence as defined in S. 192, Penal Code, cannot easily be inferred in the case of a dying declaration. The intent or knowledge necessary under S. 194, Penal Code, presents even greater difficulty in such cases. *Banti Pande v. Emperor.* 32 Cr. L. J. 210 : 129 I. C. 87 : I. R. 1931 Pat. 71 : 12 P. L. T. 109 : A. I. R. 1930 Pat. 550.

———Ss. 192, 193—*Intention, if material—Fabricating false evidence—Necessity of finding the intention—Causing false entry of a marriage in the Marriage Register—Mahomedan Marriage Register.*

In order to convict a person of fabricating false evidence under S. 193, I. P. C., it is necessary to find that the person intended that the fabrication may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator. Where the accused by falsely representing to the marriage Registrar that a certain marriage had been solemnised, induced the Registrar to make a false entry of the registration of the Marriage: *Held*, that the accused cannot be convicted of the offence of fabricating false evidence under S. 193, I. P. C., in the absence of a finding that the intention of the accused was that the false entry in the Marriage Register might appear in evidence in a judicial proceeding or in some

PENAL CODE ACT (XLV OF 1860)

other proceeding of a like nature as contemplated by S. 192, Penal Code. *Mohamed Siddiq v. Emperor.* 6 Cr. L. J. 162 : 11 C. W. N. 911.

- S. 193.
- Burden of proof.
- Causing circumstance to exist.
- Charge.
- Cognizance.
- Complaint.
- Confessions, if basis for perjury.
- Contradictory statements.
- Conviction.
- Deliberation.
- Deposition not read over to witnesses.
- Document with false statement.
- Duty of prosecution.
- Essentials.
- Evidence.
- Fabricating false evidence.
- False entry.
- False statement.
- Falsity.
- Ingredients.
- Intention.
- Intention is gist of offence.
- Judicial proceedings.
- Jurisdiction.
- Lawfully sworn.
- Materiality.
- Miscellaneous.
- Object.
- Offence under.
- Perjury.
- Pleadings.
- Procedure.
- Proof.
- Retracted statement.
- Sanction.
- Sanction to prosecute.
- Scope.
- Sentence.
- Stay of criminal proceedings pending civil case.
- What constitutes offence.
- S. 193.
- See also (i) Criminal Court.
- (ii) Cr. P. C., 1898, Ss. 133, 161, 164, 179, 190, 195, 195 (1) (b), 195 (1) (c), 195 (1) (c), 195 (b), 202, 230, 342, 360, 399, 435, 480, 476, 480, 537, 539-A.
- (iii) Evidence Act, 1872, S. 145.
- (iv) Negotiable Instruments Act, 1881.
- (v) Penal Code, 1860, Ss. 47, 191, 192, 211, 381.
- (vi) Perjury.

———S. 193—Burden of proof.

Where the charge is that the evidence has been fabricated in connection with proceedings which are only contemplated by the accused, it is upon the prosecution (Crown) to prove the fact that proceedings were contemplated. *In re : Indrachand Bachraj.* 33 Cr. L. J. 386 : 137 I. C. 134 : 34 Bom. L. R. 294 : 56 Bom. 213 : I. R. 1932 Bom. 219 : A. I. R. 1932 Bom. 185.

PENAL CODE ACT (XLV OF 1860)

—S. 193—Causing circumstance to exist—*Fabricating false evidence—Producing a wrong man for identification—Intention to cause failure of justice.*

One *D* was charged with enticing away a married woman. *C*, the brother of *D*, brought before the Court several persons among whom he falsely said was *D*, and requested the Court to ask the witnesses to identify *D*. All the witnesses said *D* was not there. *C* pointed to a man who, he said, was *D*, but who was discovered to be another man wearing a false moustache: *Held*, *C* was guilty of an offence under S. 193, Penal Code. *C*, by placing before the Magistrate a man who was not his brother *D* but whom he represented to be *D*, caused a circumstance to exist. It was his intention that the failure of witnesses to identify *D* should appear in evidence and mislead the Court. The gist of the offence did not consist in actually causing a failure of justice, but in the intention to cause a failure of justice by misleading the Court, and with such intent, causing the existence of any circumstance which might appear in evidence. *Cheda Lal v. Emperor*.

5 Cr. L. J. 285 :
4 A. L. J. 237 : 27 A. W. N. 107 :
I. L. R. 29 All. 351.

—S. 193—Charge—Charge for perjury—*Exact words in deposition not used—Effect of.*

The failure to enter in a charge for perjury under S. 193, the actual words used in a deposition is at the most an irregularity cured by S. 537, Cr. P. C. *Mirabax v. Emperor*.

23 Cr. L. J. 500 :
68 I. C. 36 : 18 N. L. R. 192 :
A. I. R. 1923 Nag. 39.

—S. 193—Charge—Charges to be separate for every act of perjury or forgery.

There must be a separate count for every alleged item of perjury or forgery, and this means that there must be independent evidence of user in the case of each document. *Jang Bahadur Lal v. Emperor*.

13 Cr. L. J. 62 :
13 I. C. 398 : 14 C. L. J. 652.

—S. 193—Charge—Prosecution in the alternative in respect of statements made under S. 164, of the Cr. P. C., and subsequently as a witness in Court.

A complaint was made to the Police charging *T*, *S* and a third person with having committed an offence under S. 420, Penal Code. During the investigation, *T* was examined on oath by a Magistrate under the provisions of S. 164, Cr. P. C. As the result of the Police investigation, *S* was placed on his trial, and *T* appeared as a prosecution witness and made a statement which appeared to the Court to be contradictory of his statement previously made under S. 164: *Held*, that there was no legal objection, if the two statements were in fact contradictory, to the prosecution of *T* on a charge in the alternative under S. 193, Penal Code. *Emperor v. Tasadduk Husain*.

7 Cr. L. J. 302 :
28 A. W. N. 73.

PENAL CODE ACT (XLV OF 1860)

—S. 193—Cognizance—Complaint by Court, necessary.

A complaint by the Court is necessary for a prosecution for an offence under S. 193, I. P. C., and the parties cannot be permitted to evade that provision of law by filing a complaint of defamation. *Kallumatam Gurubasayya v. Sanna Setra Siddalingappa*.

41 Cr. L. J. 906 :
190 I. C. 358 : 51 L. W. 491 :
1940 M. W. N. 392 : 1940, 1 M. L. J. 689 :
13 R. M. 404 : A. I. R. 1940 Mad. 677.

—S. 193—Cognizance, complaint—Necessity of.

That the Magistrate could not take cognizance of the offence under S. 193, Penal Code without a complaint from the Judge before whom the evidence was sought to be used. *In re: Kunju*.

28 Cr. L. J. 70 :
99 I. C. 102 : 24 L. W. 725 :
51 M. L. J. 800 : 38 M. L. T. 187 :
A. I. R. 1927 Mad. 199.

—S. 193—Cognizance.

Offence under S. 193 cannot be taken cognizance of by a Court except upon complaint by Court acting under S. 164 or Court to which it is subordinate. *Har Narain v. Hoshair Singh*.

36 Cr. L. J. 1505 :
150 I. C. 1118 : 1935 A. L. J. 228 :
57 All. 778 : 8 R. A. 372 :
1935 A. W. R. 131 : A. I. R. 1935 All. 341.

—S. 193—Cognizance—Perjury, order to prosecute for, while case still pending, whether proper.

An order directing the prosecution of a witness under S. 193, Penal Code, while the case in connection with which he is said to have made a false statement is still pending in the Sessions Court, is improper. *Birendra Nath Das Gupta v. Emperor*.

16 Cr. L. J. 147 :
27 I. C. 211 : 18 C. W. N. 1342.

—S. 193—Cognizance—Sanction to prosecute—Discretion of Judge.

An offence under S. 193, Penal Code, is an offence against public justice. The person best qualified to say whether a prosecution should or should not be instituted is the Judge before whom the evidence was given and who had considered all the facts of the case. *Chiranji Lal v. Ram Lal*.

13 Cr. L. J. 496 :
15 I. C. 496 : 9 A. L. J. 538.

—S. 193—Complaint and charge.

Where a person entrusted a promissory note with a Vakil's clerk for filing a suit thereon, and the latter failed to file a suit within the period of limitation but after that period forged an endorsement of payment on the pro-note and caused the suit to be filed: *Held*, the act of the Vakil's clerk fell within S. 193, and complaint of the Court was

PENAL CODE ACT (XLV OF 1860)

necessary for his prosecution. *K. S. Subramania Ayyar v. Swamikannu Chetty*.

34 Cr. L. J. 800 :
144 I. C. 519 : 37 L. W. 547 :
1933 M. W. N. 217 : I. R. 1933 Mad. 424 :
A. I. R. 1933 Mad. 413.

—S. 193—Complaint—Complaint for perjury in a case, when should be lodged.

Though it is ordinarily in the interests of justice to bring the perjurer to book and check such offenders, it is the duty of the Court to see whether it would ultimately promote the interests of justice if the perjurer is prosecuted. *Rewashankar Moolchand v. Emperor*.

41 Cr. L. J. 182 :
185 I. C. 400 : 1939 N. L. J. 562 :
12 R. N. 167 : A. I. R. 1940 Nag. 72.

—S. 193—Complaint.

Complaint under S. 193 cannot be taken cognizance of except upon complaint of Court before which offence is committed. *Bibhuti Bhushan Adhikari v. Khem Chand Churoria*.

35 Cr. L. J. 946 :
149 I. C. 363 : 38 C. W. N. 578 :
61 Cal. 792 : 6 R. C. 568 :
A. I. R. 1934 Cal. 457.

—S. 193—Complaint—Complaint for perjury, when to be made.

It is only when a Civil, Revenue or Criminal Court is of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in S. 195, Sub-s. (1), cl. (b) or cl. (c) of the Cr. P. C., which appears to have been committed in or in relation to a proceeding in that Court that such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof and shall forward the same to a Magistrate of the First Class having jurisdiction to try the complaint: *Held*, that it was not expedient in the interests of justice that the accused should be prosecuted for an alleged offence of perjury. *Pragi v. Emperor*.

37 Cr. L. J. 885 :
164 I. C. 107 : 1936 O. L. R. 429 :
9 R. O. 34 (2) : 1936 O. W. N. 763 :
A. I. R. 1936 Oudh 373.

—S. 193—Complaint—Statement literally true—Complaint, whether should be made.

A Court is not justified in making a complaint of perjury against a person in respect of a statement which is literally and strictly speaking true. *Chiragh Din v. Emperor*.

27 Cr. L. J. 330 :
92 I. C. 746 : 7 L. L. J. 621.

—S. 193—Complaint.

To see if complaint is necessary under S. 195, Cr. P. C., the crucial date is not the date when offence is committed but the date when the Court takes cognizance of it. *In re : Indrachand Bachraj*.

33 Cr. L. J. 386 :
137 I. C. 134 : 34 Bom. L. R. 294 :
56 Bom. 213 : I. R. 1932 Bom. 219 :
A. I. R. 1932 Bom. 185.

PENAL CODE ACT (XLV OF 1860)

—S. 193—Confessions, if basis for perjury.

Whether a statement is taken as a statement or as a confession, the record can be used only for the purpose for which it was taken. A 'confession' cannot be made the basis of a prosecution for perjury. A 'statement' cannot be used as a 'confession' that is, as an admission of the truth of the facts set out in it in a criminal prosecution based on these facts, either against the person making it or against others with whom he may be jointly tried. *In re : Madala Ramaniyamma*.

17 Cr. L. J. 195 :
34 I. C. 307 : 20 M. L. T. 21 :
A. I. R. 1917 Mad. 316.

—S. 193—Contradictory statements—Conviction.

Unless two contradictory statements are so absolutely opposed as to exclude the possibility of any hypothesis than that of the guilt of the accused, there can be no conviction upon an alternate charge of perjury. In such a case, it is possible that the first statement may have been false through an error or mistake which has been corrected by subsequent information and the second contradicts the first because it contains the truth which had come to the knowledge of the party in the meantime. In such a case, the statements, though contradictory, are not intentionally so, and a conviction under S. 193 of the Penal Code, may not be possible on the basis of such statements. *Bhagirathi Bai v. Emperor*.

26 Cr. L. J. 1401 :
89 I. C. 713 : A. I. R. 1926 Nag. 141.

—S. 193—Contradictory statements, if form basis of conviction.

The guilt or innocence of an accused cannot be allowed to depend upon speculation, nor upon vacillating and contradictory statements of witnesses. *Alay Ahmad v. Emperor*.

20 Cr. L. J. 370 :
50 I. C. 978 : A. I. R. 1919 All. 167.

—S. 193—Contradictory statements in same deposition, if offence.

Quaere.—Whether contradictory statements made in one and the same deposition can be the subject of a prosecution under S. 193, Penal Code. *Girdharimal v. Emperor*.

17 Cr. L. J. 240 :
34 I. C. 656 : 9 S. L. R. 202 :
A. I. R. 1916 Sind 78.

—S. 193—Conviction—Contradictory statements, when can be made basis of conviction.

A charge of perjury based on two mutually contradictory statements can be successful only where the two statements are necessarily and irreconcilably contradictory of each other. Where the accused called a person as his relation at one time, by a term not necessarily implying near relationship, and said subsequently that he was not his

PENAL CODE ACT (XLV OF 1860)

relation, there is no necessary contradiction between the statements and no conviction for perjury can be sustained on such statements. *In re : Parvataneni Kamayya*.

16 Cr. L. J. 14 :
26 I. C. 318 : 1915 M. W. N. 34 :
A. I. R. 1915 Mad. 876.

———S. 193—Conviction.

False evidence—Witness deliberately deceiving Court—Subsequent application weeks after to correct statement: *Held*, prosecution proper. *Teomal Gerimal v. Ali Muhammad Shah Rashid*.

38 Cr. L. J. 873 :
170 I. C. 360 : 10 R. S. 53 :
31 S. L. R. 77 : A. I. R. 1937 Sind 116.

———S. 193—Conviction.

Production of forged receipts in Court to support defence—Complaint under S. 193—Conviction under S. 471 is legal. *Boni Hampana Gowd v. Emperor*.

37 Cr. L. J. 421 :
161 I. C. 196 : 1935 M. W. N. 1346 :
70 M. L. J. 109 : 43 L. W. 226 :
8 R. M. 801 : A. I. R. 1936 Mad. 280.

———S. 193—Deliberation.

Where a witness either through stress of skilful cross-examination or from other circumstances while under examination in the witness-box makes false statements which he soon afterwards retracts in the course of his deposition, he cannot be accused of perjury, but where a man deliberately and intentionally enters the Court with the intention of giving false evidence and retracts his statement and admits that his evidence is false only when he is found out, he is liable to be prosecuted for perjury. *Emperor v. Badamal*.

31 Cr. L. J. 135 :
120 I. C. 507 : 24 S. L. R. 7 :
A. I. R. 1930 Sind 61.

———S. 193—Deposition not read over to witnesses—Conviction—Deposition not read over to witness in presence of accused or his Pleader, effect of—Proof of deposition.

Accused was a witness in a Sessions trial, at the close of which the Sessions Judge directed his prosecution for giving false evidence. He was brought to trial, but it was found that his deposition in the Sessions Court was not read over to him in the presence of the accused or his Pleader as required by S. 360. The Magistrate held the deposition to be inadmissible in evidence and discharged the accused. Subsequently the District Magistrate took up the case, set aside the order of discharge and ordered further inquiry under S. 437. Accused moved the Chief Court in revision: *Held*, that the deposition should not have been treated as a nullity merely because of the irregularity in not reading it over to the deponent in the presence of the accused or his Pleader; it could be proved by other evidence, as, e. g., by evidence that the witness admitted it to be correct when it was read over to

PENAL CODE ACT (XLV OF 1860)

him, and the evidence of the Judge or Magistrate who recorded it. *Tunya v. Emperor*.

20 Cr. L. J. 506 :
51 I. C. 666 : 10 L. B. R. 16 :
12 Bur. L. T. 197 : A. I. R. 1919 L. Bur. 129.

———S. 193—Deposition not read over to witness—Conviction for perjury.

A conviction under S. 193, Penal Code, is not sustainable where the deposition, after it had been completed, was not read over to the witness and acknowledged by him to be correct. The omission is more than an irregularity and it is dangerous and against public policy to make a witness liable on an unsafe record. The deposition is the only evidence admissible of the statements alleged to have been made by the witness. *In re : Nalluri Chenchiah*.

20 Cr. L. J. 379 :
50 I. C. 987 : 36 M. L. J. 296 : 9 L. W. 349 :
1919 M. W. N. 183 : 25 M. L. T. 356 :
42 Mad. 561.

———S. 193—Deposition not read over to witnesses—Conviction—Perjury—False statement made in a deposition which was not read over to the witness in presence of the accused or his pleader—Cr. P. C. (Act V of 1898), S. 360—Non-compliance with, effect of—Evidence Act (I of 1872), Ss. 80 and 91—Proof of statement.

A witness cannot be convicted under S. 193, I. P. C., for having made false statement in his deposition before a Criminal Court when the deposition was not read over to him in the presence of the accused or his pleader in accordance with the provisions of S. 360, Cr. P. C. Where the deposition of a witness in a criminal trial is not read over to him in the presence of the accused or his Pleader in accordance with the provisions of S. 360, Cr. P. C., it is not admissible in evidence and no other evidence is admissible in proof of the statements made therein. *Mohendra Nath Misser v. Emperor*.

8 Cr. L. J. 116 :
12 C. W. N. 845.

———S. 193—Deposition not read over to witness—Conviction.

Where the statements relied upon in a prosecution for perjury are not absolutely irreconcilable and there is no evidence that they were read over to the witness in the presence of the accused or his Pleader, as required by S. 360, Cr. P. C., a conviction under S. 193, Penal Code, is bad. *Bansi Pandey v. Emperor*.

18 Cr. L. J. 1039 :
42 I. C. 783 : 1917 Pat. 299 :
2 P. L. W. 176 : A. I. R. 1917 Pat. 639.

———S. 193—Document with false statements—Offence.

The accused executed a registered document purporting to be a *kabuliyat* in favour of the complainant which contained recitals designedly false. According to the accused this *kabuliyat* was accepted by the complainant: *Held*, that as the recitals in the *kabuliyat* would be evidence against the complainant, the accused was guilty of an offence under

PENAL CODE ACT (XLV OF 1860)

S. 193, Penal Code. *Mohammad Kajim Ali v. Jarabdi Nashkar*. 20 Cr. L. J. 574 : 52 I. C. 62 : 29 C. L. J. 522 : 46 Cal. 986 : A. I. R. 1919 Cal. 430.

———S. 193—Duty of prosecution.

In a case under S. 193, Penal Code, where the prosecution is based upon certain statements being falsely made by the accused, it is essential to set out the exact statements in detail upon which the prosecution wants to proceed. *Ram Dhar Singh v. Emperor*.

19 Cr. L. J. 169 : 43 I. C. 585 : 1918 Pat. 13 : 4 P. L. W. 44 : A. I. R. 1918 Pat. 448.

———S. 193—Duty of prosecution.

In a charge, under S. 193, I. P. C., of intentionally giving false evidence, the prosecution is bound to prove affirmatively by clear and positive evidence that the statement made by the accused is false and was made by him with the knowledge that it was false. *Prakash Chandra Sarkar v. Emperor*.

2 Cr. L. J. 455 : 2 C. L. J. 101.

———S. 193—Duty of prosecution.

In a prosecution under S. 193, Penal Code, it is the duty of the prosecution to prove conclusively that the statement made by the accused was necessarily a false statement. *Nirghin Mahlon v. Emperor*.

21 Cr. L. J. 500 : 56 I. C. 660 : A. I. R. 1920 Pat. 171.

———S. 193—Duty of prosecution.

In a prosecution under S. 193, Penal Code, it is incumbent on the prosecution to show first that the statement made by the accused was false, and secondly, that they knew it or believed it to be false or did not believe it to be true at the time they made the statement. *Ramdeni Pathak v. Emperor*.

39 Cr. L. J. 358 : 173 I. C. 738 : 4 B. R. 327 : 10 R. P. 432 : A. I. R. 1938 Pat. 145.

———S. 193—Duty of prosecution—In prosecutions under S. 193 or 199.

The prosecution must show affirmatively the knowledge of the accused that the evidence given or declaration made was false or his belief in its being false or absence of a belief in its truth. The real question in such cases is of the state of mind of the accused at the time of filing the declaration. *Jagdat Singh v. Emperor*.

34 Cr. L. J. 917 : 144 I. C. 1011 : 6 R. P. 139 : A. I. R. 1934 Pat. 133.

———S. 193—Duty of prosecution—Promissory note—Accused denying receipt of consideration—Prosecution, duty of, to prove passing of consideration.

The rule of law contained in the Negotiable Instruments Act that the presumption is that a promissory note was passed for consideration, does not necessarily apply to a criminal trial. Therefore, in a prosecution for perjury, under S. 193, Penal Code, arising out of a civil suit upon a promissory note in which

PENAL CODE ACT (XLV OF 1860)

the accused denied the receipt of consideration, it is for the prosecution to prove that consideration did pass, and not for the accused to prove the contrary. *Sakhawat Haidar v. Emperor*.

22 Cr. L. J. 54 : 59 I. C. 198 : 18 A. L. J. 1151 : A. I. R. 1920 All. 242 (1).

———S. 193—Duty of prosecution—Prosecution, duty of, to prove particular statement as false—Criminal trial—Failure to produce prosecution witness—Presumption.

In a case under S. 193, Penal Code, it must be proved beyond all reasonable doubt that some particular portion of the statement alleged to have been made by the accused is false. *Emperor v. Amolak Ram*.

20 Cr. L. J. 519 : 51 I. C. 679 : A. I. R. 1919 Lah. 158.

———S. 193—Essentials.

An accused could only be guilty under S. 193, Penal Code, if he had the intention of fabricating evidence in order that it should appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant, as such, or an arbitrator as laid down in S. 192. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Turak Nath Chatterjee*.

37 Cr. L. J. 698 : 162 I. C. 910 : 62 Cal. 666 : 8 R. C. 663 : A. I. R. 1935 Cal. 304.

———S. 193—Essentials.

Though proceedings contemplated at the date of the offence are sufficient to constitute the offence under S. 193, Penal Code, proceedings contemplated at the date when the Magistrate takes cognizance are not sufficient to bring the case within S. 195, Cr. P. C. *In re : - Indrachand Bachraj*.

33 Cr. L. J. 386 : 137 I. C. 134 : 56 Bom. 213 : 34 Bom. L. R. 294 : I. R. 1932 Bom. 219 : A. I. R. 1932 Bom. 185.

———S. 193—Evidence—Evidence, sufficiency of.

A sued B for ejectment from a certain house. B pleaded that he was the owner of the house. A produced two *kirayanamas* executed by B which showed that he was the tenant of A. B said that he had left his signature on blank papers and it was on those papers that A had subsequently filled up the contents of the *kirayanamas*; he, however, subsequently endorsed on the back of the documents *Tahrir taslim hai*. Upon the strength of the endorsement, B was run down for perjury. Held, that the endorsement was not alone sufficient evidence to convict B for perjury. *Chatar Singh v. Emperor*.

11 Cr. L. J. 485 : 7 I. C. 420.

———S. 193—Fabricating false evidence.

A person who fabricates a false rent-note showing that a house has been let to him for a certain period, is guilty of an offence under

PENAL CODE ACT (XLV OF 1860)

S. 193, Penal Code. *Rajaram Bhavanishankar v. Emperor.* 22 Cr. L. J. 23 :
59 I. C. 135 : 22 Bom. L. R. 1229 :
A. I. R. 1920 Bom. 319.

———S. 193—*Fabricating false evidence.*

After an application for partition had been presented by certain co-sharers, a second application was presented by a Pleader on behalf of four other co-sharers asking that their shares should be partitioned and formed into a separate *patti*. The application was signed by the Pleader only, but purported to be verified by the four co-sharers and the Pleader's *vakalatnama* authorizing him to present the application also purported to be signed by all four. As a matter of fact, one of the co-sharers was dead and his name was signed, both on the *vakalatnama* and in the verification of the application by his brother Ganeshi. Ganeshi was tried for the offence of fabricating false evidence in respect of both documents : he was acquitted as regards the *vakalatnama*, but convicted as regards the application : *Held*, that under the circumstances the conviction could not be sustained as regards the application either. *Emperor v. Ganeshi.* 2 Cr. L. J. 100 :
25 A. W. N. 52 : 2 A. L. J. 203.

———S. 193—*Fabricating false evidence—False affidavit by identifier for proving service of process.*

An identifier who knowingly makes a false affidavit of service of process for the purpose of being used in a judicial proceeding, commits the offence of fabricating false evidence within the meaning of S. 193, Penal Code. He is also guilty of an offence under S. 199 where the Court is authorised under its circular orders or any other law to receive an affidavit from an identifier as evidence of the fact of service of summons. *Kari Gope v. Manmohan Das.*

29 Cr. L. J. 111 :
106 I. C. 703 : 6 Pat. 760 :
A. I. R. 1928 Pat 161.

———S. 193—*Fabricating false evidence.*

Mere intention to divert suspicion and conceal one's guilt need not necessarily amount to fabricating false evidence. If his act falls within S. 192, he cannot take shelter behind the circumstance that he is an accused person to escape penalty under S. 193. *Bhagirath Lal v. Emperor.*

36 Cr. L. J. 379 :
153 I. C. 619 : 7 R. A. 544 :
4 A. W. R. 535 :
1934 A. L. J. 1064 :
A. I. R. 1934 All. 1017.

———S. 193—*Fabricating false evidence.*

Quære.—Entering false record in Police

PENAL CODE ACT (XLV OF 1860)

diary—Whether amounts to fabricating evidence. *Dwarkanath Varma v. Emperor.*

34 Cr. L. J. 322 :
142 I. C. 335 : 37 L. W. 584 :
64 M. L. J. 466 : 10 O. W. N. 522 :
1933 M. W. N. 409 :
37 C. W. N. 514 :
57 C. L. J. 177 : 14 P. L. T. 305 :
1933 A. L. J. 645 :
35 Bom. L. R. 507 :
I. R. 1933 P. C. 65 P. C. :
A. I. R. 1933 P. C. 124.

———S. 193—*False entry—False statement made in the recital of title in a document—Statement not admissible in evidence against persons against whose interest such statement is made.*

A person does not commit the offence of fabricating false evidence punishable under S. 193, Penal Code, by making a false statement in the recital of title to property in a document when such statement is not admissible in evidence against the person or persons against whose interest such statement is made. *Emperor v. Chandra Kumar Missir.* 2 Cr. L. J. 383 :
2 C. L. J. 46.

———S. 193—*False statement.*

Party giving evidence before Commission supporting forged document—Offence under S. 193 is committed. *Tulsi Amual v. Danalakshmi Amual.* 35 Cr. L. J. 780 :
148 I. C. 851 (2) : 66 M. L. J. 471 :
39 L. W. 693 : 57 Mad. 682 :
1934 M. W. N. 609 : 6 R. M. 550 :
A. I. R. 1934 Mad. 316.

———S. 193—*False statements.*

The question of intention goes to the root of the matter, and when the accused has proved that he did not intentionally make any false statement, he is entitled to an acquittal on the charge. *Anandi Prasad v. Emperor.*

35 Cr. L. J. 390 :
147 I. C. 395 : 11 O. W. N. 87 :
6 R. O. 262 : A. I. R. 1934 Oudh 65.

———S. 193—*Falsity.*

No person can be convicted under S. 193, Penal Code, except on proof that it is impossible that the statements of the party accused made on oath can be true. *Padarath Singh v. Ratan Singh.*

21 Cr. L. J. 145 :
54 I. C. 673 : 5 P. L. J. 23 :
1920 Pat. 140 : 1 P. L. T. 458 :
A. I. R. 1920 Pat. 419.

———S. 193—*Falsity.*

The petitioner was convicted of an offence under S. 193, I. P. C., for having made two inconsistent statements. On appeal, the conviction was upheld, the Appellate Court finding that the first statement was the false one: the statement was to the effect that the petitioner saw the accused in the case in which he gave evidence striking blows. In that case, the accused was convicted having been found to have

PENAL CODE ACT (XLV OF 1860)

caused hurts: *Held*, that the conviction must be set aside for it could not be said that the statement for making which the petitioner was convicted by the Appellate Court was intentionally false. *Asanand v. Emperor*.

1 Cr. L. J. 517 :
5 P. L. R. 261.

—S. 193—*Falsity*.

To support a prosecution for giving false evidence, it must be shown that the false statement charged against the accused is literally false. There must be a statement of fact which is false. It is no offence if the fact stated is true but some circumstance is suppressed with the result that a wrong inference may be deduced. *Ratansi Daya v. Emperor*.

17 Cr. L. J. 96 :
32 I. C. 688 : 9 S. L. R. 170 :
A. I. R. 1916 Sind 70.

—S. 193—*Ingredients*.

Per *Jenkins, C. J.*—(on reference)—To convict an accused of giving false evidence, it is necessary to show not only that he has made a statement which is false, but also that he either knew or believed it to be false or did not believe it to be true. Where it is sought to establish the offence of perjury on contradictory statements, although the Court may believe that on the one or the other occasion the prisoner swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact to the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong and swear to the reverse without meaning to swear falsely either time. *Emperor v. Banakratram Lachiram*.

1 Cr. L. J. 390 :
S. C. 6 Bom. L. R. 379 :
I. L. R. 28 Bom. 533.

—S. 193—*Intention—If material*.

Intention to give false evidence is a necessary element to constitute an offence under S. 193, I. P. C. That intention can only be gathered from the surrounding circumstances and the subsequent correction or retraction by a witness of his statement in the same deposition might negative the existence of such an intention. *Lachmi Narain v. Emperor*.

14 Cr. L. J. 280 :
19 I. C. 712 : 16 O. C. 8.

—S. 193—*Intention*.

In a case under S. 193, Penal Code, it is essential to show that the accused gave false evidence or made a false statement intentionally. *Gopi Nath Panda v. Emperor*.

18 Cr. L. J. 772 :
41 I. C. 148 : 1917 Pat. 267 :
A. I. R. 1917 Pat. 499.

—S. 193—*Intention—Intention, when to be presumed*.

False evidence is intentionally given, if the

PENAL CODE ACT (XLV OF 1860)

person making the statement makes it advisedly, knowing it to be false and with the intention of deceiving the Court and of leading it to suppose that that which he states is true. The Court may infer corrupt intention from surrounding circumstances. If a statement is proved to be false, it may safely be presumed that in making the statement the applicant gave intentionally false evidence. *Jankilal v. Emperor*.

30 Cr. L. J. 655 :
116 I. C. 643 : I. R. 1929 Nag. 163 :
A. I. R. 1929 Nag. 193.

—S. 193—*Intention*.

It is only when the witness makes a false statement with a dishonest intention and afterwards tries to correct it that his prosecution can be directed by Court. *Girdharimal v. Emperor*.

17 Cr. L. J. 240 :
34 I. C. 656 : 9 S. L. R. 202 :
A. I. R. 1916 Sind 78.

—S. 193—*Intention—Primary consideration is that of intention*.

The primary consideration for prosecution for perjury is that the false statement should be made intentionally. Where there is no finding to the effect that the statement was intentionally made, and it does not appear to be in evidence that there was any such intention: *Held*, that sanction for prosecution of the witness is illegal. *Azibulla Sarear v. Uday Sonthal*.

9 Cr. L. J. 282 :
1 I. C. 287 : 13 C. W. N. 422.

—S. 193—*Intention—Witness correcting himself, whether predicates intention to give false evidence*.

It is open to a witness to correct himself on second thought, or on being reminded of any fact which might have escaped his memory, and the subsequent correction or retraction by a witness of his statement in the same deposition does not necessarily predicate the existence of an intention to give false evidence with regard to the statement so corrected or retracted, if the correction or retraction can be otherwise satisfactorily explained. Depositions of witnesses which contain corroborations or explanations of what has been said in examination-in-chief are, *prima facie*, insufficient upon which to found a charge of perjury. *William v. Emperor*.

23 Cr. L. J. 652 :
69 I. C. 92 : 25 O. C. 139 :
A. I. R. 1922 Oudh 198.

—S. 193—*Intention—Witness not allowed an opportunity of explaining his reply*.

Where it is not known in what form a question is put to a witness and no opportunity is given to him for explaining his reply, it is unreasonable to assume that he has intentionally made a false statement so as to make him liable to be prosecuted under S. 193, Penal Code. *Harnam Singh v. Emperor*.

7 Cr. L. J. 460 :
3 P. W. R. Cr. 35.

—S. 193—*Intention is gist of offence*.

The intention to commit perjury must be clearly present before a person charged with

PENAL CODE ACT (XLV OF 1860)

that offence can properly be convicted of it, and a statement capable of being construed in any reasonable way in such committing, that it does not show a clear intention of committing perjury, or a deliberate attempt to make a false statement does not *per se* contain the element of the offence. *Ramgobind Ram v. Emperor*.

24 Cr. L. J. 471 :
72 I. C. 887 : 1 P. L. R. 17 :
A. I. R. 1924 Pat. 381.

—S. 193—Judicial proceedings.

A statement under S. 104 is not evidence in a stage of judicial proceedings within the meaning of Expl. II, S. 193, Penal Code, and a person cannot, therefore, be convicted under Part I of S. 193 in respect of such a statement. *Sajawal v. Emperor*.

33 Cr. L. J. 413 (2) :
137 I. C. 131 : 33 P. L. R. 179 :
I. R. 1932 Lah. 297 :
A. I. R. 1932 Lah. 254.

—S. 193—Judicial proceeding.

An investigation under Chap. XIV, Cr. P. C., is a stage of a "judicial proceeding," and any person who makes on oath a statement which he knows to be false before the Magistrate conducting that investigation gives false evidence and commits an offence under S. 193, I. P. C. *Suppa Tevan v. Emperor*.

3 Cr. L. J. 370 :
I. L. R. 29 Mad. 89.

—S. 193—Judicial proceeding—Cr. P. C., S. 476—Enquiry—Judicial proceeding.

An enquiry under S. 476, Cr. P. C., is a judicial proceeding, and a person giving false evidence in the course of the proceeding is guilty of perjury under S. 193, I. P. C. *Abdullah Khan v. Emperor*.

11 Cr. L. J. 45 :
5 I. C. 62 : 14 C. W. N. 132.

—S. 193—Judicial proceeding—Enquiry under S. 476 conducted by Magistrate other than Magistrate taking cognizance of case, whether judicial proceeding.

A Sub-Divisional Officer called upon the complainant in a case pending before him to show cause why he should not be prosecuted for an offence under S. 211, Penal Code, and on the complainant showing cause, sent the case to an Honorary Magistrate for recording evidence. The latter recorded the evidence and sent the case back to the Sub-Divisional Officer. On receipt of the record, the Sub-Divisional Officer directed the prosecution of the petitioner, who was a witness for the complainant, for perjury in respect of a statement made by the petitioner before the Honorary Magistrate: *Held*, that the Honorary Magistrate had, therefore, no jurisdiction to record the evidence of the petitioner and that the petitioner, therefore, did not give false evidence at any stage of a judicial proceeding within the meaning of S. 193, Penal Code, and could not be prosecuted for perjury. *Sakhi Rai v. Emperor*.

20 Cr. L. J. 245 :
49 I. C. 917 : A. I. R. 1919 Pat. 266.

—S. 193—Judicial proceeding—Judicial proceeding not pending—Sanction—Whether necessary.

PENAL CODE ACT (XLV OF 1860)

In the absence of any proceeding, pending or disposed of, in which or in relation to which an offence under S. 193, Penal Code, is said to have been committed, no sanction under S. 193 (b) of the Cr. P. C. is necessary. The clause cannot apply to any future judicial proceeding for which the false evidence may have been fabricated. *In re : Govind Pandurang*.

22 Cr. L. J. 49 (b) :
50 I. C. 193 : 22 Bom. L. R. 1239 :
45 Bom. 668 : A. I. R. 1921 Bom. 366.

—S. 193—Judicial proceeding—Penal Code (Act XLV of 1860), S. 193—Proceeding under S. 104, whether judicial proceeding.

A statement recorded by a Magistrate in the course of a Police investigation under S. 104, Cr. P. C., is not evidence in a stage of a judicial proceeding within the meaning of Expl. (2) to S. 193, Penal Code. *Purshollam Ishwar Amin v. Emperor*.

22 Cr. L. J. 241 :
60 I. C. 593 : 23 Bom. L. R. 1 :
45 Bom. 834 : A. I. R. 1921 Bom. 3.

—S. 193 Judicial proceeding.

Proceedings before a Debt Settlement Board cannot be regarded as "judicial proceedings" except for the limited purpose of S. 228, I. P. C. No prosecution will, therefore, lie under S. 193 for giving false evidence or fabricating false evidence in respect of such proceedings. *Hari Charan Kundu v. Kanshi Charan Dey*.

41 Cr. L. J. 662 :
188 I. C. 686 : 44 C. W. N. 530 :
I. L. R. 1940, 2 Cal. 14 : 13 R. C. 44 :
A. I. R. 1940 Cal. 286.

—S. 193—Jurisdiction.

Where a false return of service was made and attested by witnesses within the jurisdiction of the Court of Gaya for obtaining an *ex parte* decree in the Court of Maubhum: *Held*, that the offence under S. 193, Penal Code, was complete within Gaya Court's jurisdiction and must be tried by that Court. *Abdul Karim v. Emperor*.

30 Cr. L. J. 765 :
117 I. C. 309 : 10 P. L. T. 161 :
I. R. 1929 Pat. 421 :
A. I. R. 1929 Pat. 640.

—S. 193—Lawfully sworn.

As the Magistrate before whom the affidavits in this case were sworn was not acting in the discharge of his duties but in exercise of the powers conferred by law, he was not competent to administer the oath. *Emperor v. Di'ul Safar*.

12 Cr. L. J. 563 :
12 I. C. 651 : 5 S. L. R. 102.

—S. 193—Lawfully sworn.

In cases of perjury it is desirable that the due administration of the oath to the accused person on the occasion in question should be proved like any other fact. *Alay Ahmad v. Emperor*.

20 Cr. L. J. 370 :
50 I. C. 978 : A. I. R. 1919 All. 167.

—S. 193—Lawfully sworn—Registrar, false statement before, whether punishable.

S. 63 of the Registration Act authorises the Sub-Registrar to administer oath and record statement of the petitioner before him. There-

PENAL CODE ACT (XLV OF 1860)

fore a person, making a false statement before the Sub-Registrar, is punishable under S. 82 (a) of the Registration Act and S. 193, Penal Code. *In re : Narayanaswami Iyer.*

14 Cr. L. J. 102 :
18 I. C. 662 : 12 M. L. T. 376 :
1912 M. W. N. 1107.

———S. 193—Materiality.

If a statement made by a person is designedly false, he will be liable under S. 193, Penal Code, irrespective of the fact as to whether the statement had a material bearing or not upon the matter which was under enquiry before the Court. But the materiality or the immateriality of the statement could have a bearing upon the question of sentence which is to be passed in the case. *Raja Ram v. Emperor.*

30 Cr. L. J. 1154 :
120 I. C. 122 : I. R. 1930 All. 10 :
1930 A. L. J. 251 : A. I. R. 1929 All. 936.

———S. 193—Materiality—Giving false evidence, proof of—English and Indian Law.

The Law of England requires that a false statement in order to support a charge should be material to the question in dispute, but the I. P. C. does not impose that qualification. *Emperor v. Bal Gangadhar Tilak.*

1 Cr. L. J. 305 :
6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

———S. 193—Materiality—Statements forming subject-matter of charge under S. 193 need not be material for decision of suit—Question arises only for purpose of sentence.

It is not necessary that the statements which form the subject-matter of a charge under S. 193, I. P. C., should be material for the decision of the suit, and the question can only be considered for the purpose of the sentence in the event of a conviction. *Behari Lal Sud v. Emperor.*

41 Cr. L. J. 204 :
185 I. C. 588 : 41 P. L. R. 652 :
12 R. L. 313 : A. I. R. 1939 Lah. 529.

———S. 193—Materiality—Statement, irrelevant and immaterial—Effect of.

A question put to a witness in a trial for offences under Ss. 379 and 147, Penal Code, whether or not his father had been bound down under S. 107, Cr. P. C., is neither relevant nor material and a false answer given by the witness to such a question would not render him liable to be prosecuted for perjury. *Bramhdeo Singh v. Emperor.*

22 Cr. L. J. 568 :
62 I. C. 584 : 2 P. L. T. 389 :
1921 Pat. 133 : A. I. R. 1921 Pat. 149.

———S. 193—Miscellaneous.

A Magistrate has no power to administer an oath to a person when he is examined as a witness before him in an enquiry regarding the headman of a village. The orders of a Magistrate in respect of such matters are executive orders, and the accused cannot be convicted under S. 193. *Daya Ram v. Emperor.*

36 Cr. L. J. 264 :
153 I. C. 133 (1) : 1934 A. L. J. 1087 :
4 A. W. R. 816 : 7 R. A. 447 (2).
A. I. R. 1934 All. 988 (2).

PENAL CODE ACT (XLV OF 1860)

———S. 193—Miscellaneous.

Application for transfer with sworn affidavit—Denial of allegations by accused by counter-affidavit and also by trial Magistrate's statement—Complaint against applicant under S. 193 on the basis of counter-affidavit and Magistrate's statement is unwise. Inquiry under S. 476, Cr. P. C., would be proper. *Ambica Charan Das v. Emperor.*

32 Cr. L. J. 674 :
131 I. C. 262 : 53 C. L. J. 184 :
35 C. W. N. 690 : 58 Cal. 1211 :
I. R. 1931 Cal. 438 : A. I. R. 1931 Cal. 344.

———S. 193—Miscellaneous.

Every act of perjury is, in strict law, an offence but it does not follow, that on that account every perjurer should be charged. *Public Prosecutor v. Mayandi Nadar.*

34 Cr. L. J. 948 (1) :
145 I. C. 371 : 6 R. M. 53 :
A. I. R. 1933 Mad. 230.

———S. 193—Miscellaneous.

Fabrication of false evidence—Proceedings contemplated but not actually started—S. 195, Cr. P. C. does not apply. *In re : Indrachand Bachraj.*

33 Cr. L. J. 386 :
137 I. C. 134 : 34 Bom. L. R. 294 :
56 Bom. 213 : I. R. 1932 Bom. 219 :
A. I. R. 1932 Bom. 185.

———S. 193—Miscellaneous.

In a case of perjury, the previous deposition of the accused should not be excluded under S. 145, Evidence Act, which has no bearing whatever on such a case. *Government of Bengal v. Gannoo Mahto.*

10 Cr. L. J. 499 :
4 I. C. 124 : 9 C. L. J. 378.

———S. 193—Object.

It is immaterial whether the accused did or did not intend to defraud the judgment-debtor, for the offence charged is one against public justice, and it is with a view to secure the more orderly administration of justice that the law makes penal the deliberate assertion of falsehood in pleadings. *Emperor v. Hakikat-sing.*

14 Cr. L. J. 456 :
20 I. C. 16 : 7 S. L. R. 25.

———S. 193—Offence under—Complaint to District Magistrate as Head of Police and not as Magistrate—Conviction under S. 193 not sustainable.

A appeared before a District Magistrate and made a statement before him that a certain Police Officer had beaten him, demanded a bribe from him and locked him in the Police *hawalat*. A added that he did not wish to make a complaint but only wished the District Magistrate to make an inquiry so as to prevent the Police Officer from behaving tyrannically towards him. The District Magistrate examined A on oath. Inquiry disclosed that the charge was groundless. A was thereupon convicted under Ss. 182 and 193, Penal Code: *Held*, that the conviction under S. 193 could not stand, as (a) the District Magistrate was not moved *qua* Magistrate but only as District Head of Police. A expressly declining to institute criminal proceedings, and (b) it

PENAL CODE ACT (XLV OF 1860)

was unnecessary and perhaps unlawful for the Magistrate to have forced the man to take oath under these circumstances. *Paul v. Emperor*.

14 Cr. L. J. 56 :
18 I. C. 344 : 35 All. 102 :
11 A. L. J. 15.

—S. 193—Offence under, nature of.

Under the definition of "fabricating false evidence" it is not necessary that the evidence should be intended to be used in a judicial proceeding. It is sufficient if it is to be used to influence a public servant in any proceeding taken by law before him. *Emperor v. Ismail Khadirsab*.

29 Cr. L. J. 403 :
108 I. C. 501 : 30 Bom. L. R. 330 :
52 Bom. 385 : A. I. R. 1928 Bom. 130.

—S. 193—Offence under—When constituted—C. P. C. (Act V of 1908), O. XXII, R. 4—Substitution of legal representatives, application for—Verification, whether necessary—False statement in application—Offence.

A petition for substitution of the legal representatives of a deceased party does not under the law require to be verified and a false statement in such a petition, therefore, even though the petition is verified does not amount to an offence under S. 193, Penal Code, inasmuch as the solemn declaration embodied in such a verification is not a declaration within the meaning of S. 191 or of S. 51, Penal Code. *Purendra Jha v. Nunulal Jha*.

28 Cr. L. J. 518 :
102 I. C. 214 : 6 Pat. 184 :
8 P. L. T. 412 : A. I. R. 1927 Pat. 197.

—S. 193—Perjury—Essentials—Knowledge of falsity—Materiality of issue.

In order to establish the offence of perjury, the prosecution must prove, not only that the statement was false, but also that the person making the statement either knew or believed it to be false or did not believe it to be true. Under the Indian Law it is not necessary that the statement alleged to be false must be material to the issue. *Mahbub Ilahi, son of Fazal Ilahi v. Emperor*.

I. R. 1932 Lah. 667.

—S. 193—Perjury—Essentials of—Good faith, finding of.

A man cannot be convicted of perjury for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true. It must be found that he made some statement or statements which he knew to be false or which he believed to be false or which he did not believe to be true. This finding must be arrived at independently of the definition of "good faith" contained in S. 52, Penal Code. *Muhammad Ishaq v. Emperor*.

15 Cr. L. J. 579 :
25 I. C. 331 : 12 A. L. J. 550 : 36 All. 362.
A. I. R. 1914 All. 170.

—S. 193—Perjury in foreign country is not punishable under.

While perjury before the Court of a Native State by an Indian subject of His Majesty

PENAL CODE ACT (XLV OF 1860)

would be as objectionable as perjury before a Court in British India, it is not punishable under S. 193, Penal Code, where it is committed in a Foreign Court in relation to entirely foreign proceedings. *In re : Rambharthi Hirabharthi*.

25 Cr. L. J. 333 :
77 I. C. 189 : 25 Bom. L. R. 772 :
47 Bom. 907 : A. I. R. 1924 Bom. 51.

—S. 193—Perjury—Proof.

No man can be convicted of giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If the inference from the facts proved falls short of this, there is nothing on which a conviction can stand; because assuming all that is proved to be true, it is still possible that no offence was committed. *S. C. Gupta v. Emperor*.

25 Cr. L. J. 185 :
76 I. C. 425 : 1 Rang. 290 :
A. I. R. 1924 Rang. 17.

—S. 193—Perjury—Proof, quantum of.

To justify a conviction for perjury, it is sufficient if the statement of the accused is proved to be incredible, it is not necessary to prove that it is impossible. To justify a conviction for perjury on circumstantial evidence, it must be shown that the evidence cannot be explained on any other reasonable hypothesis. *Mohammad Ismail Khan v. Emperor*.

21 Cr. L. J. 12 :
54 I. C. 60 : 22 O. C. 236 :
A. I. R. 1919 Oudh 20.

—S. 193—Pleading.

A person does not commit an offence under S. 193, Penal Code, by merely putting in a written statement or a plaint something which in a sense is not true or by omitting something from the written statement. *Rash Behary Ray v. Emperor*.

32 Cr. L. J. 238 :
129 I. C. 111 : I. R. 1931 Cal. 127.
A. I. R. 1930 Cal. 639.

—S. 193—Procedure.

Charge of perjury based on isolated statement of witness—Accused not given opportunity to explain—Discretion of Magistrate not exercised judicially—Charge cannot be sustained. *J. E. James v. Emperor*.

34 Cr. L. J. 833 :
144 I. C. 846 : 6 R. C. 50 :
A. I. R. 1933 Cal. 606 (2).

—S. 193—Procedure—Stay of proceedings under, pending disposal of civil proceedings—Discretion.

Criminal proceedings under S. 193, Penal Code, for statements made in a civil suit pending appeal, should not ordinarily be ordered to be stayed till the disposal of the appeal, but that is a matter entirely within the discretion of the Magistrate. *Mathradas v. Emperor*.

15 Cr. L. J. 661 :
25 I. C. 989 : 8 S. L. R. 20 :
A. I. R. 1914 Sind 80.

PENAL CODE ACT (XLV OF 1860)

—S. 193 - Proof.

In order to sustain a successful charge of perjury, it is not enough to show that the statement in question is probably not true, it must be shown that it is certainly false. It is necessary for the prosecution to prove either that on its face the statement must be necessarily regarded as deliberately perjured or that it is so from extrinsic circumstances. It must be proved beyond any reasonable doubt that the statement is deliberately false. *Lalmoni Nonia v. Emperor*.

24 Cr. L. J. 321 :
72 I. C. 161 : 1 P. L. R. 142 Cr. :
4 P. L. T. 683 : A. I. R. 1924 Pat. 276.

—S. 193—Proof—Sufficiency of.

The rule that the testimony of a single witness is not sufficient to sustain an indictment for perjury, is not a safe guide for the Indian Courts which are bound by the Statute Law of India. *Arjan Singh v. Emperor*.

32 Cr. L. J. 780 :
131 I. C. 594 (2) : I. R. 1931 All. 402 :
A. I. R. 1931 All. 362.

—S. 193—Retracted statements.

It is inadvisable to prosecute under S. 193, if a witness reverts to the truth in the course of a trial, more especially when the witness was not a willing witness. *Jani v. Emperor*.

36 Cr. L. J. 10 :
152 I. C. 254 : 7 R. Sind 78 :
A. I. R. 1934 Sind 155.

—S. 193—Sanction.

In a case where contradictory statements have been made on different occasions, sanction to prosecute cannot be refused unless the approver made one of the two statements under undue influence. *Emperor v. Hussaina*.

35 Cr. L. J. 111 :
146 I. C. 461 : 6 R. L. 230 :
A. I. R. 1933 Lah. 868.

—S. 193—Sanction to prosecute—Deposition, false statement in, correction of, before close of examination—Sanction, if can be granted.

The essence of the offence of perjury consists in an attempt to mislead and deceive the Court. The deposition given by a witness must be read as a whole, and a witness must always be given an opportunity of correcting any answer made by him. Where, therefore, a witness makes a false statement and subsequently corrects it in the course of his examination, it is undesirable that he should be subjected to a prosecution for perjury as he withdraws the lie and leaves the Court under the impression of the truth. *In re : Pandu Namaji Gavande*.

18 Cr. L. J. 480 :
39 I. C. 320 : 19 Bom. L. R. 61 :
A. I. R. 1916 Bom. 49.

—S. 193—Sanction to prosecute—Discretion—Reversion of witness to truth during trial—Prosecution, if can be ordered.

It is inadvisable to prosecute a man under S. 193, Penal Code, if he has reverted to the

PENAL CODE ACT (XLV OF 1860)

truth in the course of the trial, especially when he was not a willing false witness. *Allah Wasaya v. Emperor*.

29 Cr. L. J. 1044 :
112 I. C. 468.

—S. 193—Sanction to prosecute—Discretion.

Where the statement does not, in any way, affect the credibility of the witness and is wholly irrelevant, the Court in its discretion should not sanction prosecution of the witness for perjury. *Azibullah Sarear v. Uday Sonthal*.

9 Cr. L. J. 282 :
1 I. C. 287 : 13 C. W. N. 422.

—S. 193—Sanction to prosecute under—Effect of.

If a sanction is granted for prosecution under S. 193, Penal Code, proceedings in respect of an offence under S. 211 of the Code cannot be sustained. *Shao Ghulam Sahu v. Kheyali Thakur*.

20 Cr. L. J. 132 :
49 I. C. 164 : 1918 Pat. 366 :
A. I. R. 1919 Pat. 416.

—S. 193—Scope—Ingredients of offence.

It is not a necessary ingredient of an offence under S. 193, Penal Code, that the evidence alleged to be fabricated should actually have been produced in the antecedent judicial proceeding, but in considering the advisability of sanctioning a prosecution, its production or non-production in the Court is a circumstance to which the Court might attach very considerable importance in deciding whether it is against the public interest to allow criminal proceedings to be instituted. *Munuswamy Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 340 :
72 I. C. 340 : 16 L. W. 505 :
45 Mad. 928 : 44 M. L. J. 774 :
A. I. R. 1923 Mad. 136.

—S. 193—Sentence.

Accused setting matters right before Tribunal—Actually in lock-up for 18 months—Accused student having wasted 5 years—No prosecution for not complying with terms of pardon—Sentence of 18 months held too severe. *Brahm Datt v. Emperor*.

36 Cr. L. J. 402 :
153 I. C. 547 : 16 Lah. 153 :
37 P. L. R. 534 : 7 R. L. 446 :
A. I. R. 1934 Lah. 981.

—S. 193—Stay of criminal proceedings pending civil case—Propriety of.

Where it is transparent that the criminal case is calculated to hamper the fair trial in the Civil Court, no prosecution for perjury should be lodged till after the case is decided by the Civil Court. *Rewashankar Moolchand v. Emperor*.

41 Cr. L. J. 182 :
185 I. C. 400 : 1939 N. L. J. 562 :
12 R. N. 167 : A. I. R. 1940 Nag. 72.

—S. 193—When constitutes offence.

A applied to the District Magistrate stating that his son had been murdered by certain persons and asking that the case be referred to a Council of Elders under the Frontier Crimes Regulations of 1901. The District Magistrate directed the Magistrate *Ilaga*, to make a

PENAL CODE ACT (XLV OF 1860)

summary inquiry into the case and the Magistrate *Ilaqa*, thereupon took the statement on oath of the applicant and his four witnesses. The applicant's story having been found to be false, complaints were framed against him and his witnesses under S. 193, Penal Code: *Held*, that as the statements of the accused were not taken by the Magistrate in the course of any judicial proceeding and as he had no authority to administer an oath, the accused could not be convicted of giving false evidence under S. 193, Penal Code. *Jahangir v. Emperor*.

25 Cr. L. J. 1350 :
82 I. C. 710 : 6 L. L. J. 375 :
A. I. R. 1924 Lah. 729.

———S. 193—*What constitutes offence—Affidavit read out to person and signed by him while drunk—If can be prosecuted under S. 193 for giving contrary evidence.*

Where an affidavit prepared for a person and read out to him while he is drunk is signed by him, its contents cannot be said to have been properly understood by him and he cannot, therefore, be prosecuted for perjury under S. 193, I. P. C., for giving evidence contrary to the allegations in the affidavit. *U Aung Myin U v. District and Sessions Judge Henzada*.

41 Cr. L. J. 687 :
188 I. C. 795 : 13 R. Rang. 19 :
A. I. R. 1940 Rang. 148.

———S. 193—*What constitutes offence—Application for transfer—Affidavit sworn before another Magistrate produced in support.*

Where in support of an application for transfer of a case made to a Sub-Divisional Magistrate, affidavits of three persons sworn before a Subordinate Magistrate were produced: *Held*, that the affidavits were not evidence and could not form the subject of a charge under S. 193, Penal Code. Consequently, no sanction for the prosecution of the persons who had sworn the affidavits could be granted. *Emperor v. Dital Safar*.

12 Cr. L. J. 563 :
12 I. C. 651 : 5 S. L. R. 102.

———S. 193—*What constitutes offence—Attestation of false report without knowing contents, if offence.*

The mere fact of a person placing his signature on a written report, without knowing its contents, is no ground for holding that he necessarily knew or had reason to believe that the contents of the report were false; at most, the act is indiscreet and does not amount to an offence under S. 193, Penal Code. *Jai Jai Ram v. Emperor*.

20 Cr. L. J. 268 :
50 I. C. 28 : 17 A. L. J. 574 :
A. I. R. 1919 All. 316.

———S. 193—*What constitutes offence—Concealment by accused of his own guilt, if offence.*

An accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard

PENAL CODE ACT (XLV OF 1860)

to a crime with which he is charged. *Ram Khilayan v. Emperor*. 4 Cr. L. J. 66 :
26 A. W. N. 191 : I. L. R. 28 All. 705.

———S. 193—*What constitutes offence—Contradictory statements before two Magistrates—Sanction to prosecute, if can be granted.*

Where a witness makes contradictory statements in the Courts of two Magistrates, the Court competent to grant sanction for his prosecution under S. 193, Penal Code, is the Court to which both the said Courts are subordinate. For the purpose of a sanction to prosecute a witness under S. 193, Penal Code, the Court of a Magistrate of Second Class, is subordinate to the District Magistrate and not to the Sessions Judge. *Emperor v. Amiruddin Salebhoy*.

23 Cr. L. J. 466 :
67 I. C. 818 : 24 Bom. L. R. 534 :
A. I. R. 1923 Bom. 44 (2).

———S. 193—*What constitutes offence—Contradictory statements explainable.*

B purchased certain property from A who subsequently sold it to C. C brought a complaint of cheating against A. In the course of proceedings in the case, B appeared as a witness. In his examination-in-chief he stated that no other bargain took place in his presence. In cross-examination he stated that A and C were bargaining in his presence: *Held*, that the statement in cross-examination did not necessarily imply that B knew that another bargain had been duly made, and that his explanation, that no bargain was actually effected, though negotiations were going on, was, *per se* plausible, his prosecution, therefore, for perjury was not admissible. *Emperor v. Barkat Ram*.

12 Cr. L. J. 216 :
10 I. C. 121 : 158 P. L. R. 1911 :
38 P. W. R. 1911 Cr.

———S. 193—*What constitutes offence—Contradictory statements in the same deposition, whether an offence.*

It is desirable to give witnesses a *locus penitentiae* and an opportunity to correct themselves, and if they do correct themselves immediately afterwards or on a second thought in the same deposition, a prosecution for perjury would hardly be desirable. No statement made by a witness in a deposition can, moreover, be regarded as a completed statement until the deposition is finished and corrected, if necessary, for till then every statement is liable to be retracted, corrected, varied or qualified. The whole deposition must be read as one, and if a later statement in it is contradictory to or at variance with a previous statement in the same deposition, the statement first made will be deemed to be modified by the subsequent statement. *Lachhmi Narain v. Emperor*.

14 Cr. L. J. 280 :
19 I. C. 712 : 16 O. C. 8.

———S. 193—*What constitutes offence—Contradictory statements not absolutely irreconcilable.*

A person should not be convicted under S. 193, Penal Code, for making contradictory

PENAL CODE ACT (XLV OF 1860)

statements when the statements are not absolutely irreconcilable. *Imperator v. Ali*.

13 Cr. L. J. 22 :
13 I. C. 215 : 5 S. L. R. 129.

———S. 193—*What constitutes offence—Conviction on the strength of accused's previous contradictory statements—Ligality of.*

Where the prosecution undertakes to prove that a particular statement made by a person accused of an offence under S. 193, Penal Code, is positively untrue, the accused cannot be convicted merely on the strength of contradictory statements previously made by him. *Bakshali v. Emperor*.

13 Cr. L. J. 28 :
13 I. C. 220 : 5 S. L. R. 136.

———S. 193—*What constitutes offence—Debtor purporting to send insured packet containing currency notes in discharge of debt but actually sending waste paper, if offence—Suit on debt—Postal acknowledgment, use of, in support of plea of discharge—Offence, nature of—Magistrate, jurisdiction of, to take cognizance of offence under S. 103 without complaint from Judge—Cheating—Attempt to cheat—Attempt and preparation, distinction between.*

A debtor sent to his creditor a registered insured packet purporting to contain currency notes in settlement of a debt but in reality containing only waste paper. The addressee was thereby induced to acknowledge the receipt of the insured cover. In a suit on the debt by the creditor, the debtor applied to have the Postal acknowledgment admitted in evidence in support of a plea of discharge. *Held*, that the accused used in a judicial proceeding fabricated false evidence as true and was, therefore, guilty of an offence under S. 193, Penal Code : *In re : Kunju*.

28 Cr. L. J. 70 :
99 I. C. 102 : 24 L. W. 725 :
51 M. L. J. 800 : 38 M. L. T. 187 :
A. I. R. 1927 Mad. 199.

———S. 193—*What constitutes offence—Denial of knowledge of fact—Proof that accused had personal knowledge, necessity of.*

In the course of the examination of a prosecution witness, he was asked whether the accused had arrested his sons, and the witness denied knowledge of the fact. In a prosecution of the witness for perjury, it was proved that his sons had been arrested and that he had heard of the arrest, though he had no personal knowledge of the same : *Held*, that the accused could not be convicted of an offence under S. 193, Penal Code, as there was no proof that the accused had personal knowledge of the fact. *Natha Singh v. Emperor*.

28 Cr. L. J. 1010 :
106 I. C. 98 : 9 L. L. J. 414 :
29 P. L. R. 190.

———S. 193—*What constitutes offence—Deposition of witness not recorded in accordance with law—Conviction.*

To sustain a conviction for perjury, the deposition of the witness should be taken properly in accordance with law. Where after the evidence of a witness had been

PENAL CODE ACT (XLV OF 1860)

recorded, his deposition was read to him by the Court Clerk in a place where neither the Judge nor the Vakils were present : *Held*, that the deposition not being properly taken in accordance with law, could not be admitted in evidence and the assignment of perjury could not be based upon it. *Kamatchinathan Chetty v. Emperor*.

2 Cr. L. J. 756 :
I. L. R. 28 Mad. 308.

———S. 193—*What constitutes offence—False endorsement on mortgage-deed showing payment.*

The applicant executed a sale-deed in respect of his entire property in favour of his wife, but did not register the same. He then executed a mortgage of the same property in favour of one F. Before the mortgage transaction was completed, F had made all necessary inquiry in the Registration Department as to any prior encumbrance. The appellant then put in the sale-deed in favour of his wife for registration and soon after the mortgage-deed was also registered. When the matter came to light, F charged the appellant with cheating. During the trial it was found that the mortgage-deed bore an endorsement of payment although there was no such endorsement on the date when it was filed in Court : *Held*, that the appellant was guilty of fabricating false evidence as well as of forgery. *Abdul Rashid Khan v. Emperor*.

15 Cr. L. J. 221 :
22 I. C. 1005 : 12 A. L. J. 104 :
A. I. R. 1914 All. 337.

———S. 193—*What constitutes offence—Evidence given before Commissioner—Deposition not read over to witness—Perjury—Sanction to prosecute whether can be granted.*

A sanction for prosecution for perjury granted in respect of a false statement made before a Commissioner appointed by a Court in Oudh, is not invalid merely because the statement in respect of which it is granted was not read over to the witness. *Feroze Jan v. Amir Ali*.

24 Cr. L. J. 781 :
74 I. C. 445 : 9 O. L. J. 593 :
A. I. R. 1923 Oudh 119.

———S. 193—*What constitutes offence—False answers to questions which witness could not have been compelled to answer, if offence.*

Where a person answers questions put to him in a judicial proceeding after he has sworn to tell the truth and the answers are not true, he commits perjury, even though the questions which he has answered were such as he could not have been compelled to answer. *Tunia v. Emperor*.

26 Cr. L. J. 1611 :
90 I. C. 715 : A. I. R. 1926 Pat. 168.

———S. 193—*What constitutes offence—False statement by witness—Immediate retraction of such statement—Whether prosecution necessary.*

Where a witness makes a statement which is false and at once admits this, and states what is the real truth, he should not be

PENAL CODE ACT (XLV OF 1860)

prosecuted for giving false evidence.
Dasondha Singh v. Emperor. 12 Cr. L. J. 405 :
 11 I. C. 589 : 34 P. W. R. 1911 Cr. :
 230 P. L. R. 1911.

———S. 193—*What constitutes offence—False statement during administrative inquiry, whether within S. 193—Appeal.*

In order that a person should be rendered liable for perjury under S. 193 of the Penal Code, it is essential that the perjury should have been committed in the course of any trial or proceeding before a Civil, Criminal or Revenue Court or in the course of a judicial proceeding or that at least the statement should have been made under a legal sanction. But if the statements concerned were made in the course of an administrative inquiry, no appeal lies from an order making a complaint in respect of such statements. *Raja Ram v. Emperor.*

30 Cr. L. J. 1154 :
 120 I. C. 122 : I. R. 1930 All. 10 :
 1930 A. L. J. 251 :
 A. I. R. 1929 All. 936.

———S. 193—*What constitutes offence—False statement immediately retracted, if perjury.*

Where a witness after making a false statement at once retracts what he has stated and admits that he has made a mistake, he ought not to be convicted of an offence under S. 193, Penal Code. *Fakir Chand v. Emperor.* 26 Cr. L. J. 1460 :
 89 I. C. 1028 : 1 Lah. Cas. 322 :
 A. I. R. 1925 Lah. 646.

———S. 193—*What constitutes offence—False verification—Decree-holder with knowledge of part payment verifying execution application for full amount, if offence.*

If a decree-holder, knowing that something has been paid, verifies an execution application for the full amount, he intentionally declares that to be true which he knew to be false, and is, therefore, guilty under S. 193, Penal Code. *Emperor v. Hakikatsing.* 14 Cr. L. J. 456 :
 20 I. C. 16 : 7 S. L. R. 25.

———S. 193—*What constitutes offence—Giving false evidence under S. 133, Cr. P. C., if guilty.*

Person giving false evidence under S. 133, Cr. P. C., may be prosecuted. *Hirananda Ojha v. Emperor.* 2 Cr. L. J. 575 :
 9 C. W. N. 127 : 983 : 2 C. L. J. 149 :

———S. 193—*What constitutes offence—Hearsay evidence, if can form basis of criminal prosecution under S. 193.*

Where the evidence is hearsay evidence, a Magistrate should not record it, and if under a mistake of law he records it, such evidence cannot form the basis of criminal prosecution. *Master Zoda v. Emperor.*

37 Cr. L. J. 1043 :
 164 I. C. 1057 : 38 P. L. R. 16 :
 9 R. L. 189 : A. I. R. 1936 Lah. 828.

PENAL CODE ACT (XLV OF 1860)

———S. 193—*What constitutes offence—Hearsay evidence given—Prosecution under S. 193, propriety.*

Hearsay evidence given by the witnesses could not be made the subject of a prosecution under S. 193. *Chhedi Nandu v. Emperor.* 11 Cr. L. J. 351 :
 6 I. C. 390 : 7 A. L. J. 618.

———S. 193—*What constitutes offence—Making contradictory statements—When amounts to an offence.*

The gist of an offence under S. 193, I. P. C., in which the accused is charged with making two contradictory statements, one of which he must have known to be false, is that the two statements, taking the words of those statements in their ordinary and natural meaning in the light of the context in which they are used, must be irreconcilable. Where the accused was charged with perjury in that he made a statement on the first occasion that he saw one L, son of R run away from the custody of the peon, and on the second occasion that he saw one man going eastward and that he was not certain whether the man was the accused; *Held*, that the accused could not be charged or convicted for perjury as, at the time of his second deposition, the accused was not asked to explain his first deposition in the light of his second statement. *In re : Narayanan Nair.*

11 Cr. L. J. 353 :
 6 I. C. 409 : 8 M. L. T. 86 :
 1910, 1 M. W. N. 397.

———S. 193—*What constitutes offence—Mistake in specifying property in execution application—Dishonesty not proved, if offence.*

The applicant obtained a decree for the sale of half the house. He made three applications to execute his decree. The first application asked for the sale of half the house, but in the second and third applications, the whole house was included, and as a matter of fact, the whole house was put to auction and sold. On an objection being preferred, half the house was exempted, but the applicant was tried and convicted under S. 193, Penal Code. On appeal, the conviction was altered into one under S. 210 : *Held*, that the facts did not establish dishonest or criminal intention on the part of the applicant and that he was not, therefore, guilty of any offence. *Mangal Rai v. Emperor.* 11 Cr. L. J. 202 :
 5 I. C. 695 : 7 A. L. J. 93.

———S. 193—*What constitutes offence—Omission to read out statement to deponent, effect.*

There can be no conviction under S. 193 of the Penal Code, based on a false statement which is not made and recorded with all due formalities in the manner required by law. Where the record itself does not contain the usual note that the statement has been read out and admitted correct, it cannot be presumed that it was read out. The omission to read out a statement

PENAL CODE ACT (XLV OF 1860)

to a deponent deprives him of the *locus poenitentiae* which is afforded by the reading out, and such an omission renders a conviction under S. 193 of the Penal Code altogether illegal. *Kartar Singh v. Emperor*.

18 Cr. L. J. 607 :

39 I. C. 847 : 12 P. R. 1917 Cr. :

15 P. W. R. 1917 Cr. :

A. I. R. 1917 Lah. 192.

—S. 193—*What constitutes offence—Reckless accusation against Magistrate, etc., in affidavit—Action to be taken.*

Where in an affidavit an accused person has made a reckless accusation against the Magistrate as well as the Government Advocate and the Deputy Superintendent of Police, it is expedient in the interests of justice that he should be called upon to show cause why he should not be prosecuted under S. 193, read with S. 199, Penal Code, for affirming a false affidavit. *K. L. Gauba v. Emperor*.

38 Cr. L. J. 955 :

170 I. C. 586 : I. L. R. 1937 Lah. 114 :

39 P. L. R. 643 : 10 R. L. 135 :

A. I. R. 1937 Lah. 411.

—S. 193—*What constitutes offence—Sanction to prosecute.*

A mortgagee having produced before the Deputy Commissioner a copy of a mortgage-deed, that officer referred it to the *Tahsildar* for investigation and report. The *Tahsildar* did not make any enquiry. Before the *Naib-Tahsildar*, the mortgagee stated that no payments were made by the mortgagor to him. On enquiry it was found that payments had been made which were endorsed on the back of the original mortgage-deed and the document was withheld for that reason. The Deputy Commissioner sanctioned prosecution of the mortgagee for falsification of evidence by fraudulently producing the copy and not the original of the mortgage-deed and making a false statement before the *Naib-Tahsildar*: *Held*, that the prosecution was illegal for (1) the mere production of the copy did not amount to falsification of evidence, and (2) the proceedings before the *Naib-Tahsildar* were *ultra vires*. *Katyan Singh v. Emperor*.

11 Cr. L. J. 601 :

8 I. C. 243 : 80 P. L. R. 1910.

—S. 193—*What constitutes offence—Sanction to prosecute—Incorrect statement in answer to irrelevant question—If can be granted.*

A witness was prosecuted and convicted for having made a false statement in which he disclaimed knowledge of a report previously made by a *zaildar* in another matter two months previously. He had then made a statement to the *zaildar* in an inquiry under S. 202 of the Cr. P. C., ending in dismissal of the complaint under S. 203. When called to account later on, he at once admitted that he had made a mistake: *Held*, that the conviction must be set aside. In such cases, sanction to prosecute should not be given. The answer given by the witness may have been literally true. He could not be punish-

PENAL CODE ACT (XLV OF 1860)

ed for not giving a more detailed answer even if he remembered the circumstances of the *zaildar's* inquiry which he might well have forgotten for the moment when confused by questions having no immediate bearing on the point as to which he was being examined. If the Court thought that there was a suppression of truth on the witness's part, it ought to have cleared the matter up at once by giving him an opportunity of explaining more fully and pointing out that he seemed to be making a mistake. There was clearly no intention of giving false evidence. Intention was the essence of the offence and could not be presumed in this case. *Rattan Singh v. Emperor*.

12 Cr. L. J. 265 :

10 I. C. 840 : 72 P. L. R. 1911 :

14 P. W. R. 1911 Cr.

—S. 193—*What constitutes offence—Signing darkhast containing false statements, if offence.*

Signing and verifying a *darkhast* containing false statements is an offence punishable under S. 193, Penal Code; and it makes no difference that at the time when the signature and verification were appended, the *darkhast* was blank. *Emperor v. Ratanchand Dhannaram*.

1 Cr. L. J. 959 :

6 Bom. L. R. 886.

—S. 193—*What constitutes offence—Statement false to the knowledge of the person making it.*

A witness who makes a false statement knowing it to be false, commits the offence of intentionally giving false evidence. *Emperor v. Ghulam Mustafa*.

1 Cr. L. J. 190 :

24 A. W. N. 52 : I. L. R. 26 All. 371.

—S. 193—*What constitutes offence—Statements in examination-in-chief—Corrected in cross-examination, if offence.*

A witness should be given a *locus poenitentiae* and an opportunity to correct himself and if he corrects himself immediately afterwards or on second thought in the same deposition, a prosecution for perjury would not lie. Therefore, a witness, who makes a statement in his examination-in-chief and declares that statement to be false in cross-examination, is not guilty of perjury. *Hit Narayan Singh v. Emperor*.

27 Cr. L. J. 953 :

96 I. C. 505 : A. I. R. 1926 Pat. 517.

—S. 193—*What constitutes offence—Witness correcting statement in same deposition—Offence, whether committed.*

A witness is not guilty of perjury if he corrects a statement of his, previously made, in the same deposition. *Chedi Lal v. Emperor*.

26 Cr. L. J. 10 :

83 I. C. 490 : 11 O. L. J. 309 :

A. I. R. 1924 Oudh 373.

—S. 193—*What constitutes offence—Witnessing service of summons on wrong person—If offence.*

In a rent suit summonses were issued to, amongst others, one S. Accused No. 1 identified a person as S and the summons

PENAL CODE ACT (XLV OF 1860)

was served on him; accused Nos. 2 and 3 were witnesses to the service. It appeared, however, that *S* had died some years before the suit was instituted. The three accused were accordingly convicted of an offence under S. 193, Penal Code: *Held*, that the conviction of accused Nos. 2 and 3 could not be maintained, as it was not proved that they were aware that service was to be effected upon *S*. *Prayag Singh v. Emperor*.

20 Cr. L. J. 641:

52 I. C. 417: A. I. R. 1919 Pat. 528.

-----S. 193—*What constitutes offence.*

Where a person denied having made a particular statement to a police officer in whose diary it was to be found: *Held*, that prosecution for perjury against that person could not, successfully, be maintained. *Muhammad Usman v. Emperor*.

7 Cr. L. J. 3:

4 A. L. J. 811: 28 A. W. N. 22.

-----S. 193.

S. 193, Penal Code, is applicable to the case of deliberate false allegation made in written statement and false verification. *Emperor v. Padam Singh*.

31 Cr. L. J. 954:

126 I. C. 5: 1930 A. L. J. 955:
A. I. R. 1930 All. 490.

-----Ss. 193, 211, 218, 220—*Accused charged under these sections in respect of proceedings under S. 109, Cr. P. C.—No complaint by Magistrate—Charges under Ss. 193, 211, held should be quashed—Complaint held not necessary for charge under Ss. 218, 220.*

The accused were charged under Ss. 193, 211, 218 and 220, Penal Code, in respect of proceedings under S. 109, Cr. P. C. There was no complaint filed by the Magistrate before whom the proceedings were pending: *Held*, that the offences under Ss. 193 and 211, were committed in relation to proceedings pending in the Court of the Magistrate, and no Court could take cognizance of these offences except on the complaint in writing of the Magistrate in whose Court these proceedings were pending or of some other Court to which the Magistrate in question was subordinate. The charges under these sections, therefore, must be quashed: *Held*, also that the offences under Ss. 218 and 220, did not fall within the purview of S. 195, Cr. P. C. These offences were distinct from offences under Ss. 193 and 211, Penal Code. For the purpose of obtaining a conviction under Ss. 218 and 220, Penal Code, the prosecution had to prove facts which were distinct from the facts constituting offences under Ss. 193 and 211, Penal Code. Therefore proceedings under Ss. 218 and 220, Penal Code, could be continued without a complaint by the Court which dealt with the proceedings under S. 109, Cr. P. C. *Ghulam Mohammad v. Emperor*.

39 Cr. L. J. 122:

172 I. C. 373: 39 P. L. R. 1011:
10 R. L. 307: A. I. R. 1937 Lah. 802.

-----S. 193, 423—*Fabricating false document—Sale-deed containing false recital of marriage*

PENAL CODE ACT (XLV OF 1860)

executed, if offence—“Fraudulently,” meaning of—Deprivation of property—Deception and injury.

Accused executed a sale-deed in favour of a woman alleging that she was married to him on a particular date and transferring to her certain land in lieu of dower. In fact no marriage took place between the accused and the woman who was the wife of another person: *Held*, that the only possible inference was that he was acting in furtherance of his desire to secure the person of the woman, and his intention was to use this document and false statements therein in judicial proceedings to mislead the Judge and that, therefore, he was guilty of an offence of fabricating false evidence under S. 193, Penal Code: *Held*, also, that the accused had a further intention to cause injury to the woman and her true husband and to support his false claim to that status and that, therefore, he was also guilty under S. 423, I. P. C. *Legal Remembrancer v. Abilal Mandal*.

23 Cr. L. J. 340:

66 I. C. 996: 48 Cal. 911:
A. I. R. 1921 Cal. 226.

-----Ss. 193, 467—*Procedure—Complaint under S. 193—Conviction under S. 467 also—Legality of.*

Where the accused against whom a complaint is lodged only under S. 193, Penal Code, is convicted also of an offence under S. 467, the conviction is irregular and made without jurisdiction in view of S. 195, Cr. P. C. *Kaura Ram v. Emperor*.

38 Cr. L. J. 748:

169 I. C. 44: 9 R. Pesh. 138:
A. I. R. 1937 Pesh. 67.

-----S. 194.

See also (i) Penal Code, 1860, S. 182.

-----S. 195—*Conviction under.*

To sustain a conviction under S. 195, I. P. C., it is not only necessary to prove that the accused spoke falsely, but also that he knew he was speaking falsely. *Gopalaswami Naidu v. Emperor*.

10 Cr. L. J. 7:

2 I. C. 431: 6 M. L. T. 91.

-----S. 195—*Offence under—Criminal conspiracy—Conspiracy when not indictable—False evidence, attempt to fabricate, charge of, when sufficient—Photographing under-trial prisoners against Police rules—If offence.*

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two or more agree to carry it into effect, the very plot is an act in itself, and the act, of each of the parties, promise against promise, *actus contra actum*, becomes capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means. A conspiracy is generally a “matter of inference deduced from certain criminal acts of the par-

PENAL CODE ACT (XLV OF 1860)

ties accused, done in pursuance of an apparent criminal purpose in common between them." Three Police officers joined in taking a couple of photographs, one taking the photographs, the second arranging the camera and the third arranging the prisoners. They were charged with conspiracy to bring about the conviction of the prisoners for dacoity: *Held*, that in the absence of evidence, it could not be said that his intention was necessarily to use the photographs for the purpose of fabricating false evidence. *Gulab Singh v. Emperor*. 17 Cr. L. J. 431 : 35 I. C. 991 : 14 A. L. J. 688 : A. I. R. 1916 All. 141.

————S. 195—Offence under—Persuading witnesses to make statements, if offence.

Where it appeared from the Police papers that the applicants 'got at' one *Mussamat Patia* and persuaded her to make a statement to the effect that she had seen certain persons, whom she mentioned by name, in the act of committing dacoity on her premises and that they apparently persuaded other persons to the same effect: *Held*, that this was not sufficient to convict the applicants of an offence under S. 195, Penal Code. *Durga Prasad v. Emperor*. 16 Cr. L. J. 667 : 30 I. C. 651 : A. I. R. 1915 All. 388.

————S. 196.

See also (i) Income Tax Act, 1922, Ss. 23, (2), 37.

(ii) Penal Code, 1860, Ss. 193, 417, 511.

————S. 196 — Interpretation — "Corrupt" meaning of.

The user of false evidence with the knowledge that it is false must ordinarily be "corrupt," within the meaning of S. 196, Penal Code, from its very nature, and the onus lies on the accused to show that there are circumstances in the case which prevent its being corrupt. The fact that he used the false evidence in his defence against a criminal charge is not enough to discharge the onus. Where a public servant has been induced by an accused person to produce a fabricated document in order to support his false defence, it is not difficult to support the inference as to the corrupt use by him of the fabricated evidence as being within the scope of S. 196, Penal Code. *Ramanana Hagavne v. Emperor*. 23 Cr. L. J. 23 : 64 I. C. 503 : 23 Bom. L. R. 987 : 46 Bom. 317 : A. I. R. 1922 Bom. 99.

————S. 196 — Interpretation — Corruptly—Meaning of.

The word corruptly in S. 196, Penal Code, is intended to connote a motive not necessarily connected with the passing of money as an inducement to the person impugned to use or attempt to use the fabricated evidence, and an intention to procure a false conviction is a corrupt intention. *Fazl Ahmad v. Emperor*. 15 Cr. L. J. 344 : 23 I. C. 696 : 1 P. R. 1914 Cr. : 139 P. L. R. 1914 : A. I. R. 1914 Lah. 433,

PENAL CODE ACT (XLV OF 1860)

————S. 196 — Offence under — Abusive attempt to secure medical certificate, whether offence under S. 196.

In order to constitute an offence under S. 196, I. P. C., there must be some evidence in existence which the party is either using or attempting to use. A mere attempt to get a medical certificate, which is refused, does not fall under S. 196. *In re : Katari Veranna*. 17 Cr. L. J. 388 : 35 I. C. 820 : A. I. R. 1917 Mad. 686.

————S. 196—Offence under.

An offence under S. 196, Penal Code, can be held to have been committed only if it is shown that the evidence which the accused used or attempted to use as true or genuine was in existence at the time. Accused relied on an entry in the Almanac of a witness who had appeared in the Court in obedience to the summons issued on him. He was neither examined nor asked to produce the Almanac. Thus there was no material before the Court to enable it to hold that the Almanac which witness had been called to produce was in existence or that it contained any false entry: *Held*, that the charge under S. 196 had not been brought home against the accused. *Kumar Chowdhury v. Emperor*. 38 Cr. L. J. 1011 : 170 I. C. 997 : 18 P. L. T. 271 : 16 Pat. 21 : 10 R. P. 179 : 4 B. R. 3 : A. I. R. 1937 Pat. 467.

————S. 196—Offence under—Production of document in compliance with order of Court, if offence.

It is an essential element of the offence under S. 196 of the Penal Code, that the document should have been corruptly used or attempted to be used as true or genuine evidence. The production of a document in compliance with an order of the Court does not amount to using the document as genuine within the meaning of the section. *Ma Ain Lon v. Ma On Nu*. 26 Cr. L. J. 509 : 85 I. C. 253 : 3 Rang. 36 : 3 Bur. L. J. 349 : A. I. R. 1925 Rang. 191.

————S. 196—Sanction—False case—False evidence.

Sanction to prosecute under S. 211, Penal Code, should only be given where the case is a deliberately false one: where the case brought is not false in substance, but is bolstered up by false evidence, the proper section to give sanction to prosecute under is S. 196, Penal Code. *Bholanath v. Hari Mohan*. 7 Cr. L. J. 196 : 7 C. L. J. 169.

————S. 196—Use of evidence contemplated by S. 196, Penal Code—Nature of.

The use of evidence contemplated in S. 196, Penal Code, is use by a party or witness and not use by the Court. *Government Advocate, Bihar v. Kumar Singh*. 39 Cr. L. J. 314 : 173 I. C. 432 : 16 Pat. 571 : 19 P. L. T. 51 : 10 R. P. 408 : 4 B. R. 274 : A. I. R. 1938 Pat. 83,

PENAL CODE ACT (XLV OF 1860)

———S. 197.

See also Cr. P. C., 1898, S. 439.

———S. 197—Certificate—*False statement made in application under Land Registration Act, whether certificate.*

Accused made an application under the Land Registration Act to get his name recorded in place of a woman whom he falsely stated to be dead: *Held*, that he could not be prosecuted under S. 197 of the Penal Code, for his statement in his application regarding the death of the woman was not a certificate within the meaning of S. 197. *Bal Krishen Gir v. Emperor.*

18 Cr. L. J. 978 :
42 I. C. 594 : 3 P. L. W. 201 :
A. I. R. 1917 Pat. 696.

———S. 197—Certificate—*What is.*

Per *Suhrawardy, J., obiter dictum.*—The certificate contemplated in S. 197, Penal Code, is a certificate which is required by law to be given or signed for the purpose of being used in evidence in the course of the administration of justice. *Birendra Nath Chatterjee v. Umananda Mukherjee.*

27 Cr. L. J. 182 :
91 I. C. 998 : 30 C. W. N. 120 :
42 C. L. J. 557 : A. I. R. 1926 Cal. 258.

———S. 197—Certificate within S. 197—*Certificate by agent of female depositor that depositor alive and sane, whether covered.*

A certificate given under the Post Office Rules in the case of a female depositor withdrawing a deposit by, her authorised agent to the effect that the depositor is alive and sane, is not a certificate either prescribed by the Government Savings Banks Act or by Statutory Rules made thereunder and is not, therefore, a certificate which falls within the purview of S. 197, Penal Code. *Birendra Nath Chatterjee v. Umanandra Mukherjee.*

27 Cr. L. J. 182 :
91 I. C. 998 : 30 C. W. N. 120 :
42 C. L. J. 557 : A. I. R. 1926 Cal. 258.

———Ss. 197, 198—*“Certificate,” meaning of—Signed petition certifying adjustment or satisfaction of decree, if certificate.*

Where the accused purporting to represent the decree-holder in a certain suit signed and filed a petition in the executing Court stating, contrary to the fact, that the judgment-debtor had paid off the decretal amount to the decree-holder through him: *Held*, that the signed petition was not a certificate within the purview of Ss. 197 and 198, Penal Code, and that, therefore, the accused could not be convicted under those sections. *Mahabir Thakur v. Emperor.*

17 Cr. L. J. 140 :
33 I. C. 316 : 20 C. W. N. 520 :
23 C. L. J. 423 : A. I. R. 1917 Cal. 466.

———Ss. 197, 198—*Interpretation.*

The word “certificate” in Ss. 197 and 198, Penal Code, has not the meaning of certification. *Mahabir Thakur v. Emperor.*

17 Cr. L. J. 140 :
33 I. C. 316 : 20 C. W. N. 520 :
23 C. L. J. 423 : A. I. R. 1917 Cal. 466.

PENAL CODE ACT (XLV OF 1860)

———Ss. 197, 198—*Scope.*

S. 198, Penal Code, must be read along with S. 197. Upon reading these sections it is manifest that the certificate which is referred to in S. 197 must be one which is either “required by law to be given or signed” or “is by law admissible in evidence.” S. 197 contemplates that “the certificate” should by some provision of law be admissible in evidence as such a certificate without further proof. *Kumar Chowdhury v. Emperor.*

38 Cr. L. J. 1011 :
170 I. C. 997 : 18 P. L. T. 271 :
16 Pat. 21 : 10 R. P. 179 : 4 B. R. 3 :
A. I. R. 1937 Pat. 467.

———S. 198—*Offence under.*

A person cannot be convicted for an offence under S. 198, Penal Code, with reference to filing a birth certificate of his father from the President of the Municipality since the certificate cannot be treated as evidence, unless it is formally proved by the Chairman who granted it. *Kumar Chowdhury v. Emperor.*

38 Cr. L. J. 1011 :
170 I. C. 997 : 18 P. L. T. 271 :
16 Pat. 21 : 10 R. P. 179 : 4 B. R. 3 :
A. I. R. 1937 Pat. 467.

———S. 199.

See also (i) Cr. P. C., 1898, Ss. 195, 439, 439-A.

(ii) Penal Code, 1860, Ss. 112, 114.

———S. 199—Affidavit—*Affidavit merely repeating statement of another—Whether amounts to swearing to false affidavit.*

Where a person in swearing to an affidavit only repeats what another person had written in the notice, it will not have the effect of establishing that the accused swore to false affidavit. *Qutub-ud-Din v. Emperor.*

38 Cr. L. J. 216 :
166 I. C. 352 : 17 P. L. T. 692 :
3 B. R. 164 : 9 R. P. 291 :
A. I. R. 1937 Pat. 211.

———S. 199—Affidavits—*Reckless allegations in affidavit, if offence.*

Tendency on the part of applicants to make reckless allegations in the affidavits filed in the High Court deprecated: *Held*, after considering the facts that it was expedient in the interests of justice that an enquiry should be made into an offence under S. 199, I. P. C. *Manlayak Singh v. Ramkirit.*

41 Cr. L. J. 702 :
188 I. C. 854 : 6 B. R. 754 :
13 R. P. 54 : A. I. R. 1940 Pat. 631.

———S. 199—*Applicability.*

S. 199 does not apply to applications for execution of decrees containing false averments. *Anandi Prasad v. Emperor.*

35 Cr. L. J. 390 :
147 I. C. 395 : 11 O. W. N. 87 :
6 R. O. 262 : A. I. R. 1934 Oudh 65.

———S. 199—*Basis of prosecution.*

Affidavit not complying with requirements of

PENAL CODE ACT (XLV OF 1860)

O. XIX, r. 3, C. P. C., is still a declaration.
Shahzad Khan v. Emperor. 34 Cr. L. J. 912 :
 144 I. C. 857 : 14 P. L. T. 679 :
 7 R. P. 134 : A. I. R. 1933 Pat. 513.

———S. 199—Burden of proof.

Special Marriage Act, S. 21—Burden of proof that statement was false to deponent's knowledge not discharged by prosecution—Acquittal was ordered. *Mrs. M. J. Walter v. Emperor.*

35 Cr. L. J. 744 :
 148 I. C. 689 : 11 O. W. N. 404 :
 6 R. O. 425 : A. I. R. 1934 Oudh 155.

———S. 199—Conviction under, whether can be converted to one under S. 182.

A conviction under S. 199, Penal Code, in respect of which no sanction is necessary, cannot be converted in revision to a conviction under S. 182 in respect of which a sanction is necessary, especially where the attention of the trying Magistrate was drawn to the necessity of such sanction. *Ismail v. Emperor.*

15 Cr. L. J. 603 :
 25 I. C. 515 : 8 Bur. L. T. 82 :
 A. I. R. 1914 L. Bur. 30.

———S. 199—Declaration contemplated by law.

The declaration contemplated in S. 199, Penal Code, is a statement of facts in the form simply of a declaration which, for the purpose of proof of the fact declared to, has by itself all the legal force of evidence given on oath or solemn affirmation, that is to say, it must be a declaration which having been made is afterwards receivable as evidence of the fact declared. *Ismail v. Emperor.*

15 Cr. L. J. 603 :
 25 I. C. 515 : 8 Bur. L. T. 82 :
 A. I. R. 1914 L. Bur. 30.

———S. 199—Duty of prosecution.

Section creating offence mentioning in definition of offence particular state of mind on part of offender—Burden of proving such state of mind is on prosecution. *Shahzad Khan v. Emperor.*

34 Cr. L. J. 912 :
 144 I. C. 857 : 14 P. L. T. 679 :
 6 R. P. 134 : A. I. R. 1933 Pat. 513.

———S. 199—Ingredients—Reckless statements, effect.

S. 199, Penal Code, contemplates that a statement, in order to come within the purview of the section, must be one which is either false to the knowledge of the person making it or which he ought to have known to be false or could not have believed to be true. Statements made in a reckless and haphazard manner, though untrue in fact, do not constitute an offence under the section when the person making them immediately admits the mistake and corrects them. *Aiyasami Iyer v. Aiyasami Aiyar.*

18 Cr. L. J. 636 :
 39 I. C. 1004 : 6 L. W. 241 :
 22 M. L. T. 298 : 33 M. L. J. 545 :
 A. I. R. 1918 Mad. 627.

———S. 199—Liability—Liability of declarant under S. 199, Penal Code, for false statement,

PENAL CODE ACT (XLV OF 1860)

Where an affidavit in cases in which evidence may be given by affidavit is intended to be used in a judicial proceeding before a Court of Justice and the declarant has made a statement therein that is false to his knowledge touching any point material to the object for which the affidavit is to be used, the declarant will be guilty under S. 199, I. P. C. A Village Munsif is a Judge of the Court of the Village Munsif established under Madras Village Courts Act, 1888. A statement made in an affidavit in which the declaration is signed by a Village Munsif may render the declarant liable for perjury for which sanction may properly be obtained. *Palaniappa Chetti v. Annamalai Chetti.*

1 Cr. L. J. 321 :
 14 M. L. J. 74 : I. L. R. 27 Mad. 223 :
 2 Weir 208.

———S. 199—Offence under—Declaration not admissible in evidence, whether can be basis of prosecution.

A declaration, before it can be made the foundation of a prosecution under S. 199, Penal Code, must be one which is admissible in evidence and which the Court before which it is filed is bound or authorized by law to receive in evidence. *Ram Parshad v. Emperor.*

13 Cr. L. J. 769 :
 17 I. C. 401 : 10 A. L. J. 462 : 35 All. 58.

———S. 199—Offence under—False declaration before Mamlatdar to obtain certificate of solvency for purposes of Akbari licence—If offence.

A false declaration made to a Mamlatdar in the hope of obtaining a certificate of solvency for the purpose of securing a licence from the Akbari Officials, is not such a declaration as a Court of Justice or any public servant or any person is bound by law or authorised by law to receive, and hence does not come within the purview of S. 199 of the Penal Code. *Emperor v. Rajappa Ramappa Kalai.*

16 Cr. L. J. 309 :
 28 I. C. 645 : 17 Bom. L. R. 222 :
 A. I. R. 1915 Bom. 60.

———S. 199—Offence under—Insolvency petition containing false statements.

The statements in a petition of insolvency are very analogous to statements made in ordinary civil pleadings—Statements which are verified by law on the part of the person who places them on the record. But they certainly do not constitute evidence which is bound to be accepted by the Court. A petition in insolvency unhacked or uncorroborated by other evidence would not be accepted by the Court against the interests of any other person who was concerned in the question of the petitioner's insolvency. *Ohhoteram Sarup Shah v. Emperor.*

38 Cr. L. J. 408 :
 167 I. C. 525 : 9 R. C. 702 :
 I. L. R. 1937, 1 Cal. 504 :
 A. I. R. 1936 Cal. 801.

———S. 199—Sanction—Statement unconnected with judicial proceeding—Order directing prosecution, legality of.

A Magistrate has no jurisdiction to direct

PENAL CODE ACT (XLV OF 1860)

under S. 476, Cr. P. C., the prosecution of a person for an offence under S. 197 of the Penal Code, in respect of a statement or declaration made by that person which is entirely unconnected with the judicial proceeding before the Magistrate. *Jiwan Singh v. Emperor*. 22 Cr. L. J. 653 : 63 I. C. 413 : A. I. R. 1921 Lah. 332.

—S. 199—Scope.

S. 199, Penal Code, is much wider than S. 192 and applies to every kind of affidavit which the Court is bound or authorised to receive. *Kari Gope v. Manmohan Das*. 29 Cr. L. J. 111 : 106 I. C. 703 : 6 Pat. 760 : A. I. R. 1928 Pat. 161.

—S. 199—What constitutes offence.

An identifier who knowingly makes a false affidavit of service of process for the purpose of being used in a judicial proceeding is guilty of offence under S. 199. *Kari Gope v. Manmohan Das*. 29 Cr. L. J. 111 : 106 I. C. 703 : 6 Pat. 760 : A. I. R. 1928 Pat. 161.

—S. 199—Written statement of party, whether 'a declaration which any Court of Justice is bound or authorised to receive'—False statement in such written statement—If offence.

A written statement filed by a party under O. VIII, r. 1 of the C. P. C., is not a declaration which any Court of Justice is bound or authorised (by law to receive within the meaning of S. 199, Penal Code, and a person who makes a false declaration in a written statement does not, therefore, commit an offence under the section. *Janki Rai v. Emperor*. 28 Cr. L. J. 323 : 100 I. C. 707 : 25 A. L. J. 327 : 49 All. 482 : A. I. R. 1927 All. 383.

—S. 201.

—Alternative charge under.

—Alternative charge under, if amounts to misjoinder.

—'Any evidence of the commission of that offence', scope of.

—Applicability.

—Burial of corpse.

—Burial of headless body.

—Causing disappearance of evidence.

—Concealing body of murdered man.

—Concealing corpse.

—Concealment of dead body of person committing suicide, if offence.

—Concealment of offence.

—Conviction under.

—Disposal of murdered body under threat of being shot—Offence.

—Essence of.

—Evidence of suicide causing to disappear, if offence.

—Intention.

—Offence under.

—'Offender', meaning of.

—Removal of corpse to place other than that of murder, if offence.

—Removal of corpse under fear of death, if offence.

—Removing murdered body, offence.

PENAL CODE ACT (XLV OF 1860)

—Scope of.

—Sentence.

—Separate sentence under, illegality of.

—S. 201.

See also (i) Cr. P. C., 1898, Ss. 236, 408.

(ii) Penal Code, 1860, Ss. 72, 94, 193, 302, 304.

(iii) Post Office Act, 1898, S. 3.

—S. 201—Alternative charge under, legality of—Murder, charge of—Alternative charge of causing evidence of offence to disappear—Prejudice—Test.

It is not illegal to charge an accused person first with having committed a murder, and secondly, in the alternative, if the evidence does not show that he committed the murder, of having been guilty of causing evidence of the offence to disappear, with the intention of screening the offender. The real test is, whether the accused has been prejudiced by the alternative charge made in one trial. *Hanmappa Rndrappa v. Emperor*.

25 Cr. L. J. 1349 :

82 I. C. 709 : 25 Bom. L. R. 231 :

A. I. R. 1923 Bom. 262.

—S. 201—Alternative conviction under, if amounts to misjoinder.

There is no misjoinder in charging an accused in the alternative with the main offence and under Ss. 201 and 203, Penal Code, nor is there anything irregular or improper in a Judge holding, that, while the accused is himself not free from the suspicion of being the actual murderer, he can be none the less convicted under S. 201 or 203. *In re : Chinna Gangappa*.

32 Cr. L. J. 263 :

129 I. C. 230 : 32 L. W. 389 :

54 Mad. 68 : 59 M. L. J. 677 :

1930 M. W. N. 489 :

I. R. 1931 Mad. 230 :

A. I. R. 1930 Mad. 870.

—S. 201—'Any evidence of the commission of that offence', scope of.

Per *Fawcett, J.*—The expression "any evidence of the commission of that offence" in S. 201, Penal Code, clearly refers, not to evidence in the extensive sense in which that word is used in the Indian Evidence Act, but to evidence in its primary sense, as meaning anything that is likely to make the crime evident, such as the existence of a wounded corpse or of blood stains, fabricated documents, or similar material objects indicating that an offence has been committed. The statements of witnesses and *panchnamas* do not constitute such evidence. *Anwer Khan Mohammad Khan v. Emperor*. 22 Cr. L. J. 609 :

63 I. C. 145 : 23 Bom. L. R. 823 :

A. I. R. 1921 Bom. 115.

—S. 201—Applicability of.

S. 201, Penal Code, applies merely to the person who screens the principal or actual offender and not to the principal or actual offender himself. *Ahmad v. Emperor*.

27 Cr. L. J. 109 :

91 I. C. 541 : 1 Lah. Cas. 554 :

A. I. R. 1926 Lah. 209.

PENAL CODE ACT (XLV OF 1860)

—S. 201—Burial of corpse—*Intention*.

The burial of the corpse of a murdered man if done with the intention of concealing the fact that there were marks of violence on it, might be an offence under S. 201. *Imperator v. Rino*.

13 Cr. L. J. 18 :
13 I. C. 210 : 5 S. L. R. 123.

—S. 201—Burial of headless body—*Offence*.

A person who secretly buries the headless body of a man just murdered is *prima facie* guilty under S. 201. *Nawab Din v. Emperor*.

34 Cr. L. J. 683 :
144 I. C. 12 : 34 P. L. R. 637 :
I. R. 1933 Lah. 412 (1) :
A. I. R. 1933 Lah. 516.

—S. 201—Causing disappearance of evidence.

If there is clear and independent proof that 'any person has caused evidence to disappear in order to screen some person or persons unknown,' the mere fact that he had been suspected or even tried and acquitted of the crime itself would not in itself prevent his conviction under S. 201, Penal Code. *Bucha v. Emperor*.

1 Cr. L. J. 113 :
5 P. L. R. 95 : 1 P. R. Cr. of 1904.

—S. 201—Concealing body of murdered man—*Offence*.

Concealing or otherwise disposing of the body of a murdered person amounts to causing disappearance of evidence and is punishable under S. 201, Penal Code. *Muzammal v. Emperor*.

10 Cr. L. J. 321 :
3 I. C. 622 : 8 P. W. R. 1909 Cr.

—S. 201—Concealing corpse—*Offence*.

Where it is held that the offender has not committed the murder, he can be punished for the offence which it is proved he has committed viz., that of concealing the corpse. *Fateh Muhammad v. Emperor*.

36 Cr. L. J. 83 :
152 I. C. 376 : 28 S. L. R. 387 :
7 R. S. 92 : A. I. R. 1934 Sind 139.

—S. 201—Concealment of dead body of person committing suicide, if offence.

The removal or concealment of the body of a person not proved to have been murdered but proved to have committed suicide, does not amount to an offence under S. 201, Penal Code. *Thakri v. Emperor*.

12 Cr. L. J. 425 :
11 I. C. 609 : 17 P. W. R. 1911 Cr.

—S. 201—Concealment of offence—*Concealment should be by a third person*.

Under S. 201, Penal Code; the concealment must be concealment by a third person and not by the person who is charged with having committed the offence and aided or abetted the same. It is also necessary that the disappearance of evidence should be after the offence. *Emperor v. Ghanasham*.

4 Cr. L. J. 89 :
8 Bom. L. R. 538.

—S. 201—Conviction under, if illegal—*Accused suspected of murder*.

PENAL CODE ACT (XLV OF 1860)

A conviction under S. 201 is not illegal merely because the accused gave false information to prevent himself from being harassed by the Police or merely because it may be a fact or it is suspected that the accused is guilty of the murder himself. *Alibaksh v. Emperor*.

38 Cr. L. J. 373 :
167 I. C. 368 : 9 R. S. 179 : 30 S. L. R. 461 :
A. I. R. 1937 Sind 28.

—S. 201—Conviction under, if proper—*Dead body discovered as pointed out by accused*.

The recovery of the body pointed out by the accused would be very strong evidence of an offence under S. 201. *In re : Koricha Venkataswami*.

39 Cr. L. J. 977 :
177 I. C. 909 : 1938 M. W. N. 866 :
48 L. W. 332 : 11 R. M. 394.

—S. 201—Conviction under, if vitiated.

Where notwithstanding the circumstances of grave suspicion, it is impossible on the record, as it stands, to hold that a person is the murderer or one of the murderers, his conviction under Ss. 201 and 203 is not vitiated by the existence of such circumstances. *Sohan v. Emperor*.

34 Cr. L. J. 107 (2) :
141 I. C. 116 : 1932 A. L. J. 801 :
54 All. 792 : I. R. 1933 All. 57 :
A. I. R. 1933 All. 178 (2).

—S. 201—Conviction under, illegality of.

The accused, a Police Officer, in investigating a theft case, took down the statements of certain witnesses and also prepared a *panchnama* of the search of the house of the suspect. Next day he suppressed the genuine papers and fabricated an incorrect record of the investigation. On these facts he was convicted and sentenced under Ss. 201 and 218, Penal Code: *Held*, confirming the accused's conviction and sentence under S. 218, that his conviction under S. 201 was not maintainable. *Anver Khan Mohamad Khan v. Emperor*.

22 Cr. L. J. 609 :
63 I. C. 145 : 23 Bom. L. R. 823 :
A. I. R. 1921 Bom. 115.

—S. 201—Conviction under, legality of.

Accused catching hold of tuft of deceased and another stabbing him—Accused tying deceased with rope and dragging him along some distance—Conviction under S. 201, held could not be sustained. *In re : Periaswami Thevan*.

36 Cr. L. J. 143 :
152 I. C. 696 (b) : 67 M. L. J. 631 :
1934 M. W. N. 1281 :
40 L. W. 770 : 7 R. M. 278 :
A. I. R. 1935 Mad. 36.

—S. 201—Conviction under, legality of—*Necessity of framing charge for offence*.

Where a man has been charged of murder, his conviction under S. 201, Penal Code, is not illegal even if no formal charge has been framed in respect of the latter offence. *Ditta v. Emperor*.

29 Cr. L. J. 746 :
110 I. C. 682 : 10 Lah. 213 :
30 P. L. R. 402 : A. I. R. 1928 Lah. 906.

PENAL CODE ACT (XLV OF 1860)

———S. 201—*Conviction under, requirement of.*

Before there can be a conviction under S. 201 it must be proved that an offence, the evidence of which is caused to disappear, has actually been committed. *Emperor v. Mathura Nath De.*

33 Cr. L. J. 657 :
139 I. C. 89 : I. R. 1932 Cal. 561 :
A. I. R. 1932 Cal. 850.

———S. 201—*Conviction under, validity of—Accused, producing body of deceased—Offence—Circumstantial evidence—Inference of guilt—Motive, value of.*

Motive for a crime while it is always a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence, direct or circumstantial, of the commission of the crime with which he is charged. Where the sole evidence against an accused is that in consequence of information supplied by him, the body of a murdered person was recovered from his field, he cannot be convicted under S. 302, Penal Code, but he can be convicted of an offence under S. 201. *Rannun v. Emperor.*

27 Cr. L. J. 709 :
94 I. C. 901 : 7 Lah. 84 : 27 P. L. R. 583 :
A. I. R. 1926 Lah. 88.

———S. 201—*Conviction under, validity of.*

Where it is impossible to say definitely that a person has committed the principal offence, he cannot escape conviction under S. 201, merely because he has been charged also with the principal offence. *Public Prosecutor v. Venkatamma.*

33 Cr. L. J. 814 :
139 I. C. 725 : 1932 M. W. N. 461 :
56 Mad. 63 : 36 L. W. 798 :
64 M. L. J. 153 : I. R. 1932 Mad. 776 :
A. I. R. 1932 Mad. 748.

———S. 201—*Conviction under, when legal.*

Where the Crown has satisfactorily proved (a) that an offence has been committed for which some person is criminally responsible and (b) that the accused caused the disappearance of the evidence of the commission of the offence or gave false information concerning it, a presumption arises in favour of the Crown that the accused did the act with the requisite intent. That presumption may, however, be rebutted by circumstances or by direct evidence. *Tajan v. Emperor.*

28 Cr. L. J. 674 :
103 I. C. 402 : A. I. R. 1927 Sind 241.

———S. 201—*Conviction under, when maintainable—Accused seen last with deceased—Pointing out dead body—Motive to kill, present.*

Where all that is established against the accused is that he had a motive to get rid of the deceased, that he is one of the two persons with whom the deceased was last seen and that he had pointed out the spot where the dead body of the deceased was ultimately found, it cannot be said that the offence of murder has been brought home to the accused beyond suspicion. Under the

PENAL CODE ACT (XLV OF 1860)

circumstances, only a conviction under S. 201, Penal Code, is maintainable. *Besant Singh v. Emperor.*

28 Cr. L. J. 641 :
103 I. C. 97 : A. I. R. 1927 Lah. 541.

———S. 201—*Conviction under.*

Where a trial is conducted of charges under Ss. 302 and 201, Penal Code, there is nothing to prevent an acquittal under S. 302 and conviction under S. 201. *Durlav Namasudra v. Emperor.*

33 Cr. L. J. 546 :
138 I. C. 116 : 36 C. W. N. 373 :
59 Cal. 1040 : I. R. 1932 Cal. 417 :
A. I. R. 1932 Cal. 297.

———S. 201—*Disposal of murdered body under threat of being shot—Offence.*

Where certain persons who are directed under threat of being shot to take away and dispose of the body of a murdered person to a place from where it was not likely to be recovered, do so even after the danger of instant death is removed, such persons are along with the person threatening them, guilty under S. 201, Penal Code, and the statements of such persons admitting the facts amount to confession. *Zahid Beg v. Emperor.*

39 Cr. L. J. 364 :
173 I. C. 838 : 1937 A. W. R. 1099 :
1937 A. L. J. 1253 : 10 R. A. 508 :
A. I. R. 1938 All. 91.

———S. 201—*Essence of.*

The essence of S. 201, Penal Code, is that the accused caused the evidence of the commission of the offence to disappear *with the intention of screening* the offender from legal punishment. *Bakhtawari v. Emperor.*

31 Cr. L. J. 37 :
120 I. C. 268 : A. I. R. 1930 All. 45.

———S. 201—*Evidence of suicide causing to disappear, if offence.*

Causing evidence of suicide to disappear is not punishable under S. 201. *Fatch Moham-mad v. Emperor.*

36 Cr. L. J. 83 :
152 I. C. 376 : 28 S. L. R. 387 :
7 R. S. 92 : A. I. R. 1934 Sind 139.

———S. 201—*Intention.*

Motive should not be confounded with intention. The motive is the reason which induces the accused to do the act. An intention to screen the offender, whoever he may be, falls within the scope of S. 201. A caused evidence of a murder to disappear in order to screen his sons whom he suspected of being the murderers. The sons were tried for the offence of murder and acquitted : *Held*, (1) that the ordinary consequence of A's act was that the offenders, whoever they might be, would be screened ; (2) that if A contemplated this ordinary consequence, he had the intention prescribed by S. 201 although A could not be held guilty of the offence of screening his sons. *Emperor v. Rino Sobedar.*

13 Cr. L. J. 721 :
16 I. C. 753 : 6 S. L. R. 76.

———S. 201—*Offence under.*

Approver's evidence that accused committed murder—Corroboration only as to motive—

PENAL CODE ACT (XLV OF 1860)

Accused pointing out spot wherefrom body was exhumed—Offence, held to be committed only under S. 201 and not under S. 302. *Jiwan Singh v. Emperor*.

35 Cr. L. J. 352 :
147 I. C. 215 : 34 P. L. R. 866 :
6 R. L. 360 : A. I. R. 1934 Lah. 23 (2).

—S. 201—Offence under, essentials of—
Naming or identification or conviction for principal offence of offenders is not necessary—
Intention of screening offender and giving false information for that purpose is sufficient.

It is not necessary before a conviction can take place under S. 201, Penal Code, that the offender must be named or identified or convicted of the principal offence. If it is clear that the information was given by an accused with the purpose of screening the murderer from legal punishment, then the provisions of S. 201, Penal Code, are to that extent satisfied. The knowledge as to who the offender is may not be available to the prosecution. Nor does S. 201 say that it is necessary, before a conviction can be recorded under that section, that the murderer should have been identified and punished. It is sufficient if it is proved that the accused gave false information with the intention of screening the murderer, that is, the offender, from legal punishment. *Alibaksh v. Emperor*.

38 Cr. L. J. 373 :

167 I. C. 368 : 9 R. S. 179 :

30 S. L. R. 461 : A. I. R. 1937 Sind 28.

—S. 201—Offence under, essential of—
Screening offender.

One of the ingredients of an offence under S. 201, Penal Code, is the intention to screen a specified offender; and in order to justify a conviction under that section, it is necessary that an offence for which some person has been convicted or is criminally responsible, should have been committed. *Adho v. Emperor*.

26 Cr. L. J. 897 :

86 I. C. 961 : 19 S. L. R. 6 :

A. I. R. 1925 Sind 257.

—S. 201—Offence under, essential of.

To constitute an offence under S. 201, Penal Code, it is not necessary that the accused must be aware of the identity of the offender whom he intends to screen. Illustration to a section rank only as cases decided on the section; they ought never to be allowed to control the plain meaning of the section itself. *Emperor v. Rino Sobedar*.

13 Cr. L. J. 721 :

16 I. C. 753 : 6 S. L. R. 76.

—S. 201—Offence under, what amounts to—
Murder—Person committing murder if can be guilty under S. 201.

A person who has actually committed a crime, whether murder or any other crime, is not any the less guilty of removing traces thereof if it is proved against him that he has done so, because he was the person who actually committed the offence. The mere removal of a body from one place to another so as to remove traces of the place or indications which might implicate a particular individual even though such removal does not remove un-

PENAL CODE ACT (XLV OF 1860)

doubted evidence that a murder has taken place, is within S. 201, Penal Code. *Emperor v. Har Piari*.

27 Cr. L. J. 1068 :

97 I. C. 44 : 24 A. L. J. 958 :

49 All. 57 : A. I. R. 1926 All. 737.

—S. 201—Offence under when punishable—
Accused committing offence and then concealing evidence, can be convicted for both the offences.

It may be that a principal in England cannot be convicted also as an accessory after the fact, but that rule can have no effect on the Indian Law which is contained in definite Acts S. 201, Penal Code, makes it punishable to remove evidence of the commission of a crime and it is nowhere said either in the Penal Code or in the Cr. P. C., that a man who commits an offence, and then conceals the evidence, cannot be convicted both of the offence and of concealing the evidence. *Ajog Narain v. Emperor*.

38 Cr. L. J. 193 :

166 I. C. 369 : 1936 A. L. J. 1310 :

1936 A. W. R. 1040 : 9 R. A. 402 :

A. I. R. 1937 All. 14.

—S. 201—Offender, meaning of.

A conviction for an accessory offence under S. 201, Penal Code, is not illegal merely because it is suspected, but not proved or admitted, that the accused committed or was one of the several persons who committed the principal offence. *Tajan v. Emperor*.

28 Cr. L. J. 674 :

103 I. C. 402 : A. I. R. 1927 Sind 241.

—S. 201—Removing of corpse to place other than that of murder, if offence.

Removing the corpse of a murdered man from the scene of murder to another place does not come under S. 201. *Nagendra Bhakta v. Emperor*.

35 Cr. L. J. 535 :

147 I. C. 1028 (1) : 37 C. W. N. 348 :

6 R. C. 389 : A. I. R. 1934 Cal. 144.

—S. 201—Removal of corpse to place other than that of murder, if offence.

The removal of the corpse of the murdered man from the place of murder to another place, a few yards away, will not amount to causing disappearance of any evidence of the commission of the murder. *Thakur Singh v. Emperor*.

40 Cr. L. J. 948 :

184 I. C. 409 : 1939 A. L. J. 547 :

12 R. A. 226 : 1939 A. W. R. 577 :

A. I. R. 1939 All. 665.

—S. 201—Removal of corpse under fear of death, if offence—Accused, whether guilty.

Where an accused helps in removing the dead body of a murdered person under compulsion of threats, which reasonably cause him apprehension of instant death, he is not guilty of an offence under S. 201, Penal Code. *Emperor v. Aular*.

26 Cr. L. J. 676 :

86 I. C. 52 : 23 A. L. J. 25 :

47 All. 306 : A. I. R. 1925 All. 315.

—S. 201—Removing murdered body—
Offence—Conviction for causing evidence of murder to disappear—Legality of conviction.

Where persons concerned in a murder remove

PENAL CODE ACT (XLV OF 1860)

the corpse of the murdered man from one place to another, their act does cause evidence of the murder to disappear. Where a person causes evidence of a murder to disappear with an intention to shield the murderer, he can be convicted under S. 201, Penal Code, though his main intention may have been to save himself from suspicion. Where the accused who were sleeping close to the deceased man on the night on which the latter was murdered and who were concerned with the murder, removed the corpse to another place: *Held*, they must be considered to have had an intention of screening the murderer though their main intention may have been to save themselves and the accused could be convicted under S. 201, Penal Code. *Mata Din v. Emperor*.

31 Cr. L. J. 575 :
123 I. C. 886 : 6 O. W. N. 1017 :
5 Luck. 255 : A. I. R. 1930 Oudh 113.

———S. 201—Scope of.

A person charged under S. 302, Penal Code, can be convicted for an offence under S. 201, Penal Code, if he is found not to have taken part in the murder but to have made away with the evidence of murder, even though he was not separately charged under S. 201. *Mata Din v. Emperor*.

31 Cr. L. J. 575 :
123 I. C. 886 : 6 O. W. N. 1017 :
5 Luck. 255 : A. I. R. 1930 Oudh 113.

———S. 201—Scope of—Causing disappearance of evidence of crime—Criminal himself whether liable.

S. 201, Penal Code, does not apply to a criminal causing evidence of his own offence to disappear, but exclusively to another person who screens the actual offender. Where a person is said or believed to have himself committed an offence, he cannot be convicted of causing disappearance of the evidence of that offence, even though he cannot be convicted of the principal offence as well for want of sufficient evidence. *Kudaon v. Emperor*.

27 Cr. L. J. 60 :
91 I. C. 236 : 21 N. L. R. 86 :
A. I. R. 1925 Nag. 407.

———S. 201—Scope of—Evidence, causing disappearance of evidence of crime—Giving false information to Police to screen offender.

The accused was not guilty of an offence under S. 201, Penal Code, by merely locking the outer door of her house where her son had committed murder, as it appeared that the corpse had not been removed or concealed by the accused. *Emperor v. Mussammal Rajan*.

3 Cr. L. J. 136 :
6 P. L. R. 674 : 53 P. R. Cr. 1905.

———S. 201—Scope of—Information need not be given to Police or Magistrate—Whether information is volunteered or given in reply to enquiries is immaterial.

The information need not be given to the Police or the Magistrate under S. 201, I. P. C., and it is immaterial whether that information is

PENAL CODE ACT (XLV OF 1860)

volunteered or given in reply to enquiries. *Pattammal v. Emperor*.

41 Cr. L. J. 950 :
190 I. C. 573 : 1940 M. W. N. 803 :
1940, 2 M. L. J. 315 : 52 L. W. 349 :
13 R. M. 416 : A. I. R. 1940 Mad. 898.

———S. 201—Scope of.

S. 201 does not relate to the principal offender but to persons other than the actual criminal who, by causing the evidence of the offence to disappear, assist the principal to escape the consequences of his offence. *Rup Narain Kurmi v. Emperor*.

32 Cr. L. J. 975 :
132 I. C. 876 : 12 P. L. T. 746 :
10 Pat. 140 : I. R. 1931 Pat. 300 :
A. I. R. 1931 Pat. 172.

———S. 201—Scope of—S. 201 is not limited to giving false information to Police.

S. 201 is not limited to giving false information to the Police. *Alibaksh v. Emperor*.

38 Cr. L. J. 373 :
167 I. C. 368 : 9 R. S. 179 :
30 S. L. R. 461 : A. I. R. 1937 Sind 28.

———S. 201—Sentence.

For the purpose of calculating the punishment to be awarded under S. 201, it is necessary for the Court to decide, not so much what offence—the evidence of which has been concealed—has been committed, as what offence the accused knew or had reason to believe, had been committed. *In re : Chinna Gangappa*.

32 Cr. L. J. 263 :
129 I. C. 230 : 32 L. W. 389 :
1930 M. W. N. 489 : 54 Mad. 68 :
59 M. L. J. 677 : I. R. 1931 Mad. 230 :
A. I. R. 1930 Mad. 870.

———S. 201—Separate sentence under, illegality of—Murder, conviction for.

A separate sentence under S. 201, Penal Code, along with a conviction of the accused for murder is illegal. *In re : Nalli Narasigadu*.

16 Cr. L. J. 583 :
30 I. C. 135 : A. I. R. 1916 Mad. 1163.

———Ss.—201, 202—Scope of—Causing evidence of offence to disappear—Positive destruction of evidence not necessary—Burying.

The offence under S. 202, Penal Code, is not a minor offence included under S. 201, for an essential ingredient of the offence under S. 202 is the legal duty of the accused to give information, and this is no part of the offence under S. 201. Consequently, an accused against whom a charge under S. 201 is framed, cannot be convicted of an offence under S. 202 without a charge under the latter section being framed against him. In order to support a finding that the accused has caused evidence to disappear, it is not necessary to prove the positive destruction of evidence. *Imperator v. Rino*.

13 Cr. L. J. 18 :
13 I. C. 210 : 5 S. L. R. 123.

———Ss. 201, 203, 211—Conviction under—Accomplice, whether can be convicted under Ss. 201, 203—False information to Police implicating innocent man—Offence—Intention.

A person who gives false information to the

PENAL CODE ACT (XLV OF 1860)

Police, accusing another of an offence of murder in order to screen the real offender, commits offences not only under Ss. 201 and 203, Penal Code, but also under S. 211. The husband of the accused having been murdered at night, she gave information to the Police falsely implicating a certain person: *Held*, that although there were circumstances of grave suspicion against the accused woman, as being an accomplice, yet as it would be impossible on the record as it stood to hold that she was the murderer or one of the murderers, she could be convicted under Ss. 201 and 203, Penal Code. *Taprinessa v. Emperor*.

19 Cr. L. J. 903 :
47 I. C. 275 : 46 Cal. 427 :
A. I. R. 1919 Cal. 679.

—Ss. 201, 302—*Causing to disappear evidence of murder, effect of—Principal, if convicted as accessory after the fact—Mere suspicion, if bar to conviction.*

Where it is impossible to say definitely, however strongly it might be suspected, that an accused was guilty of murder, mere suspicion is no bar to a conviction under S. 201. But if in a case of murder it be accepted as a proved fact before the Court that the accused disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder, they cannot be convicted of the minor offence of causing evidence of the murder to disappear, even though by an error of the Judge or by a misconception of the position by the Public Prosecutor, the charge of murder is subsequently withdrawn. *Sumanta Dhupi v. Emperor*.

17 Cr. L. J. 4 :
32 I. C. 132 : 20 C. W. N. 166 :
23 C. L. J. 333 : A. I. R. 1916 Cal. 919.

—S. 202.

See also Cr. P. C., 1898, S. 403.

—S. 202—*Conviction under, requirement of—Offence of intentional omission to give information of offence by person bound to inform—What must be proved to sustain conviction for.*

In order that there may be a conviction under S. 202, Penal Code, the accused must know or have reason to believe that an offence of which he is bound to give information has been committed: *Held*, that even on the facts as found by the Additional Sessions Judge, it was not shown that Po On knew or had reason to believe that murder had been committed. He might have thought it very probable, but the section requires more than that. *Nga Saw v. Emperor and Nga Po On v. Emperor*.

2 Cr. L. J. 133 :
11 Bur. L. R. 8.

—Ss. 202, 411—*Alteration of charge, illegality of.*

Alteration of conviction from under S. 202

PENAL CODE ACT (XLV OF 1860)

to one under S. 411—No specific charge under S. 411—Alteration is illegal. *Daulat Ram v. Emperor*.

35 Cr. L. J. 10 :
146 I. C. 465 : 10 O. W. N. 466 :
8 Luck. 518 : 6 R. O. 129 :
A. I. R. 1933 Oudh 315.

—S. 203.

See also Cr. P. C., 1898, Ss. 248, 345.

—S. 203 *Applicability of—False evidence given on questions by police during investigation.*

S. 203, Penal Code, does not apply to the case of a person who gives false evidence as a witness to the police in the course of their investigation, and that only in reply to questions put to him. It contemplates information volunteered by some person. *Sarju Sarun v. Emperor*.

11 Cr. L. J. 438 :
7 I. C. 50 : 7 A. L. J. 1150.

—S. 203—*Scope of—Giving false information with respect to offence, what constitutes.*

S. 203, Penal Code, only applies to information volunteered by the informant, and not to a false statement made in the course of an examination by a Police Officer. *Emperor v. Nga Po Lwin*.

21 Cr. L. J. 700 (b) :
57 I. C. 940 : 3 U. B. R. 1920, 204 :
A. I. R. 1920 U. Bur. 20.

—S. 204—*Rough draft destroyed—Offence—Panchnama—Fair copy regarded as original document.*

In the course of an investigation, a Police Officer had a certain document drawn up and signed by a *Panch*, but finding it disfigured by interlineations and scratches, he had the document re-written in textually the same form by the same writer and the same *Panch*. The rough document was, thereupon, destroyed: *Held*, that, on a true view of the facts, the fair document which the officer preserved and ultimately presented to the Court must be regarded as the only document which he was lawfully compelled to produce as evidence, the former writing being nothing more than rough notes designed for the preparation of the fair original document, and hence a conviction of the Police Officer under S. 204, Penal Code, could not be supported. *Emperor v. Ganga Ram*.

13 Cr. L. J. 912 :
17 I. C. 1008 : 14 Bom. L. R. 1163.

—S. 204—*Scope of—Mere refusal to produce document, whether offence under S. 204.*

A mere refusal to produce document though not an offence under S. 204, Penal Code, a refusal to produce a document, with the intention, otherwise proved, of keeping the document secret may well be sufficient evidence to prove a secretion within the meaning of the section. An honest refusal to produce a document is obviously not a "secretion" of a document. But where there is a refusal coupled with a secret dealing with the document or with a dealing intended to be kept

PENAL CODE ACT (XLV OF 1860)

secret, an offence under S. 204 is committed.
Takhtram Tulsidas Ambwani v. Emperor.

40 Cr. L. J. 75 :
178 I. C. 381 : 11 R. S. 90 :
1939 Kar. 238 : A. I. R. 1938 Sind 217.

—Ss. 204, 477—*Destruction of document*
—*Offence—Cr. P. C., Ss. 203, 439.*

Complainant alleged that the accused had wilfully and dishonestly destroyed a contract and a delivery order relating to transactions with the complainant's firm and charged him with offences under S. 477, Penal Code. The complaint was dismissed under S. 203, Cr. P. C., on the ground that, even if the facts alleged by the complainant were true, no offence under S. 477, Penal Code, had been committed as the documents destroyed by the accused were not valuable securities. On revision: *Held*, (1) that there had been no sufficient inquiry into the complaint and that the Magistrate ought to have considered the other provisions of the Penal Code; (2) that this was, therefore, a fit case in which a further inquiry ought to be ordered.
Debendra Nath v. Bhagirathi Mahto.

25 Cr. L. J. 167 :
76 I. C. 391 : 38 C. L. J. 158 :
A. I. R. 1921 Cal. 552.

—S. 205.

See also (i) Bengal Tenancy Act, 1885,
S. 158-B.

(ii) Cr. P. C., 1898, Ss. 423,
439 (4).

—S. 205—*False personation, what is—*
Accused representing as servant of another getting
notice under S. 158-B, Bengal Tenancy Act,
served on such person—Offence held does not
come under S. 205.

Where an accused personates as a servant of another person and gets a notice under S. 158-B, Bengal Tenancy Act, to be served on such person by writing before the Civil Court process-server, *apne malik ka namka notice paia*, it is not a case of falsely personating another person within the meaning of S. 205, Penal Code, and he cannot be convicted under that section.
Qutub-ud-Din v. Emperor.

38 Cr. L. J. 216 :
166 I. C. 352 : 17 P. L. T. 692 :
3 B. R. 164 : 9 R. P. 291 :
A. I. R. 1937 Pat. 211.

—S. 206.

See also Cr. P. C., 1898, S. 105 (b).

—S. 206—*Duty of Court—Transfer of a*
decree subject to attachment—Not fraudulent.

There is nothing to prevent a judgment-debtor from disposing of his interest in an attached debt. The Court should not presume a fraudulent intention because he does what he is entitled to do. *Ram Narayan v. Jokhai Ram.*

3 Cr. L. J. 92 :
3 A. L. J. 1 : 26 A. W. N. 26.

—S. 206—*Harvesting crops under*
attachment, if offence.

Where the crops have been attached in

PENAL CODE ACT (XLV OF 1860)

execution of a decree, the mere harvesting of them would not bring the person doing so within the scope of S. 206, Penal Code, unless it were shown that he did one of the things mentioned in S. 206, with a fraudulent intent. It must be shown that he did so with the intention of preventing the crops from being taken in the execution of decree and not merely with the intention of saving them. *Dawood Rowther v. Abdul Kadir Rowther.*

40 Cr. L. J. 312 :
179 I. C. 980 : 48 L. W. 441 :
1938 M. W. N. 1009 :
1938, 2 M. L. J. 843 : 11 R. M. 639 :
A. I. R. 1938 Mad. 976.

—S. 206—*Offence under, essentials of.*

In execution of the decree he had obtained, the accused attached certain grain and live-stock from the possession of his judgment-debtor, and this was left in the custody of the accused on his passing a *jimmapatra*. On the property being sold, the property was found to be less than that delivered to him. On refusal of permission to prosecute, the judgment-debtor filed a complaint under Ss. 403 and 109, Penal Code: *Held*, that no offence under S. 206 being made out on the facts, sanction to prosecute was not necessary: *Held*, also that the word 'taken' in S. 206 was used in the sense of 'seized' or 'taken possession of'. *Sahebrao Baburao v. Emperor.*

38 Cr. L. J. 272 :
166 I. C. 731 : 9 R. B. 252 :
38 Bom. L. R. 1192 :
A. I. R. 1937 Bom. 46.

—S. 206—*Scope of—Fraudulent removal*
of property—Accused not liable under decree—
Offence.

A person who, in order to protect his own property, not legally liable for a decree, from confusion with property which is so liable, makes it over to another person, does not commit an offence under S. 206 of the I. P. C. *In re: Basappa Shivappa.*

18 Cr. L. J. 784 :
41 I. C. 160 : 19 Bom. L. R. 535 :
A. I. R. 1917 Bom. 265.

—S. 206—*Scope of.*

Where an accused, forestalling the action of the Court in sending an *Amin* to harvest the crop which was attached, goes openly to the field and harvests the crop himself, it cannot be said that there was any deceit or intention to deceive or secrecy on the part of the accused, and though his action is dishonest, it cannot be said to be fraudulent under S. 206, Penal Code. *Y. Kothandarama Reddi v. Kandra Balarami Reddy.*

39 Cr. L. J. 711 :
176 I. C. 144 : 1937 M. W. N. 462 :
1937, 2 M. L. J. 802 :
46 L. W. 139 : 11 R. M. 34 :
A. I. R. 1937 Mad. 713.

—S. 206—*Scope of.*

The word "fraudulently" in the I. P. C., ordinarily connotes firstly, an element of deceit or secrecy and secondly, an intention

PENAL CODE ACT (XLV OF 1860)

to cause injury. Where the accused judgment-debtor immediately after giving an undertaking to the Court not to transfer certain property, transfers the same in favour of his son by a sale-deed with the knowledge that his son would be in a position to claim the property as his own, the intention to cause injury clearly exists in such a case and the case falls under S. 206, I. P. C. *Crown Prosecutor v. T. Sellamuthu*.

41 Cr. L. J. 397 :
187 I. C. 122 : 1939 M. W. N. 1248 :
51 L. W. 744 : 12 R. M. 686 :
1940, 1 M. L. J. 761 :
A. I. R. 1940 Mad. 271.

———Ss. 206, 207—Scope of—Fraudulent transfer in anticipation of threatened suit, whether within Ss. 206 and 207.

Ss. 206 and 207, Penal Code, refer only to transfers to prevent property from being taken in execution of a decree or order made in a suit which is actually pending in a Civil Court. They are not wide enough to cover transfers effected in anticipation of the institution of a suit. *Ponnuswami v. Emperor*.

31 Cr. L. J. 1063 :
126 I. C. 533 : 8 Rang. 268 :
A. I. R. 1930 Rang. 128.

———Ss. 206, 406—Distinction between—Intention requisite in the two cases—Nature of.

An offence punishable under S. 406 is substantially a different offence from the one punishable under S. 206. The criminal intention necessary for an offence punishable under S. 206 is that of fraudulent prevention of property or any interest therein from being forfeited or taken in execution of a decree or order. Such an intention is materially different from the intention required in an offence punishable under S. 406. *Sahebrao Baburao v. Emperor*.

38 Cr. L. J. 272 :
166 I. C. 731 : 9 R. B. 252 :
38 Bom. L. R. 1192 :
A. I. R. 1937 Bom. 46.

———S. 209.

See also Cr. P. C., 1898, Ss. 195, 195 (6).

———S. 209—Application to prosecute under, when to be made—False suit—Remedy of defendant—Defamation, complaint of, whether sustainable.

As a general rule, it is undesirable that people should be hampered in their access to the Courts and getting justice by the fear that if they are unsuccessful they may be prosecuted for defamation. The ordinary remedy of a person who has had a false suit brought against him is to apply to the Court to prosecute the plaintiff under S. 209, Penal Code. Courts should be careful when a complaint for defamation is filed in respect of proceedings in a Civil Court to see whether the provisions of S. 209, Penal Code, and the provisions of the Cr. P. C., generally have not been evaded. The High Court

PENAL CODE ACT (XLV OF 1860)

is extremely reluctant to quash proceedings in *limine* but will do so in a proper case. *Gangumal v. Emperor*.

26 Cr. L. J. 941 :
86 I. C. 1005 : 18 S. L. R. 83 :
A. I. R. 1925 Sind 263.

———S. 209—Burden of proof.

In a prosecution based on the allegation that a false claim was wilfully presented, the prosecution will have to prove affirmatively that the case was a false one. *Hira Lal v. Emperor*.

33 Cr. L. J. 860 :
139 I. C. 543 : 13 P. L. T. 370 :
I. R. 1932 Pat. 245 :
A. I. R. 1932 Pat. 243.

———S. 209—'Claim', meaning of.

The word "claim" used in S. 209, Penal Code, cannot refer to a document produced in evidence to substantiate the relief asked for in a suit. *Boddu Ramayya v. Chitturi Surayya*.

16 Cr. L. J. 439 :
29 I. C. 71 : 28 M. L. J. 486 :
17 M. L. T. 446 : A. I. R. 1916 Mad. 1105.

———S. 209—Directing prosecution of plaintiff under, validity of—Preferring false claim—Accused, whether must be given opportunity to show cause.

The mere dismissal of a suit in the absence of a clear finding that the suit was false and was brought with intent to injure the defendant, is not a justification for directing the prosecution of the plaintiff under S. 209, Penal Code. Where a plaintiff is called upon to show cause why he should not be prosecuted under S. 209, Penal Code, he should be afforded every opportunity of adducing evidence in support of his claim and to remove any doubt in the mind of the Court as to the falsity of the case. *Chakauri Rai v. Emperor*.

21 Cr. L. J. 158 :
54 I. C. 686 : A. I. R. 1920 Pat. 548.

———S. 209—Duty of Court.

Complaint of defamation in respect of Civil Court proceedings—Court must see that provisions of S. 209 are not evaded. *Ghanshamdas Gianchand v. Nenumal*.

36 Cr. L. J. 78 :
152 I. C. 346 : 28 S. L. R. 251 :
7 R. S. 85 : A. I. R. 1934 Sind 114.

———S. 209—False claim.

Manager dealing with claim under Chota-Nagpur Encumbered Estates Act, is not a Court—False claim made to Manager—Conviction under S. 209 is not legal—User of false document and perjury in the proceedings—Offences under Ss. 471 and 193, are made out. *Kewal Ram v. Emperor*.

36 Cr. L. J. 1354 :
158 I. C. 324 : 15 Pat. 69 :
1 B. R. 872 : 16 P. L. T. 693 :
8 R. P. 187 : A. I. R. 1935 Pat. 515.

———S. 209—Question of fraud—Evidence.

The question of fraud or dishonesty or intent to injure or annoy must be decided

PENAL CODE ACT (XLV OF 1860)

like any other question of fact, on the evidence. *Moti Lal v. Emperor*.

37 Cr. L. J. 420 :
161 I. C. 314 : 1936 A. L. J. 71 :
1936 A. W. R. 161 : 8 R. A. 722 (2) :
A. I. R. 1936 All. 164.

———S. 209—Sanction to prosecute under
—When can be given—Conviction on uncorroborated testimony of accomplices—Statement by a deceased person made to a Magistrate in the absence of the accused, admissibility of—Cr. P. C. (Act V of 1898), Ss. 195 (6), 437, 476
—Sanction to prosecute—District Judge—Jurisdiction—Remanding case of sanction—Sanction to prosecute after compromise.

A brought a suit in a Munsif's Court on two bonds and obtained a compromise-decree. Six months after the decree, the opposite party applied for sanction to prosecute the plaintiff for an offence under S. 209, Penal Code. The Munsif rejected the application. Thereupon, an appeal was preferred to the District Judge who set aside the order of rejection and remanded the case to the Munsif for further inquiry : *Held*, that the District Judge had no jurisdiction to remand the case : *Held*, further, that after the parties had compromised, it was not a case to sanction prosecution. *Beni Pershad v. Sarju Pershad*.

12 Cr. L. J. 174 :
9 I. C. 982 : 8 A. L. J. 429 :
33 All. 512.

———S. 209—Scope of.

A person who brings a claim in the Civil Court which he knows to be false, commits an offence punishable under S. 209, but he does not by so doing commit an offence either, if he succeeds, of extortion, or if he fails, of attempting to commit extortion. *Khushal v. Emperor*.

18 Cr. L. J. 651 :
40 I. C. 299 : 4 O. L. J. 143 :
20 O. C. 129 : A. I. R. 1917 Oudh 117.

———Ss. 209, 210—Scope of—Dishonestly making false claim—Fraudulently obtaining decree.

In order to bring a case under S. 209, Penal Code, it is immaterial whether the Court in which the false claim was instituted had jurisdiction to try the suit. The words in the section are "a Court of justice" and not "a Court of justice having jurisdiction." Similarly, if a person obtains a decree fraudulently for a sum not due, the case would fall under S. 210 of the Code. *Badri v. Emperor*.

20 Cr. L. J. 698 :
52 I. C. 666 : A. I. R. 1919 All. 323.

———S. 210.

See also Cr. P. C., 1898, S. 195.

———S. 210—Complaint under, when lies.

A complaint under S. 210 would lie where a person fraudulently obtains an attachment of property against another for an amount

PENAL CODE ACT (XLV OF 1860)

not due from the latter. *Hikmal Ullah Khan v. Sakina Begam*.

32 Cr. L. J. 367 :
129 I. C. 264 : 1931 A. L. J. 117 :
I. R. 1931 All. 136 :
A. I. R. 1931 All. 305.

———S. 210—Fraudulent execution of decree—Sanction to prosecute.

In an application for execution of a decree, the decree-holder (accused) made no mention of having received a certain sum of money from the judgment-debtor three days previous to the application. The Court executing the decree sanctioned prosecution of the decree-holder for an offence under S. 210, Penal Code. It was contended that the sanction should be revoked for (1) the sum of money was made over to the decree-holder, merely as a deposit, (2) the warrant applied for was never in fact issued, and the judgment-debtor suffered no loss and was put to no disgrace and the interests of justice did not require a prosecution, and (3) in any case, there was no completed offence under S. 210, Penal Code : *Held*, that the sanction was properly granted. *Fauja Singh v. Emperor*.

12 Cr. L. J. 187 :
10 I. C. 643 : 55 P. L. R. 1911 :
10 P. W. R. 1911 Cr.

———S. 210—Fraudulent intention, proof of.

For sustaining a charge under S. 210, Penal Code, it is necessary to establish that the person charged acted fraudulently. *Hari Ram v. Emperor*.

30 Cr. L. J. 666 :
116 I. C. 711 : 11 L. L. J. 103 :
30 P. L. R. 392 : I. R. 1929 Lah. 567 :
A. I. R. 1929 Lah. 676.

———S. 210—Mis-statement of decretal amount, if offence—Duty of executing Court to find out proper amount.

Where a decree-holder drew the executing Court's attention to the final decree both in the heading and at the foot of his application for execution, but misdescribed its precise terms : *Held*, that he could not be made criminally liable under S. 210, Penal Code, for such a mistake, particularly as it was a business of the executing Court to verify the amount due to him in terms of the decree sought to be executed. *Daya Ram v. Emperor*.

15 Cr. L. J. 263 :
23 I. C. 471 : 11 P. W. R. 1914 Cr. :
64 P. L. R. 1914 : A. I. R. 1914 Lah. 254.

———S. 210—Offence under fraudulent decree.

An offence under S. 210 is committed as soon as a decree is fraudulently obtained. The setting aside by a Civil Court of a fraudulently obtained decree is not evidence in a Criminal Court of the existence of fraud which it is necessary to prove independently in criminal proceedings. Therefore the fact that such a decree has not been set aside is no bar to a prosecution under S. 210, I. P. C., though it might be admissible as evidence to prove

PENAL CODE ACT (XLV OF 1860)

that there is no fraud. *Emperor v. Molla Fazla Karim*.
3 Cr. L. J. 365 :
I. L. R. 33 Cal. 193.

S. 211.

- Absence of definite accusation, effect of.
- Absence of sanction, effect of.
- Accusation in dying declaration, if amounts to false complaint.
- Acquittal under.
- 'Be instituted,' scope of.
- Burden of proof.
- Charge.
- Cognizance.
- Communication of suspicion.
- Communication of suspicion to Police, if offence.
- Complainant failing to prove his case.
- Complaint.
- Complaint by Court.
- Conviction.
- 'Criminal charge,' what is not.
- Definite charge of offence.
- Delay, effect of.
- Duty of Court.
- Duty of Magistrate.
- Duty of prosecution.
- False charge.
- False complaint.
- False dying declaration.
- False information.
- False information to Police.
- First and second part.
- Information to Police.
- Ingredients.
- Institution of criminal proceedings.
- Intention.
- Interpretation.
- Offence under.
- Power of Magistrate.
- Practice.
- Procedure.
- Prosecution.
- Punishment, nature of.
- Report to Police.
- Sanction.
- Sanction of Magistrate before trial, if necessary.
- Sanction to prosecute.
- Scope.
- Scope of.
- Second complaint.
- Telegram to Police, if amounts to false charge.

S. 211.

- See also (i) Artificers Act, 1859, S. 2.
(ii) Cr. P. C. 1898, Ss. 4, 4 (h), 182, 179, 190, 190 (1) (a) (b) and (c), 190 (1) (c), 190 (b), 195, 195 (1), 195 (1) (b), 195 (1) (b) and (c), 200 (a), 235, 253, 342, 439, 476, 476-B, 526, Chap. XIV.
(iii) Legal Practitioner.
(iv) Madras District Police Act, 1859, S. 47.
(v) Penal Code, 1860, Ss. 112, 182, 193, 195, 196.

PENAL CODE ACT (XLV OF 1860)

(vi) Workman's Breach of contract Act, 1859, S. 1.

S. 211—Absence of definite accusation, effect of.

Where, in an original complaint presented to a Police Officer, there is no definite accusation against a person, it cannot, in order to bring the case under S. 211 of the Code, be supplemented by a supplementary statement containing specific averments made to a Sub-Inspector in the course of an investigation. *In re : Mallala Obiah*.

19 Cr. L. J. 38 :
42 I. C. 998 : 1917 M. W. N. 875 :
A. I. R. 1918 Mad. 731.

S. 211—Absence of sanction, effect of.

Cognizance of complaint under S. 211, Penal Code, cannot be taken against person for action taken by him as Deputy Commissioner of Police, without the previous sanction of the Local Government. *J. W. Atkinson v. S. W. H. Xavier*.

37 Cr. L. J. 728 :
162 I. C. 988 : 8 R. Rang. 603 :
A. I. R. 1936 Rang. 242.

S. 211—Accusation in dying declaration, if amounts to false complaint.

Accusation in dying declaration does not amount to false complaint. *Banti Pande v. Emperor*.

32 Cr. L. J. 210 :
129 I. C. 87 : 12 P. L. T. 109 :
I. R. 1930 Pat. 71 :
A. I. R. 1930 Pat. 550.

S. 211—Acquittal under, S. 182 if bar to trial under S. 211.

An acquittal under S. 182 does not bar a trial under S. 211. *Thakar Singh v. Chatter Pal*.

11 Cr. L. J. 420 :
6 I. C. 944 : 20 P. R. 1910 Cr. :
30 P. W. R. 1910 Cr. : 140 P. L. R. 1910.

S. 211—'Be instituted,' scope of—Words "be instituted" in second part denote passive mood.

The words "be instituted" in second part of S. 211, Penal Code, do not denote the past tense as is sometimes contended. The words denote the passive mood. *Dharamdas Hiranand v. Emperor*.

40 Cr. L. J. 12 :
178 I. C. 218 : 1939 Kar. 241 :
11 R. S. 82 : A. I. R. 1938 Sind 213.

S. 211—Burden of proof—Duty of prosecution to establish charge—Failure of accused to examine witness, if implies guilt.

The duty of the prosecution in a case under S. 211, Penal Code, is to prove by satisfactory evidence that the charge was wilfully false to the knowledge of the maker of the charge. It is for the prosecution to establish their case, and if they fail to supply that proof which is required to secure the conviction of the accused, the failure on the part of the latter to examine any particular person as a defence witness will not imply the guilt as having been proved. Where the petitioner, on learning from his

PENAL CODE ACT (XLV OF 1860)

wife that the complainant who was living in the house had disappeared with valuables, lodged an information to the Police charging him with theft which was afterwards found to be false, it was held that he could not be convicted under S. 211, Penal Code, unless the prosecution established that there was, as a matter of fact, no theft, or that the petitioner knew that there was no theft. *Hassan Mirza v. Emperor.*

15 Cr. L. J. 355 :
23 I. C. 723 : 18 C. W. N. 391 :
A. I. R. 1914 Cal. 349.

———S. 211—Burden of proof.

In a charge against a person for having instituted criminal proceedings on false grounds, it is not for the accused person to make out that his complaint is true until the whole ground of it has been clearly traversed by evidence showing that it is false. *In re : Sankaram Servai.*

30 Cr. L. J. 167 :
113 I. C. 455 : 30 L. W. 795 :
I. R. 1929 Mad. 135 :
A. I. R. 1929 Mad. 496.

———S. 211—Charge.

A mere suggestion to the Police that certain houses should be searched because there is reason to suspect the conduct of the owners of those houses, does not amount to a "charge" within the meaning of S. 211, Penal Code. *Solaimuthu Pillai v. Murugaih Moopan.*

16 Cr. L. J. 423 :
28 I. C. 999 : 1915 M. W. N. 272 :
A. I. R. 1916 Mad. 639.

———S. 211—Charge, meaning of.

"Charge" explained. The test is whether the person making the charge intended to set the criminal law in motion against the persons charged. *Bhawani Sahai v. Emperor.*

33 Cr. L. J. 409 :
137 I. C. 157 : 13 Lah. 568 :
I. R. 1932 Lah. 299 (2) :
33 P. L. R. 174 : A. I. R. 1932 Lah. 246.

———S. 211—Charge under—Procedure—Complaint which the Magistrate holds to be false must be verified and dealt with under S. 200, Cr. P. C.

If a Magistrate is going to make a charge against a person of an offence under S. 211, Penal Code, the complaint which the Magistrate holds to be false must have been verified and dealt with by the Court according to law. The word "may" under S. 190, Cr. P. C., does not mean that Magistrate may refuse to take cognizance of an offence upon a complaint duly made to him. *Radhakrishin G. Keswani v. Emperor.*

40 Cr. L. J. 449 :
180 I. C. 436 : 11 R. S. 178 :
1939 Kar. 648 : A. I. R. 1939 Sind 78.

———S. 211—'Charge', what amounts to—Accusation made to a Village Magistrate.

Where an accusation of murder is made, in the first instance, to a Village Magistrate who has authority to arrest any person whom he suspects of having committed the murder of a person, whose body is found within his jurisdiction, the accusation is a "charge" within the

PENAL CODE ACT (XLV OF 1860)

meaning of S. 211, Penal Code, even though it does not amount to the institution of criminal proceedings and even though no criminal proceedings follow it owing to the Police on investigation referring the charge as false. *Chenna Malli Gowda v. Emperor.*

1 Cr. L. J. 426 :
I. L. R. 27 Mad. 129.

———S. 211—Cognizance—Facts disclosing offences under Ss. 211 and 182—Power of Court to try offences under S. 211 without complaint of public servant concerned.

Where all the facts of a complaint taken together disclose an offence under S. 211 of the Penal Code, the Court is not debarred from enquiring into the offence simply because an offence under S. 182 of the Penal Code is also disclosed, and for the trial of such an offence, a written complaint from the public servant concerned is necessary. *Muthuvolu Kudumburan v. Samiayya Kudumburan.*

37 Cr. L. J. 1134 :
165 I. C. 292 : 71 M. L. J. 485 :
44 L. W. 631 : 9 R. M. 228 :
59 Mad. 1083 : 1936 M. W. N. 641 :
A. I. R. 1937 Mad. 8.

———S. 211—Cognizance.

Prosecution for false charge may be under S. 182 and S. 211 but if false charge is serious, S. 211 should be applied. *Emperor v. Sarada Prasad Chatterjee.*

2 Cr. L. J. 171 :
I. L. R. 32 Cal. 180.

———S. 211—Communication of suspicion—No offence.

The mere communication of a suspicion to the Police does not amount to making a charge of a criminal offence within the meaning of S. 211, Penal Code. *Abdul Ghafur v. Emperor.*

26 Cr. L. J. 1165 :
88 I. C. 525 : 6 Lah. 28 :
A. I. R. 1925 Lah. 325.

———S. 211—Communication of suspicion to Police, if offence—Preferring a false charge—Whether amounts to institution of a criminal proceeding.

The mere communication of a suspicion to the Police on which an inquiry may be initiated does not amount to the institution of a criminal proceeding within the meaning of S. 211, Penal Code. *Saominatha Thevan v. Emperor.*

13 Cr. L. J. 303 :
14 I. C. 767 : 1912 M. W. N. 1125.

———S. 211—Complainant failing to prove his case—Liability for offence under S. 211.

The failure of a complainant to prove his case is not the same thing as the institution of a maliciously false case so as to make him liable for an offence under S. 211, I. P. C. *Mukti Narayan Gir v. Emperor.*

41 Cr. L. J. 349 :
186 I. C. 627 : 20 P. L. T. 947 :
6 B. R. 377 : 12 R. P. 534 :
A. I. R. 1940 Pat. 97.

PENAL CODE ACT (XLV OF 1860)

———S. 211—Complaint.

Complaint of offence under S. 211 by three Magistrates constituting Bench—Order of discharge signed by two—Matter being technical, High Court refused to entertain. *Banke Lal v. Maiku*. 35 Cr. L. J. 121 :

146 I. C. 638 : 10 O. W. N. 1037 :
6 R. O. 150 (2) : A. I. R. 1933 Oudh 430.

———S. 211—Complaint, necessity of.

Report to Police by woman as having been raped by A and others unknown—Police finding it false—Complaint in Court naming A and B—Dismissal of complaint—Charge of defamation against woman—Offence falls under S. 211 and not S. 500—Complaint in writing of Court is necessary. *Swec Ing v. Koon Han*. 36 Cr. L. J. 970 :

156 I. C. 598 : 8 R. Rang. 27 :
A. I. R. 1935 Rang. 163.

———S. 211—Complaint by Court—Necessity of—False charge to Police followed by complaint to Magistrate—Prosecution of complainant without complaint from Magistrate, legality of.

Where information to the Police amounting to a false charge under S. 211, Penal Code, is followed by a complaint to the Court based on the same allegations and the same charge, the provisions of S. 195 (1) (b) of the Cr. P. C., come into operation and complaint of the Court is necessary to the validity of a prosecution of the informant under S. 211 of the Penal Code, even if the prosecution be in respect of the false charge made to the Police, and the same rule will hold good irrespective of whether the Court investigated the complaint or not. *Rambrose v. Emperor*. 30 Cr. L. J. 342 :

114 I. C. 685 : 6 Rang. 578 :
I. R. 1929 Rang. 77 :
A. I. R. 1928 Rang. 254.

———S. 211—Complaint by Court—When necessary.

When a false charge is made only to the Police or when the person making the false charge has not applied to the Magistrate and when no Court proceedings have ensued, no complaint is necessary under S. 195 of the Cr. P. C. before a prosecution under S. 211, I. P. C. can be instituted against the informant. *Bholu v. Punaj*. 28 Cr. L. J. 934 :

105 I. C. 454 : 10 N. L. J. 191 :
23 N. L. R. 136 : A. I. R. 1928 Nag. 17.

———S. 211—Conviction, illegality of—False charge, making of—Complaint to Deputy Commissioner.

Where the accused submitted a petition to the Deputy Commissioner while he was on tour, making certain complaints against a manager of the Court of Wards and the accused was convicted of an offence under S. 211, Penal Code, for making a false charge against the Manager of the Court of Wards: *Held*, that the petition submitted by the accused not being a complaint within the meaning of S. 4, (h), Cr. P. C., and there

PENAL CODE ACT (XLV OF 1860)

being no institution of criminal proceedings, the conviction was illegal. *Ahmad Khan v. Emperor*. 1 Cr. L. J. 957 :

5 P. L. R. 397.

———S. 211—Conviction, propriety of.

Fight between Municipal employees under accused and cartmen—Accused not present at alleged fight—Accused charging cartmen with obstructing him in discharge of his duties—Charge found false—Conviction of accused under S. 211, *held* proper. *Emperor v. Verhomal Kakumal*. 36 Cr. L. J. 1289 :

157 I. C. 792 : 8 R. S. 34.

———S. 211—Conviction under, if can be altered to one under S. 182—“False charge”—False petition to Superintendent of Police for protection from oppression of head-constable—Whether amounts to false charge—*Held*, conviction under S. 211, could not be altered to one under S. 182, for want of a complaint by Police Officer as required by S. 195, Cr. P. C.

For an allegation to amount to a false charge, as contemplated under S. 211, Penal Code, it must be made with the intention and object of setting the Criminal Law in motion. A false petition to the Superintendent of Police praying for the protection of the petitioner from the oppression of a head-constable which may be effected by some departmental action, does not amount to such a false charge. The charge must be embodied either in a complaint to the Magistrate or in a report of a cognizable offence to a Police Officer: *Held*, that the conviction under S. 211, could not also be altered to one under S. 182, since none of the Police Officers to whom the complaint was addressed by the petitioner had taken the trouble of presenting a complaint against him as required by S. 195, Cr. P. C. *Ram Rakha v. Emperor*. 38 Cr. L. J. 1070 :

171 I. C. 333 : 39 P. L. R. 238 :
10 R. L. 182 : A. I. R. 1937 Lah. 624.

———S. 211—Criminal charge, what is not—“False charge”, meaning of—Petition for inspection of Municipal election papers to the District Magistrate—Whether charge.

The applicant presented a petition to the District Magistrate, who was in charge of the papers connected with a Municipal election, praying for permission to inspect the file saying that he intended to take criminal proceedings against the employee of the Municipal Board who, while distributing the voting papers, had given some of them to persons who had no right to receive them intending to cause injury to the applicant: *Held*, that the petition did not amount to a criminal charge within the meaning of S. 211, Penal Code. *Zorawar Singh v. Emperor*. 12 Cr. L. J. 433 :

11 I. C. 617 : 8 A. L. J. 1106.

———S. 211—Definite charge of offence—Information to Police—Offence.

There is an essential difference between a mere information to the Police and a definite statement to it that a certain person has

PENAL CODE ACT (XLV OF 1860)

committed a certain particular offence. In the latter case, which is much graver than the former, S. 211, Penal Code, applies. Accused laid a clear and definite information before the Police to the effect that there was a dacoity in his house and that certain particular persons had taken part in it. It was found that no dacoity had taken place and that, at any rate, the persons mentioned by the accused never took part in the dacoity: *Held*, that the accused was guilty of an offence under S. 211, Penal Code. *Samokhan v. Emperor*. 26 Cr. L. J. 594 : 85 I. C. 818 : A. I. R. 1925 All. 472.

———S. 211—Delay, effect of.

In charges under S. 211, great delay should not be tolerated, and such delay alone is a sufficiently good reason for refusing to proceed with the complaint. *Murugappa Chettyar v. K. P. R. M. Raman Chettyar*. 37 Cr. L. J. 243 : 160 I. C. 150 (2) : 8 R. Rang. 345 : A. I. R. 1935 Rang. 485.

———S. 211—Duty of Court—Complaint—Dismissal under S. 203—Prosecution of complainant, when justifiable—Complaint by Court—Prima facie case, necessity of.

A Court should not make a complaint for a prosecution under S. 211, Penal Code, where there are not sufficient materials before it, to show that there is a *prima facie* case against the accused. The mere fact that a complaint was dismissed by a Magistrate summarily under S. 203, Cr. P. C., will not throw the burden on the complainant to prove that his complaint was a reasonable and honest one, and justify a complaint by the Court for a prosecution for an offence under S. 211, Penal Code. *Din Mohammad v. Emperor*. 27 Cr. L. J. 1345 : 98 I. C. 465 : A. I. R. 1927 All. 107.

———S. 211—Duty of Court.

Narazi petition against Police report and inquiry—Process under Ss. 211 and 182 should not be issued without dismissing the *narazi* petition. *Lachmi Shaw v. Emperor*. 33 Cr. L. J. 514 (1) : 137 I. C. 849 : 36 C. W. N. 15 : I. R. 1932 Cal. 395 (1) : A. I. R. 1932 Cal. 383 (1).

———S. 211—Duty of Magistrate—False complaint—Order for prosecution based on Police report alone, legality of—Duty to give opportunity to complainant to prove his case.

A Magistrate does not exercise a proper discretion in ordering a complainant to be prosecuted under S. 211, Penal Code, merely on the receipt of a Police report that the complaint is false. The complainant should be given a reasonable time and full opportunity to prove his case before sanction is given for his prosecution. *Tenhu Dhanuk v. Emperor*. 28 Cr. L. J. 639 : 103 I. C. 63 : 8 P. L. T. 662.

———S. 211—Duty of prosecution—False charge, what amounts to—Just or lawful grounds, absence of.

PENAL CODE ACT (XLV OF 1860)

In order to bring home a charge under S. 211, Penal Code, the prosecution must establish that there were no just and lawful grounds for the action taken and that the accused was aware of this. *Abdul Ghafur v. Emperor*. 26 Cr. L. J. 1165 : 88 I. C. 525 : 6 Lah. 28 : A. I. R. 1925 Lah. 325.

———S. 211—Duty of prosecution.

In order to successfully prosecute an accused under S. 211, the prosecution must establish that the primary intention of the accused when he made the statement, the basis of the charge, was to cause injury to the persons mentioned by him. *Bhawani Sahai v. Emperor*. 33 Cr. L. J. 409 : 137 I. C. 157 : 33 P. L. R. 174 : 13 Lah. 568 : I. R. 1932 Lah. 229 (2) : A. I. R. 1932 Lah. 246.

———S. 211—Duty of prosecution—Ingredients of—Nature of proof required to establish offence.

In order to prove an offence under S. 211, Penal Code, it will be necessary for the prosecution to establish, firstly that the prosecution brought by the appellant against the respondent was brought with intent to cause injury to the respondent ; secondly, that the charge made against the respondent was false, and thirdly, that it was made with the knowledge on the part of the appellant that there was no just or lawful ground for such charge. *U Po Thein v. Buta Khan*. 38 Cr. L. J. 226 : 166 I. C. 489 : 9 R. Rang. 262 : A. I. R. 1936 Rang. 473.

———S. 211—False charge.

A person who sets the criminal law in motion by making a false charge to the Police of a cognizable offence, institutes criminal proceedings within the meaning of S. 211, Penal Code, and, if the offence falls within the description in the latter part of the section, he is liable to the punishment provided in that part. *Emperor v. Mt. Chhoti Bi*. 4 Cr. L. J. 240 : 2 N. L. R. 119.

———S. 211—False charge against two persons—One offence.

Where a false charge is made against two persons only, one offence is committed and not two in spite of the fact that a charge was made against two persons. *Nga Ba Shein v. Emperor*. 35 Cr. L. J. 1259 : 151 I. C. 185 : 7 R. Rang. 43 : A. I. R. 1934 Rang. 21.

———S. 211—False charge, essentials of—Suggestion and publication of rumour, not within the section.

To sustain a conviction under S. 211, Penal Code, there must be something more than a mere suggestion of an inference that the complainant had committed an offence. There must be proof of a charge of some specific offence made with the intention and object of setting the criminal law in motion

PENAL CODE ACT (XLV OF 1860)

against the man who is said to have committed the offence. Moreover, the circumstances in which the statement was made and the form of words used have to be considered. *Nga Bon She v. Emperor*.

18 Cr. L. J. 2 :
36 I. C. 834 : 10 Bur. L. T. 259 :
A. I. R. 1917 L. Bur. 108.

—S. 211—'Falsely charges' meaning of.

The words "falsely charges" imply a false charge to a person in authority made with a view to setting the criminal law in motion. The question here is one of intention. *Hidayatullah v. Emperor*.

37 Cr. L. J. 604 :
162 I. C. 140 : 8 R. Pesh. 189 :
A. I. R. 1936 Pesh. 66.

—S. 211—False charge made before police—Offence.

Where a person makes a report to the Police deliberately but falsely charging another with having committed an offence with the intention that the Police should put that person on his trial, he is guilty of an offence under S. 211 of the Penal Code. A charge laid before the Police amounts to the institution of a criminal proceeding within the meaning of the latter part of S. 211, Penal Code. *Par-meshar Lall v. Emperor*.

27 Cr. L. J. 373 :
92 I. C. 885 : 4 Pat. 472 :
7 P. L. T. 657 : A. I. R. 1925 Pat. 678.

—S. 211—False charge of murder before Police—Police Officer—Magistrate's jurisdiction—Commitment to Sessions bad.

The accused gave a false information to the Police that a certain person had committed murder : *Held*, that they committed an offence under the first paragraph of S. 211, I. P. C. : *Held*, further, that the offence being one which the Magistrate had jurisdiction to try, a commitment to the Court of Session simply on the ground that the offence falls within the second paragraph of S. 211 is bad in law. *Emperor v. Jagmohan*.

11 Cr. L. J. 54 :
4 I. C. 812 : 6 A. L. J. 989.

—S. 211—False charge of murder.

It is in the interests of justice that a man who brings a false charge of murder against any person should be prosecuted if a *prima facie* case is made out against him. *Sampuran Singh v. Emperor*.

35 Cr. L. J. 1392 :
151 I. C. 691 (a) : 35 P. L. R. 593 :
7 R. L. 182 (1).

—S. 211—False charge of non-cognizable offence.

A false charge of a non-cognizable offence made to Police is not an institution of criminal proceedings. *Abdul Hakim Khan v. Emperor*.

33 Cr. L. J. 631 :
138 I. C. 551 : 59 Cal. 334 :
I. R. 1932 Cal. 465 : A. I. R. 1932 Cal. 511.

—S. 211—False charge of offence, what amounts to.

The failure of a complainant to prove his case, is not the same thing as the institution of a

PENAL CODE ACT (XLV OF 1860)

maliciously false case, so as to sustain a charge of an offence under S. 211, Penal Code. *Chhedi Upadhyaya v. Emperor*. 24 Cr. L. J. 316 : 72 I. C. 76 : 1 P. L. R. 50 Cr. : 4 P. L. T. 703.

—S. 211—False charge—Statement made to the Police—Cr. P. C., S. 151—Statement not reduced to writing.

Where a false charge is made to the Police with the intention of setting the criminal law in motion against the person against whom the charge is made, the fact that the statement made to the Police was not reduced to writing in accordance with the requirements of S. 154, Cr. P. C., does not prevent the statement from being a false charge within the meaning of S. 211, Penal Code. *Mallappa Reddi v. Emperor*.

1 Cr. L. J. 425 :
I. L. R. 27 Mad. 127 : 1 Weir 192.

—S. 211—False charge to Police—Proof—Necessity of proving that there was no just or lawful ground for such charge—Communication to Police on authority of others—No personal knowledge—Suspicion.

The petitioner addressed a *rukka* (letter) to the Police in which he did not claim any personal knowledge of the facts, but, on the authority of information supplied to him by others, stated that a certain person had murdered a woman : *Held*, that unless a person making a charge under S. 211, Penal Code, actually knows that there is no just or lawful ground for it, he is not guilty of the offence and cannot properly be convicted of it. The prosecution must prove that there was no just or lawful ground for the charge, and unless this is proved, the informer must be acquitted. *Karim Bakhsh v. Emperor*.

2 Cr. L. J. 66 :
12 P. R. Cr. 1905 : 6 P. L. R. 278.

—S. 211—False charge, what is.

A false charge, mentioned in S. 211, I. P. C., must not be understood in any restricted or technical sense, but in its ordinary meaning of a false accusation made to any authority bound by law to investigate or to take any steps in regard to it, such as giving information of it to superior authorities with a view to investigation or other proceedings; and the 'institution of criminal proceedings' includes the setting of the criminal law in motion. *The Sessions Judge, Tinnevely v. Sivan Chetty*.

9 Cr. L. J. 170 :
1 I. C. 187 : 5 M. L. T. 269 :
32 Mad. 258.

—S. 211—False charge, what is.

An allegation will amount to a false charge under S. 211 only if made with the intention and object of setting the criminal law in motion. *Abdul Hakim Khan v. Emperor*.

33 Cr. L. J. 631 :
138 I. C. 551 : 59 Cal. 334 :
I. R. 1932 Cal. 465 : A. I. R. 1932 Cal. 511.

—S. 211—'False charge,' what is.

A false charge must be made with the intention to set the law in motion against the person

PENAL CODE ACT (XLV OF 1860)

charged and must be made to an officer or to a Court who has power to investigate and send it for trial. *Mathura Prasad v. Emperor*.

18 Cr. L. J. 1017 :

42 I. C. 761 (1) : 15 A. L. J. 767 : 39 All. 715.

———S. 211—False complaint—Prosecution under S. 211, without giving opportunity to complainant to substantiate his complaint, legality of.

Where the Police make a report to a Magistrate that a complaint is false and that the complainant might be prosecuted under S. 211, Penal Code, and the complainant does not ask the Magistrate to enquire into the case, his conviction under S. 211, Penal Code, cannot be set aside on the mere ground that he was not given an opportunity of proving his case before he was prosecuted. *Emperor v. Sobarati Sain*.

30 Cr. L. J. 1144 :

120 I. C. 48 : 8 Pat. 734 :

I. R. 1929 Pat. 688 : A. I. R. 1929 Pat. 650.

———S. 211—False dying declaration, if offence.

The law does not require dying declarations to be recorded by Magistrates, and while an individual Magistrate who records a dying declaration may happen to be empowered to take cognizance apart from such powers of cognizance, an accusation contained in a dying declaration made to a Magistrate stands on no better footing than an accusation made to a private individual without any Statutory obligation to move in the matter at all. *Banti Pande v. Emperor*.

32 Cr. L. J. 210 :

129 I. C. 87 : 12 P. L. T. 109 :

I. R. 1931 Pat. 71 :

A. I. R. 1930 Pat. 550.

———S. 211—False information—Information given to Village Magistrate or Munsif (Village Headman) and communicated by him to Police—Information found to be false—Conviction of informant under S. 211, I. P. C.

Information of an offence given by a person to a Village Munsif (Village Headman), who communicated it to the Police, which, in turn, investigated and found it to be false, may be made the basis of a charge against the informant under S. 211. But every information of an offence does not necessarily amount to a charge of an offence, e. g., when a man gives information, which he has heard from other, and the truth of which he does not allege. *The Sessions Judge, Tinnevely v. Sivan Chetty*.

9 Cr. L. J. 170 :

1 I. C. 187 : 32 Mad. 258 :

5 M. L. T. 269.

———S. 211—False information to Police.

Prosecution not launched—Offence falls under para. 1—Accused should not be committed to Sessions. *Emperor v. Gaya Teli*.

32 Cr. L. J. 314 :

129 I. C. 369 (2) : I. R. 1931 All. 145 :

A. I. R. 1930 All. 818.

———S. 211—False information to Police—Prosecution of informant—Court, whether bound to give opportunity to informant to show cause why he should not be prosecuted.

PENAL CODE ACT (XLV OF 1860)

When the Police have reported an information given by an informant to be false in a cognizable case and have laid a complaint against that informant under S. 211, Penal Code, the Court is not bound before issuing summons under S. 211, Penal Code, to call upon the informant to show cause why he should not be prosecuted, though as a matter of caution, it would ordinarily be wise to give the informant an opportunity to show such cause. *Maugni Padhan v. Emperor*.

30 Cr. L. J. 842 :

117 I. C. 647 : 7 Pat. 408 :

I. R. 1929 Pat. 455 : 10 P. L. T. 827 :

A. I. R. 1929 Pat. 70.

———S. 211—First and second part—Distinction between.

There is no distinction between the first and second part of S. 211, Penal Code, between proceedings before the Police and proceedings before the Magistrate. The second part of S. 211 must be read with the first part, and the second part refers to "such criminal proceedings." Obviously these criminal proceedings are the criminal proceedings referred to in the first part. The criminal proceedings are just as much instituted within the meaning of the section when first information of a cognizable offence is given to the Police under S. 154, Cr. P. C., as when a complaint is made direct to a Magistrate under S. 200. *Dharamdas Hiranand v. Emperor*.

40 Cr. L. J. 12 :

178 I. C. 218 : 11 R. S. 82 :

1939 Kar. 241 : A. I. R. 1938 Sind 213.

———S. 211—Information to Police—Sanction to prosecute.

When a person institutes before the Police criminal proceedings which, on enquiry, are found to have no justification, and then he makes a complaint to the Magistrate in respect of the same matter, he cannot be prosecuted for an offence under S. 211, I. P. C., unless he has had an opportunity of proving the truth of his complaint and his complaint has been disposed of by the Magistrate. *Jogendra Lal Mukerjee v. Bahu Ballabh Hor*.

2 Cr. L. J. 615 :

9 C. W. N. 158 : I. L. R. 33 Cal. 1 :

2 C. L. J. 228.

———S. 211—Ingredients.

Offence described in S. 211 of the Code relates to an attempt to put the criminal Courts in motion against another person. The action which S. 211 renders penal is action entailing very serious consequences and, therefore, the more serious consideration is required of the individual who takes it. It is sufficient, therefore, in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in S. 182. To bring a case within that section, it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for

PENAL CODE ACT (XLV OF 1860)

giving the information, but a positive knowledge or belief of the falsity of the information given. *Emperor v. Ram Krishna*.

5 Cr. L. J. 105 :
9 Bom. L. R. 33 : I. L. R. 31 Bom. 204.

—S. 211—Institution of criminal proceedings, what amounts to.

A person who sets the criminal law in motion by making a false charge to the Police of a cognizable offence, institutes criminal proceedings within the meaning of S. 211, Penal Code. *Tofazel Hossein v. H. C. Hanl.*

32 Cr. L. J. 110 :
128 I. C. 208 : 34 C. W. N. 556 :
I. R. 1931 Cal. 64 :
A. I. R. 1930 Cal. 711.

—S. 211—Institution of criminal proceedings, what amounts to.

False charge and institution of criminal proceedings are not exclusive—Report of cognizable offence made to Police amounts to institution of criminal proceedings. *Faiz Alam v. Emperor*.

35 Cr. L. J. 1418 :
151 I. C. 816 : 7 R. Pesh. 37 :
A. I. R. 1934 Pesh. 112.

—S. 211—Institution of criminal proceedings, what does not amount to—Question by Police Officer—Institution of Criminal proceedings—Cr. P. C., S. 161.

Answers to questions put by a Police Officer under S. 161, Cr. P. C., do not amount to institution of criminal proceedings or preferring a false charge within the meaning of S. 211, Penal Code. *In re : Vcrupatti Penchalngaddi*.

11 Cr. L. J. 164 :
4 I. C. 1061 : 6 M. L. T. 133.

—S. 211—Institution of criminal proceedings, what is.

The making of a false charge to the Police of a cognizable offence is the institution of criminal proceedings. *Emperor v. Johri*.

33 Cr. L. J. 256 :
136 I. C. 277 : 1931 A. L. J. 177 :
I. R. 1932 All. 165 :
A. I. R. 1931 All. 269.

—S. 211—Institution of criminal proceedings, when amounts to offence—False report to two Police Officers—One having no jurisdiction—Offence, held, partially committed at each place.

The laying of an information which the Police Officer has power to investigate and the causing of that officer to investigate, amounts to institution of criminal proceedings. Consequently, where the accused reports to two Police Officers, one of whom has no jurisdiction, while the other has, the accused must be held to have instituted proceedings and the offence under S. 211, Penal Code, committed though partially at each place. *Nanhkoo Mahton v. Emperor*.

37 Cr. L. J. 862 :
163 I. C. 805 : 17 P. L. T. 472 :
9 R. P. 40 : 2 B. R. 643 (2) :
A. I. R. 1936 Pat. 358.

—S. 211—Intention.

No offence is committed under S. 211, Penal

PENAL CODE ACT (XLV OF 1860)

Code, when there is no intention to set the law in motion against anybody. *Ramrao Gurrao v. Emperor*.

24 Cr. L. J. 910 :
75 I. C. 158 : 6 N. L. J. 202 :
A. I. R. 1923 Nag. 313.

—S. 211—Interpretation—Institution—Meaning of.

The term "institution" in S. 211, Penal Code, means the institution either by the accused himself, or by the Police or others in consequence of the accused's action, in some Criminal Court. *Muhammad Hayat v. Emperor*.

23 Cr. L. J. 82 :
65 I. C. 434 : 6 P. W. R. 1922 Cr. :
A. I. R. 1922 Lah. 33.

—S. 211—Offence under—Complaint—No intention to set the law in motion—Complainant, whether guilty.

One D laid information before the Police that a theft had occurred at his house and that he suspected the applicant. Thereupon, the Police started their investigation, kept the applicant in custody and ill-treated him. The latter made an application praying that enquiry be conducted in the presence of the Magistrate. The Magistrate sent the application to the District Superintendent, Police, for report. After the report was received, notice was issued to the applicant to appear before the Magistrate when the Magistrate examined and cross-examined him at great length and directed the application to be taken on the file as a complaint under S. 330 of the Penal Code. Then having held "a preliminary inquiry," he dismissed the complaint under S. 203, Cr. P. C., and taking proceedings under S. 476 of the Code, ordered the applicant to be prosecuted under S. 211, Penal Code : Held, that the application in question was not a complaint within the meaning of the Cr. P. C., no offence was committed and the order of the prosecution was bad. *Ramrao Gurrao v. Emperor*.

24 Cr. L. J. 910 :
75 I. C. 158 : 6 N. L. J. 202 :
A. I. R. 1923 Nag. 313.

—S. 211—Offence under, essentials of.

The elements of an offence under S. 211, Penal Code, are firstly that a false charge should be brought ; secondly, that the person bringing it should know that there was no just or lawful ground for such proceeding or charge, and thirdly, that it should be brought to cause injury to the persons against whom it was made. Where the only finding recorded is that a false complaint was brought, it is not sufficient to support a conviction under S. 211. *Saw Ratan Lal Binani v. Emperor*.

40 Cr. L. J. 605 :
181 I. C. 916 : 11 R. C. 874 :
A. I. R. 1939 Cal. 288.

—S. 211—Offence under—Intention, if material.

Every false charge made to the Police is not necessarily an offence under S. 211, Penal Code. If the intention to injure is absent, then the offence falls under S. 182 of the Code, and there is no reason why if the prosecutor is unable or unwilling to prove intention, that

PENAL CODE ACT (XLV OF 1860)

is to say, malice, he should not be permitted to take a conviction under S. 182. *Daroga Gope v. Emperor*.

26 Cr. L. J. 1269 (2) :
88 I. C. 1045 : 6 P. L. T. 515 :
5 Pat. 33 : 1926 Pat. 106 :
A. I. R. 1925 Pat. 717.

—S. 211—Offence under, nature of.

An offence under S. 211, Penal Code, is a non-cognizable one, and the Police are not empowered to investigate into it of their own accord, and to prefer a charge in respect of it. *In re : Perumal Naick*.

26 Cr. L. J. 1550 :
90 I. C. 398 : 1925 M. W. N. 317 :
22 L. W. 209 : A. I. R. 1925 Mad. 672.

—S. 211—Offence under, what constitutes—Information to Police given by two persons separately on different dates—Offence—Burden of proof.

Two persons acting separately and on different dates, gave similar information to the Police charging a third person with being in possession of stolen property; the Police, after inquiry were unable to proceed against that person, and instituted proceedings against the two informants under S. 211, Penal Code; they were tried together at one trial, a joint charge was drawn up against them, and they were convicted: *Held*, that for a conviction under S. 211, Penal Code, it is necessary to establish that the accused knew that there was no just or lawful ground for the charge. *Gopal Kahar v. Emperor*.

22 Cr. L. J. 333 :
61 I. C. 61.

—S. 211—Offence under.

Where a person makes a false charge to the Police and subsequently institutes a prosecution in Court on the basis of the same charge, the offence of making a false charge under S. 211, Penal Code, must be deemed to have been committed in relation to a judicial proceeding instituted in Court, and before the person making the charge can be prosecuted for such offence, a complaint in writing must be made by the Magistrate in whose Court the criminal case was instituted under Cl. (b) of S. 195 of the Cr. P. C. *Daroga Gope v. Emperor*.

26 Cr. L. J. 1269 (b) :
88 I. C. 1045 : 6 P. L. T. 515 :
5 Pat. 33 : 1926 Pat. 106 :
A. I. R. 1925 Pat. 717.

—S. 211—Offence under.

Woman asking Police to investigate and punish Sub-Inspector who is alleged to have raped her—Sub-Inspector exonerated of the charge by District Superintendent of Police.—Complaint by Sub-Inspector against woman for having brought false charge against him: *Held*, offence if any, committed by woman under S. 211 and not under S. 182. *Local Government v. Mst. Gaji*.

17 N. L. J. 189 :
A. I. R. 1935 Nag. 69.

—S. 211—Power of Magistrate—Procedure.

Where upon a petition by the accused to the Assistant Superintendent of Police charging

PENAL CODE ACT (XLV OF 1860)

certain persons of commission of a cognizable offence, he directs an enquiry and having received a report from the Sub-Inspector in charge of the *thana* that the case was maliciously false, makes a complaint against the accused for prosecuting him under S. 211, I. P. C., the complaint is proper and an offence is committed even though the offence complained of was enquired into by the Sub-Inspector. Where after the Magistrate has taken cognizance of the offence upon such complaint, the accused files a protest petition stating that he is ready to prove the case set up by him with a prayer that the matter may be enquired into by any Magistrate before any order is passed on the Police report and the petition is rejected by the Magistrate on the ground that as he had already taken cognizance of the offence it was too late to modify that order, the procedure followed by the Magistrate is proper one. *Saguni Missir v. Emperor*.

41 Cr. L. J. 409 :
187 I. C. 128 : 6 B. R. 424 :
12 R. P. 571 : A. I. R. 1940 Pat. 625.

—S. 211—Practice—False charge—Opportunity to be given to prove charge before prosecuting.

Where it is intended to prosecute any person under S. 211, Penal Code, such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. *Emperor v. Tula*.

6 Cr. L. J. 42 :
27 A. W. N. 195 : 4 A. L. J. 471 :
I. L. R. 29 All. 587.

—S. 211—Practice—False charge—Opportunity to be given to prove charge before prosecuting.

Where it is intended to prosecute any person under S. 211, Penal Code, such person ought to be given an opportunity of substantiating, if he can, the charge he has made before his prosecution is ordered. *Emperor v. Sheo Ghulam*.

6 Cr. L. J. 340 :
27 A. W. N. 268.

—S. 211—Procedure.

No person should be proceeded against for making a false charge against another unless he has been given an opportunity of substantiating his allegations. *Bhawani Sahai v. Emperor*.

33 Cr. L. J. 409 :
137 I. C. 157 : 33 P. L. R. 174 :
13 Lah. 568 : I. R. 1932 Lah. 299 (2) :
A. I. R. 1932 Lah. 246.

—S. 211—Procedure.

Prosecution for false accusation before dismissal of complaint is illegal. *Gati Mandal v. Emperor*.

4 Cr. L. J. 68 :
4 C. L. J. 88.

—S. 211—Procedure—Sanction under—Cr. P. C., S. 195—Necessity of.

A went to a Police Station and made a report against several persons of whom B was one. He accused them of offences of rioting and voluntarily causing hurt. The Police made inquiry and sent up several persons for trial

PENAL CODE ACT (XLV OF 1860)

but not *B*. The Magistrate convicted some of the accused but the Sessions Judge acquitted them on appeal. Thereupon, *B* made a complaint to the Magistrate charging the applicant with having made a false report in respect of himself to the Police. The Magistrate took cognizance of the complaint: *Held*, that the Magistrate had no power to take cognizance of the complaint without sanction obtained under S. 195, Cr. P. C., as the offence under S. 211 of the Penal Code was one committed in relation to a proceeding in Court. *Hardwar Pal v. Emperor*. 13 Cr. L. J. 702:

16 I. C. 510 : 34 All. 522 :
10 A. L. J. 61.

———S. 211—Prosecution, basis for—"Instituting Criminal Proceedings"—Cr. P. C., S. 162—Statement under S. 162—Complaint—Charge.

A statement made to the Police under S. 162, Cr. P. C., is not a complaint or a charge. Such statement, when made after the law has already been set in motion and when the prosecution cannot be said to have been instituted by that statement, cannot be made the basis of a prosecution under S. 211, Penal Code. *In re : Krishna Baipadithaya*.

11 Cr. L. J. 286 :
5 I. C. 908 : 20 M. L. J. 132.

———S. 211—Prosecution for false charge, basis for—False charge must be to one having authority to set criminal law in motion—Cr. P. C., S. 162, statement made under, cannot be the basis of prosecution for false charge.

A statement made under S. 162, Cr. P. C., in answer to questions put by a Police Officer making an investigation, under S. 162, Cr. P. C., cannot be made the basis of a prosecution under S. 211, Penal Code. Information of an alleged dacoity was given to a Village Munsif who sent a report to the Police. The police thereupon investigated the case and rejected it as false. The informant was prosecuted under S. 211, Penal Code: *Held*, that there was no institution of criminal proceedings by the informant, as the Village Munsif had no power to investigate in cases of dacoity. The informant had made no 'false charge' within the meaning of S. 211, as it was not made to one having power to investigate and send up for trial. The subsequent investigation was not the result of the information given but of the report sent by the Village Munsif. *Chinna Ramna Gowd v. Emperor*. 9 Cr. L. J. 77:

31 Mad. 506 : 18 M. L. J. 573.

———S. 211—Prosecution, legality of.

Information to Police Officer amounting to complaint of cognizable offence—Information not reduced to writing—Subsequent complaint by accused—Complaint found false—Prosecution of accused under S. 211, Penal Code, is not legal. *In re : Patil Subha Reddi*.

37 Cr. L. J. 357 :
160 I. C. 988 : 1935 M. W. N. 1197 :
43 L. W. 261 : 8 R. M. 737 :
A. I. R. 1936 Mad. 160.

———S. 211—Prosecution, legality of—

PENAL CODE ACT (XLV OF 1860)

Complainant not given opportunity to produce all evidence.

A prosecution for an offence under S. 211, Penal Code, is not necessarily illegal merely because the complainant was not given an opportunity to adduce all his evidence in support of his case. *Bansidhar Marwari v. Emperor*. 24 Cr. L. J. 862 :

74 I. C. 1054 : A. I. R. 1924 Pat. 138.

———S. 211—Prosecution of complainant before disposal of case, if legal.

The practice that a complainant for first informant should not be prosecuted under S. 211, Penal Code, until his complaint or Police case has been disposed of, is not based on any Statute, and is merely a precautionary rate of safety in respect of a special class of criminal case. Therefore, while a prosecution under S. 211 of the Code, might, in certain circumstances, be delayed or even set aside in accordance with this practice, the practice could *per se* be no ground for setting aside a conviction. *Suchil Raul v. Emperor*.

31 Cr. L. J. 934 :
125 I. C. 770 : 11 P. L. T. 224 :
9 Pat. 126 : A. I. R. 1930 Pat. 622.

———S. 211—Prosecution under, essentials to be considered—Abettor, when can be prosecuted—Proof that he was aware of falsity of complaint—Necessity of.

In a charge under S. 211, Penal Code, what is to be considered is the nature of the complaint or charge made by the accused, in other words, whether the complaint is substantially true and what is false is a mere fringe to the complaint or whether the substantial complaint is false and what is true is a mere fringe, or in other words, a mere accessory circumstance. If *A* believes what *B* told him and in good faith orders *B* to file a complaint, the fact that *B*'s story turned out to be untrue will be no ground for criminal prosecution of *A*, even if during the inquiry, he assists in the production of evidence. It is necessary to prove also that *A* believed in its falsity. *Sahadeo Karan Singh v. Emperor*. 38 Cr. L. J. 462 :

167 I. C. 852 : 3 B. R. 347 :
9 R. P. 437 : A. I. R. 1937 Pat. 84.

———S. 211—Prosecution under.

The setting aside by a Civil Court of a fraudulently obtained decree is not evidence in a Criminal Court, of fraud which it is necessary to prove independently in criminal proceedings. Therefore the fact that such a decree has not been set aside is no bar to a prosecution under S. 210, I. P. C., though it might be admissible as evidence to prove that there is no fraud. *Emperor v. Molla Fazal Karim*. 3 Cr. L. J. 365 :

I. L. R. 33 Cal. 193.

———S. 211—Prosecution under, when lies—Workman's Breach of Contract Act, 1859—Ss. 1, 2.

Proceedings under the first paragraph of S. 2, Workman's Breach of Contract Act, 1859,

PENAL CODE ACT (XLV OF 1860)

are criminal proceedings, and a prosecution under S. 211, Penal Code, for instituting proceedings without just cause under S. 1 of that Act, will lie. *V. Karupanna v. Mada Nadan*.
1 Cr. L. J. 1018:
2 L. B. R. 300.

————S. 211—Punishment, nature of—Age, how far to be taken into account in passing sentence.

The offence under S. 211, Penal Code, is one which should ordinarily be punished with a substantive sentence of imprisonment. The age of the accused is a factor to be taken into consideration in deciding the nature of the sentence. But if for that reason the Magistrate deems fit only to impose a fine instead of imprisonment, the amount of the fine should be so determined as to inflict on the accused a punishment comparable with what he would suffer had he been a younger man. *Emperor v. Muthia Chetti*.
17 Cr. L. J. 158:
33 I. C. 638 : 1 M. W. N. 1:
A. I. R. 1917 Mad. 667.

————S. 211—Report to police.

Informant insisting on Court proceedings amounts to charge. On making of charge, offence is complete and injured party can file complaint. Subsequent complaint by informant is immaterial. *Nga Ba Shein v. Emperor*.
35 Cr. L. J. 1259:
151 I. C. 185 : 7 R. Rang. 43:
A. I. R. 1934 Rang. 21.

————S. 211—Sanction, if necessary.

No sanction is necessary for filing a complaint under S. 211 unless some proceedings before a Magistrate have preceded the complaint. *U Sein Ywet v. U. Maung Fyi*.
35 Cr. L. J. 802:
148 I. C. 345 : 6 R. Rang. 257:
A. I. R. 1934 Rang. 40.

————S. 211—Sanction of Magistrate before trial, if necessary—Police reporting complaint by accused to be false and praying for his prosecution under S. 211—Magistrate calling upon accused to show cause—Accused filing "narazi" petition.

The accused was given shelter for the night in the house of B. In course of the night, he attempted to take advantage of B's wife. As a result of this, he was beaten by B. He then went to the Police Station and brought an entirely false charge of robbery against B. The Police reported the case to be a false one and prayed for the prosecution of the accused under S. 211, Penal Code. The Magistrate called upon the accused to show cause why he should not be prosecuted, and the accused then filed what is known as a *narazi* petition. The case then proceeded to trial, and the accused was in due course convicted; *Held*, that the sanction of the Magistrate who dealt with the *narazi* petition was not necessary before the prosecution started. *Jamini Kanta Ghose v. Bhabanath-Jaisi Barman*.
40 Cr. L. J. 785:
183 I. C. 384 : I. L. R. 1939, 1 Cal. 318:
43 C. W. N. 279 : 12 R. C. 156:
A. I. R. 1939 Cal. 273.

PENAL CODE ACT (XLV OF 1860)

————S. 211—Sanction to prosecute under, if can be granted—Petition asking for Police warning the accused, if complaint.

A petition making certain charges against a person and asking for an order on the Police to warn that person in the first instance, is not a complaint and no sanction to prosecute the petitioner under S. 211 can be granted. *Purno Chandra Ghosh v. Harish Chandra Ghosh*.
12 Cr. L. J. 535:
12 I. C. 303 : 15 C. W. N. 1051.

————S. 211—Sanction to prosecute under.

The mere acquittal of accused is not sufficient for sanctioning prosecution under S. 211, Penal Code; there must be a reasonable belief in the mind of the sanctioning Court that there was no foundation for the criminal charge, in other words, there must be a belief that in instituting criminal proceedings, the petitioner acted knowingly without belief in the truth of the allegations made by him or recklessly without caring whether the allegations were true or false, and the judgment of the trial Court ought to show that there was no foundation whatever for the criminal case against the persons who were acquitted. *Kusum Sav v. Janak Lal*.
20 Cr. L. J. 603:
52 I. C. 219 : 1919 Pat. 250:
4 P. L. J. 374 : A. I. R. 1919 Pat. 362.

————S. 211—Scope — Accused giving information to Police resulting in arrest of third person on charge of murder—Third person discharged—Accused alleged responsible for his prosecution—Accused, if guilty under S. 211, or S. 182.

Where, upon information given to the Police by the accused, a third person is arrested on a charge of murder and challaned to the Court of a Magistrate by whom, however, he is subsequently discharged, and the prosecution case is that the accused is responsible for the proceedings instituted against the third person, the offence committed by the accused is one under S. 211 and not under S. 182, Penal Code. *Jhamatmal Alumal v. Emperor*.
41 Cr. L. J. 8:
184 I. C. 243 : 12 R. S. 100:
A. I. R. 1939 Sind 274.

————S. 211—Scope.

An offence under S. 210, I. P. C., is committed as soon as a decree is fraudulently obtained. *Emperor v. Molla Fazal Karim*. 3 Cr. L. J. 365:
I. L. R. 33 Cal. 193.

————S. 211—Scope.

The criminal proceedings and false charge within the meaning of S. 211, Penal Code, mean proceedings and charge in British India, where the Penal Code is in force; criminal proceedings taken and a false charge made before a Court in a Native State are not within the scope of the section. *In re : Ram-bharthi Hirabharthi*.
25 Cr. L. J. 333:
77 I. C. 189 : 25 Bom. L. R. 772:
47 Bom. 907 : A. I. R. 1924 Bom. 51.

PENAL CODE ACT (XLV OF 1860)

———S. 211—Scope of—Complaint dismissed without examination of complainant—Calling upon complainant to show cause against being proceeded against.

If a Magistrate without examining the complainant, which he is bound to do under S. 200, Cr. P. C. dismisses his complaint, the complainant cannot be called upon to show why he should not be proceeded against under S. 211, Penal Code. *In re: Rampappa Ballal-
rao Desai.*

27 Cr. L. J. 740 :
95 I. C. 68 : 28 Bom. L. R. 490 :
A. I. R. 1926 Bom. 284.

———S. 211—Scope of—Complaint if bona fide, mere fact that one accused had been wrongly identified is no ground for instituting prosecution under S. 211, Penal Code.

If the complaint in its generality was bona fide, the fact that one accused person had been wrongly identified cannot be regarded as a ground for instituting a prosecution under S. 211, Penal Code. *Bachu Singh v. Tribeni Sah.*

40 Cr. L. J. 157 :
179 I. C. 167 : 11 R. P. 328 :
5 B. R. 203 : A. I. R. 1939 Pat. 178.

———S. 211—Scope of—Complaint to Inspector-General, Police, ss. 5 and 36 of Act I of 1861—Investigation by District Superintendent of Police—Its dismissal—Sanction to prosecute—Revision.

Where H. D. sent to the Inspector-General of Police a few specific charges of bribery against a Sub-Inspector of Police and asked for investigation—The Inspector-General, who is a Magistrate under S. 5 of Act V of 1861, and is empowered by S. 36 of the Act to enquire into and determine as a Magistrate any charge against a Police Officer above the rank of a constable, ordered the District Superintendent of Police to investigate, and that officer forwarded the result of his investigation to the District Magistrate: *Held.* that a false charge of an offence, preferred to a person empowered to order investigation by the Police, though not followed by further proceedings in any Court, brings the matter of the charge within the 1st part of S. 211, I. P. C. *Hamayun v. Emperor.*

7 Cr. L. J. 291 :
3 P. W. R. Cr. 22 : 26 P. R. 1908 Cr.

———S. 211—Scope of—Criminal proceedings, meaning of.

The criminal proceedings referred to in S. 211, Penal Code, must be regarded as proceedings before a Magistrate. A man who makes a false charge, which fails to result in any proceedings before a Magistrate, owing to his clumsiness or for some similar reason, is saved from himself to a certain extent by the action of the Police in throwing out the case, and he has merely "falsely charged", he has neither initiated criminal proceedings nor caused them to be initiated. If, owing to his greater skill, he has succeeded in getting the Police to arrest his enemy and place him before a Court, then his greater skill has succeeded in involving himself perhaps in an offence for which he

PENAL CODE ACT (XLV OF 1860)

can be more heavily punished, because he would then have caused criminal proceedings to be instituted. *The King v. Ma Ban Gyi.*

40 Cr. L. J. 113 :
178 I. C. 644 : 1938 Rang. 236 :
11 R. Rang. 255 : A. I. R. 1938 Rang. 397.

———S. 211—Scope of.

A false charge within the meaning of S. 211 must be made to a competent Magistrate or other person with a statutory standing in the matter and must further be made with the object of setting the criminal law in motion. *Banti Pandi v. Emperor.*

32 Cr. L. J. 210 :
129 I. C. 87 : 12 P. L. T. 109 :
I. R. 1930 Pat. 71 : A. I. R. 1930 Pat. 550.

———S. 211—Scope of—"Falsely charges," in S. 211, interpretation of.

The expression "falsely charges" in S. 211, Penal Code, must be construed along with the words which speak of the institution of proceedings in the earlier part of the section, so that the test is "whether the person who made the statement which is alleged to constitute the charge did so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed." *Government Advocate, Bihar v. Kumar Singh.*

39 Cr. L. J. 314 :
173 I. C. 432 : 16 Pat. 571 : 19 P. L. T. 51 :
10 R. P. 408 : 4 B. R. 274 :
A. I. R. 1938 Pat. 83.

———S. 211—Scope of—Giving false information to Police—Trial before giving opportunity to prove truth of information, validity of.

A person cannot be called upon to stand his trial under S. 211, Penal Code, for having given false information to the Police without giving him an opportunity to prove before a Magistrate that the information given by him was true. *Akshoy Kumar Chakrabarty v. Emperor.*

28 Cr. L. J. 152 :
99 I. C. 408 : 31 C. W. N. 124 :
A. I. R. 1927 Cal. 175.

———S. 211—Scope of.

Ordinarily a person ought to be given an opportunity to show cause before he is ordered to be prosecuted under S. 211. *Sheikh Abdulla v. Emperor.*

33 Cr. L. J. 406 :
137 I. C. 133 : 35 C. W. N. 1210 :
I. R. 1932 Cal. 266 :
A. I. R. 1932 Cal. 287.

———S. 211—Scope of.

Telegram to Deputy Commissioner, Assistant Commissioner, and District Superintendent of Police that certain Sub-Inspector committed offence against sender—Allegations proving false—No offence under S. 211 but under S. 182, held committed. *Hidayatullah v. Emperor.*

37 Cr. L. J. 604 :
162 I. C. 140 : 8 R. Pesh. 189 :
A. I. R. 1936 Pesh. 66.

PENAL CODE ACT (XLV OF 1860)

———S. 211—Scope of.

The information, given to a Village Magistrate (Village Headman), is different in every respect from the "criminal information" known to the English law, and cannot be treated as the 'institution of a criminal proceeding' or 'making a charge' within the meaning of S. 211, I. P. C. *The Sessions Judge, Tinnevely v. Sivan Chetty*.

9 Cr. L. J. 170 :
1 I. C. 187 : 5 M. L. T. 269 :
32 Mad. 258.

———S. 211—Scope of.

To constitute an offence under S. 211, Penal Code, it is not necessary that the process should be issued or charge pressed against any person upon a complaint. It is sufficient that a false charge or complaint is made against him. *Hardeo Singh v. Hanuman Dat Narain*.

1 Cr. L. J. 7 :
24 A. W. N. 10 : 26 All. 244.

———S. 211—Scope of.

Under S. 211 there must be a definite accusation before a person can be said to have either charged or instituted criminal proceedings against another. By 'criminal proceedings,' in S. 211 of the Code is meant criminal proceedings intended to be taken in Court. *In re : Mallala Obiah*.

19 Cr. L. J. 38 :
42 I. C. 998 : 1917 M. W. N. 875 :
A. I. R. 1918 Mad. 731.

———S. 211—Second complaint.

If on the dismissal of a complaint under S. 211 a second complaint under S. 211 can be filed, then the complainant can certainly file a second complaint on the same facts, and instead of alleging an offence under S. 211 allege an offence under S. 500. *U. Sein Ywet v. U. Maung Fyi*.

35 Cr. L. J. 802 :
148 I. C. 845 : 6 R. Rang. 257 :
A. I. R. 1934 Rang. 40.

———S. 211—Telegram to Police, if amounts to false charge.

The mere despatch of a telegram falsely stating that a dacoity had been committed without mentioning the names of any persons alleged to have been concerned or suspected of complicity in the offence, does not amount to the institution of a false charge within the meaning of S. 211, Penal Code. The phrase "information received" in S. 157, Cr. P. C., refers to information furnished and recorded under S. 154, and a telegram is not such information. *In re : Anandamuri Anandayya*.

15 Cr. L. J. 622 :
25 I. C. 630 : 1 L. W. 355 :
1914 M. W. N. 382 :
A. I. R. 1915 Mad. 312.

———S. 211.

When complaint of an offence under S. 211 is presented to a Magistrate, opportunity cannot be given to an accused to prove the truth of the complaint. *Emperor v. Ghansram*.

8 Cr. L. J. 349 :
4 N. L. R. 136.

PENAL CODE ACT (XLV OF 1860)

———Ss. 211, 182—Offence under, requisites of.

To constitute an offence under S. 182, Penal Code, it is only necessary that the information given by an accused to a public servant should be false to his knowledge, whereas to constitute an offence under S. 211, it is necessary that the accused should institute or cause to be instituted some criminal proceedings against another person or should falsely charge him with having committed an offence. The expression of a suspicion that a person may have committed an offence does not amount to the institution of a criminal charge against him, where the Police are only left to act upon the suspicion and follow up the clue, as they might or might not think fit. *In re : Mallala Obiah*.

19 Cr. L. J. 38 :
42 I. C. 998 : 1917 M. W. N. 875 :
A. I. R. 1918 Mad. 731.

———Ss. 211, 182—Proceedings by Police without sanction, legality of—Informant not giving any name—Acquittal of accused—Intention.

When a case is instituted under S. 211, Penal Code, it must be proved that the person accused instituted or caused to be instituted, criminal proceedings with intent to injure that person. Where a person, therefore, made a report to the Police without naming any person that property was stolen, and on investigation, it was found to have been removed with the permission of his co-owner by a particular person against whom criminal proceedings were taken but who was acquitted : *Held*, that the petitioner was not guilty of the offence under S. 211, Penal Code, there being no proof of his intention to injure that person. The case under S. 211 was not maintainable against the accused as no sanction had been obtained to start criminal proceedings against him. *Niaz Ali v. Emperor*.

5 Cr. L. J. 396 :
4 A. L. J. 361 : 27 A. W. N. 149.

———Ss. 211, 193—Institution of proceedings, what is not—Mere fact of giving evidence alone, if amounts to institution of proceedings.

The mere fact of giving evidence alone cannot, by any stretch of reasoning, be tantamount to the institution of proceedings within the meaning of S. 211, Penal Code. *Master Zodpa v. Emperor*. 37 Cr. L. J. 1043 :
164 I. C. 1057 : 38 P. L. R. 16 :
9 R. L. 189 : A. I. R. 1936 Lah. 828.

———Ss. 211, 193—Proper procedure—Magistrate declining to prosecute—District Magistrate directing prosecution—Trial Magistrate commencing prosecution—Propriety.

Once a Magistrate passes an order declining to take action under Ss. 211 and 193, Penal Code, that order can be displaced only by the order of the Appellate Court under S. 476-B, Cr. P. C. The District Magistrate has no power to direct the prosecution, and if the Magistrate in making the complaint allows himself to be guided by the wishes of

PENAL CODE ACT (XLV OF 1860)

a superior executive officer acting in that capacity, he manifestly acts improperly and contrary to law. *Ramdeni Pathak v. Emperor*.

39 Cr. L. J. 358 :
173 I. C. 738 : 4 B. R. 327 :
10 R. P. 432 : A. I. R. 1938 Pat. 145.

—Ss. 211, 500—*False report by woman*
—*False report by woman that her modesty was insulted by servants of complainant at his investigation—Defamation, if constituted—Offence failing under S. 211—Complainant, if precluded from proceeding under S. 500.*

A woman made a false report in the Police Station that a certain *Malguzar* called her up and told his servants to pollute her (*Kujat karo*), whereupon they dragged her away and insulted her modesty by taking off her *dhoti*, beating her and turning her out with her person exposed: *Held*, that to attribute such conduct to a person in the respectable position of a *Malguzar* like the non-applicant, would tend to lower him in the estimation of right-thinking persons of his community and would, therefore, amount to defamation. Even though the allegations of the prosecution may, in such a case, amount to an offence under S. 211, the complainant is not precluded from proceeding under S. 500, Penal Code. When the complainant merely asks for redress of his personal grievance, he is entitled to do so and the accused cannot be heard to say that she prefers the more serious section because the procedure under it would be more favourable to her. *Binia v. Emperor*.

38 Cr. L. J. 189 :
166 I. C. 282 : 9 R. N. 119 :
I. L. R. 1937 Nag. 338 :
A. I. R. 1936 Nag. 241.

—S. 212—*Harbouring absconded offender—Offence, ingredients of—Harbouring person against whom proclamation has been issued and whose properties have been attached, whether offence—'Offender,' meaning of.*

Concealing or harbouring a person against whom a proclamation has been issued or whose properties have been attached but who is not shown to be an 'offender' within the meaning of S. 212, Penal Code, that is, a person who has committed an offence punishable with death, transportation imprisonment or fine, does not amount to, an offence under S. 212 of the Code. A person cannot be convicted under S. 212, Penal Code, unless it is proved that he knew or had reason to believe that the person harboured or concealed was an offender within the meaning of that section. *Emperor v. Laloor*.

31 Cr. L. J. 288 :
121 I. C. 549 : A. I. R. 1930 All. 33.

—S. 212—Scope of.

The charge against the petitioner was that he had harboured or concealed three named *domes*, knowing or having reason to believe at the time that they had committed a dacoity and offences under S. 28, Criminal Tribes Act. Three *domes* were found concealing themselves in the *dalan* of the petitioner and were arrested by the *chaukidar* and

PENAL CODE ACT (XLV OF 1860)

other villagers. The defence was that it was the petitioner himself that had arrested the three *domes*. It was also in evidence that a dacoity had been committed in the neighbourhood, and that in connection with this dacoity not only were processes under Ss. 87 and 88, Cr. P. C. taken out, and served against the three *domes*, but proclamations by beat of drum were made: *Held*, that this was clearly insufficient to fulfil the requirements of S. 212, Penal Code. The mere silence of the petitioner when he was asked by the villagers how the three *domes* came to be in his *dalan* or the falsehood of his story that it was he himself that had arrested the *domes*, was insufficient to warrant his conviction on the footing that he had concealed persons whom he knew or had reason to believe to be "the offenders" in relation to the particular dacoity in question. *Shivarekha Pande v. Emperor*.

39 Cr. L. J. 768 :
176 I. C. 462 : 19 P. L. T. 568 :
4 B. R. 743 : 11 R. P. 96 :
A. I. R. 1938 Pat. 358.

—S. 213.

See also Sentence.

—S. 213—Offence under, ingredients of—*Gratification to screen offender from punishment.*

The offence constituted by S. 213, Penal Code, consists in the corrupt motive which is brought into play as much as in the delay to criminal justice. It consists in the compounding of an offence by some agreement not to bring the criminal to justice, and this section intends to punish those who make a profit out of a public wrong. Actual concealment or screening even for a short time may be sufficient, but there must be some concealment for screening actually proved. If such is proved, and there is further the acceptance of, or attempt to obtain, or agreement to accept, the gratification or restitution as a consideration for the same, the offence is complete. The fact that the very same person subsequently did prosecute even to conviction would not purge the offence. *Hem Chandra Mukherjee v. Emperor*.

26 Cr. L. J. 345 :
84 I. C. 649 : 40 C. L. J. 278 :
52 Cal. 151 : A. I. R. 1925 Cal. 85.

—Ss. 213, 214—Scope of—*Concealing offence—Screening offender—No concealment or screening where no offence committed—Offender acquitted of principal offence—Court cannot go behind acquittal for purposes of Ss. 213, 214.*

The words "concealing an offence" and "screening any person from legal punishment for any offence" in Ss. 213 and 214, Penal Code, presuppose the actual commission of an offence or the guilt of the person screened from punishment; if there was no such principal offence, a subsidiary offence under these two sections cannot come into existence. Where a person has been tried and acquitted of the principal offence, it

PENAL CODE ACT (XLV OF 1860)

is not open to another Court to hold for the purposes of Ss. 213 and 214, Penal Code, that the offence was committed. *Emperor v. Sanalal*.

14 Cr. L. J. 453 :
20 I. C. 613 : 15 Bom. L. R. 694 :
37 Bom. 658.

—S. 214—Offence under, what is—*Illegal gratification—Offer of money to forest subordinate for not proceeding with a compoundable offence—Burma Forest Act (Burma Act IV of 1902), S. 62.*

A had a licence under the Burma Forest Act for one saw-pit but worked two saw-pits. B, a forester, discovered this breach of the rules and told A that he would be prosecuted. Whereupon A offered him Rs. 5 not to proceed with the case. The offence of working more saw-pits than were covered by the licence was compoundable under the Forest Act : *Held*, (1) that the offer of Rs. 5 to B did not amount to an offence under S. 214, Penal Code ; (2) that the fact that B was not authorized to compound the offence, did not make any difference. *Emperor v. Kya Song*.

13 Cr. L. J. 474 :
15 I. C. 990 : 6 L. B. R. 48.

—S. 215—Actual thief, if can be convicted under.

The actual thief himself cannot be convicted of an offence under S. 215, Penal Code. *Godha v. Emperor*.

28 Cr. L. J. 670 :
103 I. C. 206 : 8 Lah. 263 :
28 P. L. R. 433 :
A. I. R. 1927 Lah. 500.

—S. 215—Attempt to commit offence, when complete.

In order to constitute an attempt to commit an offence under S. 215, Penal Code, it is not necessary that the person who is willing to take and the person who is willing to give the illegal gratification should agree both as to the object for which the gratification is to be given, and also as to the shape or form the gratification is to take. When once a proposal has been made for the payment of an illegal gratification whether it is completed by an agreement or not, the offence of an attempt to commit an offence under S. 215 is complete. *Emperor v. Nga Nyo*.

1 Cr. L. J. 1116 :
2 L. B. R. 310.

—S. 215—Burden of proof—Elements of offence proved by evidence—Onus is on accused to prove that he is entitled to benefit of exception.

Once the elements of an offence under S. 215 have been established by evidence, the onus of proving that the person charged is entitled to the benefit of the exception is on the defence particularly so where there has been a spontaneous demand by the accused of money in circumstances indicating an intention not to bring the offender to justice. *Ramanand Teli v. Emperor*.

39 Cr. L. J. 887 :
177 I. C. 344 : 11 R. P. 148 :
4 B. R. 818 : 19 P. L. T. 776 :
A. I. R. 1938 Pat. 590.

PENAL CODE ACT (XLV OF 1860)

—S. 215—Burden of proof.

In a charge under S. 215, Penal Code, the burden of proving that the accused had used all the means in their power to bring about the apprehension of the offenders is upon them. *Yusuf Mian v. Emperor*.

39 Cr. L. J. 808 :
176 I. C. 85 : 1938 A. L. J. 531 :
11 R. A. 145 : 1938 A. W. R. 362 :
I. L. R. 1938 All. 681 :
A. I. R. 1938 All. 440.

—S. 215—Burden of proof.

Once the elements of an offence under S. 215 have been established by evidence, the onus of proving that the person charged is entitled to the benefit of the exception is on the defence. *Arman Ullah v. Jainulla*.

34 Cr. L. J. 1015 :
145 I. C. 569 : 37 C. W. N. 360 :
6 R. C. 117 : A. I. R. 1933 Cal. 599.

—S. 215—Charge under—Maintainability—Accused charged with receiving money under promise to return complainant's stray donkey.

Where the evidence shows that the accused took a sum of money and gave a receipt in the presence of witnesses under promise of return of a donkey that had gone astray, and though it may be that the donkey he had to return was a donkey that was stolen, there is nothing upon the record to show that it was so, and the charge shows that the donkey was a stray donkey and not a stolen donkey, no offence under S. 215, Penal Code, is disclosed and a conviction under S. 215 is not maintainable even if the accused pleads guilty. *Balu v. Emperor*.

37 Cr. L. J. 1038 (a) :
164 I. C. 934 : 30 S. L. R. 96 :
9 R. S. 60 (1) : A. I. R. 1936 Sind 145.

—S. 215—Conviction, if legal—Receiving gratification to restore stolen property—Accused suspected of actual theft—Conviction, whether legal.

The accused promised to return a stolen bullock on payment of Rs. 30. He received the money and 3 days later produced the bullock : *Held*, that the accused must have known who the actual thieves were, and as he took no steps to bring them to justice, he was guilty of an offence under S. 215, Penal Code. It cannot be a defence to the charge of accepting money for returning stolen property that the person who takes the money is himself the thief. *Emperor v. Mukhtara*.

26 Cr. L. J. 481 :
85 I. C. 225 : 22 A. L. J. 838 :
46 All. 915 : A. I. R. 1924 All. 783.

—S. 215—Conviction, legality of—Person suspected of theft—Failure of prosecution to prove theft by him—Convicted under S. 215.

A person suspected of theft may, if the prosecution fails to prove the fact of theft by him, be convicted under S. 215. *Ramanand Teli v. Emperor*.

39 Cr. L. J. 887 :
177 I. C. 344 : 11 R. P. 148 :
4 B. R. 818 : 19 P. L. T. 776 :
A. I. R. 1938 Pat. 590.

PENAL CODE ACT (XLV OF 1860)

—S. 215—*Conviction under, if maintainable—Cow lost from grazing ground—Taking money and promising to return cow, whether constitutes offence.*

Where the complainant's cow was lost from the grazing ground and the accused took Rs. 12 from him and promised to return the cow in ten days' time, but did not do so and subsequently refused to return either the cow or the money: *Held*, that as there was no proof that any offence had been committed in respect of the cow, the accused could not be convicted under S. 215, Penal Code. *Sharfa v. Emperor.*

16 Cr. L. J. 541 :
29 I. C. 669 : 9 P. R. 1915 Cr. :
28 P. L. R. 1916 : A. I. R. 1914 Lah. 551.

—S. 215—*Conviction under, illegality of—Theft.*

A person missed his cow from a *bathan* where it had been let loose for grazing. He made a search but got no trace of the cow, and then lodged a *sanha* at the *thana* giving a description of the missing animal. Some months afterwards the accused went to him and promised to find out the culprit for a consideration. They thus took some money from him, there was no evidence that the cow was in fact stolen: *Held*, that the accused could not be convicted under S. 215. *Radha Mohan Ahir v. Emperor.*

41 Cr. L. J. 922 :
190 I. C. 387 : 7 B. R. 22 :
13 R. P. 235 : A. I. R. 1940 Pat. 138.

—S. 215—*Conviction, when sustainable.*

A conviction under S. 215 cannot be sustained in the absence of evidence to show that the loss of the movable property was by means of the commission of an offence punishable under the Penal Code. *Bageshwari Ahir v. Emperor.*

33 Cr. L. J. 709 :
139 I. C. 76 : 13 P. L. T. 732 :
11 Pat. 392 : I. R. 1932 Pat. 201 :
A. I. R. 1932 Pat. 241.

—S. 215—*'Deprive', meaning of—Bullock straying at night disappearing—Person taking money and showing owner bullock tied up by somebody in jungle—Such person, if guilty under S. 215.*

The word 'deprive' in S. 215, Penal Code, cannot be interpreted in a narrow sense to mean "taken out of possession of." To deprive a person of any article may be either to take it away from him or to prevent him from getting possession of it if he would have done so in the normal course of events. Where, therefore, in a case, a bullock strays at night and disappears and is subsequently found to be tied up to a tree in the jungle by an unknown person, the person who tied it up in the jungle is depriving the owner of possession of it because normally a bullock which went away would return to its owner in the ordinary course, and by being tied up it would be prevented from so doing. In such a case, the Court is entitled quite fairly to make the inference that the bullock had either been stolen or misappropriated dishonestly by some person. A person, therefore, who takes money for pointing out the bullock so tied up in the

PENAL CODE ACT (XLV OF 1860)

jungle, is guilty of an offence under S. 215, Penal Code. *Yusuf Mian v. Emperor.*

39 Cr. L. J. 808 :
176 I. C. 85 : 11 R. A. 145 :
1938 A. L. J. 531 : 1938 A. W. R. 362 :
I. L. R. 1938 All. 681 :
A. I. R. 1938 All. 440.

—S. 215—*Duty of prosecution.*

Restoring lost property on payment of some remuneration—For conviction under S. 215, prosecution should prove that property has been lost by commission of an offence and accused is screening the offender. *Ram Naresh Rai v. Emperor.*

32 Cr. L. J. 1072 :
133 I. C. 800 : 1932 A. L. J. 103 :
I. R. 1931 All. 752 :
A. I. R. 1931 All. 710.

—S. 215—*Ingredient.*

It is necessary, in order to maintain a conviction under S. 215 to prove that the complainant had been deprived of his property by an offence punishable under the Code. *Akbar v. Emperor.*

32 Cr. L. J. 729 :
131 I. C. 369 : 32 P. L. R. 38 :
I. R. 1931 Lah. 465 :
A. I. R. 1931 Lah. 157.

—S. 215—*Ingredients of, offence under—Accused held, could not be convicted under S. 215.*

S. 215, I. P. C., has three essential ingredients; first, taking or agreeing or consenting to take any gratification under pretence or on account of helping any person to recover any movable property; secondly, that the owner of such property must have been deprived of it by an offence punishable under the I. P. C.; and thirdly, that the person in question, having taken or agreed to take the gratification, must not have used all means in his power to cause the offender to be apprehended and convicted of the offence. The complainant's bullock disappeared one day. The circumstances showed that the bullock might have strayed. The accused offered to recover the bullock if certain amount was paid by the complainant. The complainant refused to accept it and the accused did nothing further: *Held*, that the second ingredient of S. 215 referred to above was not present and the accused could not be convicted. *Biswanath Dubey v. Gharbigan Chamar.*

41 Cr. L. J. 902 :
190 I. C. 382 : 7 B. R. 23 :
13 R. P. 204 : A. I. R. 1940 Pat. 548.

—S. 215—*Knowledge of offender, if necessary.*

Knowledge of the offender is not a necessary ingredient of an offence under S. 215, Penal Code. It may well be that a person who receives money for discovering stolen property, may, in the course of his investigations, obtain information which, if followed up, would lead to the apprehension of the offender. If he withholds that information from the proper authorities, it is obvious that it cannot be said that he used his best endeavour to cause

PENAL CODE ACT (XLV OF 1860)

the offender to be apprehended. *Yusuf Mian v. Emperor*. 39 Cr. L. J. 808 :

176 I. C. 85 : 1938 A. L. J. 531 :

I. L. R. 1938 All. 681 : 11 R. A. 145 :

1938 A. W. R. 362 : A. I. R. 1938 All. 440.

———S. 215—Offence, nature of—*Taking money to find stolen property*.

It is not an offence to take money from another in order to help him to find stolen property and to convict the thief. It is an offence for one who knew of the commission of the crime, and who could at once have informed the offender, to wait till a reward is offered, and then to take money from the owner of the property under colour of getting the property back for him. The section is not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of his offence. *Emperor v. Nangu*. 29 Cr. L. J. 21 :

106 I. C. 437 : 25 A. L. J. 866 :

50 All. 186 : A. I. R. 1928 All. 22.

———S. 215—Offence under—*Complainant's cycle stolen—Accused accosting him and demanding certain amount to get back cycle—Accused, is guilty under S. 215*.

Where a cycle of the complainant is stolen and the accused accosts him, and tells him that if he gives certain amount, his cycle can be recovered, the very terms in which the complainant is approached implies that there was expected to be no questions asked as to the actual offender and no attempt at his apprehension or conviction. The accused is, therefore, guilty under S. 215, Penal Code. *Ramanand Teli v. Emperor*. 39 Cr. L. J. 887 :

177 I. C. 344 : 11 R. P. 148 :

4 B. R. 818 : 19 P. L. T. 776 :

A. I. R. 1938 Pat. 590.

———Ss. 215, 420—Offence, when maintainable—*Deprived of movable property—Necessary ingredient for conviction under S. 215—Cattle disappearing—No presumption as to its being stolen—Cheating—Dishonest motives must be present at the time of taking money*.

There can be no conviction for an offence under S. 215, Penal Code, until it is proved that a person has been deprived of movable property by an offence punishable under the Code. Where a buffalo has disappeared, there is no presumption that an offence has been committed in respect of it. In order to constitute an offence under S. 420, Penal Code, the dishonest intent must either precede or accompany the act of dishonesty. *Hemraj v. Emperor*. 11 Cr. L. J. 295 :

6 I. C. 250.

———S. 215—Scope of Charge of thief himself for offence under S. 215, legality of.

It is no defence to a charge under S. 215, Penal Code, that the accused himself was the thief of the stolen property. *Emperor v. Gulu*. 29 Cr. L. J. 736 :

110 I. C. 592 : 22 S. L. R. 450 :

A. I. R. 1928 Sind 168.

PENAL CODE ACT (XLV OF 1860)

———S. 215—Scope of—*Receiving gratification to help owner to recover stolen property—Gratification received by thief himself—Offence*.

S. 215, Penal Code, is not intended to apply to the actual thief but to a person who takes gratification on account of helping the owner to recover stolen property without at the same time using all the means in his power to cause the offender to be apprehended and convicted of the offence. *Kehr Singh v. Emperor*. 26 Cr. L. J. 1121 :

88 I. C. 353 : 2 Lah. Cas. 25 :

7 L. L. J. 477 : A. I. R. 1925 Lah. 563.

———S. 215—Scope of.

Screening or attempting to screen the offender is not a necessary ingredient under S. 215. *Arman Ullah v. Jainulla*. 34 Cr. L. J. 1015 :

145 I. C. 569 : 37 C. W. N. 360.

6 R. C. 117 : A. I. R. 1933 Cal. 599.

———S. 215—Scope of.

Taking money from another in order to help him find stolen property and convict thief does not constitute offence—Points required to be proved open to doubt—Benefit of doubt to accused should be given. *Haji Jan Mohammad v. Emperor*. 36 Cr. L. J. 1464 :

158 I. C. 498 : 8 R. S. 53 :

A. I. R. 1935 Sind 103.

———S. 215—Scope of—*Thief himself taking gratification to restore stolen property—Conviction, legality of*.

S. 215, Penal Code, is not intended to apply to the thief himself, and, therefore, where a man is convicted of theft, he ought not to be also convicted under S. 215 of taking a gratification to restore the stolen property. *Emperor v. Nga Nyan U*. 16 Cr. L. J. 421 :

28 I. C. 997 : U. B. R. 1914, II 43 :

A. I. R. 1914 U. Bur. 43.

———Ss. 215, 71, 380—*Theft and taking gratification to restore stolen property—Cattle theft—Joinder of charges—Double conviction*.

The two accused stole a bullock and returned it to the owner two days later on payment of Rs. 20. They were tried at one trial both for theft under S. 380, Penal Code, and for offences under S. 215. The Magistrate found that the theft had been committed for the express purpose of obtaining money for the bullock's return. He convicted the accused of both the offences charged, and passed a separate sentence for each offence: *Held*, that in view of the short time that elapsed between the theft and the return of the bullock, the Magistrate's finding as to the purpose of the theft was justifiable, and the theft and the return might be considered to be a series of acts so connected as to form the same transaction. There was, therefore, no misjoinder of charges. The actual thief is not liable to be convicted of an offence under S. 215 in respect of the property which he himself stole. As the facts proved justified the conclusion that the accused were themselves the thieves, the convictions under

PENAL CODE ACT (XLV OF 1860)

S. 380 were upheld and those under S. 215 set aside. *Twet Pe alias Shan Gale v. Emperor*.
7 Cr. L. J. 464 :
14 Bur. L. R. 67 : 4 L. B. R. 199.

———Ss. 215, 511—*Attempt to commit offence*
—*Proposal to secure return of stolen property*.

A mere proposal to be paid a sum of money in order to procure the restoration of stolen property is not an offence under S. 215, Penal Code, but is an attempt to commit that offence. *Hargayan v. Emperor*.

25 Cr. L. J. 127 :
76 I. C. 191 : 20 A. L. J. 927 :
45 All. 159 : A. I. R. 1923 All. 83.

———S. 216—*Duty of prosecution—Harbouring proclaimed offender*.

In a trial for an offence under S. 216, Penal Code, it is the duty of the prosecution to prove that the accused knew the proclaimed offender to be a person for whose apprehension an order had been made by competent authority. *Harnam Singh v. Emperor*.

26 Cr. L. J. 415 :
84 I. C. 1055 : 6 L. L. J. 478 :
A. I. R. 1925 Lah. 103.

———S. 216—*'Harbour'. meaning of*.

"Harbour" means the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or assisting a person in any way to avoid apprehension. *Nga Lin v. Emperor*.

36 Cr. L. J. 1384 (2) :
158 I. C. 500 : 8 R. Rang. 173 :
A. I. R. 1935 Rang. 294.

———S. 216—*'Harbour', meaning of*.

One M, after conviction for robbery, escaped from Jail and hid himself in the house of H in village A, where a proclamation for M's arrest was duly issued and published. The accused B was the resident of a neighbouring village T, but being a friend of M used to visit M frequently in the house of H: Held, that B had committed the offence of harbouring M under S. 216, Penal Code. The word "harbour" in S. 216 must be construed liberally. The person, at whose instance harbouring is effected, commits the offence, although the house in which the harboured person stays may belong to a different person. *Emperor v. Bhujabali Akappa Gorwadi*.

13 Cr. L. J. 701 :
13 I. C. 509 : 14 Bom. L. R. 583.

———S. 216—*Harbouring offender—Warrant issued without jurisdiction—Absence of intention to prevent apprehension—Offence*.

A conviction for harbouring or concealing an offender against apprehension under a warrant cannot be sustained where the officer issuing the warrant had no jurisdiction to issue it. In order that an offence under S. 216, Penal Code, should be committed, it is necessary that the person harbouring the offender must be harbouring him with the intention of

PENAL CODE ACT (XLV OF 1860)

preventing him from being apprehended. *In re : Shripad G. Chandavarkar*.

29 Cr. L. J. 317 :
108 I. C. 27 : 30 Bom. L. R. 70 :
52 Bom. 151 : I. L. T. 40 Bom. 116 :
A. I. R. 1928 Bom. 184.

———S. 216—*Harbouring offender, what amounts to—False denial of presence of offender in accused's house and giving evasive answers—Offence*.

Where, after the Police had informed the accused that a certain person who was in the accused's house was a proclaimed offender, the accused denied the fact that that person was in his house and gave prevaricating answers, with the object of enabling him to escape: Held, that the conduct of the accused amounted to an offence under S. 216, Penal Code. *Vir Singh v. Emperor*.

31 Cr. L. J. 772 :
125 I. C. 178 : 11 L. L. J. 377 :
A. I. R. 1930 Lah. 99.

———S. 216—*Harbouring proclaimed offender—Giving warning, whether amounts to harbouring—Sentence*.

A person who deliberately gives warning to a proclaimed offender of the approach of the Police with the intention to assist him to escape, is guilty of an offence under S. 216, Penal Code. An outlaw, especially in the North-West Frontier Province, is a menace and an enemy to the public at large, and any person who conspires to assist him must be held to be also an enemy of the public and should be severely dealt with. *Akbar Ali v. Emperor*.

24 Cr. L. J. 485 :
72 I. C. 949.

———S. 216—*Knowledge—Harbouring proclaimed offender—Criminal Intelligence Gazette, publication in, whether sufficient notice—Offender adopting false name—Harbourer misdescribing offender as his relation*.

In order to establish an offence under S. 216, Penal Code, it must be proved that a public servant in the exercise of his lawful authority ordered a certain person to be apprehended for an offence and that the person charged with harbouring him did so, knowing of such order with the intention of preventing his apprehension. Such knowledge cannot be presumed from the mere publication of the name of the offender in the *Criminal Intelligence Gazette*, nor can it be inferred from the offender's adopting a false name and the harbourer's misdescribing him as his relation. *Bakwant Singh v. Emperor*.

15 Cr. L. J. 349 :
23 I. C. 701 : 1 O. L. J. 30 :
A. I. R. 1914 Oudh 204.

———S. 216—*Making sign of approach of Police, if offence—"Harbouring", meaning of*.

The word "harbour" in S. 216, Penal Code, includes every kind of assistance rendered to a person to evade apprehension. Making a sign to a person on the approach of the

PENAL CODE ACT (XLV OF 1860)

Police to escape would fall within the purview of S. 216. *Balkaran Singh v. Emperor.*

26 Cr. L. J. 1288 :
89 I. C. 152 : 12 O. L. J. 270 :
2 O. W. N. 260 : A. I. R. 1925 Oudh 423.

———S. 216—Mere finding of absconder in a house of person, if amounts to offence—Issue of proclamation, before arrest, whether conclusive evidence of knowledge.

The mere fact that an absconder is found in the house of another person is not sufficient to involve the owner of the house in an offence under S. 216, Penal Code, unless all other elements of the offence are established. Among other things, it is the duty of the prosecution to prove the knowledge of the accused person as required by S. 216, and here, too, the fact that a proclamation had been made some time before the arrest is not conclusive evidence of the knowledge of the so-called offender. *Moola v. Emperor.*

40 Cr. L. J. 243 (a) :
179 I. C. 651 : 40 P. L. R. 934 :
11 R. L. 607 : A. I. R. 1939 Lah. 19.

———S. 216—Offence under, what constitutes—Harbouring.

Harbouring or concealing a person for whose apprehension an order has been passed by a public servant for the purpose of enforcing a punishment already inflicted on him for having committed an offence, is an offence under S. 216, Penal Code. *Satanji Koer v. Emperor.*

11 Cr. L. J. 95 :
5 I. C. 311 : 11 C. L. J. 109.

———S. 216—Offence under, what constitutes—Harbouring persons ordered to be apprehended for alleged offence—Harboured persons acquitted of offence—Harbourer, whether guilty under S. 216—Punishment.

To constitute an offence under S. 216, Penal Code, it is enough to show that against the person harboured orders for apprehension have been issued for an offence alleged against him and it is not necessary to show that the offence in respect of which orders of apprehension have been issued was actually committed by him. The purpose of the provision is to penalise acts designed to obstruct or defeat the course of justice which requires that suspected persons should be arrested whether they may prove eventually to be guilty or innocent. But the acquittal of the person harboured can be taken into account in awarding sentence. *In re : Rangaswami Goundan.*

30 Cr. L. J. 183 :
113 I. C. 545 : 1928 M. W. N. 588 :
55 M. L. J. 503 : 28 L. W. 403 :
I. R. 1929 Mad. 145 : 52 Mad. 73 :
A. I. R. 1928 Mad. 1147.

———S. 216—Scope of—Offence under, when complete—“Harbour,” meaning of.

There is no time limit for the completion of an offence under S. 216, Penal Code, which is complete as soon as it is committed, and it is immaterial whether the evasion of apprehension of the offender lasts six hours or six

PENAL CODE ACT (XLV OF 1860)

years. The word “harbour” in S. 216, Penal Code, includes “the assisting of a person in any way to evade apprehension,” and is not confined to providing shelter, food and clothing. *Emperor v. Sarwar Singh.*

24 Cr. L. J. 659 :
73 I. C. 691 : 5 L. L. J. 329 :
A. I. R. 1923 Lah. 223.

———Ss. 216, 216-A—Giving meal to proclaimed offender, if offence—Dacoity, acquittal on charge of—Harbouring such persons, whether offence.

A conviction under S. 216-A, Penal Code, cannot stand for harbouring persons who have been acquitted of the charge of dacoity brought against them. The mere giving of a meal to a proclaimed offender is not an offence within the meaning of S. 216 of the Penal Code in the absence of any evidence to the effect that the intention of the accused was to prevent the offender from being apprehended. *Hukam Singh v. Emperor.*

26 Cr. L. J. 410 :
84 I. C. 1050 : 6 L. L. J. 481 :
1 Lah. Cas. 326 : A. I. R. 1925 Lah. 289.

———S. 216-A—Applicability of.

To attract the penalty of S. 216-A, Penal Code, it is not enough that a person should be harbouring dacoits in general but the section renders it penal to harbour persons who intend to commit a particular dacoity. *Emperor v. Sunderdas.*

26 Cr. L. J. 1028 :
87 I. C. 916 : A. I. R. 1925 Sind 295.

———S. 216-A—Pony lent for removing loot, if offence—Harbouring dacoits.

The action of an accused who lends his pony to some dacoits in order to facilitate them in removing the property looted, does not amount to “harbouring” the dacoits within the meaning S. 216-A, Penal Code. *Damri v. Emperor.*

26 Cr. L. J. 151 :
83 I. C. 711 : 22 A. L. J. 496 :
A. I. R. 1924 All. 676.

———S. 216-B—“Assisting in any way to evade apprehension,” meaning of—Harbouring offender.

Where the accused in answer to an enquiry of an Inspector of Police replied that his brother, who was charged under S. 411, Penal Code, was in the house and promised to produce him, but on going inside the house he returned after a delay of 15 minutes with his brother's son and said that he had made a mistake, as the son was in the house and not his brother, and subsequently on search being made by the Police, the brother was found hiding in the house : *Held*, that as by the methods he employed the accused did give time and opportunity to the offender to conceal himself or effect his escape, he was guilty under S. 216-B for giving material assistance to the offender in evading apprehension. *Muchi Mian v. Emperor.*

18 Cr. L. J. 731 :
40 I. C. 731 : 36 C. L. J. 141 :
21 C. W. N. 1062 : A. I. R. 1918 Cal. 826.

PENAL CODE ACT (XLV OF 1860)

—S. 216-B—False information to Police, whether harbouring.

A person giving false information to the Police with respect to a proclaimed offender or warning the latter of the approach of the Police so that he might make good his escape is guilty of the offence of harbouring. *Tara Singh v. Emperor*. 27 Cr. L. J. 563 : 94 I. C. 131 : 7 Lah. 30 : 27 P. L. R. 218 : A. I. R. 1926 Lah. 206.

—S. 216-B—Knowledge of whereabouts of offender, if amounts to harbouring.

Mere knowledge of the whereabouts of an offender does not amount to harbouring him. *Jagadish Chandra Maity v. Emperor*. 157 I. C. 1030 (1) : 39 C. W. N. 317 : A. I. R. 1935 Cal. 550.

—S. 216-B—Scope of—Mere knowledge of whereabouts of offender does not amount to harbouring.

"Harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or assisting a person in any way to evade apprehension. Mere knowledge of the whereabouts of an offender does not amount to harbouring him. Where a father who was asked to produce his son who was charged with a offence and was absconding, produced him when the police demanded him : *Held*, that he was not guilty under S. 216-B merely from this fact. *Jagadish Chandra Maity v. Emperor*. 157 I. C. 1030 (1) : 39 C. W. N. 317 : A. I. R. 1935 Cal. 550.

—S. 217—Conviction under, when illegal—Illiterate Police Patel—Tearing up panchnama after being told by complainants that they had no desire to continue proceedings—Police Patel guilty of no offence.

The applicant, an old and illiterate Police Patel, on receiving a complaint of the offence of rape, made some investigation and prepared a panchnama of the scene and arrested the two persons against whom the accusation was laid. He sent them with a report to the Police Station, but on the way the parties, presumably to save the girl's reputation, came to a settlement and all returned to the village. The relatives of the girl, who were responsible for lodging the proceedings informed the Patel that they had no desire to continue them and the Patel thereupon tore up the panchnama which he had made : *Held*, that under the circumstances, the Patel could not be convicted under S. 217, Penal Code. *Narainbhai Bhulabhai v. Emperor*. 14 Cr. L. J. 441 : 20 I. C. 601 : 15 Bom. L. R. 578.

—S. 217—Offence under, if committed—Police Officer retaining property found in search for theft—Property not part of stolen property—Offence—Cr. P. C., S. 523—Failure to report.

A Police constable, who retained for himself a piece of gold found in a search for stolen property but not proved to be part of the stolen property and failed to report his possession to his superior officers under S. 523,

PENAL CODE ACT (XLV OF 1860)

Cr. P. C., is guilty of an offence under S. 217, Penal Code. *In re : B. Dasappa*.

16 Cr. L. J. 453 : 29 I. C. 85.

—S. 217—Reasonable influence.

For a conviction under Ss. 217 and 218, Penal Code, it is not necessary to establish that an offence has actually been committed. It would be sufficient if the circumstances are such that a reasonable inference can be drawn therefrom that the accused had a knowledge that he was likely by his act to save a person from legal punishment. *Emperor v. Mathura Nath De*. 33 Cr. L. J. 657 : 139 I. C. 89 : I. R. 1932 Cal. 561 : A. I. R. 1932 Cal. 850.

—S. 218.

See also Penal Code, 1860, S. 198.

—S. 218—Conviction under, illegality of—Document.

In a revenue suit brought by a tenant against the *zemindar* for commutation of rent, the *Patwari* was examined as a witness and the Revenue Court, to avoid taking down a statement from him in detail, directed the *Patwari* to prepare a written statement '*fard*' according to his papers and to file it, and the *Patwari* did so. The *Patwari* was subsequently charged under S. 218, Penal Code, on the ground that the statement prepared by him was incorrect to his knowledge : *Held*, that the *Patwari* could not be prosecuted under S. 218, Penal Code, inasmuch as the statement prepared by him was not a document which it was his duty to prepare. *Mcharban Ali Khan v. Sita Ram*. 30 Cr. L. J. 874 : 118 I. C. 232 : 1929 A. L. J. 512 : I. R. 1929 All. 824 : A. I. R. 1929 All. 374.

—S. 218—False entry by *Patwari*.

False entry in *khasra* made by *Patwari*—Loss caused to a person—Criminal intention—Offence under S. 218, if committed by *Patwari*. *Chandrabhan Lal v. Emperor*. 37 Cr. L. J. 131 : 159 I. C. 531 : 1935 A. W. R. 1066 : 1935 A. L. J. 1083 : 8 R. A. 463 : A. I. R. 1935 All. 968.

—S. 218—False report by Police Officer—Offence.

A Police Officer who makes a false report to a Magistrate accusing a person of an offence knowing it to be incorrect and with intent to cause injury to that person, is guilty of an offence under S. 218, Penal Code. The word '*charged*' in the said section is not restricted to the narrow meaning of enjoined by a special provision of the law. *Nathu Mal v. Abdul Haq*. 31 Cr. L. J. 584 : 123 I. C. 841 : 12 L. L. J. 5 : A. I. R. 1930 Lah. 159.

—S. 218—Intentionally framing incorrect record by Public servant—Subsequent conduct—Bona fides of the entry.

Where a Police Inspector was charged with framing an incorrect record in that he entered in his diary that certain cartmen told him that

PENAL CODE ACT (XLV OF 1860)

"they were not beaten by dacoits," while, in fact, they had told him that *they were beaten by dacoits*, it was held that this of itself would not be sufficient to sustain a conviction under S. 218, I. P. C., but where, without endeavouring to inquire into the truth of the said entry in his diary he destroyed certain records which falsified it and substituted fresh note books, his *bona fides* were open to question and he must be deemed to have framed an incorrect public record intentionally. *Ramaswami Iyenger v. Emperor*. 12 Cr. L. J. 455 :

11 I. C. 799 : 1911, 2 M. W. N. 44.

-----S. 218—*Preparing false record to screen offender—Guilt of offender, whether material.*

For the purposes of a charge under S. 218, Penal Code, the actual guilt or otherwise of the alleged offender is immaterial. Where it is proved that the commission of a cognizable offence was brought to the notice of an officer-in-charge of a Police Station officially and that in order to screen the offender he prepared the record in a manner which he knew to be incorrect, he is guilty of an offence under S. 218, irrespective of the fact whether the alleged offenders were or were not guilty. *Moti Ram v. Emperor*.

26 Cr. L. J. 837 :
86 I. C. 661 : 7 L. L. J. 331 :
A. I. R. 1925 Lah. 461.

-----S. 218—'Record', what is—*Pay-sheets drawn up in Railway Offices, whether a "record."*

A pay-sheet drawn up in a Railway Office and setting out certain sums as due by the Railway to certain coolies described as working in a special gang, is a record within the meaning of S. 218. *Kesri Mal v. Emperor*.

15 Cr. L. J. 502 :
24 I. C. 590 : 1 O. L. J. 200 :
A. I. R. 1914 Oudh 361.

-----S. 218—Scope of.

S. 218, Penal Code, is much wider and embraces cases other than those in which a principal offender is screened. The gist of the section is the stifling of truth and the perversion of the course of justice in cases where an offence has been committed. It is not necessary even to prove the intention to screen any particular person. It is sufficient that the accused knows it to be likely that justice will not be executed and that some one will escape punishment for the offence. *Anverkhan Mahamadkhan v. Emperor*.

22 Cr. L. J. 609 :
63 I. C. 145 : 23 Bom. L. R. 823 :
A. I. R. 1921 Bom. 115.

-----S. 219.

See also Penal Code, 1860, S. 218.

-----S. 219—'Maliciously', meaning of—*Munsif pronouncing decree, knowing he has no jurisdiction—Offence.*

The word 'maliciously' in S. 219, Penal Code, means and implies an intention to do an act which is wrongful to the detriment of another, and any person who wilfully does an act injurious to another without lawful excuse

PENAL CODE ACT (XLV OF 1860)

does it maliciously. A Village Munsif heard and pronounced a decree in a suit which he knew he had no jurisdiction to entertain; *Held*, that he had acted maliciously and was guilty of the offence described in S. 219, Penal Code. *Peary Lal v. Emperor*.

18 Cr. L. J. 527 :
39 I. C. 495 : 15 A. L. J. 106 :
A. I. R. 1917 All. 317.

-----S. 219—Offence under, essentials of.

The essence of the offence under S. 219 is (1) that there must be a judicial proceeding, that is, a proceeding actually commenced and pending wherein a party claims relief against another and invites the decision of the Court in regard thereto and not a fictitious one where there is no party litigating, and (2) that there must be the making of a real report or a real pronouncement of an order, verdict or decision. Where there is no judicial proceeding at all, everything being a make-believe, there is no making of a report nor a pronouncement of an order, verdict or decision except the making of an entry of such a pronouncement having been made when in fact it was not so made. The accused, a Village Munsif, charged with preparation of the register of suits filed in his Court and framing it in such a manner which he knew to be incorrect, *i. e.*, making it appear that a certain suit has been filed, cannot be convicted under S. 219, Penal Code, but under S. 218. *In re : Narapareddi Seshareddi*.

39 Cr. L. J. 875 :
177 I. C. 489 : 47 L. W. 542 :
1938 M. W. N. 345 :
1938, 1 M. L. J. 867 : 11 R. M. 327 :
A. I. R. 1938 Mad. 595.

-----S. 220.

See also Penal Code, 1860, S. 193.

-----Ss. 220, 343—Illegal confinement.

If a person having authority to commit persons to confinement, commits to confinement a person for making a false statement, and then refuses to grant bail, his refusal, coupled with corrupt motives, would in itself constitute an offence under S. 220 as also under S. 343. *Emperor v. Daya Shankar Jesukhram*.

1 Cr. L. J. 146.

-----S. 221.

See also Penal Code, 1860, S. 54.

-----S. 221—Intentionally allowing escape—*Offence—Murder committed in presence of public servants—Murderer allowed to escape—Offence—Motive.*

Where the applicants were legally bound to arrest a man who had committed murder in their presence and they omitted to apprehend him and did it intentionally, and there was nothing involuntary about it, they are legally guilty of an offence under S. 221, Penal Code. Their motive may not have been that they wanted the man to escape, but that they were afraid of getting

PENAL CODE ACT (XLV OF 1860)

hurt, but motive must always be distinguished from intention. *Ram Lal v. Emperor*.

37 Cr. L. J. 1019,
164 I. C. 702 : 1936 A. L. J. 1006 :
9 R. A. 183 : 1936 A. W. R. 819 :
A. I. R. 1936 All. 651.

—S. 222—Intentionally aiding prisoners to escape—Offence—Acts of prisoner amounting to preparation and not attempt, effect of.

A person who does certain acts in order to facilitate the attempt of a prisoner to escape and thereby does facilitate an attempt to escape, is guilty of an offence under S. 222, Penal Code, and it makes no difference that the acts proved on the part of the prisoner do not amount to an attempt to escape but constitute only a preparation to escape or that the attempt was in fact frustrated by other circumstances. *Maula Bakhsh v. Emperor*.

30 Cr. L. J. 1103 :
120 I. C. 188 : I. R. 1930 Lah. 28 :
A. I. R. 1929 Lah. 607.

—Ss. 222, 223—Public servant of British India, who is.

A public servant in British India is not a public servant with reference to Mysore Territory. Where certain Police constables of British India allowed a prisoner in their custody to escape, and such escape took place in Mysore Territory : *Held*, that they could not be convicted of an offence under Ss. 222, 223, Penal Code, such constables not being public servants of the Mysore State. The facts of the case are that the accused and another constable of the Kollegal Police while escorting two prisoners from Kollegal to the Central Jail at Coimbatore allowed one of the prisoners to escape in the Mysore Territory near the 21st mile from Kollegal. They were tried and convicted by the 1st Class Magistrate of French Rocks for an offence under Ss. 222 and 223, Penal Code. *In the matter of : Sundra Rajoo*.

9 Cr. L. J. 431 :
12 M. C. C. R. 254.

—S. 223—Conviction, illegality of—Escape from lawful custody—Chaukidar.

The Police of an adjoining Native State arrested in British territory one Ban Singh suspected of having committed an offence in the Native State, and made him over to one Debi, a *chaukidar*, from whose custody he escaped : *Held*, that neither the original arrest nor the subsequent custody by the *chaukidar* were lawful, and therefore, that the *chaukidar* could not properly be convicted under S. 223, Penal Code. *Emperor v. Debi*.

5 Cr. L. J. 277 :
27 A. W. N. 94 : I. L. R. 29 All. 377.

—S. 223—Offence, essentials of—Escape of prisoner—Negligence—Natural and probable consequence of negligence.

A, a Police Officer in charge of a *Thana*, left the *Thana* having left orders to the writer head constable to make arrangements for the escort of certain prisoners. The head constable made arrangements and sent the prisoners

PENAL CODE ACT (XLV OF 1860)

off. From the custody of the escorts the prisoners escaped : *Held*, the escape of the prisoners was not the natural and probable consequence of A's negligence and he could not be convicted under S. 223, Penal Code. *Durga Prasad v. Emperor*.

11 Cr. L. J. 478 :
7 I. C. 411 : 7 A. L. J. 907.

—S. 223—Offence under, essentials of—Jail warder negligently allowing prisoner to escape—Offence.

Before a person can be convicted under S. 223, Penal Code, it must be shown not only that he was guilty of negligence, but that the escape was at least the natural and probable consequence of his negligence. Accused, a jail warder, was placed in charge of a gang of prisoners and sent off to do agricultural work. Contrary to his orders, he permitted a convict warden to take two of the convicts to the cemetery to water the trees there. The cemetery was at some distance and not within sight, nor did the accused attempt to patrol in that direction. Owing to the negligence of the convict warder, one of the convicts escaped : *Held*, that the accused was guilty of an offence under S. 223, Penal Code. *Ahsan Ali v. Emperor*.

20 Cr. L. J. 350 :
50 I. C. 830 : 11 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 229.

—S. 223—Proof of negligence.

Where a jail warder was charged under S. 223, Penal Code, that he, being a public servant, charged with the duty of keeping in confinement certain prisoners who were under trial, negligently suffered these prisoners to escape from confinement : *Held*, that under the provisions of S. 223, Penal Code, it must be shown that there was negligence on the part of the accused and that the escape of the prisoners was the consequence of this negligence : *Held*, also, that taking all the circumstances into account and in view of unsatisfactory state of the evidence, which was utterly insufficient to decide whether the warder was in fact negligent in the performance of his duties, he could not be convicted. *Rur Singh v. Emperor*.

37 Cr. L. J. 918 :
164 I. C. 265 : 9 R. C. 184 :
40 C. W. N. 61.

—S. 223—Scope of—Negligently suffering prisoner to escape—Marching prisoner after sunset contrary to the orders of Magistrate.

Where the only fact found against an accused charged under S. 223, Penal Code, was that he marched a prisoner after sunset, contrary to the directions of the Magistrate, and the prisoner escaped : *Held*, that no offence under S. 223, Penal Code, was made out. *The District Magistrate of Nellore*.

10 Cr. L. J. 293 :
5 I. C. 460 : 6 M. L. T. 247.

—S. 223—Scope of—Negligently suffering prisoner to escape.

Two policemen were conveying a prisoner

PENAL CODE ACT (XLV OF 1860)

from one place to another in a camel cart. The prisoner was secured by two pairs of handcuffs and a rope round the waist. He wanted to be let down from the cart to answer the call of nature, and thereupon one set of handcuffs was removed and he was let down. He suddenly raised an alarm of snake and in the confusion jerked at the waist rope and ran away: *Held*, that the policemen were not guilty of negligently suffering the prisoner to escape within the meaning of S. 223, Penal Code. *Girdhari v. Emperor*.

19 Cr. L. J. 78 :
43 I. C. 110 : 15 A. L. J. 883 :
A. I. R. 1918 All. 282.

—S. 224.

See also (i) Cr. P. C., 1898, Ss. 56, 59.
(ii) Penal Code, 1860, S. 147.

—S. 224—Duty of Appellate Magistrate—*Appeal from conviction for offence under—Appellant pleading illegality of confinement in stocks owing to his respectability.*

Where in an appeal from a conviction for an offence under S. 224, Penal Code, the appellant pleads illegality of the confinement in stocks on account of his respectability, the Appellate Magistrate should deal with that point before disposing of the appeal. *In re : Uppala Kolayya Nagaram*.

16 Cr. L. J. 672 :
30 I. C. 656 : 18 M. L. T. 310 :
A. I. R. 1916 Mad. 686.

—S. 224—Escape from custody—*Acquittal of accused—Conviction for escape from custody, legality of.*

An accused person legally arrested for an offence must submit to be tried and dealt with according to law, and if he gains his liberty before he is delivered by due course of law, he commits the offence of escaping from lawful custody under S. 224, Penal Code. It would be an offence for a man to escape from custody after he has been lawfully arrested on a charge of having committed an offence although he may not have been subsequently convicted of such latter offence. *Kalia Amra v. Emperor*.

28 Cr. L. J. 380 :
100 I. C. 988 : 29 Bom. L. R. 168 :
A. I. R. 1927 Bom. 96.

—S. 224—Escape from custody—*Arrest of judgment-debtor—Judgment-debtor allowed to go by decree-holder and process-server.*

Where a person arrested in execution of a civil process was allowed to go by the decree-holder and the process-server who had arrested him: *Held*, that there was no offence of escape from lawful custody committed by the person who was arrested. *In re : Public Prosecutor*.

11 Cr. L. J. 477 :
7 I. C. 392 : 8 M. L. T. 286 :
1910 M. W. N. 592.

—S. 224—Escape from custody—*Escape of a person merely accused but not convicted of an offence.*

The accused was detained in custody on

PENAL CODE ACT (XLV OF 1860)

account of having been accused of an offence, but before the conclusion of the trial he escaped from custody: *Held*, that he was guilty of an offence under S. 224, I. P. C., though he had not been convicted of any offence at the time of escaping. *In re : Sidda Basavaiya*.

7 Cr. L. J. 179 :
12 M. C. C. R. 50.

—S. 224—*Escape from custody, when no offence.*

Where it is not proved that a proclamation had been issued in respect of an accused wanted under S. 186, his arrest without warrant, is illegal, and the accused commits no offence if he escapes from the custody of the constable who arrests him. *Raghuni Prasad Mahto v. Emperor*.

37 Cr. L. J. 318 :
160 I. C. 604 : 2 B. R. 227 :
17 P. L. T. 81 : 8 R. P. 370 :
A. I. R. 1936 Pat. 249.

—S. 224—Escape from lawful custody—*Trial for escape from lawful custody in which accused is lawfully detained for an offence with which he is charged, or of which he has been convicted—The question whether accused is guilty of the offence in respect of which he is detained—Whether such question is material in such trial.*

The Magistrate acquitted the accused of escaping from lawful custody, for the reason that, as the theft for which he had been arrested was not proved, there could be no offence under S. 224 of the Penal Code: *Held*, that the Magistrate's reason was not sound; that the question whether the accused was guilty of the offence of theft was immaterial, and that the facts to be proved were that he was charged with an offence, thus he was lawfully detained in custody for that offence, and that he escaped from that custody that: on the evidence the arrest and the custody were lawful. *Emperor v. Po Hla*.

4 Cr. L. J. 389 :
12 Bur. L. R. 246 : 3 L. B. R. 221.

—S. 224—Escape from lawful custody—*Accused arrested by private person—Accused made over to chowkidar—Chowkidar, whether Police officer—Chowkidar's custody, whether lawful, Cr. P. C., S. 59.*

One A was arrested by a private person within the terms of S. 59, Cr. P. C., and made over to a chowkidar to be taken to the Police Station. A escaped from the custody of the chowkidar with the aid of some other persons: *Held*, that the custody of the chowkidar was not lawful as he was not a Police Officer within the terms of S. 59, Cr. P. C., and that, therefore, the escape was no offence. *Purna Chandra Kundu v. Emperor*.

14 Cr. L. J. 494 :
20 I. C. 750 : 41 Cal. 17 : 17 C. W. N. 978.

—S. 224—*Person rescued, liability of—Arrest by chowkidar on suspicion—Rescue—Causing hurt to public servant in discharge of*

PENAL CODE ACT (XLV OF 1860)

duty—Common intention—U. P. Town Areas Act (II of 1914), S. 41.

Chaukidars are no longer appointed under S. 52, Act XX of 1850, as that section has been repealed by S. 41, United Provinces Town Areas Act. They are not members of the Police Force and have no authority to arrest on mere suspicion. Therefore, it is no offence to rescue from their custody a person arrested by them on suspicion. A person rescued from arrest cannot be said to have been acting in pursuance of a common intention with his rescuers, where there is nothing to show that before his arrest he had any apprehension of being arrested or had made any pre-arrangement for his rescue. *Jafar v. Emperor*.

17 Cr. L. J. 529 :
36 I. C. 577 : 14 A. L. J. 789 :
A. I. R. 1916 All. 253.

—S. 224—Scope of—Cr. P. C., S. 75—Warrant signed by Magistrate not being presiding officer, validity of—Arrest—Escape—Offence.

A warrant signed by a Magistrate, not being the presiding officer of the Court within the meaning of S. 75, Cr. P. C., is invalid, and a person arrested on such a warrant commits no offence in escaping from the custody of the constable who has arrested him. *Jagpat Kori v. Emperor*.

18 Cr. L. J. 526 :
39 I. C. 494 : 1 P. L. W. 306 :
2 P. L. J. 487 : 1918 Pat. 48 :
A. I. R. 1917 Pat. 17.

—S. 224—Scope of—State subject—"Detention," contemplated by—Arrest.

The detention contemplated by S. 224, I. P. C., should necessarily be for any of the offences mentioned in the I. P. C., or under any local or special law applicable to British India. A State subject who is arrested within the boundaries of a State by the State Police for any offence committed in that State, cannot be proceeded against under S. 224, I. P. C., if he escapes from the custody of the State Police when he is within the British territory even if that State has adopted the I. P. C. *Billu v. Emperor*.

41 Cr. L. J. 378 :
186 I. C. 795 : I. L. R. 1940 Lah. 570 :
12 R. L. 432 : A. I. R. 1940 Lah. 44.

—S. 224—Sentence under.

Sentence under S. 224 need not run consecutively with sentence for main offence. *Emperor v. Chokhu Yesu*.

36 Cr. L. J. 282 (1) :
153 I. C. 34 : 36 Bom. L. R. 963 :
7 R. B. 211 : A. I. R. 1934 Bom. 462 (1).

—S. 224—What constitutes offence.

Mere running away of a person whom an official of Civil Court tries to arrest under Civil Court warrant, does not amount to obstructing public servant under S. 224. *Peeru Muhammad Lebbai v. Swaminatha Pillai*.

17 Cr. L. J. 71 :
32 I. C. 663 : A. I. R. 1917 Mad. 182.

—S. 224.

Running away to avoid arrest under warrant

PENAL CODE ACT (XLV OF 1860)

of Civil Court—Offence. *Peeru Muhammad Lebbai v. Swaminatha Pillai*. 17 Cr. L. J. 71 :
32 I. C. 663 : A. I. R. 1917 Mad. 182.

—Ss. 224 and 225—Duty of prosecution.

For a conviction under Ss. 224 and 225, it is essential that the prosecution should show that the apprehension or arrest made or attempted was lawful in every way. *Kartik Chandra Maity v. Emperor*. 33 Cr. L. J. 706 :
138 I. C. 844 : 13 P. L. T. 135 :
I. R. 1932 Pat. 190 : A. I. R. 1932 Pat. 171.

—Ss. 224, 225—Escape from custody—Obstructing apprehension—Opium Act (I of 1878), Ss. 9, 15—Arrest by Excise Officer of a person selling a black substance alleging it to be opium, if legal.

An Excise Officer acting under S. 15, Opium Act has lawful authority to arrest a person who sells a black substance (not opium), alleging it to be opium, though its possession is not an offence under S. 9 of the Act. Consequently the escape of such a person as well as his rescue from the custody of the Excise Officers are offences under Ss. 224 and 225, Penal Code, respectively. *Mohammad Kazi v. Emperor*.

17 Cr. L. J. 379 :
35 I. C. 811 : 20 C. W. N. 1294 :
43 Cal. 1161 : A. I. R. 1917 Cal. 426.

—Ss. 224, 225-B—Escape from Police custody—Cr. P. C., S. 109—Proceedings under S. 109—Escape from Police custody—Offence.

A person escaping from Police custody while proceedings under S. 109, Cr. P. C., have been taken against him commits an offence under S. 225-B and not S. 224, Penal Code. *Emperor v. Khanu Kori*. 25 Cr. L. J. 462 :
77 I. C. 814 : A. I. R. 1925 Sind 193.

—Ss. 224, 225, 353—Scope of—Sub-Inspector—Direction by, to constable for arrest—Use of force—Person resenting it—Scuffle following—Person resenting cannot be convicted under S. 224, nor can persons assisting him be convicted under Ss. 225 and 353.

Where a Police Sub-Inspector who is not present on the scene asks the constables to bring certain persons with some papers to the Police Station, his order does not amount to a direction to arrest those persons, as contemplated by S. 50, Cr. P. C., unless the order is given in writing. If in such a case the constables try to take one of the persons to the *thana* by force, the use of the force is illegal and if such person resents it and it is followed by a scuffle, in the course of which, brickbats are thrown, the person resenting cannot be convicted under S. 224, I. P. C., nor can the persons assisting him be convicted under Ss. 225 and 353, I. P. C. *Gulabi Mahto v. Emperor*.

41 Cr. L. J. 742 :
189 I. C. 539 : 21 P. L. T. 144 :
6 B. R. 835 : 13 R. P. 125 :
A. I. R. 1940 Pat. 361.

PENAL CODE ACT (XLV OF 1860)

—Ss. 224, 226—*Escape from jail—Prisoner under sentence of transportation—Confinement in jail before actual transportation—Return from transportation.*

A prisoner under a sentence of transportation, who escapes from a jail where he is confined before he is actually transported beyond the seas, cannot be convicted under S. 226, Penal Code. His escape is not "a return from transportation." *Nga Po Ghein v. Emperor.* 13 Cr. L. J. 54 : 13 I. C. 390 : 4 Bur. L. T. 261.

—Ss. 224, 323—*Escape from wrong arrest, if offence—Assaulting Police constable—Accused not in lawful custody—Private defence, right of.*

Where a person assaulted a constable who had wrongly arrested him, in order to effect his escape and it did not appear that the constable was acting in good faith under colour of his office: *Held*, that the constable was guilty of wrongful confinement and as against him the accused was entitled to the right of private defence. *Ram Singh v. Emperor.* 26 Cr. L. J. 428 : 85 I. C. 44 : A. I. R. 1923 All. 34.

—Ss. 224, 323, 353—*Defective warrant, effect of—Escape from lawful custody—Arrest, legality of—Hurt caused to constable in rescuing person from custody—Offence.*

One L was arrested by a constable under a warrant, which was not signed by the Magistrate issuing it and which was made over to the *thana* Officer on an order purporting to have been made by the District Superintendent of Police but not signed by anybody. L was rescued by the other accused, who caused unnecessary hurt to the constable in effecting the rescue: *Held*, (1) that the warrant was defective and that the constable having purported throughout to act under the warrant, the arrest of L was illegal and that the latter was not, therefore, guilty of any offence in effecting his escape: (2) that the persons who effected L's rescue were guilty of an offence under S. 323, Penal Code. *Mousi Lal v. Emperor.* 19 Cr. L. J. 1000 : 48 I. C. 340 : 1918 Pat. 285 : 5 P. L. W. 226. A. I. R. 1918 Pat 252.

—S. 225.

See also Cr. P. C., 1898, Ss. 59, 224, 225.

—S. 225—*Arrest by private person, legality of—Cr. P. C., S. 59—Obstruction to lawful apprehension—Arrest by private person.*

S. 59 of the Cr. P. C. empowers a private person to arrest any person who, in his view, commits a non-bailable and cognizable offence. A private person who attempts to arrest a person who has not committed a cognizable offence *in his view* is not entitled to the protection of that section or S. 235, Penal Code. A person who offers resistance or obstruction to the arrest by a private person of another person, who is escaping after the commission of a non-bailable and cognizable offence but

PENAL CODE ACT (XLV OF 1860)

who did not commit the offence in view of the person attempting to arrest him, cannot be held to have committed an offence under S. 225, Penal Code. *Alawal v. Emperor.*

23 Cr. L. J. 3 : 64 I. C. 371 : 4 U. P. L. R. Lah. 21 : 19 P. L. R. 1922 : A. I. R. 1922 Lah. 73.

—S. 225—*Conviction under—Cr. P. C., S. 56—Arrest under written order—Rescue from lawful custody—Assault on Police Officer—Offence.*

A constable arrested a person in pursuance of a written order made by a Sub-Inspector under S. 56, Cr. P. C. The accused hustled the constable, pushed him aside and thus rescued the person who had been arrested: *Held*, that the accused were guilty of offences under S. 353 read with S. 225, Penal Code. *Emperor v. Janki Prasad.* 22 Cr. L. J. 210 : 60 I. C. 322 : 19 A. L. J. 196 : 43 All. 283 : A. I. R. 1921 All. 202.

—S. 225—*Intention.*

A conviction under S. 225, Penal Code, cannot be sustained in the absence of a clear finding as to the intention with which the accused person or persons acted. The intention of the accused is an important ingredient in the offence under that section. *Alawal v. Emperor.* 23 Cr. L. J. 3 : 64 I. C. 371 : 19 P. L. R. 1922 : 4 U. P. L. R. Lah. 21 : A. I. R. 1922 Lah. 73.

—S. 225—*Obstruction, what amounts to—Merely threatening officer attempting to arrest, whether amounts to obstruction—Sentence.*

Threatening a Sub-Inspector of Excise in order to prevent him from arresting an offender amounts to offering resistance and illegal obstruction to arrest within S. 225 of the Penal Code. The obstruction offered does not, however, constitute a serious offence in such a case and does not deserve a heavy punishment. *Bechu Mian v. Emperor.* 31 Cr. L. J. 465 : 123 I. C. 68 : A. I. R. 1930 Pat. 344.

—S. 225—*Rescue of person arrested under legal warrant—Civil warrant not addressed to bailiff by name.*

A civil warrant not addressed to a particular bailiff by name but addressed "to the bailiff of the Court" is not invalid; therefore, the rescuer of a person arrested under such a warrant is guilty of an offence under S. 225, Penal Code. *In re : Abdul Rahiman Sahib.* 15 Cr. L. J. 439 : 24 I. C. 175 : 1 L. W. 500 : A. I. R. 1914 Mad. 55.

—S. 225—*Resistance to unlawful attempt of arrest—Police Officer sending private persons to make arrest—Resistance to such arrest not punishable.*

The Cr. P. C. confers no power on a Police Officer to send persons; who are not Police Officers, to make an arrest which he himself could lawfully make. No offence under S. 225, Penal Code, can be committed where

PENAL CODE ACT (XLV OF 1860)

the attempt to arrest is not lawful. Therefore, where a ten-house gaung sent villagers to arrest certain persons suspected of theft and the accused offered resistance to the arrest: *Held*, that the accused were not guilty of an offence under S. 225, Penal Code. *Emperor v. Tail: Pyn.* 10 Cr. L. J. 118 : 2 I. C. 619 : 5 L. B. R. 21.

—S. 225—Scope of—Thief, custody of, by chowkidar—Rescue—Offence—Chowkidar, if Police Officer.

A person rescuing a thief, kept in custody by a chowkidar in Bengal, does not commit an offence under S. 225, Penal Code. *Dirajaddi v. Emperor.* 17 Cr. L. J. 164 : 33 I. C. 644 : A. I. R. 1916 Cal. 247.

—S. 225-A—Negligence—Allowing escape from such arrest—Offence—Leaving open door of room in which prisoner is confined—Negligence.

Where a Police Officer who was entrusted with the custody of an arrested person omitted to secure one of the doors of the room in which that person was confined and the prisoner escaped through that door: *Held*, that the officer was clearly guilty of negligence and committed an offence under S. 225-A, Penal Code. *Ramnandan Singh v. Emperor.* 31 Cr. L. J. 717 : 124 I. C. 638 : A. I. R. 1930 Pat. 103.

—S. 225-A—Offence under—When constituted.

One N was arrested by a headman on a charge of cattle-theft and made over to the accused villagers, to be taken to the Police Station. On the way, owing to the negligence of the accused, N escaped: *Held*, that the accused could not be convicted under S. 225 (A), Penal Code, inasmuch as they were not public servants. *Nga Paw E v. Emperor.* 18 Cr. L. J. 351 : 38 I. C. 735 : 10 Bur. L. T. 170 : 2 U. B. R. 1916, 122 : A. I. R. 1917 U. Bur. 8.

—S. 225-B.

—Arrest.

—Attempts to rescue deserter from Army.

—Breaking arrest under illegal warrant.

—Conviction under.

—Duty of prosecution.

—Escape.

—Illegal obstruction to arrest.

—Lawful custody.

—Offence under.

—Proper person to make complaint under.

—Rescue.

—Resistance.

—Right of person to be arrested.

—Scope of.

—S. 225-B—'Arrest', meaning of—Arrest, how effected.

An arrest is a restraint of the liberty of the person, and unless there is submission, actual contact is necessary to effect it. There must

PENAL CODE ACT (XLV OF 1860)

be touch or confinement or else acquiescence. Mere words cannot constitute an arrest. *Aludomal v. Emperor.* 17 Cr. L. J. 87 :

32 I. C. 679 : 9 S. L. R. 141 :

A. I. R. 1916 Sind 19.

—S. 225-B—'Arrest', what constitutes—Arrest by oral declaration and not by touch, whether legal—Cr. P. C., S. 46 (1).

There can be no arrest within the meaning of S. 46 (1), Cr. P. C., unless the person to be arrested is actually touched by the process-server. An arrest by mere oral declaration is not legal and there can be no conviction under S. 225-B, Penal Code, of a person which is so arrested. *Harmohanlal v. Emperor.* 30 Cr. L. J. 128 :

113 I. C. 288 : 11 N. L. J. 259 :

I. R. 1929 Nag. 26.

—S. 225-B—Attempts to rescue deserter from Army—Rescuing from Police custody—Power of Police Officer to arrest deserter without warrant.

A person who intentionally resists or illegally obstructs a Police Officer in the apprehension of a deserter from His Majesty's Army or rescues or attempts to rescue him from the custody of such officer, is guilty of an offence punishable under S. 225-B, Penal Code. A Police Officer has the power of arresting without warrant a deserter from His Majesty's Army. *Emperor v. Rahim Ali.* 13 Cr. L. J. 234 :

14 I. C. 426 : 20 P. R. 1911 Cr.

—S. 225-B—Breaking of arrest under illegal warrant—Offence, if committed.

A warrant of arrest issued under the provisions of the C. P. Tenancy Act, not bearing the seal of the Court has no force and the arrest under it is illegal and in breaking arrest the person does not commit any offence and his conviction under S. 225-B is illegal. *Bhullihan v. Emperor.* 39 Cr. L. J. 118 :

172 I. C. 335 : 10 R. N. 196 (1) :

20 N. L. J. 219 : A. I. R. 1938 Nag. 45.

—S. 225-B—Conviction under—Offence under section committed when a prisoner escapes while the peon having custody of him is asleep.

A man legally arrested for an offence must submit to be tried and dealt with according to law. A prisoner who escapes, after he is arrested and before he is delivered by due course of law, owing to the neglect or consent of the person having him in custody, is guilty of an offence under S. 225-B, Penal Code. *The Public Prosecutor v. Ramaswami Konan.* 8 Cr. L. J. 200 :

31 Mad. 271 : 18 M. L. J. 540.

—S. 225-B—Conviction under, when legal—Cr. P. C., S. 123—Failure to furnish security for good behaviour—Imprisonment—Escape from jail—Offence.

A person who escapes from a jail in which he is confined under a warrant under S. 123, Cr. P. C., by reason of his having failed to find security to be of good behaviour should

PENAL CODE ACT (XLV OF 1860)

be convicted under S. 225-B, Penal Code, and not under S. 224. *Mooli v. Emperor*.

21 Cr. L. J. 831 (a) :
58 I. C. 831 : 18 A. L. J. 1039 :
2 U. P. L. R. All. 401 :
A. I. R. 1921 All. 281.

———S. 225-B—Duty of prosecution.

Where a constable arrests a man and tells him expressly that he is doing so under a particular authority which he claims to have to arrest him, and if such arrest is resisted, it will be for the prosecution afterwards to establish that the constable who arrested the man had power to act under the authority that he claimed to have. It is not sufficient for the prosecution afterwards to say that the constable had authority under some other provision of law. *In re : Appaswamy Mudaly*.

25 Cr. L. J. 563 :
81 I. C. 51 : 46 M. L. J. 447 :
19 L. W. 504 : 34 M. L. T. 95 :
47 Mad. 442 : A. I. R. 1924 Mad. 555.

———S. 225-B—Escape from arrest.

In pursuance of the orders of the High Court, the District Munsif passed a general order that all warrants of arrest issued by Munsif's Court should be signed by the head clerk: *Held*, that the delegation was formerly made by "the Court" and not personally by the District Munsif who passed the general order in this behalf. Similarly the delegation was made to the head clerk and not to the particular head clerk. Consequently the issue of a warrant by the head clerk of the successor of the District Munsif who issued the general order was not illegal and escaping from the arrest effected under such warrant was an offence under S. 225-B, Penal Code. *Public Prosecutor v. Abdul Rajak*.

39 Cr. L. J. 685 :
176 I. C. 138 : 1938 M. W. N. 316 :
1938, 1 M. L. J. 667 :
47 L. W. 536 : 11 R. M. 31 :
A. I. R. 1938 Mad. 536.

———S. 225-B—Escape from custody—Rules of Board of Revenue relating to recovery of land revenue, r. 9, Cl. 2.

Although, as laid down by the rules of Board of Revenue, a process for recovery of the arrears of land revenue should 'ordinarily' issue against the *lambardar* in the first instance, yet there may be occasions when it is expedient to issue process in the first instance against the defaulter himself. Therefore, if the Collector chooses to proceed against the defaulter direct and order the arrest and detention of the defaulter, the arrest is legal and escape from custody is an offence punishable under S. 225-B, Penal Code. *Emperor v. Gulab Singh*.

11 Cr. L. J. 137 :
5 I. C. 449 : 7 A. L. J. 21.

———S. 225-B—Escape from lawful custody:

Judgment-debtor in custody of process-server on his payment of detention *batta* for two days—Judgment-debtor escaping but appearing in Court on third day—Act held constituted

PENAL CODE ACT (XLV OF 1860)

escape from lawful custody, though there was no order in writing for detention—Offence held technical one. *In re : Nellore Auditor-narayana Reddi*.

34 Cr. L. J. 284 :
142 I. C. 242 (1) : 1932 M. W. N. 1222 :
I. R. 1933 Mad. 206 (2) :
A. I. R. 1933 Mad. 278.

———S. 225-B—Escape from unlawful custody—Cr. P. C., -S. 110—Security proceedings—Arrest without warrant, legality of.

A Police Officer has no authority to arrest without a warrant a person against whom proceedings have been instituted under S. 110, Cr. P. C. Where such a person is arrested by the Police without a warrant and escapes from the custody of the Police, he is not guilty of an offence under S. 225-B, Penal Code, inasmuch as the arrest was illegal. *Kala v. Emperor*.

26 Cr. L. J. 1360 :
82 I. C. 400 : 1 Lah. Cas. 51 :
A. I. R. 1925 Lah. 623.

———S. 225-B—Illegal obstruction to arrest—Arrest without showing warrant—Offence.

Where a person forcibly resists or attempts to evade arrest and Police Officer arrests him without showing warrant acting under S. 46, Cr. P. C., intentional resistance or illegal obstruction to arrest in such a case is punishable under S. 225-B even if S. 80, Cr. P. C., has not been complied with. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Darbesh Ali*.

30 Cr. L. J. 703 :
116 I. C. 723 : 49 C. L. J. 264 :
33 C. W. N. 284 : 56 Cal. 831 :
I. R. 1929 Cal. 499 :
A. I. R. 1929 Cal. 174.

———S. 225-B—Lawful custody, necessity of—Escape from custody.

A person cannot be convicted under S. 225-B, Penal Code, of escape or attempt to escape, unless the custody in which he was detained was lawful. *Emperor v. Ramara*.

7 Cr. L. J. 74 :
4 L. B. R. 103.

———S. 225-B—Lawful custody.

S. 225-B, Penal Code, requires that the custody from which a man tries to escape must be a lawful custody; he must have been lawfully arrested and detained; then only he is liable to conviction under the section. *In re : Appaswamy Mudaly*.

25 Cr. L. J. 563 :
81 I. C. 51 : 46 M. L. J. 447 :
19 L. W. 504 : 34 M. L. T. 95 :
47 Mad. 442 : A. I. R. 1924 Mad. 555.

———S. 225-B—Lawful custody, what is—Civil Court, power of, to commit judgment-debtor to custody of peon—Custody, whether lawful—Escape from custody—Prosecution—Procedure.

Where a Civil Court is desirous of prosecuting a person who has escaped from the lawful custody of a servant of the Court, the latter must file a complaint in the ordinary way. A Civil Court is not empowered to leave the judgment-debtor in the custody of a peon after giving him time to pay the decretal amount. Where, however, this is done,

PENAL CODE ACT (XLV OF 1860)

the detention of the judgment-debtor does not amount to lawful custody within the meaning of S. 225-B, Penal Code. *Emperor v. Madho Singh*.

26 Cr. L. J. 865 :
86 I. C. 801 : 23 A. L. J. 189 :
47 All. 409 : A. I. R. 1925 All. 318.

—S. 225-B—Offence under—Resistance or obstruction to arrest—Overt acts, if necessary.

Where a person ran into his house to avoid his arrest in execution of a Civil Court's warrant : *Held*, that his mere running away into his house did not amount to intentional resistance or illegal obstruction within the meaning of S. 225-B : *Held*, further, that there must be some overt act of resistance or obstruction to justify a conviction under S. 225-B, Penal Code. *Emperor v. Gajadhar*.

11 Cr. L. J. 71 :
8 I. C. 823 : 7 A. L. J. 1174.

—S. 225-B—Proper person to make complaint under.

In cases under S. 225-B the proper person to make the complaint is the officer from whom the escape or rescue has been effected, but a complaint by another person aware of the facts is not a nullity. *Mehr Singh v. Emperor*.

35 Cr. L. J. 86 :
146 I. C. 387 : 34 P. L. R. 1020 :
6 R. L. 222 : A. I. R. 1933 Lah. 884.

—S. 225-B—Rescue from arrest on civil warrant—Surrender next day—Offence, if complete.

Where a person is arrested on a civil warrant and while in the custody of the peon, he is rescued by a number of friends, though without offering any resistance himself and disappears until he surrenders himself the next day, he is guilty of an offence under S. 225-B, Penal Code, as he took advantage of his release from custody and got out of the way of the peon. *D. M. Attiya v. Emperor*.

24 Cr. L. J. 307 :
72 I. C. 67 : 11 L. B. R. 449 :
2 Bur. L. J. 19 : A. I. R. 1923 Rang. 133.

—S. 225-B—Rescue from arrest under defective warrant—No offence.

Warrant for arrest—Name or description of person to whom warrant is issued not given—Release of person arrested under such warrant is not an offence. *Fattu v. Emperor*.

34 Cr. L. J. 455 :
142 I. C. 887 : 1932 A. L. J. 1073 :
55 All. 109 : I. R. 1933 All. 139 :
A. I. R. 1932 All. 692.

—S. 225-B—Rescue from illegal arrest—Cr. P. C., S. 100—Search for person illegally detained—Warrant for search at particular place—Person arrested at different place—Legality of search and detention—Rescue from custody—Offence.

A Magistrate can issue a search warrant under S. 100, Cr. P. C., acting solely upon the petition of the complainant. It is not necessary before issuing the warrant that he should try out a case whether the application was *bona fide* or not. It is not illegal

PENAL CODE ACT (XLV OF 1860)

for a Magistrate to issue a warrant under S. 100, Cr. P. C., without confining it to any particular place. But an officer to whom a warrant for searching a person at a particular place is directed has no power to make a search outside that place and take the person into custody from a different place. *Chcpa Mahlon v. Emperor*.

30 Cr. L. J. 7. 175 :
113 I. C. 578 : I. R. 1929 Pat. 50 :
11 P. L. T. 31 : A. I. R. 1928 Pat. 550.

—S. 225-B—Resistance to arrest by chaukidar.

An arrest by a *chaukidar* under S. 59, Cr. P. C., in pursuance of a written order from an officer in charge of a Police station, is legal and its resistance is an offence under S. 225-B, I. P. C. *Bahubal Sircar v. Emperor*.

3 Cr. L. J. 201 :
10 C. W. N. 287.

—S. 225-B—Resistance to defective warrant—No offence—Warrant under O. XXI, r. 8, G. P. O. (Act V of 1908), in execution, not bearing seal of the Court—Resistance to it, if offence under S. 225-B.

In order that an offence under S. 225-B, Penal Code, be constituted, the apprehension must be lawful, that is to say, the warrant on which the arrest was made must have been executed with all due formalities of law. Where the warrant was one issued under O. XXI, r. 8, C. P. C., requiring the seal of the Court under O. XXI, r. 24 (2) and was not so sealed, the resistance to the arrest is not an offence under S. 225-B. *The King v. Maung Pa Shein*.

40 Cr. L. J. 845 :
183 I. C. 791 : 1939 Rang. 445 :
12 R. Rang. 116 : A. I. R. 1939 Rang. 320.

—S. 225-B—Resistance to execution of civil warrant.

It is not necessary that a bailiff executing a Civil Court warrant should, in the first instance, show the warrant. It is sufficient that he should apprise the person to be arrested of the contents of the warrant and show it, if desired, and resistance to execution is not justified merely because the bailiff fails to show the warrant in the first instance. *Superintendent and Remembrancer of Legal Affairs v. Baroda Kanta*.

23 Cr. L. J. 347 :
66 I. C. 1003 : 25 C. W. N. 815 :
A. I. R. 1921 Cal. 79.

—S. 225-B—Resistance to illegal warrant.

Accused resisting public servant executing illegal warrant is not guilty. *Jagannath v. Emperor*.

33 Cr. L. J. 887 :
140 I. C. 118 : 1932 A. L. J. 179 :
I. R. 1932 All. 611 : A. I. R. 1932 All. 227.

—S. 225-B—Resistance to illegal warrant—Warrant addressed to no one, legality of.

Where a warrant of arrest issued by a Civil Court in execution of a money decree was not addressed to the bailiff or to any other person or to the peon who attempted to execute it, and the petitioner resisted on his arrest : *Held*, that the resistance made

PENAL CODE ACT (XLV OF 1860)

was not against a lawful warrant. *Muhammad Bakhsh v. Emperor*. 1 Cr. L. J. 1091 : 16 P. R. Cr. of 1904.

—S. 225-B—Resistance to lawful arrest—Offence, ingredients of—Overt act, proof of.

In order to constitute an offence under S. 225-B, Penal Code, something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest; there must be an overt act of resistance or obstruction. There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. *Dewa Singh v. Emperor*.

20 Cr. L. J. 64 :
48 I. C. 832 : 33 P. R. 1918 Cr. :
A. I. R. 1919 Lah. 475.

—S. 225-B—Resistance to lawful authority—Offence—Warrant—Arresting officer, duty of—Procedure.

An officer armed with a warrant of arrest should produce the warrant before the person sought to be arrested and make an attempt to arrest him, and if he is in fact resisted, then the person sought to be arrested would be guilty of an offence under S. 225-B, Penal Code, inasmuch as to constitute an offence under the section something more than evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest, is required. In a serious case like this if the facts mentioned are true, a charge should be framed against the accused and the accused should be tried in the ordinary way and not summarily. *Aijaz Husain v. Emperor*.

17 Cr. L. J. 413 :
35 I. C. 973 : 14 A. L. J. 731 : 38 All. 506 :
A. I. R. 1916 All. 53.

—S. 225-B—Resistance to warrant, when no offence—Illegality of tax—Absence of seal of Court.

Under S. 225-B, Penal Code, resistance or obstruction to the apprehension of a person is punishable only if the apprehension is lawful. Where the imposition of tax for the non-payment of which the warrants are issued is itself illegal and *ultra vires*, the resistance to their execution is not punishable under the section. The omission of the seal of the Court issuing it renders a warrant void and a person offering resistance to apprehension under such a warrant does not commit an offence under S. 225-B, Penal Code. *Dasondhi v. Emperor*.

29 Cr. L. J. 265 :
107 I. C. 601 : 9 Lah. 424 :
A. I. R. 1928 Lah. 332.

—S. 225-B—Resistance, what is not.

The accused, seeing a process-server accompanied by the decree-holder and an elder coming with a warrant to arrest him in execution of decree ran into his house and would not come out when called upon to do

PENAL CODE ACT (XLV OF 1860)

so: *Held*, that this did not amount to resistance or illegal obstruction within the meaning of S. 225-B, Penal Code. *Emperor v. Gun Pal*.

4 Cr. L. J. 287 :
U. B. R. Cr. 1906 : 12 Bur. L. R. 340.

—S. 225-B—Right of person to be arrested.

Any man who is being arrested, has a right to ask the officer arresting him to show him what power he has to do so. If the arrest is under a warrant, the man arrested is entitled to ask that the warrant be shown to him to see that he is being properly arrested, and when the warrant is not shown to him and the arrest is made, such an arrest will not be a legal arrest. *In re : Appaswamy Mudaly*.

25 Cr. L. J. 563 :
81 I. C. 51 : 46 M. L. J. 447 :
19 L. W. 504 : 34 M. L. T. 95 : 47 Mad. 442 :
A. I. R. 1924 Mad. 555.

—S. 225-B—Scope of—Escape from custody—Consent of custodian, effect of—Offence.

An escape from lawful custody is none the less an offence under S. 225-B, because the escape was effected with the consent of the custodian. For the purposes of the section, the consent and neglect of the custodian are placed on the same footing. *Public Prosecutor v. Sennimalai Goundan*.

20 Cr. L. J. 208 :
49 I. C. 656 : 9 L. W. 216 :
25 M. L. T. 290 : 1919 M. W. N. 695 :
A. I. R. 1919 Mad. 864.

—S. 225-B—Scope of—Offering resistance or obstruction to lawful apprehension, what constitutes—Absconding, whether resistance or obstruction.

In order to justify the conviction of a person under S. 225-B, Penal Code, for the offence of intentionally offering resistance or illegal obstruction to the lawful apprehension of himself, something more than mere absconding is required; there must be an overt act of resistance or obstruction; some active opposition by show of force. *Emperor v. Annawadin*.

24 Cr. L. J. 848 :
74 I. C. 960 : 1 Rang. 218 :
3 Bur. L. J. 246 :
A. I. R. 1923 Rang. 231.

—S. 225-B—Scope of—Person charged of rescuing himself from lawful custody—Conviction under S. 225-B, if can stand.

A person cannot rescue himself from the lawful custody, and the conviction against him under S. 225-B cannot stand. *Moti Dusadh v. Emperor*.

41 Cr. L. J. 381 :
186 I. C. 784 : 6 B. R. 391 : 12 R. P. 553 :
A. I. R. 1940 Pat. 479.

—S. 225-B—Scope of—Resistance to lawful arrest—Intention, necessity of.

An offence under S. 225-B, Penal Code, is committed only when the resistance to arrest is intentional. A person who makes the resistance not knowing that he is being, or is about to be arrested cannot, therefore, be

PENAL CODE ACT (XLV OF 1860)

convicted of an offence under the said section. *Holmes v. Emperor*.

29 Cr. L. J. 286 :
107 I. C. 772 : A. I. R. 1928 Lah. 324.

-----S. 225-B.

Person who escapes from custody of a process-server after he is arrested and shuts himself up in a room and refuses to come out is guilty of an offence under S. 225-B. *Jamna Das v. Emperor*.

28 Cr. L. J. 753 :
103 I. C. 833 : 9 Lah. 214 :
9 L. L. J. 408 : 29 P. L. R. 196 :
A. I. R. 1927 Lah. 708.

-----Ss. 225-B, 332, 333—Right to resist illegal arrest—Arrest by Police Officer.

Even if the action of a Police Officer in arresting a person is wholly illegal, yet the person arrested or the persons who assist the arrested person are not entitled to use more force than is necessary for protection against illegal arrest. *Hardayal Singh v. Emperor*.

27 Cr. L. J. 628 :
94 I. C. 404 : 20 S. L. R. 85 :
A. I. R. 1926 Sind 190.

-----Ss. 225-B, 353—Rescue from lawful custody—Legality of warrant—Cr. P. C., Ss. 82, 174.

An Assistant Collector issued warrants for the arrest of certain witnesses, for whose attendance summonses had been issued, but who had not appeared in obedience thereto. The serving officer had not been able to effect personal service of the summonses, but had affixed copies to the houses of the persons to be served. The Court previous to issuing warrants did not comply with the provisions of S. 82, Cr. P. C., though it was apparently of opinion that there had been due service of the summonses. The officers charged with the execution of the warrants arrested one of the witnesses, but they were attacked by N and others and the man they had arrested was rescued. N was convicted under Ss. 225-B and 353, Penal Code: *Held*, that even if S. 225-B was not applicable the conviction under S. 353 of the Code was perfectly justified. *Emperor v. Narbadeshwar*. 2 Cr. L. J. 155 : 25 A. W. N. 66 : 27 All. 491.

-----Ss. 225-B, 353—Resistance to defective warrant—Absence of name of person to be arrested—Assault—Rescue—Offence.

A warrant which does not contain the name of the person to be apprehended except in the heading where he is described as a party to a suit which is non-existent, is illegal, and an assault by the person to be arrested under such a warrant on the person seeking to execute the warrant and a rescue of the person apprehended, do not constitute offences under Ss. 353 and 225-B, respectively of the Penal Code. *Hiralal Chandra Poddar v. Jogendra Nath Laskar*.

26 Cr. L. J. 2 :
83 I. C. 481 : 39 C. L. J. 452 :
51 Cal. 902 : A. I. R. 1924 Cal. 959.

PENAL CODE ACT (XLV OF 1860)

-----S. 227.

See also Burma Criminal Law Amendment (Conditionally Released Prisoners) Act, 1928, S. 2.

-----S. 227—Documentary evidence—Nature of evidence required to prove conviction, remission, conditions of remission, identity of accused and breach of conditions.

In a case under S. 227, Penal Code, the fact that the accused person has been convicted and sentenced, the fact that he was granted a remission and the conditions of the remission, should be proved by documentary evidence. Oral evidence is not admissible to prove these facts. But the identity of the accused and the fact that he has committed a breach of the condition of remission may be proved by oral evidence. *Nga Po Ngwe v. Emperor*.

31 Cr. L. J. 174 :
120 I. C. 692 : 7 Rang. 355 :
A. I. R. 1929 Rang. 278.

-----S. 227—Duty of Court.

Conditionally released prisoner—Court has to decide if such prisoner has violated conditions on which remission was granted. *Emperor v. Nga Po Min*. 34 Cr. L. J. 447 : 142 I. C. 728 : I. R. 1933 Rang. 45 : A. I. R. 1933 Rang. 28.

-----S. 228.

See also (i) Cr. P. C., 1898, Ss. 307, 424, 480, 481, 482, 483.
(ii) Penal Code, 1860, S. 179.

-----S. 228—Absence of intention—Intentional insult or interruption of judicial proceeding—Detaining witness for cross-examination—Statement of accused, whether must be recorded.

Petitioner was on his trial for some offence before a Magistrate. After a prosecution witness had been examined-in-chief and was about to leave, he gave him a push in order to detain him for cross-examination: *Held*, that it could not be said that the petitioner intended to insult or cause interruption to the Magistrate within the meaning of S. 228, Penal Code. *Pohu Ram v. Emperor*. 25 Cr. L. J. 588 : 81 I. C. 76 : A. I. R. 1923 Lah. 88.

-----S. 228—Contempt of Court.

Minor under custody of guardian appointed by Court—Understanding that minor not to be married without Court's permission—Marrying the girl without such permission does not amount to offence under S. 228—Accused is liable under Contempt of Courts Act. *Mst. Kaulashia v. Emperor*. 34 Cr. L. J. 770 : 144 I. C. 351 : 12 Pat. 1 : 14 P. L. T. 605 : I. R. 1933 Pat. 231 : A. I. R. 1933 Pat. 142.

-----S. 228—Conviction, impropriety of—Statement in application about Judge.

A person was convicted under S. 228, Penal Code, for having made a statement as follows :

PENAL CODE ACT (XLV OF 1860)

"Probably as the rumour goes, with a view to avoid this big and stiff case for reasons best known to him, the applicants came to know that he (Mr. P. N. Agha) was reported sick of high blood pressure four days before the case actually started": *Held*, that the Judge would have shown judicial balance by not taking notice of this passage in the application and by not taking proceedings under S. 228, Penal Code. *Salag Ram v. Emperor*.

38 Cr. L. J. 416 (2) :
167 I. C. 515 : 9 R. A. 550 :
A. I. R. 1937 All. 171.

————S. 228—Conviction under, maintainability of—Contempt of Court—Failure to record nature and stage of proceeding and nature of contempt—Validity of conviction.

A conviction for an offence under S. 228, Penal Code, cannot be maintained when the record does not show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult. *Jattu Ram v. Emperor*.

29 Cr. L. J. 880 :
111 I. C. 464 : 29 P. L. R. 653 :
A. I. R. 1928 Lah. 357.

————S. 228—Insult to Courts.

Accused was on his trial for riot, mischief by fire and attempt to murder, and when opening his defence, put in a written statement complaining that he was being tried by a prejudiced Judge, when asked to withdraw this latter expression, he declined to do so, whereupon the Magistrate proceeded against him summarily under S. 228, Penal Code, and convicted him thereunder: *Held*, that accused was guilty of the offence charged, because his intention clearly was to offer an insult to the Court. *Venkatrao Rajerao v. Emperor*.

23 Cr. L. J. 325 :
66 I. C. 821 : 24 Bom. L. R. 386 :
46 Bom. 973 : A. I. R. 1922 Bom. 261.

————S. 228—Insult to Court.

In order to bring a case within S. 228, Penal Code, and S. 480, Cr. P. C., it must be shown that the assessor intentionally offered an insult to the Court by appearing in Court in a dress consisting of a *paheran*, a cap and a scarf. *Emperor v. Chhaganlal Ishwardas Shah*.

35 Cr. L. J. 107 (2) :
146 I. C. 550 (2) : 35 Bom. L. R. 1025 :
6 R. B. 156 (2) : A. I. R. 1933 Bom. 478.

————S. 228—Intention—Insult or interruption to Judicial Officer—Ingredients of offence.

The chief ingredient of the offence under S. 228, Penal Code, is the intention of the offender and the question is not whether a Judicial Officer felt insulted but whether an insult was actually offered and intended. A Judicial Officer is no doubt fully entitled to maintain the dignity of the Court but he should not be too sensitive and too ready to take offence where none is intended. *Parshotam Lal Rajpal v. Emperor*.

27 Cr. L. J. 474 :
93 I. C. 698 : A. I. R. 1925 Lah. 210.

PENAL CODE ACT (XLV OF 1860)

————S. 228—Intention — Interruption or insult.

The principal ingredient of an offence under S. 228, I. P. C., is intentional insult or interruption. *In re : Surrendra Nath Banerjee*.

4 Cr. L. J. 210 :
10 C. W. N. 1062 : 4 C. L. J. 415.

————S. 228—Intentional insult—Contempt of Court.

The question under S. 228, Penal Code, is not whether the Court or officer felt insulted, but whether any insult was offered and intended. A Judicial Officer has to maintain a dignity of his Court, but he must not be too sensitive, especially when his own action is not altogether justified. *Dalip Singh v. Emperor*.

23 Cr. L. J. 9 :
64 I. C. 377 : 2 Lah. 308 :
4 U. P. L. R. Lah. 9 : 24 P. L. R. 1922.

————S. 228 —Intentional interruption.

S. 228, Penal Code, requires that the insult or interruption to the Court should be intentional. Where there is no such intention, there is no offence. *In re : Dattatraya Venkatesh Beli*.

1 Cr. L. J. 612 :
6 Bom. L. R. 541.

————S. 228—Interruption to Court, what constitutes—Mere noise, if sufficient—Action, when to be taken.

An audible remark by a person is not intentionally offering interruption to the Court so as to constitute an offence under S. 228, Penal Code. Action should be taken by Court under S. 228, Penal Code only in exceptional cases, as the Court in such cases is both a prosecutor and a Judge. *In re : Ramasamy Gounden*.

16 Cr. L. J. 610 :
30 I. C. 434 : 2 L. W. 686 :
29 M. L. J. 274 : A. I. R. 1916 Mad. 648.

————S. 228—Interruption, what amounts to.

For a conviction under S. 228, Penal Code, there must be intentional interruption to the Court. The mere fact that two persons who are being jointly tried for the same offence consult together in Court before making their statement in Court does not amount to an interruption in the proceedings of the Court, and is not, therefore, an offence under S. 228 of the Code. *Mahadeosingh v. Emperor*.

27 Cr. L. J. 66 :
91 I. C. 242 : 8 N. L. J. 190 :
22 N. L. R. 1 : A. I. R. 1925 Nag. 403.

————S. 228—Judicial proceeding.

Proceedings before Debt Settlement Board cannot be regarded as judicial proceedings except for the limited purpose of S. 228. *Hari Charan Kunden v. Kanshi Charan*.

41 Cr. L. J. 662 :
188 I. C. 686 : 44 C. W. N. 530 :
I. L. R. 1941, 2 Cal. 14 : 13 R. C. 114.
A. I. R. 1940 Cal. 286.

PENAL CODE ACT (XLV OF 1860)

———S. 228—Offence under, *ingredients of*.

There are three ingredients of the offence described in S. 228, Penal Code: (1) there must be an insult or interruption; (2) the insult or interruption must be intentional; (3) the insult must have been offered or the interruption caused to a public servant sitting in any stage of a judicial proceeding. It is not a *sine qua non* that the alleged interruption must delay the proceedings of the Court for any length of time. The determining factor is not the duration of the time but the nature of the act committed by the accused. *Gopi Chand v. Emperor*.

19 Cr. L. J. 676 :
46 I. C. 36 : 14 P. R. 1918 Cr. :
24 P. W. R. 1918 Cr. : 90 P. L. R. 1918 :
A. I. R. 1918 Lah. 65.

———S. 228—Presumption — *Petition for transfer not happily worded—Intention to insult, whether can be presumed.*

The mere fact that a petition for adjournment of a case on the ground that the accused intended to apply for transfer of the proceedings to another Court is not happily worded, does not raise a presumption that the intention of the petitioner was to offer insult to the presiding officer of the Court. *Murli Dhar v. Emperor*.

17 Cr. L. J. 163 :
33 I. C. 643 : 14 A. L. J. 247 :
. 38 All. 284 : A. I. R. 1916 All. 330.

———S. 228—Proceedings for contempt of Court.

In the case of proceedings for contempt of Court under S. 228, omission to set forth the particulars as required by S. 481, Cl. (2), Cr. P. C., is fatal to the proceedings. *Ramlal v. Emperor*.

32 Cr. L. J. 1221 :
134 I. C. 684 : 14 N. L. J. 106 :
I. R. 1931 Nag. 172 :
A. I. R. 1931 Nag. 193.

———S. 228—Proof of intention—Duty of prosecution and Court.

In all offences in the Penal Code, where the intention is an essential ingredient of the offence, that intention must be strictly made out by the prosecution. This rule applies to the offence under S. 228 and it is also the duty of the Court of Appeal to decide if the intention is proved. *Venkatrao Rajerao v. Emperor*.

23 Cr. L. J. 325 :
66 I. C. 821 : 24 Bom. L. R. 386 :
46 Bom. 973 : A. I. R. 1922 Bom. 261.

———S. 228—Prosecution under, *maintainability of*.

A notice was issued by a Munsif calling upon the petitioner to show cause why he should not be criminally prosecuted for contempt of Court and defamation in respect of a petition in an execution matter, praying for time in order to enable the applicant to move the District Judge to transfer the case from the file of the said Munsif to some other Court. Cause was shown and the petitioner was committed to the Criminal Court for charges under Ss. 228 and 500, Penal

PENAL CODE ACT (XLV OF 1860)

Code: *Held*, that the prosecution under S. 228, Penal Code, cannot stand. The Court in which an offence is committed under that section should try the offender then and there and pass order under that section. *Jogendra Narayan v. Syama Charan*.

6 Cr. L. J. 405 :
6 C. L. J. 713.

———S. 228—Scuffle in verandah of Court—*Offence.*

Accused had a scuffle with some persons in the verandah of a Court room. The *chaprasi* of the Court intervened and put an end to it. No interruption was caused to the Court and it was found that there was no intention on the part of the accused to insult the Court: *Held*, that the accused was not guilty of an offence under S. 228, Penal Code. *Manghai Ram v. Emperor*.

20 Cr. L. J. 777 (a) :
53 I. C. 617 : A. I. R. 1919 All. 330.

———S. 228—Threat to witness in Court—*Offence.*

An accused person who, during the hearing of a case, makes an impertinent threat to a witness in the box, commits an offence under S. 228, Penal Code. *Allu v. Emperor*.

24 Cr. L. J. 756 :
74 I. C. 260 : 21 A. L. J. 72 :
45 All. 272 : A. I. R. 1923 All. 193.

———S. 229—'Charged,' meaning of.

The word 'charged' is used in S. 229, Penal Code in the popular sense as implying inculpation of an alleged offence as distinguished from a charge formulated after trial. *Kalia Amra v. Emperor*.

28 Cr. L. J. 380 :
100 I. C. 988 : 29 Bom. L. R. 168 :
A. I. R. 1927 Bom. 96.

———S. 230—Scope of—*Murshidabad rupees, counterfeiting of, duty.*

S. 230, Penal Code, was intended to and does apply to Murshidabad rupees. *Emperor v. Deni*.

2 Cr. L. J. 395 :
2 A. L. J. 498 : 25 A. W. N. 184 :
I. L. R. 28 All. 62.

———Ss. 230, 247—*Coin, what is—Coin used as ornaments—Fraudulent defacement by cutting and clipping—Criminal liability.*

A coin which ceases to be used as money does not cease to be a Queen's coin within the meaning of S. 230, Penal Code, and the mere fact that a coin is being used as an ornament by soldering a ring to it does not transform it absolutely into a new article. If, therefore, an accused person clips and cuts away a coin and makes up the deficient weight by soldering with the intention of subsequently delivering it to a Bank, he would be guilty of fraudulently defacing a coin, even though on a previous occasion, the coin had been used as a wearing ornament. *Mehlab Rai v. Emperor*.

27 Cr. L. J. 426 :
93 I. C. 154 : 24 A. L. J. 842 :
48 All. 603 : A. I. R. 1926 All. 321.

PENAL CODE ACT (XLV OF 1860)

—Ss. 230, 420—'Coin,' meaning of—Uttering false coin—Cheating.

Where the offence charged consisted of selling or pawning as genuine gold *mohurs* of the reign of Shahjahan silver rupees of that reign which had been gilt or in some way covered over with gold, it was held that the offence would be that of cheating and not that of uttering false coin. A gold *mohur* of the reign of Shahjahan cannot be deemed to be "coin" within the meaning of S. 230, Penal Code, as it is not used for the time being as money. *Emperor v. Khushali*.

4 Cr. L. J. 453 :
26 A. W. N. 308 : 4. A. L. J. 43 : 29 All. 141.

—S. 231.

See also Penal Code, 1860, S. 28.

—S. 232.

See also Penal Code, 1860, S. 71.

—Ss. 232, 235—Possession of implements for counterfeiting—Counterfeiting coin—Separate sentences.

Where a person is convicted of counterfeiting coin and also of having in his possession implements and materials for the purpose of using them for counterfeiting, separate sentences under Ss. 232 and 235, Penal Code, cannot be passed upon him, inasmuch as the possession of the implements and materials is part and parcel of the transaction of counterfeiting. *Bishan Das v. Emperor*.

24 Cr. L. J. 236 :
71 I. C. 700 : 5 L. L. J. 272 :
A. I. R. 1924 Lah. 78.

—S. 233.

See also (i) Cr. P. C., 1898, Ss. 166 (2), 190 (1) (b) and (c), 403.
(ii) Penal Code, 1860, Ss. 71, 99, 147, 323.

—S. 235.

See also Penal Code, 1860, S. 230.

—S. 235—Burden of proof.

The onus of proving the fitness of the materials for the purpose of counterfeiting and of the intention of the accused to use them for that purpose lies on the prosecution. *Khadim Hus-sain v. Emperor*.

26 Cr. L. J. 247 :
84 I. C. 247 : 5 Lah. 392 :
A. I. R. 1925 Lah. 22.

—S. 235—Conviction under, legality of.

A Police party raided a certain *kotha* belonging to the accused. A tin box was found in it and a number of articles which are used for the purpose of counterfeiting coins were found in this tin box. One other person was also living in the *kotha* of the accused. He was a grown up man and had got a wife and two children : Held, that it could not be said with any degree of certainty that the *kotha* was in the possession of the accused alone and there being no evidence whatsoever to show that the accused was in any way aware of the contents of the tin box, the con-

PENAL CODE ACT (XLV OF 1860)

viotion under S. 235 could not be upheld. *Mohammad Bakhsh v. Emperor*.

A. I. R. 1935 Lah. 39.

—S. 235—Conviction of wife under—Proof.

Where in a case under S. 235, Penal Code, it is sought to make a wife liable along with her husband with whom she is living, it is necessary to prove that possession and control over the instruments and materials for counterfeiting were with her alone or with her also. *Lachminiya Thakurain v. Emperor*.

35 Cr. L. J. 9 :
146 I. C. 474 (1) : 14 P. L. T. 256 :
6 R. P. 267 (1) : A. I. R. 1933 Pat. 272.

—S. 235—Conviction under—Proof of knowledge of possession—Possession of instruments for counterfeiting coin—Accused's knowledge, if material.

For a conviction under S. 235, Penal Code, it is not only necessary that the accused should be in possession of the instruments or materials for counterfeiting coin but it should also be proved that the possession was within the accused's knowledge. *Nga San Nyein v. Emperor*.

16 Cr. L. J. 264 :
28 I. C. 152 : 8 Bur. L. T. 131 :
A. I. R. 1915 L. Bur. 64.

—S. 235—Counterfeiting coin—Sentence—Separate conviction for being in possession of various instruments, legality of.

Though the offence of counterfeiting coin is very serious and deserves an exemplary sentence, when a man is being convicted for being in possession of instruments or materials for counterfeiting coin, it is not right to convict him separately for being in possession of various parts of such instruments or materials. *Allah Wadhaya v. Emperor*.

31 Cr. L. J. 527 :
123 I. C. 525 : A. I. R. 1930 Lah. 51.

—S. 235—Mere proof of physical possession of instruments, if sufficient for conviction—Offence under—Essentials to be proved.

Before an offence can be made out under S. 235, Penal Code, it is incumbent upon the prosecution to prove not only the possession of the instrument or material but also to prove that the possession was with the intention of using the same for the purpose of counterfeiting coin or with full knowledge and belief that it was intended to be used for that purpose. *In re : Morsan*.

39 Cr. L. J. 344 :
173 I. C. 394 : 47 L. W. 173 :
1938 M. W. N. 89 : 10 R. M. 578 :
1938, 1 M. L. J. 482 :
A. I. R. 1938 Mad. 393.

—S. 235—Scope of—Counterfeiting Queen's coin—Possession of counterfeit coins—Possession.

The first essential required by Ss. 235 and 243, Penal Code, is that possession of the instruments and coin should be established against the accused person. To establish

PENAL CODE ACT (XLV OF 1860)

such possession, it is not sufficient to show that the object in question was in such a position that the accused, if he had known it, might have exercised power or control over it. There must further be evidence of some circumstance indicating that he intended to exercise such power or control or that he knew that he could do so at will and for the purpose of bringing home to any person the voluntary possession of any object, the mere proof of a fact of which he knows nothing, would be valueless. The sections also require in the accused person intention or knowledge as to the use to be made of the objects in possession. *Emperor v. Hari Maniram Sonar*.

1 Cr. L. J. 960 :
6 Bom. L. R. 887.

———S. 235—*Scope of—Possession of instruments for counterfeiting coin—Exclusive possession.*

The accused was convicted of the offence under S. 235, Penal Code, for being in possession of a box containing instruments used for counterfeiting coin. It appeared that two other brothers of the accused had access to the box and it was not proved that there was any property of the accused in it: *Held*, that the conviction was illegal for it was not shown that the accused was in exclusive possession of the box. *Abdul Majid v. Crown*.

1 Cr. L. J. 40 :
7 P. L. R. 14.

———S. 235—*Scope of—Possession of instruments for counterfeiting coins—Intention of accused—Materials incapable of striking complete coin—Offence.*

Mere possession of instruments and materials capable of counterfeiting coins is no offence. To constitute an offence under S. 235, Penal Code, possession of such instruments should be with the intention of counterfeiting coins and the intention must be proved to establish the charge. Where it is not proved that the materials in the possession of the accused were such as could be used for the purposes of counterfeiting; a conviction under S. 235, Penal Code, cannot be sustained. Where the materials found in the possession of the accused are incapable of striking a complete coin, it cannot be inferred against the accused that his intention was to manufacture coins. *Khadim Hussain v. Emperor*. 26 Cr. L. J. 247 : 84 I. C. 247 : 5 Lah. 392 : A. I. R. 1925 Lah. 22.

———S. 235—*Sentence, nature of—Counterfeiting coins.*

A deterrent sentence should be passed for an offence connected with counterfeiting of coins. *Emperor v. Sardara Singh*.

28 Cr. L. J. 305 :
100 I. C. 529 : A. I. R. 1927 Lah. 220.

———Ss 235, 243—*Possession of counterfeit coins, when amounts to offence—Hindu joint family—Coins found in verandah of joint house—Presumption—Possession of manager.*

Some counterfeit coins and a mould for counterfeiting were found buried under the

PENAL CODE ACT (XLV OF 1860)

floor of the verandah of a house occupied by a Hindu joint family, and the father as the head and managing member of the family, was convicted of being in possession of the articles found. It appeared that the verandah was used by the son of the accused as a shop, while the father looked after cultivation, and excepting the discovery of the articles, there was no evidence to account for their presence, or of the accused having been seen in possession of counterfeit coins or instruments: *Held*, that, in the circumstances, the presumption that the managing member of a Hindu family must be held to be in possession of articles found could not be used against the accused, because (a) it was impossible for him to know of tiny things placed by a junior member of the family in a place which was not shown to have been under his direct control, and (b) the evidence did not exclude the possibility of the articles having been surreptitiously introduced by a stranger. *Anrit Sonar v. Emperor*.

20 Cr. L. J. 439 :
51 I. C. 263 : 1919 Pat. 220 : 4 P. L. J. 525 :
A. I. R. 1919 Pat. 330.

———S. 238.

See also Cr. P. C., 1898, Ss. 342, 355 (2).

———Ss. 239, 240—*Offences under, nature of.*

Offences made punishable under Ss. 239 and 240 are separate and distinct offences and S. 235, Cr. P. C., permits of double conviction and consecutive sentences for offences under these sections. *Gopichand v. Emperor*.

146 I. C. 7 :
6 R. Pesh. 12 : A. I. R. 1933 Pesh. 99.

———Ss. 239, 240—*Punishments for offences under—Offences made punishable under Ss. 239 and 240 are separate and distinct offences—Cr. P. C., S. 235—Double conviction and consecutive sentences are valid.*

Offences made punishable under Ss. 239 and 240, Penal Code, are separate and distinct offences and S. 235, Cr. P. C., permits of double conviction and consecutive sentences for offences under these sections. A man who delivers counterfeit coin to another, knowing it to be counterfeit and with intent that fraud may be committed, when that coin includes both Queen's coin and coin of another country, can be separately convicted and sentenced to consecutive terms of imprisonment under both Ss. 239 and 240, Penal Code, at the same trial. S. 71, Penal Code does not apply to the case. *Gopichand v. Emperor*.

146 I. C. 7 :
6 R. Pesh. 12 : A. I. R. 1933 Pesh. 99.

———S. 240—*Conviction under, propriety of—Absence of finding as to knowledge that coins were counterfeit at the time accused became possessed of them—Conviction under S. 240, if proper—Alteration of conviction to S. 241.*

A conviction under S. 240, Penal Code, is not sustainable in the absence of a finding that the accused had the knowledge that the coins were counterfeit at the time the accused became possessed of them. Mere delivery of coins knowing that they were counterfeit is not

PENAL CODE ACT (XLV OF 1860)

enough. If, however, the facts found fulfil the requirements of S. 241, the conviction can be altered from S. 240 to S. 241. *Dost Muhammad v. Emperor.*

38 Cr. L. J. 174 (a) :
166 I. C. 44 : 9 R. N. 115 :
I. L. R. 1937 Nag. 133 :
A. I. R. 1936 Nag. 242.

-----Ss. 240, 241—Scope of—Counterfeit coins, delivery of—Guilty knowledge at time of first possession, absence of—Offence.

To attract the application of S. 240, Penal Code, it is not enough to show that the accused delivered counterfeit coins to another person but it must also be established that at the time he became possessed of such coins he knew them to be counterfeit and unless the latter ingredient is established, the offence committed is one under S. 241 and not under S. 240. *Bhan Singh v. Emperor.*

31 Cr. L. J. 736 :
124 I. C. 688 : 31 P. L. R. 235 :
I. R. 1930 Lah. 560.

-----Ss. 240, 241—Sentence—Deliberate uttering of counterfeit coins—Matter cannot be dealt with leniently.

Where the articles seized from the accused's house indicate that he had some knowledge of counterfeiting and he knew the coins were false and his action in uttering them is of a deliberate nature, the matter cannot be dealt with leniently. *Dost Muhammad v. Emperor.*

38 Cr. L. J. 174 (a) :
166 I. C. 44 : 9 R. N. 115 :
I. L. R. 1937 Nag. 133 :
A. I. R. 1936 Nag. 242.

-----Ss. 240, 243—Possession and delivery of counterfeit coin.

C, who was in possession of 104 counterfeit rupees, made over 40 of these to P with a view to their being passed on as genuine; and being found in possession of the remaining 64 rupees, was tried and convicted under S. 243, I. P. C. Subsequently C and P were tried jointly, C for delivering to P and P for possessing 40 counterfeit rupees: *Held*, that the delivery of base coin, with a view to its being changed for good money, is a distinct offence from possessing such coin and the subsequent joint trial of the accused was permissible, though the receiver of the coin might have been charged and tried with the giver for abetting an offence under S. 240, I. P. C., inasmuch as he received it with the deliberate intention of committing a fraud by passing it off as genuine. *Prosunno Kumar Das v. Emperor.*

1 Cr. L. J. 714 :
8 C. W. N. 717 : I. L. R. 31 Cal. 1007.

-----S. 241.

See also Cr. P. C., 1898, S. 241.

-----Ss. 241, 243—Possession of counterfeit coin with knowledge—Evidence—Passing off as genuine a counterfeit coin—Presumption.

Where a person tendered a false coin to another and asked for change which was refused on the ground that the coin was false, and he thereafter tendered it to another person: *Held*,

PENAL CODE ACT (XLV OF 1860)

that it might be presumed that after the first refusal, the accused knew the coin to be bad and that his attempt thereafter to induce another person to receive it constituted an offence under S. 241, Penal Code. *Ebrahim v. Emperor.*

12 Cr. L. J. 79 :
9 I. C. 449 : 4 Bur. L. T. 9.

-----S. 242.

See also Penal Code, 1860, S. 240.

-----S. 242—Conviction under, legality of—Possessing implements for counterfeiting Queen's coins—Evidence.

Where the accused was convicted of being in possession of implements for counterfeiting and of possessing counterfeit Queen's coins on the evidence of: (1) a person who now denied a conflicting statement made by him on oath on a previous occasion, and (2) of a person who by the disposition showed enmity with the accused, and (3) a Station House Officer whose evidence could not be accepted without corroboration: *Held*, that the evidence on record was not sufficient to support the conviction. *In re: Kummara Guruvayya.*

7 Cr. L. J. 132 :
3 M. L. T. 140.

-----S. 243.

See also Penal Code, 1860, Ss. 230, 235, 240.

-----S. 243—Conviction, propriety of.

Possession of counterfeit coin—Accused living in house along with other persons—Conviction for being in possession of counterfeit coin is not proper. *Tulsi Ram v. Emperor.*

37 Cr. L. J. 551 :
162 I. C. 295 : 1936 A. W. R. 456 :
1936 A. L. J. 508 : 8 R. A. 859 :
A. I. R. 1936 All. 650.

-----S. 243—Fraudulent possession of counterfeit coins—Possession of servant, when becomes possession of master.

In a trial under S. 243, Penal Code, the Jury should be directed to come to a decision: (1) whether the counterfeit coins were in the possession of the accused, or in the possession of his clerk or servant on behalf of the accused, (2) if they were in the possession of the accused, whether he knew at the time, when he became so possessed of them, that the coins were counterfeit, and (3) if they were in the possession of the clerk or servant on behalf of the accused, whether at the time the clerk or servant on behalf of the accused became possessed of the counterfeit coins, the accused himself knew that they were counterfeit. *Fateh Chand v. Emperor.* (F. B.)

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 : 44 Cal. 477 :
A. I. R. 1917 Cal. 123.

-----S. 243—Offence under, essentials to be proved.

To constitute an offence under S. 243, Penal Code, it must be proved: (1) that the accused was in possession of the coin, (2) that the coin

PENAL CODE ACT (XLV OF 1860)

was counterfeit of the King's coin, (8) that the accused was in such possession fraudulently or with intent to defraud, and (4) that at the time he became possessed of such counterfeit coin, he knew it to be counterfeit. *Fateh Chand v. Emperor*. (F. B.)

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 : 44 Cal. 477 :
A. I. R. 1917 Cal. 123.

—S. 243—Possession, proof of.

The term 'possession' as used in S. 243, Penal Code, has to be interpreted in the light of S. 27, which, by virtue of S. 7, is applicable wherever the term is used in the Code. An accused charged under S. 243 may be proved to be in possession within the meaning of that section, if he is in possession in either of two modes, namely, (a) he may be in possession of the coin himself, or (b) he may be in possession, because his wife, clerk or servant is in possession of the coin on his account. Whichever mode of possession is established, it is essential to prove that at the time the accused became possessed of the coin, he knew it to be counterfeit. *Fateh Chand v. Emperor*. (F. B.)

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 : 44 Cal. 477 :
A. I. R. 1917 Cal. 123.

—S. 243—Presumption.

Pieces of a silver of size of a rupee and counterfeit rupees of same year found concealed in a room in accused's possession. Presumption of guilt arises. *Emperor v. Sangaram*.

34 Cr. L. J. 545 (2) :
143 I. C. 152 : 9 O. W. N. 1198 :
I. R. 1933 Oudh 167 :
A. I. R. 1933 Oudh 85.

—S. 243—Proof.

In the course of a search of the house of the accused in connection with an offence under Ss. 457 and 380, Penal Code, counterfeit coins were recovered from a cloth bundle kept inside a black wooden box under lock and key. The defence was that the coins at one time belonged to the S Estate and were sold as a part of the estate's property. The purchase was ostensibly made by one M but the accused had a half-share in it, with the result that the counterfeit coins fell in his share: *Held*, that the important element of the offence that the accused was in possession of counterfeit coins "fraudulently," or with intent that fraud may be committed, has not been proved, and therefore, the charge under S. 243 had not been proved against him. *Gudar Sao v. Emperor*.

37 Cr. L. J. 1154 :
165 I. C. 603 : 17 P. L. T. 648 :
3 B. R. 63 : 9 R. P. 196 :
A. I. R. 1936 Pat. 533.

—S. 247.

See also (i) Criminal trial.

(ii) Penal Code, 1860, S. 280.

PENAL CODE ACT (XLV OF 1860)

—S. 247—Scope of—Complainant absent—Accused, acquittal of—Death of complainant—Substitution of name of legal representative—Compoundable offence.

Where the man on whose complaint a prosecution under S. 352, Penal Code, was started, died, and on his death, his nephew applied to be substituted in place of his deceased uncle: *Held*, that no substitution should be allowed and an order should be passed under S. 247 acquitting the accused on the failure of the complainant to appear at the hearing of the case, unless for some reason the Magistrate thought proper to adjourn the case to some other day. *Purna Chandra v. Dengar Chandra*. 16 Cr. L. J. 322 :
28 I. C. 688 : 19 C. W. N. 334 :
A. I. R. 1915 Cal. 708.

—S. 247—Trespass, meaning of.

The term "trespass" means an unjustifiable intrusion upon property in possession of another person. *Jhari Singh v. Emperor*.

21 Cr. L. J. 443 :
56 I. C. 235 : A. I. R. 1920 Pat. 349.

—S. 263.

See also Court Fees Act, 1870, S. 30.

—S. 263, Part I—Offence under—Essentials of—Proof of.

The first part of S. 263, Penal Code, makes it an offence to erase or remove from a stamp issued by Government for the purpose of revenue, any mark put upon it for the purpose of denoting that it has been used, if that erasing or removing is done fraudulently or with intent to cause loss to Government. Therefore, for an offence under the first part of the section, it is necessary to prove fraud or an intent to cause loss to Government. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bazlar Rahman*.

37 Cr. L. J. 923 :
164 I. C. 12 : 39 C. W. N. 542 :
9 R. C. 193 (2).

—S. 263, Part II—Offence under—Essentials of—Proof of.

Under the second part of the section, it is an offence to have in possession any stamp from which the mark put upon it for the purpose of denoting that it has been used has been erased or removed, if these facts are known to the person having such a stamp in his possession. That it to say, it is sufficient to prove that the person in whose possession the stamp was found knew that such a mark had been erased or removed from it and it is not necessary under this part of the section to prove that his possession was fraudulent or with intent to cause loss to Government. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bazlar Rahman*.

37 Cr. L. J. 923 :
164 I. C. 12 : 39 C. W. N. 542 :
9 R. C. 193 (2).

—S. 263, Part II—Offence under—Proof of.

Per Jack, J.—The fact that the stamps were

PENAL CODE ACT (XLV OF 1860)

not purchased does not, of course, necessarily show that an offence could not be committed in respect of them. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bazlar Rahman*.

37 Cr. L. J. 923 :
164 I. C. 12 : 39 C. W. N. 542 :
9 R. C. 193 (2).

—S. 265—Fraud, proof of—Necessity of.

In a case under S. 265, Penal Code, it is the duty of the prosecution to lead some evidence to prove that the accused knew the measures to be incorrect, and in the absence of any such evidence, there could be no presumption of fraudulent intention on the part of the accused, and he cannot be convicted under S. 265 of the Penal Code. *Bakhallal v. Emperor*.

30 Cr. L. J. 692 :
116 I. C. 671 : I. R. 1929 Nag. 191 :
A. I. R. 1929 Nag. 239.

—Ss. 265 and 266—Fraud—Proof of—Necessity of.

A conviction under S. 265, I. P. C. cannot be maintained where there is no complaint by purchaser; and the fact that the search took place after dark without proper precautions, the absence of proper description of the weights seized, the small discrepancies alleged, the silence of the record as to what standard weights were used for purposes of comparison and the want of proof of knowledge of fraudulent intent on the accused's part are all fatal defects in a prosecution under S. 260, I. P. C. *Sobha v. Emperor*.

9 Cr. L. J. 4 :
38 P. W. R. Cr. 1908.

—Ss. 265, 266—Fraud—Proof of—Necessity of.

Where standard weights are not prescribed, no presumption of fraud can arise in respect of short weights, and a conviction under Ss. 265-266, Penal Code, cannot be obtained unless the element of fraud is strictly proved. *Emperor v. Mi Ya Pyan*.

9 Cr. L. J. 415 :
U. B. R. Cr. 1908, 3rd Cr. Penal Code 17.

—S. 266—"False measure," meaning of.

The fact that an offence may have been committed under the Bombay Weights and Measures Act, does not make the measures false within the meaning of S. 260, I. P. C. According to the ordinary use of language, if a measure is described as false, that means that it is something other than what it purports to be. *Kanayalal Mohanlal Gujar v. Emperor*.

41 Cr. L. J. 172 :
185 I. C. 228 : 41 Bom. L. R. 977 :
12 R. B. 241 : A. I. R. 1939 Bom. 455.

—S. 266—Fraud—Meaning of.

Agreement between purchaser and seller that commodity sold should be measured by measure produced by purchaser—No representation by purchaser that measure produced was standard one—Purchaser is not guilty under S. 260. *Kanayalal Mohanlal Gujar v. Emperor*.

41 Cr. L. J. 172 :
185 I. C. 228 : 41 Bom. L. R. 977 :
12 R. B. 241 : A. I. R. 1939 Bom. 455.

PENAL CODE ACT (XLV OF 1860)

—S. 266—Fraud—Meaning of.

It is only when the seller purports to sell according to a certain standard and sells below that standard, that he can be said to be guilty of fraud. *Emperor v. Harak Chand Marwari*.

19 Cr. L. J. 145 :
43 I. C. 433 : 15 A. L. J. 897 :
40 All. 84 : A. I. R. 1918 All. 174.

—S. 266—Fraud—Meaning of.

Where both purchaser and seller are well aware of the actual measure being used, there can be no question of fraudulent intent. It is only when the seller purports to sell according to a certain standard and sells below that standard, that he can be said to be guilty of fraud. *Kanayalal Mohanlal Gujar v. Emperor*.

41 Cr. L. J. 172 :
185 I. C. 228 : 41 Bom. L. R. 977 :
12 R. B. 241 : A. I. R. 1939 Bom. 455.

—S. 266—Fraud—Proof of—Necessity of.

A necessary ingredient of an offence under S. 260, Penal Code, is fraudulent intent, and where both purchaser and seller are well aware of the actual measure being used, there can be no question of fraudulent intent. *Emperor v. Harak Chand Marwari*.

19 Cr. L. J. 145 :
43 I. C. 433 : 15 A. L. J. 897 :
40 All. 84 : A. I. R. 1918 All. 174.

—S. 266—Offence under—Mode of, trial of.

Sixty-eight persons were challaned under S. 260, Penal Code, for using short weights; sixty-eight separate cases were started. The prosecution evidence was taken only in one case. A joint reply purporting to be on behalf of all the accused was then put in, headed as being a statement on solemn affirmation, with reference to the lists of weights found to be wrong. In this statement, the accused stated that some ten years before their weights were tested and found correct and that possibly some of these old weights had to some extent worn down by use. The Magistrate treated this joint statement of all the accused as being a confession of guilt and thereupon proceeded to conviction and sentence: *Held*, that the method of joint trial of all the accused was so irregular that the convictions could not be allowed to stand. *Emperor v. Nanak Chand*.

15 Cr. L. J. 11 :
22 I. C. 155 : 20 P. R. 1913 Cr. :
36 P. L. R. 1914 : A. I. R. 1914 Lah. 42.

—S. 268.

See also (i) Cr. P. C., 1898, S. 133.
(ii) Penal Code, 1860, S. 43.
(iii) Police Act, 1861, S. 34.

—S. 268—Common nuisance.

A common nuisance cannot be excused on the ground that it causes some convenience or advantage to the person guilty of it. *Bharosa Patak v. Emperor*.

13 Cr. L. J. 183 :
13 I. C. 999 : 9 A. L. J. 355 :
34 All. 345.

PENAL CODE ACT (XLV OF 1860)

———S. 268—Public nuisance—*Proof of—Sufficiency of.*

The accused was convicted for an offence under S. 268, Penal Code, for removing a plague patient to a house where several persons were living, and one of them in consequence, was attacked with plague. The Joint Magistrate, on appeal, directed the Sub-Magistrate to take any further evidence which the prosecution could produce to prove illegality or negligence: *Held*, that further inquiry was not necessary in this case. *In re: Chabumian Sahib.* 14 Cr. L. J. 45 : 18 I. C. 269 : 12 M. L. T. 664.

———S. 268—Public nuisance—*What is.*

Allowing prickly pear to spread on to a road used by the public, is a public nuisance within the definition of the expression in S. 268, Penal Code. *In re: Molaiappa Goundan.* 30 Cr. L. J. 432 : 115 I. C. 242 : 28 L. W. 621 : 55 M. L. J. 715 : I. R. 1929 Mad. 402 : 52 Mad. 79 : A. I. R. 1928 Mad. 1235.

———S. 268—Public nuisance—*What is.*

Annoyance caused to religious ideas by innocent acts of others is not nuisance. *Janki Prasad v. Karamat Hussain.* 137 I. C. 587 : 1931 A. L. J. 624 : 53 All. 836 : I. R. 1932 All. 333 : A. I. R. 1931 All. 674.

———S. 268—Public nuisance—*What is.*

Owners of shops constructing platforms in front of them—Existence of platforms a public nuisance—Persons merely renting shops and sitting on them—are not guilty of offence under S. 268. *Puranmashi v. Emperor.* 37 Cr. L. J. 269 : 160 I. C. 269 : 8 R. A. 592 (1) : 1936 A. L. J. 200 : 58 All. 694 : 1936 A. W. R. 194 : A. I. R. 1936 All. 156.

———Ss. 268, 290—*Working rice-husking machine at night—If public nuisance.*

Upon revision, the Chief Court upheld the conviction of the petitioner under Ss. 208—290, Penal Code, for working a rice-husking machine at night in a residential quarter of a city and the order passed against him under S. 143 of the Cr. P. C. forbidding the working of the machine at night after 10 p. m. with the modification that the prohibition should last till 6 a. m. *Phiraya Mal v. Emperor.* 1 Cr. L. J. 513 : 5 P. L. R. 256 : 9 P. R. Cr. of 1904.

———Ss. 268, 291—*Slaughtering cattle in enclosed area, if public nuisance—Conviction under S. 291, when proper.*

Slaughtering of cattle in an area surrounded by walls, in itself, is not necessarily a public nuisance as defined in S. 268, Penal Code. For a conviction under S. 291, Penal Code, it must be proved that the accused had, on some previous occasion, committed a particular nuisance and had been personally enjoined

PENAL CODE ACT (XLV OF 1860)

not to repeat or continue it and had repeated or continued it. *Chuhar v. Emperor.*

30 Cr. L. J. 660 : 116 I. C. 705 : I. R. 1929 Lah. 561 : A. I. R. 1929 Lah. 252.

———S. 269.

See also Bombay City Municipal Act, 1888, Ss. 429, 430.

———S. 269—Offence under—*Essentials of.*

The gist of the unlawful act is that there must be danger of the infection spreading. If care is taken to avoid the infection, the act cannot be said to be unlawful or negligent and no offence is committed under the section. The mere failure to carry out an order which could otherwise have been *bona fide* obeyed by the avoidance of the danger of infection, cannot be regarded as an offence under S. 269, Penal Code. *In re: Kandaswami Mudaliar.* 20 Cr. L. J. 785 : 53 I. C. 689 : 26 M. L. T. 386 : 10 L. W. 627 : 38 M. L. J. 80 : 43 Mad. 344 : A. I. R. 1920 Mad. 420.

———S. 269—Offence under—*When constituted.*

The Health Officer of the Madras Municipality directed the removal of a small-pox patient to an Isolation Hospital, but the patient's father removed him instead to an isolated house under the advice of his doctor: *Held*, that the disobedience to the Health Officer's order under S. 306, Madras City Municipal Act, did not amount to an offence under S. 269, Penal Code, as the accused's action prevented the spread of the infectious disease. *In re: Kandaswami Mudaliar.* 20 Cr. L. J. 785 : 53 I. C. 689 : 26 M. L. T. 386 : 10 L. W. 627 : 38 M. L. J. 80 : 43 Mad. 344 : A. I. R. 1920 Mad. 420.

———S. 272—Mixing pig's fat with ghee whether "noxious as food".

The mixing of pig's fat with ghee and selling the mixture, would be noxious to religious and social feelings of both Hindus and Muhammadans, but such an act would not come within the meaning of the expression "noxious as food" which is used in S. 272, Penal Code. *Ram Dayal v. Emperor.* 26 Cr. L. J. 220 : 83 I. C. 1004 : 21 A. L. J. 875 : 46 All. 94 : A. I. R. 1924 All. 214.

———S. 272—"Noxious as food", meaning of.

The expression "noxious as food" which occurs in S. 272, Penal Code, means unwholesome as food or injurious to health and not repugnant to one's feelings. *Ram Dayal v. Emperor.* 26 Cr. L. J. 220 : 83 I. C. 1004 : 21 A. L. J. 875 : 46 All. 94 : A. I. R. 1924 All. 214.

———S. 273.

See also Bihar and Orissa Municipal Act, 1922, Ss. 287, 288.

PENAL CODE ACT (XLV OF 1860)

———S. 273—Interpretation.

The word "public" used in this section means human beings in general and does not include animals. *Sita Ram v. Emperor*.

7 Cr. L. J. 278 :
3 P. W. R. 10 Cr. : 3 P. R. 1908 Cr. :
139 P. L. R. 1908.

———S. 273—Milk mixed with water, whether noxious.

Milk is not rendered noxious by being mixed with water, and a person who exposes for sale milk adulterated with water is not guilty of an offence under S. 273, Penal Code. *Dhawa v. Emperor*.

26 Cr. L. J. 1441 :
89 I. C. 961 : 1 Lah. Cas. 273 :
A. I. R. 1926 Lah. 49.

———S. 273 — "Noxious." meaning of—Adulteration of ghee with vegetable oil.

The word "noxious" in S. 273, Penal Code, means harmful to health or unwholesome. *Chokraj Marwari v. Emperor*. 7 Cr. L. J. 405 :
12 C. W. N. 608.

———S. 273—Noxious food — Proof of—Necessity of.

In the absence of evidence to show that the adulteration of ghee with vegetable oil was such as to render it noxious in the above sense, such adulteration cannot be held to constitute an offence under S. 273, Penal Code. *Chokraj Marwari v. Emperor*.

7 Cr. L. J. 405 :
12 C. W. N. 608.

———S. 273—Noxious food—Proof of—Necessity of.

Knowledge that an article of food offered for sale is unfit for consumption cannot be presumed; this, like other ingredients of the offence under S. 273, Penal Code, must also be proved. *Mukund Ram v. Emperor*.

25 Cr. L. J. 537 :
77 I. C. 1001 : A. I. R. 1922 All. 273.

———S. 273—Noxious food—Sale of—Proof of—Necessity of.

To sustain a conviction under S. 273, Penal Code, it is necessary to show that the accused sold or exposed for sale an article which was, to his knowledge, noxious as food or drink. *Sheo Lal v. Emperor*.

1 Cr. L. J. 210 :
24 A. W. N. 56 : 1 A. L. J. 64 :
I. L. R. 26 All. 387.

———S. 273—Sale of noxious food for use of animals, if offence.

The sale of noxious food for the use of animals is not punishable under S. 273, Penal Code. *Sita Ram v. Emperor*. 7 Cr. L. J. 278 :
3 P. W. R. 10 Cr. : 3 P. R. 1908 Cr. :
139 P. L. R. 1908.

———S. 273—Sale of noxious food—What is.

A person cannot be convicted of an offence under S. 273, Penal Code, for selling wheat containing a large admixture of extraneous matter, e. g., dirt, wood, matches, charcoal,

PENAL CODE ACT (XLV OF 1860)

black-seeds and other matters. *Emperor v. Narumal Jawarmal*.

1 Cr. L. J. 618 :
6 Bom. L. R. 520.

———S. 273—Sale of noxious food—What is.

Where, as a matter of trade, the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund, whether the grain was good or bad, and on the pit being opened, it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under S. 273, Penal Code. *Emperor v. Salig Ram*.

3 Cr. L. J. 208 :
26 A. W. N. 23 : I. L. R. 28 All. 312.

———S. 277—Public spring—Meaning of.

The "public spring" contemplated in S. 277, Penal Code, does not include a continuous stream of water running along the bed of a river. *Emperor v. Nama Rama*. 1 Cr. L. J. 6 :
6 Bom. L. R. 52.

———S. 277—Public well—Meaning of.

A place is a public place if people are allowed access to it, though there may be no legal right to it. So, a well is a public well if people are allowed to use its water. *Ramkaranlal v. Emperor*.

18 Cr. L. J. 650 :
40 I. C. 298 : 13 N. L. R. 68 :
A. I. R. 1916 Nag. 15.

———S. 277—Spitting in public well, if offence.

Accused voluntarily spitted into a well, the water of which was used for drinking purposes : Held, that he was guilty of an offence under S. 277, Penal Code, although the degree to which his act rendered the water less fit for drinking might be small. *Ramkaranlal v. Emperor*.

18 Cr. L. J. 650 :
40 I. C. 298 : 13 N. L. R. 68 :
A. I. R. 1916 Nag. 15.

———S. 278—Scope.

Section 278, Penal Code, is directed against a public nuisance, and not a private nuisance. *Rahim Mian v. Emperor*.

30 Cr. L. J. 556 :
116 I. C. 48 : 10 P. L. T. 87 :
I. R. 1929 Pat. 288 : A. I. R. 1929 Pat. 113.

———S. 278—Throwing offensive matter into private dwelling, if offence.

Where the accused threw a human skull which was in a highly offensive condition into the house of the complainant, but there was nothing to show that the atmosphere was made noxious to the other persons dwelling in the locality : Held, that the accused was not guilty of an offence under S. 278, Penal Code, though his conduct was most reprehensible and offensive. *Rahim Mian v. Emperor*.

30 Cr. C. J. 556 :
116 I. C. 48 : 10 P. L. T. 87 :
I. R. 1929 Pat. 288 : A. I. R. 1929 Pat. 113.

———S. 279.

See also Penal Code, 1860, Ss. 107, 302, 304-A.

PENAL CODE ACT (XLV OF 1860)

—S. 279—Charge under S. 279, Penal Code—*Conviction under S. 5, Motor Vehicles Act, legality of.*

The facts which have to be proved for a conviction under S. 279, Penal Code, and for a conviction under S. 5, Motor Vehicles Act, are substantially the same and a person who is charged under one of these sections may be convicted under the other inasmuch as there is no question of prejudice to him in such a case. *Charan Singh v. Emperor.*

26 Cr. L. J. 1254 :
88 I. C. 998 : 23 A. L. J. 79 :
A. I. R. 1925 All. 798.

—S. 279—Conviction under—*Legality of.*

Accused taking all care to avoid occurrence of accident—Complainant mostly responsible for same—Accused held, not guilty. *F. G. Robson v. Emperor.*

36 Cr. L. J. 178 :
152 I. C. 699 : 7 R. Rang. 170 :
A. I. R. 1934 Rang. 194.

—S. 279—Conviction under—*Legality of.*

Accused while driving a motor car on the wrong side of the road at a blind corner between roads of considerable traffic, came in collision with a motor bicycle and caused damage to the side-car of the bicycle: Held, that the accused was guilty of an offence under S. 279, Penal Code. *Yar Mahomed v. Emperor.*

26 Cr. L. J. 253 :
84 I. C. 253 : 16 S. L. R. 147.

—S. 279—Conviction under—*Legality of.*

Pork Inspector's car chasing car containing illicit pork—Pork Inspector instructing driver to keep chased car in sight—Both cars going at dangerous speed and ignoring traffic signals—Chased car crashing—Chasing car stopped at distance of 100 feet from crashed car—Conviction of driver of chasing car under S. 279 held was proper but sentence of imprisonment was not called for in the circumstances—Pork Inspector held could not be convicted under S. 279-114. *Maung Tun Khin v. The King.*

39 Cr. L. J. 535 :
175 I. C. 133 : 10 R. Rang. 463 :
A. I. R. 1938 Rang. 97.

—S. 279—Conviction under—*Legality of.*

Tram-car being driven fast but not at excessive speed—Camel car being driven in same direction parallel to tram-car—Camel suddenly swerving to wrong side and cart colliding with tram—Tram driver held not guilty under S. 279—*Karachi Tramways Act (II of 1888), S. 15.* *Abdul Ghani Nasurullah v. Emperor.*

39 Cr. L. J. 515 :
175 I. C. 27 : 10 R. S. 272 :
A. I. R. 1938 Rang. 86.

—S. 279—Finding as to rash and negligent driving—*Necessity of.*

There must be a specific finding for conviction under Ss. 279, 288 or 304-A as to rash and negligent driving. *Ram Sewak v. Emperor.*

34 Cr. L. J. 1154 :
146 I. C. 28 : 10 O. W. N. 823 :
6 R. O. 79 : A. I. R. 1933 Oudh 391.

PENAL CODE ACT (XLV OF 1860)

—S. 279—*Interpretation.*

'Any other person,' includes occupants of vehicle which is being rashly or negligently driven. *Ejaz Ahmad v. Emperor.*

36 Cr. L. J. 1352 :
158 I. C. 305 : 1935 O. W. N. 1026 :
1935 O. L. R. 573 : 8 R. O. 86 :
A. I. R. 1936 Oudh 148.

—S. 279—*Miscellaneous.*

Persons loitering on the road are bound to make way for a motorist. *Emperor v. Homnatain Sukhailal Kaehhi.*

35 Cr. L. J. 696 :
148 I. C. 541 : 6 R. N. 186 :
A. I. R. 1934 Nag. 65.

—S. 279—*Negligence—Meaning of.*

Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public generally or to an individual in particular which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. *F. G. Robson v. Emperor.*

36 Cr. L. J. 178 :
152 I. C. 699 : 7 R. Rang. 170 :
A. I. R. 1934 Rang. 194.

—S. 279—*Negligent riding—What is.*

Riding on pillion of ordinary bicycle in crowded street is negligent act. *The King v. Bas Deo.*

41 Cr. L. J. 693 :
188 I. C. 800 : 1940 Rang. 127 :
13 R. Rang. 27 : A. I. R. 1940 Rang. 176.

—S. 279—*Offence under—Punishment for.*

Though the punishment for rash and negligent driving to the public danger provided by S. 279, Penal Code, is greater, the more general provisions of the Penal Code are calculated to remind the Magistrate, when the prosecution is under that Code, and the danger is alleged to have been caused, by rash and negligent driving, that it is not only on the part of the drivers of vehicles that the Penal Code enforces the civil duty of circumspection, from the neglect of which the improbability of culpable negligence arises. *Emperor v. H. O. Bayne.*

3 Cr. L. J. 494 :
8 Bom. L. R. 414.

—S. 279—*Rash and negligent driving—Rule to be observed.*

The driver of a motor car has no business to attempt to pass a car in front of him by going on to the wrong side of the road unless he can see the road in front is so absolutely clear of traffic coming from the opposite direction that he can get back again on to the right side of the road without any risk of accident. *Santul Jadhav v. Emperor.*

22 Cr. L. J. 324 :
61 I. C. 52 : 23 Bom. L. R. 358 :
A. I. R. 1921 Bom. 456.

—S. 279—*Rash and negligent driving of motor car—Not stopping car—Offence, gravity of.*

Every case of collision between a motor car

PENAL CODE ACT (XLV OF 1860)

and a pedestrian must be judged on its merits. Where a person by his rash and negligent driving knocks a passenger over with impunity and leaves him where he was without stopping to see the injury caused, he must be dealt with severely. *Emperor v. Aghan*.

28 Cr. L. J. 894 :
104 I. C. 910 : 4 O. W. N. 768 :
A. I. R. 1927 Oudh 441.

————S. 279—*Rash or negligent driving—Injury to occupants alone—No danger to person using public road, if offence.*

To sustain a conviction under S. 279, Penal Code, for driving a bus rashly or negligently, it must be shown that the driving complained of constituted a danger to any person using the public road, but a person who causes hurt to the occupants of the vehicle by rash or negligent driving, can be convicted of an offence under S. 337 of the Penal Code. *Mahomad Jamal v. Emperor*.

30 Cr. L. J. 1077 :
119 I. C. 536 : I. R. 1929 Sind 216 :
A. I. R. 1930 Sind 64.

————Ss. 279, 338—*Offences under—Sentence for—Propriety of.*

Rash and negligent driving resulting in grievous hurt to another—Conviction should be under S. 338 only and not under both Ss. 279 and 338. *Raghu Prasad v. Emperor*.

40 Cr. L. J. 759 (b) :
183 I. C. 224 : 20 P. L. T. 403 :
12 R. P. 131 : 5 B. R. 954 :
A. I. R. 1939 Pat. 388.

————S. 280—*Conviction under—Legality of.*

Certain country boats were anchored at a wrong place, that is in deep water in the fair way of the river. The accused who was in charge of a steam launch had no reason to suppose that the boats which had no lights were stationary. On seeing the boats ahead, the accused blew a whistle and did all he could to avoid them but could not prevent an accident: *Held*, that the accused was not guilty of any rashness or negligence and could not be convicted under S. 280, Penal Code. *Kamdar Ali v. Emperor*.

12 Cr. L. J. 362 :
11 I. C. 130 : 14 C. L. J. 656 :
15 C. W. N. 835.

————S. 280—*Negligent navigation—What is—Rash navigation of a launch—Running into a boat at anchor in itself prima facie evidence of negligence.*

It is the primary duty of steam vessels to keep out of the way of vessels lying at anchor. The fact that a launch runs into a cargo boat at anchor is in itself *prima facie* evidence of negligent navigation. *Lal Meah v. Emperor*.

12 Cr. L. J. 582 :
12 I. C. 846 : 4 Bur. L. T. 140.

————S. 280—*Rash navigation of vessel—Rashness or negligence—Proof of.*

To support a conviction under S. 280, Penal Code, there must be proof of rashness or negligence which endangers human life or is

PENAL CODE ACT (XLV OF 1860)

likely to cause hurt or injury to any other person. The immediate cause of the accident should be rashness or negligence on the part of the navigator. In considering the question of degree, the question of contributory negligence has also to be taken into account, not as a defence to the indictment, but for the purpose of determining causation and fixing a measure of the liability of the accused. *Kamdar Ali v. Emperor*.

12 Cr. L. J. 362 :
11 I. C. 130 : 14 C. L. J. 656 :
15 C. W. N. 835.

————S. 282—*Conveying person by water for hire—Culpable negligence in.*

In the middle of the monsoon, the overloading of a boat would be dangerous and it would be culpable negligence on the part of the accused to leave the whole thing in the hands of the boatman, leaving the passengers to their fate. *Tofail Ahammad Mia v. Emperor*.

35 Cr. L. J. 1373 :
151 I. C. 660 : 38 C. W. N. 200 :
7 R. C. 153 : A. I. R. 1934 Cal. 490.

————S. 283.

See also Cr. P. C., 1898, Ss. 133, 235 (1).

————S. 283—*Cart-track lying in patta land of accused closed by them and right to do so claimed—Conviction under S. 283, propriety of.*

Where a cart-track lies in the *patta* land of the accused who have put up a wall across it and claim a right to close it, the proper course would be to proceed against them under S. 138, Cr. P. C. They cannot be convicted under S. 283, I. P. C. *In re : Muthu Goundan*.

41 Cr. L. J. 391 :
186 I. C. 896 : 50 L. W. 593 :
1939 M. W. N. 1259 : 12 R. M. 701 :
A. I. R. 1940 Mad. 216.

————S. 283—*Obstructing public road—Essential of offence.*

In order to sustain a conviction under S. 283, Penal Code, of causing obstruction to a public road, the prosecution must prove that the obstruction was caused under the authority or direction of the accused. *Lalla Prasad v. Emperor*.

22 Cr. L. J. 331 (a) :
61 I. C. 59 : 19 A. L. J. 25 :
A. I. R. 1921 All. 192.

————S. 283—*Obstructing public road—Obstruction left on public road—Inference.*

Where a *prabha* left lying in a public road could not fail to cause obstruction to any person who had occasion to pass along that road: *Held*, that though obstruction to any individual was not expressly proved, it was a matter of necessary inference. *In re : Venkappa*.

16 Cr. L. J. 560 :
29 I. C. 832 : 38 Mad. 305 :
A. I. R. 1916 Mad. 847.

————S. 283—*Obstructing public road—Principal and agent—Liability.*

A person who employs an independent con-

PENAL CODE ACT (XLV OF 1860)

tractor cannot be convicted in respect of an obstruction caused by the contractor or his men and not authorised by him. *Latta Prasad v. Emperor*.

22 Cr. L. J. 331 (a) :
61 I. C. 59 : 19 A. L. J. 25 :
A. I. R. 1921 All. 192.

————S. 283 — Obstructing public road—
What is.

A public nuisance may undoubtedly be caused without any deliberate intention of causing it. Where, therefore, the accused places a *charpai* on a public road and thereby obstructs the Sub-Inspector, he commits the offence under S. 283. *Ram Krishna v. Emperor*.

36 Cr. L. J. 893 :
156 I. C. 39 : 1935 A. L. J. 1057 :
1935 A. W. R. 814 : 7 R. A. 1049 :
A. I. R. 1935 All. 746 (1).

————S. 283—Obstructing public road—*What is.*

In a trial for an offence under S. 283, Penal Code, the Magistrate asked the accused whether they drove bullock carts on a particular road at a particular time and thus caused danger by obstructing the road. One of them replied that he had driven a cart on the road at the time indicated and that he begged to be excused as he was ignorant. The other replied that he had made a mistake and begged to be excused. On these pleas both of them were convicted of an offence under S. 283, Penal Code, and sentenced to fine : *Held*, that there being no other evidence on the record, the conviction could not be maintained. *Emperor v. Ghulam Raza*.

25 Cr. L. J. 707 :
81 I. C. 195 : A. I. R. 1925 Lah. 153.

————S. 283—Obstructing public road—*What is.*

Ordinarily, every shopkeeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. The manner of the exhibition complained of as a nuisance must be necessary for the purposes of business in the sense that without it the business could not be carried on reasonably. *Emperor v. Noor Mahomed*.

12 Cr. L. J. 258 :
10 I. C. 804 : 35 Bom. 368 :
13 Bom. L. R. 209.

————S. 283—Obstructing public way—*What is.*

Where obstruction consisted in the erection of a hut encroaching upon a public thoroughfare, and not in exposing goods for sale in such hut : *Held*, that the accused who only rented the hut could not be convicted of an offence under S. 283, Penal Code. *Narain Adhikari v. Emperor*.

1 Cr. L. J. 244 :
8 C. W. N. 369.

———S. 283—Offence under—*Proof of.*

In order to sustain a conviction under S. 283, Penal Code, it must be proved that the accused actually obstructed the road, and by so

PENAL CODE ACT (XLV OF 1860)

doing, caused danger or injury to any person using that road. *Emperor v. Ghulam Raza*.

25 Cr. L. J. 707 :
81 I. C. 195 : A. I. R. 1925 Lah. 153.

————S. 283—Public road, *what is.*

The accused placed some refuse on a path lying on his land, and on the complaint of some persons who were using the path, the accused was convicted under S. 341, Penal Code. There was no evidence to show dedication of the path to, or user of the path by, the public in general. There was also no evidence to prove that the complainants had acquired any right of way by grant or prescription. There was only the oral testimony of two or three witnesses who said that for over 20 years the path had been used by the villagers : *Held*, that the path was not a public way within S. 283, Penal Code. *Pran Nath Kundu v. Emperor*.

31 Cr. L. J. 859 :
125 I. C. 600 : 33 C. W. N. 915 :
57 Cal. 526 : A. I. R. 1930 Cal. 286.

————S. 283—Public road—*What is.*

Where the privilege to use a road is enjoyed only by one particular section of the community or by inhabitants of two or three villages and not by others, the road is not a public road within the meaning of S. 283, Penal Code. *Pran Nath Kundu v. Emperor*.

31 Cr. L. J. 859 :
125 I. C. 600 : 33 C. W. N. 915 :
57 Cal. 526 : A. I. R. 1930 Cal. 286.

————S. 286.

See also Penal Code, 1800, S. 337.

————S. 287—Negligent conduct with respect to machinery—*Competent engineer employed to work machinery—Liability of employer or owner.*

Where an owner of machinery employs a competent man to work it and leaves him unfettered, he cannot be held criminally responsible for any accident due to the errors of his employee. But he would be so liable, if he compels his employee to work the boiler at an unsafe pressure. *Emperor v. Kanhaya Lal*.

4 Cr. L. J. 279 :
8 P. R. 1906 Cr.

————S. 287—Omitting to guard machinery—*Liability of partners in mill.*

A took a lease of a mill. He entered into partnership with B, and appointed the latter as its managing partner, C was the *mistri*. Part of the leather belting of a shaft which was installed in the mill protruded outside the factory building. Two girls who resided in a neighbouring house went into the mill compound for play. They went too near the belting and one was killed and the other injured. A, B and C were convicted under S. 304-A, Penal Code : *Held*, (i) that A not having taken any active part either in erecting the shaft and the belting or in the management of the mill could not be held liable even under S. 287, Penal Code, for the manner in which these had been erected or

PENAL CODE ACT (XLV OF 1860)

were worked and was not guilty of any offence; (ii) that B and C were guilty of an offence under S. 287, Penal Code, as they had omitted to take sufficient care of the machinery, but were not guilty under S. 304-A. *Mohri Ram v. Emperor*.

31 Cr. L. J. 1175 :

127 I. C. 153 : A. I. R. 1930 Lah. 453.

—S. 287—Taking precaution with machinery—Limit of—No duty to provide perfect security.

S. 287, Penal Code, does not require that the owner of machinery should provide perfect security against every possibility of danger. It is enough if he takes reasonable precautions and so much care as is sufficient to guard against such danger as can be expected within the bounds of probability. *Mulraj Dhir v. Emperor*.

31 Cr. L. J. 1232 :

127 I. C. 562 : A. I. R. 1930 Pat. 507.

—S. 288—Negligent pulling down or repairing buildings—What is.

Where a wall of a house collapsed and caused injury to the complainant's property by its fall into his compound : *Held*, that S. 288 could not apply, as it referred to Negligence in pulling down or repairing a building; that this was not a public nuisance, the danger caused being not a public one or one to people in general residing in the vicinity, but a danger to certain individuals; that the case would not also come under mischief, as when the word 'cause' was used in the Penal Code, the immediate cause was generally intended; and that the case was clearly one of tort to be decided in a civil Court. *Shah Jeychand Gopalji v. Thakar Bawa Virji*.

1 Cr. L. J. 488.

—S. 289—Ingredients of offence under Negligent management of animal—Allowing vicious animal at large—Grievous hurt—Knowledge of results—Presumption.

The essentials of an offence under S. 289, Penal Code, are that there should be probable danger to human life or limb or danger of grievous hurt from the negligence shown in the custody of the animal. If a person allows an animal in his custody to be at large in spite of its previous vicious character, the presumption is that he does so with knowledge that there is probable danger to human life or limb. *Shivbharan Ayodhya Prasad v. Emperor*.

17 Cr. L. J. 383 :

35 I. C. 815 : 18 Bom. L. R. 682 :

A. I. R. 1916 Bom. 196.

—S. 289—Negligent conduct with animal—Bull set at large nullius inquit, proprietus, —Liability for negligence to take order with such animal.

A bull set at large in accordance with the general religious practice of the Hindus becomes *nullius inquit, proprietus* and therefore ceases to be in the possession of the original owner. Should such bull become dangerous to human life, it is illegal to convict the original owner under S. 289, I. P. C., for

PENAL CODE ACT (XLV OF 1860)

negligently omitting to take order with the animal. *Emperor v. Shambu Dial*.

1 Cr. L. J. 501 :

5 P. R. Cr. of 1904 : 5 P. L. R. 308.

—S. 289—Negligent conduct with animal—Liability of owner and herdsman.

When a person has been injured by a buffalo, which was known to be a dangerous animal, the herdsman, who was present and who failed to take steps to avert the injury, is criminally liable under S. 289, Penal Code, as well as the owner who took no precautions regarding the animal. *Shamlay v. Emperor*.

6 Cr. L. J. 100 :

3 N. L. R. 90.

—S. 289—Negligent conduct with animal—Tethering horse in narrow street comes within S. 289.

The tethering of a horse in a narrow street where people cannot pass without going near the animal's hind legs is a negligent omission to take order with the animal sufficient to satisfy the requirements of S. 289, I. P. C. *Gagumal Mulchand v. Emperor*.

41 Cr. L. J. 818 :

190 I. C. 64 : 13 R. S. 55 :

1940 Kar. 445 : A. I. R. 1940 Sind 172.

—S. 289—Negligent conduct with animal—What is—Injury caused by dog—Negligence—Offence.

Owing to the negligence of the accused his dog bit the complainant and caused hurt to the latter : *Held*, that the accused was guilty of an offence under S. 289, Penal Code, and not under S. 323 of the Code. *Mg. Shwe Zin v. Mg. Po Ngwe*.

25 Cr. L. J. 565 :

81 I. C. 53 : 2 Bur. L. J. 8 :

A. I. R. 1923 Rang. 147.

—S. 289—Negligent conduct with dog—Dog biting human beings—Offence—Proof of.

To allow liberty to a ferocious animal is in itself likely to cause danger to human beings. But in the case of an ordinary domestic animal, e. g., a dog, there is no presumption that it is likely to bite human beings. Therefore, in order to obtain a conviction under S. 289, Penal Code, against the owner of a dog, it must be proved that that particular dog had a tendency or character of biting human beings. *Lachini Narain v. Emperor*.

19 Cr. L. J. 1.

42 I. C. 913 : A. I. R. 1918 All. 369.

—S. 289—Offence under — Essentials necessary to prove.

For a conviction under S. 289, Penal Code, it must be established in the affirmative that the animal in question was likely to cause grievous hurt or danger to human life, and that the accused knowingly or negligently omitted to take proper care of such animal. *Muhammad Sadiq v. Emperor*.

1 Cr. L. J. 1059 :

1 A. L. J. 605.

PENAL CODE ACT (XLV OF 1860)

—S. 290.

See also (i) Cr. P. C., 1898, S. 227.

(ii) Penal Code, 1860, Ss. 277, 278.

(iii) Police Act, 1861, S. 84.

—S. 290—Conviction under—*Legality of.*

Accused was tried for an offence under S. 34, Police Act, on the allegation that he had kept logs of wood in a public place and had thereby caused obstruction to the passers-by. The Magistrate in his judgment found that the act of the accused did not come within the purview of S. 34, Police Act, but that it amounted to an offence under S. 290, Penal Code, and convicted the accused of the latter offence, without having at any previous stage of the case explained to the accused that he would have to meet a charge under S. 290, Penal Code: *Held*, that the conviction was illegal and must be set aside. *Raghunath Kandu v. Emperor.*

27 Cr. L. J. 152 :
91 I. C. 888 : 24 A. L. J. 168 :
A. I. R. 1926 All. 227.

—S. 290—Essential ingredients of offence under.

The essential ingredient of the offence is that the act must cause any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or must necessarily cause injury, obstruction, danger or annoyance to the persons who may have occasion to use any public right. *In re: Pedagiri Perumal Naidu.*

38 Cr. L. J. 120 :
166 I. C. 36 : 1936 M. W. N. 1151 :
44 L. W. 806 : 9 R. M. 324 :
A. I. R. 1937 Mad. 130.

—S. 290—Fowling water of river, if public nuisance.

Though the fouling of the water running in a continuous stream may not be an offence under S. 277, it may well be a nuisance under S. 290 of the Code, if the evidence shows that the act was such as to cause common injury or danger to the public. *Emperor v. Nama Rama.*

1 Cr. L. J. 6 :
6 Bom. L. R. 52.

—S. 290—Offence under—*Place of trial.*

Act committed outside British India—Annoyance to persons within British India—Court in British India cannot try offence. *T. Sreeramamurthy v. Emperor.*

36 Cr. L. J. 467 :
154 I. C. 146 : 41 L. W. 82 :
1934 M. W. N. 1316 :
68 M. L. J. 211 : 7 R. M. 416 :
A. I. R. 1935 Mad. 189.

—S. 290—Offence under—*Proof of.*

In order to constitute an offence under S. 290, it is not necessary that the alleged nuisance should emit smells injurious to health; it is sufficient if they be offensive to the senses. *G. Berckefeldt v. Emperor.*

5 Cr. L. J. 45 :
5 C. L. J. 40 : I. L. R. 34 Cal. 73.

PENAL CODE ACT (XLV OF 1860)

—S. 290—Public nuisance—*Accused offering satta tickets for sale—Collection of customers before shop—Guilt of accused.*

Where the accused, a shopkeeper, sold satta tickets at his shop with the result that 10 or 15 customers collected outside and obstructed the traffic in the public street adjoining the shop: *Held*, that the assembling of the customers and the obstruction of the traffic could not be considered to be the direct or the necessary consequence of the offer of satta tickets for sale and the accused could not be convicted of public nuisance. *Nanak Chand v. Emperor.*

31 Cr. L. J. 443 :
122 I. C. 481 : 11 Lah. 236 :
31 P. L. R. 494 : A. I. R. 1929 Lah. 801.

—S. 290—Public nuisance—*Chaukidar shouting at night, whether guilty.*

A *chaukidar* employed by a private person who makes a noise at night in order to scare away thieves and bad characters from the house of his master and thereby disturbs the rest of his master neighbours is not guilty of an offence under S. 290, Penal Code. *Emperor v. Ram Charan Ahir.*

27 Cr. L. J. 1020 :
96 I. C. 876 : 3 O. W. N. 526 :
29 O. C. 302 : A. I. R. 1926 Oudh 414.

—S. 290—Public nuisance—*Obstruction caused by acts of third parties in accused's land—Offence—Liability of.*

Where some persons diverted the water of a stream into the land of the accused with the result that a certain path was obstructed, and the accused was charged with and convicted of an offence under S. 290, I. P. C.: *Held*, that the conviction was wrong and should be set aside. *Vellai Gownden v. Emperor.*

10 Cr. L. J. 10 :
2 I. C. 424.

—S. 290—Public nuisance—*Obstruction of traffic—Person responsible for obstruction, whether guilty.*

If a crowd collects in a street and obstructs the traffic so as to cause a nuisance, the person who is directly responsible for the crowd collecting is not less but more guilty than the other persons who form the crowd, and this is equally the case whether he happens to be inside or outside his shop when the Police appears. *Hapoo Mal v. Emperor.*

26 Cr. L. J. 135 :
83 I. C. 695 : 22 A. L. J. 662 :
A. I. R. 1924 All. 568.

—S. 290—Public nuisance—*Obstruction to highway—Offence.*

If any portion, however small, of a public street is encroached upon, the inevitable result is that obstruction is caused to persons who may have occasion to use the highway, for the public is entitled to use every inch of a road that has been dedicated to the public. An encroachment, therefore, upon any portion of a public highway, must necessarily obstruct the public from using the area encroached upon

PENAL CODE ACT (XLV OF 1860)

and amounts to an offence within the meaning of S. 290, Penal Code. *Emperor v. Nisar Muhammad Khan*. 26 Cr. L. J. 942 : 86 I. C. 1006 : 26 P. L. R. 127 : 6 Lah. 203 : A. I. R. 1925 Lah. 454.

————S. 290—Public nuisance—Passing urine in public place in village—Absence of evidence to show annoyance or injury to public—Act whether punishable—Essential ingredients of offence under S. 290.

The mere act of passing urine in any public place would not amount to an offence punishable under S. 290, Penal Code. Where a respectable man of fifty-five years passed urine in a grazing ground *poromboke* under cover of a tamarind tree in a village to which the Towns Nuisances Act did not apply; *Held*, that such an act does not generally cause any annoyance to the villagers in general and the accused was not guilty of an offence under S. 290 of the Penal Code. *In re : Vedagiri Perumal Naidu*. 38 Cr. L. J. 120 : 166 I. C. 36 : 1936 M. W. N. 1151 : 44 L. W. 806 : 9 R. M. 324 : A. I. R. 1937 Mad. 130.

————S. 290—Public nuisance—Placing of charpoy temporarily on road.

Placing a charpoy on the road in the bazar temporarily, does not amount to the offence of causing public nuisance. *Kamla Prasad v. Emperor*. 13 Cr. L. J. 830 : 17 I. C. 574 : 10 A. L. J. 362.

————S. 290—Public nuisance—Skinning an animal which died natural death—Whether public nuisance.

The mere act of skinning an animal which dies a natural death does not in itself constitute a public nuisance. *Emperor v. Beni*. 15 Cr. L. J. 600 : 25 I. C. 352 : 12 A. L. J. 349 : A. I. R. 1914 All. 363.

————S. 290—Public nuisance, user of premises giving rise to—Proprietors of premises, whether liable.

Speaking generally, where the user of premises gives rise to a nuisance, the person liable under S. 290, Penal Code, is the occupier for the time being, whoever he may be. A proprietor who is not in occupation of the premises is not liable unless his conduct amounts to an abetment of the offence under that section. *Bhuban Ram v. Bibhuti Bhusan Biswas*. 19 Cr. L. J. 915 : 47 I. C. 287 : 22 C. W. N. 1062 : 29 C. L. J. 262 : A. I. R. 1919 Cal. 539.

————S. 290—Public nuisance what constitutes—Annoyance of neighbours in general, necessity of—Theatre—Annoyance to neighbouring house—Conviction of proprietors, legality of.

Because the residents of a single house are annoyed by the noise of a theatre, the householder is not entitled to prosecute the proprietors of the theatre under S. 290, Penal Code. For a conviction under that section, annoyance must actually be caused

PENAL CODE ACT (XLV OF 1860)

to people in general occupying property in the vicinity. *K. T. Hing v. J. N. Silas*.

32 Cr. L. J. 185 : 128 I. C. 806 : 57 Cal. 849 : I. R. 1931 Cal. 102 : A. I. R. 1930 Cal. 713.

————S. 290—Public nuisance—What is.

Where the manager of a bone mill permitted a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity: *Held*, he was not doing an act which he was entitled to do in carrying on his trade in a reasonable way, and was therefore guilty of committing a public nuisance. *G. Berckefeldt v. Emperor*.

5 C. L. J. 40 : I. L. R. 1934 Cal. 73.

————S. 291.

Sec also (i) Cr. P. C., 1898, S. 195.
(ii) Penal Code, 1860, S. 268.

————S. 292—Advertisement in newspaper relating to book containing obscene pictures—Liability of printer and publisher.

The printer and publisher of a newspaper was convicted of an offence under S. 292, Penal Code, in respect of an advertisement relating to a book on eugenics entitled *Kashmiri Kok Shastra* which contained the following passage. "Contains.....coloured pictures (photos) of eighty-four postures of men and women with interesting descriptions of these." The book did not in fact contain pictures of men and women cohabiting: *Held*, that the advertisement would not come within the purview of S. 292, Penal Code, even if it really referred to pictures of men and women cohabiting and the conviction was illegal. *Jagat Narain Lall v. Emperor*.

29 Cr. L. J. 773 : 110 I. C. 805 : A. I. R. 1928 Pat. 649.

————S. 292—Conviction under—Revision.

If the accused is not prejudiced in his defence and the prosecution maintains that the whole book is obscene, mere failure of the prosecution to mention particular passage, is no reason for interfering in revision. *Kailash Chandra v. Emperor*. 33 Cr. L. J. 771 : 139 I. C. 461 : 36 C. W. N. 985 : 56 C. L. J. 123 : I. R. 1932 Cal. 623 : A. I. R. 1932 Cal. 651.

————S. 292—Frankness of expression, if obscenity.

A distinction should be observed between obscenity, i. e., language calculated to inflame the passions, and a certain primitive frankness of expression such as one would expect to find in a language like Marathi. It is not the primitive frankness or directness of expression which is most likely to corrupt or inflame the mind. *Emperor v. Vishnu Krishna Puranik*. 14 Cr. L. J. 248 : 19 I. C. 504 : 15 Bom. L. R. 307.

PENAL CODE ACT (XLV OF 1860)

———S. 292—*Medical publications if 'obscene'—Medical journal, description of sexual disorders in, if offence.*

Disease is a thing to be combated, and descriptions of it, with cures suggested, printed in a paper intended to reach sufferers and doctors and not likely to come into the hands of others are not criminal. On the other hand, descriptions of defective sexual enjoyment, with advice for heightening and prolonging such enjoyment in the case of normal persons, should be kept out of public prints, as they amount to incentives to sensuality. *Emperor v. Thakar Datt.*

18 Cr. L. J. 126 :
37 I. C. 478 : 7 P. W. R. 1917 Cr. :
25 P. R. 1917 Cr. : A. I. R. 1917 Lah. 288.

———S. 292—*Obscene book—Proof—Particular passages obscene—Other passages not—Liability.*

In the case of a prosecution under S. 292, Penal Code, in respect of a book alleged to be obscene, if the prosecution succeeds in showing that the detailed passages on which they rely are of an obscene character, the author's liability in respect of those passages would not be saved or avoided merely by reference to other passages in the book which contain moral precepts of an unexceptionable character. *Emperor v. Vishnu Krishna Puranik.*

14 Cr. L. J. 248 :
19 I. C. 504 : 15 Bom. L. R. 307.

———S. 292—*Obscene print—Principal and Agent—Liability of.*

The mere fact that a person is proprietor and publisher of a newspaper is not sufficient to render him criminally liable in respect of matter inserted therein by one of his servants. There must be a distinct finding that the matter complained of was inserted by the order or owing to the negligence of the proprietor. *Muntaz Ali v. Emperor.*

2 Cr. L. J. 717 :
35 P. R. Cr. of 1905 : 6 P. L. R. 588.

———S. 292—*Obscenity—Test of.*

In determining whether a pamphlet is obscene within the meaning of S. 292, Penal Code, the test to be applied is, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. In each case the question is one of fact. *Rahimatalli Mahomed-
alli v. Emperor.*

22 Cr. L. J. 513 :
62 I. C. 401 : 22 Bom. L. R. 166 :
A. I. R. 1920 Bom. 402.

———S. 292—*Obscenity—Test of.*

The term 'obscene' is not defined in Penal Code, but the test of obscenity is whether the matter charged as being obscene is likely to deprave and corrupt the minds of those who are open to such immoral influences and into whose hands the publication of the sort may fall. *Public Prosecutor v. Mantripragada Markondeyulu.*

18 Cr. L. J. 153 :
37 I. C. 521 : 5 L. W. 237 :
22 M. L. T. 169 : A. I. R. 1918 Mad. 1195.

PENAL CODE ACT (XLV OF 1860)

———S. 292—*Obscenity—Test of.*

The test in determining the obscenity of a publication is, whether the tendency of the matter charged as obscene is to deprave and corrupt those into whose hands such a publication might fall. *Khirode Chander Roy Chowdhury v. Emperor.*

13 Cr. L. J. 177 :
13 I. C. 993 : 15 C. L. J. 151 :
39 Cal. 377.

———S. 292—*Obscenity—Test of.*

The test of obscenity is whether the language complained of is such as is calculated to deprave or corrupt those whose minds are open to immoral influences. That being the test, the important point to look at would be rather the form of expression than the actual meaning, for the same meaning may be obscenely expressed by one form of language, and yet by the use of another form of language may be couched in expressions free from reproach. *Emperor v. Vishnu Krishna Puranik.*

14 Cr. L. J. 248 :
19 I. C. 504 : 15 Bom. L. R. 307.

———S. 292—*Obscenity—Test of.*

The test of obscenity, with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. *Emperor v. Hari Singh.*

2 Cr. L. J. 520 :
25 A. W. N. 203 : I. L. R. 28 All. 100.

———S. 292—*Obscenity—What is—Picture of nude woman when can be regarded as obscene under S. 292.*

A picture of a woman in the nude is not *per se* obscene, where there is nothing in it which would shock or offend the taste of any ordinary or decent-minded person. Unless the pictures of nude females are an incentive to sensuality and excite impure thoughts in the minds of ordinary persons of normal temperament who may happen to look at them, they cannot be regarded as obscene within the meaning of S. 292, I. P. C. *Sreeram Saksena v. Emperor.*

41 Cr. L. J. 617 :
188 I. C. 526 : 44 C. W. N. 479 :
71 C. L. J. 257 : I. L. R. 1940, 1 Cal. 581 :
13 R. C. 11 : A. I. R. 1940 Cal. 290.

———S. 292—*Offence under—Author is eminent, is no answer.*

Where matter contained in a book is obscene, it is no justification of an offence under S. 292, Penal Code, that the matter published was written by an eminent writer. *Public Prosecutor v. Mantripragada Markondeyulu.*

18 Cr. L. J. 153 :
37 I. C. 521 : 5 L. W. 237 :
22 M. L. T. 169 : A. I. R. 1918 Mad. 1195.

PENAL CODE ACT (XLV OF 1860)

———S. 292—*Offence under — Intention, whether material.*

The question of intention of the writer is not germane to the consideration of an offence under S. 292, Penal Code, which can only be gathered from the character of the matter contained in the book, the publisher of which must be deemed to have intended the natural consequences of his act. Where a publication is devoted to depicting the illicit passion of a libertine towards the married wife of another and is priced so low as to be within reach of the man in the street, it is an obscene publication, even though the intention of the publisher was to publish the classical composition of a standard author in the true interests of the literature. *Public Prosecutor v. Mantripragada Markondeyulu.* 18 Cr. L. J. 153 : 37 I. C. 521 : 5 L. W. 237 : 22 M. L. T. 169 : A. I. R. 1918 Mad. 1195.

———S. 292 — Religious book when obscene.

A passage may not be "obscene" in its place in a religious book but may become so by being published in a journal sold to the public. *Ghulam Hussain v. Emperor.*

18 Cr. L. J. 505 :
39 I. C. 473 : 5 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 219.

———S. 292—*Religious book, when obscene.*

But if the objectionable passages contained in a religious book are extracted and printed separately, and such passages deal with matters which are to be judged by the standard of humane conduct, and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences, such publication may not be justified on the ground that the passages formed part of a religious book. *Khironde Chander Roy Chowdhury v. Emperor.*

13 Cr. L. J. 177 :
13 I. C. 993 : 15 C. L. J. 151 :
39 Cal. 377.

———S. 292 — Religious publication, if obscene.

As the tendency of a religious publication is not to deprave or corrupt the morals of persons, it is not obscene within the meaning of S. 292, Penal Code. *Khironde Chander Roy Chowdhury v. Emperor.*

13 Cr. L. J. 177 :
13 I. C. 993 : 15 C. L. J. 151 :
39 Cal. 377.

———S. 292— *Sale of Obscene books—Offence— Intention is immaterial though it is material for sentence.*

The motive of the publishers in publishing the book does not prevent the book from being obscene if the descriptions are obscene. The motive may be taken into account as regards the question of sentence ; but whether it is obscene or not depends on the material itself and not upon the reasons for its publication. *Kailash Chandra v. Emperor.*

33 Cr. L. J. 771 :
139 I. C. 461 : 36 C. W. N. 985 :
56 C. L. J. 123 : I. R. 1932 Cal. 623 :
A. I. R. 1932 Cal. 651.

PENAL CODE ACT (XLV OF 1860)

———S. 292—*Sale of obscene work—Offence —Intention is immaterial.*

If in fact a work is one of which it is certain that it would suggest to the minds of the young of either sex or even to persons of more advanced years thoughts of a most impure and libidinous character, then its sale is a criminal offence, and it is immaterial that the accused has in view an ulterior object which is innocent or even laudable. *Khironde Chander Roy Chowdhury v. Emperor.*

13 Cr. L. J. 177 :
13 I. C. 993 : 15 C. L. J. 151 :
39 Cal. 377.

———S. 292—*Selling obscene literature —Offence—Intention is immaterial.*

If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. *Emperor v. Hari Singh.*

2 Cr. L. J. 520 :
25 A. W. N. 203 : I. L. R. 28 All. 100.

———S. 292—*Selling obscene books—Offence —Intention is immaterial.*

Where the consequences of such publication are to excite in the minds of the readers impure thoughts and to insinuate in their minds revolting ideas which had no place there before, an offence punishable under S. 292, Penal Code, is committed, and it is immaterial what the printer or editor's intention was. *Ghulam Hussain v. Emperor.*

18 Cr. L. J. 505 :
39 I. C. 473 : 5 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 219.

———S. 292—*Test of obscenity.*

The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of that sort may fall. The test is how it affects young people of either sex whose minds are impressionable. *Kailash Chandra v. Emperor.*

33 Cr. L. J. 771 :
139 I. C. 461 : 36 C. W. N. 985 :
56 C. L. J. 123 : I. R. 1932 Cal. 623 :
A. I. R. 1932 Cal. 651.

———S. 292—*The Urya book, if obscene.*

The *Urya* book *Natu Ohari* is not an obscene publication, as it is an old religious work and the incidents described in the book would not suggest immoral thoughts in those who believe in the divinity of Krishna and Radha. *Khironde Chander Roy Chowdhury v. Emperor.*

13 Cr. L. J. 177 :
13 I. C. 993 : 15 C. L. J. 151 : 39 Cal. 377.

———S. 294.

See also Cr. P. C., 1898, S. 106.

———S. 294 — *Conviction for uttering obscene song in public place, whether involves breach of the peace.*

A conviction under S. 294, Penal Code, for uttering obscene abuse in a public place may amount to a conviction for an offence involv-

PENAL CODE ACT (XLV OF 1860)

ing a breach of the peace within the meaning of S. 106, Cr. P. C. *Emperor v. Mi Kun Ya*.

1 Cr. L. J. 555 :

U. B. R. 1904, 1st Qr. P. C. 4.

—S. 294—Sentence for offence under—
Sentence of 3 months is unduly severe.

A sentence of three months for an offence under S. 294, is unduly severe. *Parliam v. Emperor*.
2 Bur. L. J. 98 : A. I. R. 1923 Rang. 253.

—S. 294-A—Conviction under—Legality of.

Petitioner issued a circular relating to a lottery in which he stated that the sweep would close on a particular day and that the Draw would take place on a certain day under the supervision of the patrons stated in the tickets and that the prize-winners would be notified of the result by telegram. Prizes of different values were mentioned in the circular and orders were solicited : *Held*, that the accused was guilty of an offence under S. 294-A, Penal Code. *Chamanlal Pranjivandas v. Emperor*.

26 Cr. L. J. 980 :

87 I. C. 516 : 27 Bom. L. R. 363 :

A. I. R. 1925 Bom. 243.

—S. 294-A—Drawing—Meaning of.

The meaning of the term 'drawing' in relation to a lottery is that the lots should be drawn by some mechanical or human agency involving their chance extraction. *Emperor v. Gurbaksh Singh*.

36 Cr. L. J. 785 :

155 I. C. 590 : 35 P. L. R. 753 :

16 Lah. 51 : 7 R. L. 738 :

A. I. R. 1934 Lah. 840.

—S. 294-A—Every one getting something for his money, whether lottery.

Giving prizes out of the profits of sale to the lucky ones who happen to receive the lucky tickets supplied to every purchaser from a shop does amount to a lottery within the meaning of S. 294-A, Penal Code, if the general public bought the tickets for the chance of a prize, and not for the sake of the things supposed to be sold. *Chakrabathy v. Emperor*.

17 Cr. L. J. 143 :

33 I. C. 319 : 9 Bur. L. T. 124 :

A. I. R. 1916 L. Bur. 56.

—S. 294-A—Gaming house—What is.

The members of the Committee of a club who exercise full control over club matters, inclusive of the premises, 'keep' the premises of the club within the meaning of that expression as used in S. 294-A, Penal Code. Where a house is kept open for a double purpose, viz., as an honest social club for those who do not desire to play as well as for the purpose of gaming for those who desire to play, it is a house opened and kept for the purpose of gaming, and it is not necessary to show that the house is used exclusively for the purpose of drawing a lottery. Where the common object is the keeping of a place for the purpose of drawing a lottery not authorized by Government, all who engage in such an object are individually guilty and can be prosecuted jointly or

PENAL CODE ACT (XLV OF 1860)

severally. A Collector who is a Revenue Officer is not authorized to sanction a lottery, nor would the mere act of taking income-tax from the club on the profits of the lotteries constitute authorization. *Emperor v. A. J. Cooke*.

15 Cr. L. J. 243 :

23 I. C. 195 : 7 Bur. L. T. 187 :

A. I. R. 1914 L. Bur. 23.

—S. 294-A—Interpretation.

The word 'drawing' is used in S. 294-A, Penal Code, in its physical sense. *Vasirally v. Emperor*.

30 Cr. L. J. 9 :

112 I. C. 777 : 30 Bom. L. R. 1426 :

I. R. 1929 Bom. 50 : 53 Bom. 57 :

A. I. R. 1928 Bom. 550.

—S. 294-A—Interpretation.

The word 'goods' in S. 294-A, Penal Code, applies not only to movables but also to immovable property. *In re : O. M. Peddammalla Reddi*.

28 Cr. L. J. 4 (a) :

99 I. C. 36 : 24 L. W. 655 :

51 M. L. J. 685 : 1926 M. W. N. 949 :

38 M. L. T. 136 : 50 Mad. 479 :

A. I. R. 1927 Mad. 66.

—S. 294-A—Interpretation.

The words 'not authorized' in S. 294-A, Penal Code, mean no more and no less than 'unless authorized, or not having been authorised or without authority,' and are in the nature of an exception or proviso and under S. 105 of the Evidence Act, the burden of proof lies on the accused to show that the lottery was authorised by Government. *Emperor v. A. J. Cooke*.

15 Cr. L. J. 243 :

23 I. C. 195 : 7 Bur. L. T. 187 :

A. I. R. 1914 L. Bur. 23.

—S. 294-A—Keeping lottery house.

Company for conduct of lottery is illegal even if some objects are philanthropic. *Universal Mutual Aid and Poor Houses Association, Limited, Madras v. A. W. Thoppa Naidu*.

33 Cr. L. J. 792 :

139 I. C. 644 : 1932 M. W. N. 904 :

63 M. L. J. 554 : 36 L. W. 610 :

56 Mad. 26 : I. R. 1932 Mad. 759 :

A. I. R. 1933 Mad. 16.

—S. 294-A—Keeping lottery office—Lottery—Delivery of ticket books for sale of tickets—Offence.

Where ticket books relating to a lottery were delivered by the accused to several persons with a view to the tickets therein being sold by these persons to others : *Held*, that the delivery of the ticket books could not be considered in any sense to be a mere casual or gratuitous delivery and the accused was guilty of an offence under S. 294-A, Penal Code. *Emperor v. Diwan Chand Jolly*.

31 Cr. L. J. 692 :

124 I. C. 347 : A. I. R. 1930 Lah. 81.

—S. 294-A—Keeping lottery office.

Offer of cash bonus to donors by drawing lots—Scheme is lottery and company conducting it should be wound up. *Universal*

PENAL CODE ACT (XLV OF 1860)

Mutual Aid and Poor Houses Association, Limited, Madras v. A. D. Thoppa Naidu.

33 Cr. L. J. 792 :
139 I. C. 644 : 1932 M. W. N. 904 :
63 M. L. J. 554 : 36 L. W. 610 :
56 Mad. 26 : I. R. 1932 Mad. 759 :
A. I. R. 1933 Mad. 16.

————S. 294-A—Keeping lottery office.

The office or place, the keeping of which is punishable under the 1st part of S. 294-A is a place or office where the actual drawing of the lottery takes place. Keeping a small office for doing preliminary business and correspondence and not intended and fit for the drawing purposes, is not indictable under this part of the section. *Madan Gopal v. Emperor.*

11 Cr. L. J. 382 :
6 I. C. 620 : 14 P. W. R. 1910 Cr. :
17 P. R. 1910 Cr. : 92 P. L. R. 1910.

————S. 294-A—“Keeping office for purpose of drawing lottery”, if offence.

An offence under S. 294-A, Penal Code, is made out when it is shown that the accused kept an office where he carried on the necessary preliminary work for running a lottery and received the lottery moneys and which he held out to the public as the place where the lottery would finally be drawn. *Ramaswami Mudaliar v. Emperor.*

23 Cr. L. J. 688 :
69 I. C. 272 : 16 L. W. 757 :
44 M. L. J. 595 : A. I. R. 1923 Mad. 187.

————S. 294-A—Liability.

Officers of Association are liable for an offence under S. 294-A. *The General Relief Association v. Emperor.*

33 Cr. L. J. 678 :
138 I. C. 751 : 33 P. L. R. 824 :
I. R. 1932 Lah. 534 ;
A. I. R. 1932 Lah. 581.

————S. 294-A—Lottery, meaning of.

A lottery is an arrangement for the distribution of prizes by chance among persons purchasing tickets. *F. A. D'Souza v. Emperor.*

27 Cr. L. J. 777 :
95 I. C. 313 : 20 S. L. R. 192 :
A. I. R. 1926 Sind 213.

————S. 294-A—Lottery not sanctioned by Government — Handbill announcing sale of lottery tickets—Publication of handbill, whether offence.

The publication of a handbill announcing that tickets of a certain lottery not sanctioned by the Government can be had at a particular place is not sufficient to constitute a publication of a proposal to pay any sum on any event or contingency relative or applicable to the drawing of any ticket in any lottery not authorised by Government, and is, therefore, not an offence under para. 2 of S. 294-A, Penal Code. *Emperor v. Rachappa Muriappa Shabadi.*

26 Cr. L. J. 222 :
83 I. C. 1006 : 26 Bom. L. R. 968 :
A. I. R. 1925 Bom. 26.

————S. 294-A—Lottery, what amounts to.

The accused who was a dealer in cigarettes had caused five rupee notes to be inserted in

PENAL CODE ACT (XLV OF 1860)

some packets of cigarettes so that any purchaser of a packet of cigarettes stood a chance of getting a packet containing a five rupee note, and published many handbills in which these facts were set out. The accused was convicted on these facts, for an offence under S. 294-A (2), Penal Code, and fined : *Held*, that though the scheme published by the accused amounted to a lottery, the accused could not be convicted under S. 294-A (2) inasmuch as there was no actual drawing of lots, which is an essential ingredient of the offence. *Vazirally v. Emperor.*

30 Cr. L. J. 9 :
112 I. C. 777 : 30 Bom. L. R. 1426 :
I. R. 1929 Bom. 50 : 53 Bom. 57 :
A. I. R. 1928 Bom. 550.

————S. 294-A—Lottery—What is.

A scheme for distributing prizes, etc., of the following description is a 'lottery' within the meaning of the 2nd part of the section : "Every subscriber pays Rs. 10-8 and gets a bond for Rs. 10. This sum is guaranteed by one of seven Banks and not only is negotiable but can be cashed at the Bank at par at any time. The draws were to start when 2,000 tickets had been sold and at stated intervals, further drawings were to be made until every one had got a prize or had had their money returned. Those who did not draw prizes in the first draw would go on drawing at each distribution till they got a prize, or decided to withdraw their money. Thus the original ten rupees was absolutely safe, the extra eight annas was to cover the cost of correspondence, etc". *Madan Gopal v. Emperor.*

11 Cr. L. J. 382 :
6 I. C. 620 : 14 P. W. R. 1910 Cr. :
17 P. R. 1910 Cr. : 92 P. L. R. 1910.

————S. 294-A—Lottery—What is.

Avowed object of association charitable—Interest derived from capital divisible by lots—No provision for return of capital—Transaction amounts to a lottery. *A. D. Raj v. Emperor.*

33 Cr. L. J. 696 :
138 I. C. 687 : 10 Rang. 232 :
I. R. 1923 Rang. 166 :
A. I. R. 1932 Rang. 143.

————S. 294-A—Lottery—What is.

Scheme for giving of gramophones as prizes to subscribers to monthly chits—Winners relieved from future subscription—Nature of transaction held lottery. *Public Prosecutor v. Munisami Naidu.*

35 Cr. L. J. 1232 :
150 I. C. 1119 : 1934 M. W. N. 265 :
40 L. W. 26 : 67 M. L. J. 163 :
57 Mad. 923 : 7 R. M. 66 :
A. I. R. 1934 Mad. 464.

————S. 294-A—Lottery—What is.

Sweets purchaser getting ticket entitling him to try his luck at lottery—Transaction held within the meaning of S. 294-A. *Dhana v. Emperor.*

35 Cr. L. J. 1249 :
150 I. C. 1093 : 28 S. L. R. 112 :
7 R. S. 39 : A. I. R. 1934 Sind 69.

PENAL CODE ACT (XLV OF 1860)

—S. 294-A—*Lottery—What is.*

The accused ran two lotteries in the following manner: (i) Tickets numbered 1 to 100 were put into a pitcher and the public purchased other tickets and chose a number consisting of either one or two digits which at the time of the sale was written upon their tickets. In the evening three tickets were drawn from the pitcher, their sum was taken and the last two figures of their sum became the winning numbers. Those persons were then adjudged to be winners whose tickets bore either one or both of the last two digits of the total so obtained; (ii) Instead of drawing three tickets from a pitcher the average price at which the various sales of opium had taken place that month in Calcutta was calculated and prizes were awarded to those persons who had predicted the last or the last two figures of that price: *Held*, (1) that in the first case the distribution of prizes was determined solely by the fortuitous issue of numbers from the pitchers and that it was essentially a lottery within the meaning of S. 294-A of the Code: (2) that since there was no drawing in this particular case, the transaction did not render the accused liable to punishment under S. 294-A, Penal Code. *Emperor v. Mukandi Lal*.

18 Cr. L. J. 768 :
41 I. C. 144 : 35 P. R. 1917 Cr. :
33 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 93.

—S. 294-A—*Offence under—Essential ingredients of.*

The actual drawing of lots is an essential ingredient of the offence under the said section. *Vazirally v. Emperor*. 30 Cr. L. J. 9 :
112 I. C. 777 : 30 Bom. L. R. 1426 :
I. R. 1929 Bom. 50 : 53 Bom. 57 :
A. I. R. 1928 Bom. 550.

—S. 294-A—*Offence under—When constituted.*

Irish sweepstake ticket containing proposal for payment of different sums to ticket holders—Publication of such report is offence under S. 294-A. *Rabindra Nath Dhar v. Emperor*.

34 Cr. L. J. 518 :
143 I. C. 113 : 56 C. L. J. 539 :
I. R. 1933 Cal. 336 : A. I. R. 1933 Cal. 332.

—S. 294-A—*Offence under—When constituted.*

Publication of scheme of lottery—Scheme not contemplating drawing by mechanical or human agency involving their chance extraction—No offence is committed. *Emperor v. Gurbaksh Singh*.

36 Cr. L. J. 785 :
155 I. C. 590 : 35 P. L. R. 753 :
16 Lah. 51 : 7 R. L. 738 :
A. I. R. 1934 Lah. 840.

—S. 294-A—*Offence under—When constituted.*

Where on the face of a lottery ticket it is stated that the prize, if any, due to the number on the ticket will be paid, it contains a proposal inviting persons to take part in the lottery, and offering such a ticket for sale amounts to publication of said proposal and constitutes an

PENAL CODE ACT (XLV OF 1860)

offence under S. 294-A of the Penal Code. *F. A. D'Souza v. Emperor*.

27 Cr. L. J. 777 :
95 I. C. 313 : 20 S. L. R. 192 :
A. I. R. 1926 Sind 213.

—S. 294 A—*Proposal—What is.*

A drawing list which sets out on the first page the list of the winners drawn on a certain day in the month of May, and on its back contained the description: "The sweep for June is now open. It will close on the 20th June 1913. Settling day 23rd June 1913. All tickets must be taken in the name of a member, etc." was held to be a proposal within the meaning of S. 294-A, Penal Code. *Emperor v. A. J. Cooke*.

15 Cr. L. J. 243 :
23 I. C. 195 : 7 Bur. L. T. 187 :
A. I. R. 1914 L. Bur. 23.

—S. 294-A—*Prosecution for offence under—Withholding of—Effect of.*

Government declaring chit fund illegal—Prosecution withheld provided chit funds were wound up within certain time and subscriptions paid up—Accused's failure—Prosecution under S. 294-A—Withholding of prosecution held not tantamount to authorization of chit fund. *Public Prosecutor v. Soosai Pillai*.

39 Cr. L. J. 916 :
177 I. C. 640 : 47 L. W. 573 :
1938 M. W. N. 431 : 1938, 1 M. L. J. 724 :
11 R. M. 363 : A. I. R. 1938 Mad. 715.

—S. 294-A—*Publication of proposal—When offence.*

Per *Tyabji, A. J. C.*—The Legislature could not have intended that the communication of a single proposal for participating in a lottery (for instance the offer of a single ticket or inquiry about one) should be punishable as a publication of the proposal for a lottery, or to the abatement of that offence. Per *Kennedy, J. C.*—A mere casual and gratuitous delivery of a lottery ticket is not necessarily the publication for a proposal within the meaning of S. 294-A, Penal Code. *F. A. D'Souza v. Emperor*.

27 Cr. L. J. 777 :
95 I. C. 313 : 20 S. L. R. 192 :
A. I. R. 1926 Sind 213.

—S. 294-A—*Raffle of ginning factory, whether constitutes lottery.*

The publication of an advertisement of a lottery by which a ginning factory is to be raffled, is an offence within the meaning of S. 294-A, Penal Code. *In re : C. M. Peddammalla Reddi*.

28 Cr. L. J. 4 (a) :
99 I. C. 36 : 24 L. W. 655 :
51 M. L. J. 685 : 1926 M. W. N. 949 :
38 M. L. T. 136 : 50 Mad. 479 :
A. I. R. 1927 Mad. 66.

—S. 295.

See also (i) Evidence Act, 1872, S. 9.
(ii) Penal Code, 1860, S. 297.

—S. 295—*Conviction under, offence of—Legality of.*

Four accused entering complainant's house and

PENAL CODE ACT (XLV OF 1860)

one of them demolishing wall being constructed by him and throwing away *pindi* of Naika Gossain worshipped by complainant and his family, into drain—Conviction under S. 295 is erroneous—Accused can be convicted under S. 297. *Amir Hassan v. Emperor*.

41 Cr. L. J. 810 :
189 I. C. 867 : 21 P. L. T. 121 :
6 B. R. 874 : 13 R. P. 174 :
A. I. R. 1940 Pat. 414.

———S. 295—'Defile', meaning of.

The word 'defile' in S. 295, Penal Code, is not confined to the idea of making dirty but is also extended to ceremonial pollution, which, however, must be proved. *Kutti Chami Moothan v. Rama Pallar*.

19 Cr. L. J. 960 :
47 I. C. 812 : 24 M. L. T. 181 :
41 Mad. 980 : A. I. R. 1919 Mad. 755.

———S. 295—'Defile'—Meaning of.

Where the accused, who belonged to the Moothan caste in Malabar and claimed the status of Vaisyas, entered into the Nallambalam of a temple which was open to non-Brahmins : Held, that their act did not amount to 'defiling' the temple within the meaning of S. 295, Penal Code. *Kutti Chami Moothan v. Rama Pallar*.

19 Cr. L. J. 960 :
47 I. C. 812 : 24 M. L. T. 181 :
41 Mad. 980 : A. I. R. 1919 Mad. 755.

———S. 295—Disturbing religious ceremony—Carrying flags to temple through public streets, if offence.

The carrying of flags through public streets of a temple by a procession of certain *Lodhas* with the sanction of public authorities, is to be considered as the performance of a religious ceremony and the assembly engaged in the carrying of these flags is an assembly lawfully engaged in the performance of a religious ceremony. An attack on such a procession constitutes an offence punishable under S. 296, Penal Code. *Masit v. Emperor*.

12 Cr. L. J. 573 :
12 I. C. 837 : 34 All. 78 :
8 A. L. J. 1150.

———S. 295—Insulting religion of any class.

Damage to mosque by placing rafters of house in walls thereof—Absence of knowledge of damage or insult to Muhammadan religion—No offence. *Sohana Ram v. Emperor*.

23 Cr. L. J. 426 :
67 I. C. 586 : 3 L. L. J. 247.

———S. 295—Killing cow with intention of offending religious feelings of Hindus, if offence.

The killing of a cow with the intention or knowledge of offending the religious susceptibilities of Hindus is not an offence under S. 295, Penal Code. Where in a village the Sikhs killed some fowls by the process known as *ghatka* in the vicinity of a mosque, thereby causing annoyance to the Muhammadans, who in retaliation killed a cow with the knowledge that the Sikhs would be likely to consider such killing as an insult to their religion : Held,

PENAL CODE ACT (XLV OF 1860)

that the Muhammadans were not guilty of an offence under S. 295, Penal Code. *Ali Muhammad v. Emperor*.

19 Cr. L. J. 314 :
44 I. C. 330 : 1 P. W. R. 1918 Cr. :
160 P. L. R. 1917 : 10 P. R. 1918 Cr. :
A. I. R. 1918 Lah. 365.

———S. 295—Killing of dedicated bull, if offence.

The killing of a dedicated bull for the sake of the meat and the value of the skin, is not an offence under S. 295, Penal Code. *Pir Ali v. Emperor*.

21 Cr. L. J. 453 :
56 I. C. 457 : A. I. R. 1920 Pat. 550.

———S. 295—Scope.

Ahir wearing sacred thread after due ceremony—Brahmins breaking it away—Case, does not come under S. 295. *Sheo Shankar v. Emperor*.

41 Cr. L. J. 550 :
188 I. C. 127 : 1940 O. L. R. 309 :
1940 O. W. N. 509 : 12 R. O. 427 :
A. I. R. 1940 Oudh 348.

———S. 295—Untouchable entering temple—Intention of defiling sacred object—Offence.

When custom that has held for many centuries ordains that an untouchable, whose very touch is, in the opinion of devout Hindus, pollution, should not enter the enclosure surrounding the shrine of any Hindu God, and when an untouchable with that knowledge deliberately enters a temple and defiles the idol, he commits an offence within the purview of S. 295, Penal Code. *Atma Ram v. Emperor*.

25 Cr. L. J. 155 :
76 I. C. 299 : A. I. R. 1924 Nag. 121.

———S. 295-A—Charge under—Fact that accused wrote pamphlet in reply to one written by member of other religion, whether defence.

It is no defence to a charge under S. 295-A, for any one merely to say that he was writing a pamphlet in reply to one written by an adherent of another religion who has attacked his own religion. If he chooses to write such a pamphlet, he must take care of the language which he employs. *The King v. Nga Shwe Hpi*.

40 Cr. L. J. 640 :
182 I. C. 96 : 1939 Rang. 302 :
11 R. Rang. 514 : A. I. R. 1939 Rang. 199.

———S. 295-A—Offence under—What is.

What is punishable under S. 295-A is not so much the matter of the discourse, written or spoken, as the manner of it. The Court must, therefore, look with great care at the words used. If the words used caused persons to feel insulted but were only such as might possibly wound, and in fact did so, then there would be no offence under the section; if the words used were bound to be regarded by any reasonable man as grossly offensive and provocative, and were maliciously intended to be regarded as such, then an offence would have been committed. *The King v. Nga Shwe Hpi*.

40 Cr. L. J. 640 :
182 I. C. 96 : 1939 Rang. 302 :
11 R. Rang. 514 : A. I. R. 1939 Rang. 199.

PENAL CODE ACT (XLV OF 1860)

—Ss. 295, 447—*Offences under sections, whether separate offences.*

When a Hindu temple is entered into and its property damaged, the offence under S. 447, Penal Code, cannot be dissociated from the offence under S. 295, Penal Code, which only had expression in the entry into the temple. The two offences are really one. *Bahra v. Emperor.* 25 Cr. L. J. 1173 :

82 I. C. 37 : A. I. R. 1925 Oudh 50.

—S. 296—"Assembly" within meaning of S. 296.

For the purpose of S. 296, I. P. C., three persons gathered together for purposes of worship are sufficient to constitute an "assembly." *Emperor v. Aftab Mohammed Khan.* 41 Cr. L. J. 647 :

188 I. C. 649 : 1940 A. L. J. 206 :

13 R. A. 55 : A. I. R. 1940 All. 291.

—S. 296—Attacking procession passing through private place, if offence.

Muhammadans taking procession through private grove—Fight between Hindus and Muhammedans—Right to take procession through grove not established—Offence under S. 296 held not committed by Hindus. *Bulgar Singh v. Emperor.* 34 Cr. L. J. 778 :

144 I. C. 540 : 10 O. W. N. 582 :

I. R. 1933 Oudh 257 :

A. I. R. 1933 Oudh 196.

—S. 296—Causing a disturbance, what amounts to.

The essential ingredient of an offence under S. 296, Penal Code, is the doing of an act which causes a disturbance. The mere spreading of false rumours, although they might result in most serious consequences, cannot be described as "causing a disturbance." *Mohammad Husain v. Emperor.*

20 Cr. L. J. 421 :

51 I. C. 197 : 17 A. L. J. 820 :

A. I. R. 1919 All. 188.

—S. 296—Disturbing assembly lawfully engaged in worship on highway, if offence.

As no assembly can be lawfully engaged within the meaning of S. 296, Penal Code, on a highway, the accused could not be convicted of an offence under that section for having taken possession of drums from certain boys who were beating them on a public road to summon people for a procession during Muharram, which the accused restored to them the next day. *Emperor v. Dhalu Ram.*

10 Cr. L. J. 445 :

3 I. C. 981 : 119 P. L. R. 1909.

—S. 296—Disturbing religious assembly—Proof of—Procession in public streets before the mosque—Hours of worship notified by District Magistrate—Procession during the notified hours.

It is not necessary for the purpose of S. 296, Penal Code, that the accused should have had an active intention to disturb religious worship. It is sufficient if knowing they were likely to disturb it by their

PENAL CODE ACT (XLV OF 1860)

music, they took the risk and did actually cause disturbance. *Public Prosecutor v. Sunku Seethaiah.* 11 Cr. L. J. 400 :

6 I. C. 774 : 7 M. L. T. 430.

—S. 297.

See also Penal Code, 1860, S. 448.

—S. 297—Applicability.

While S. 297 is comprehensively worded, the offence at which it strikes, is intimately bound up with the commission of a trespass or, subject to that, of deliberately offering an indignity to a corpse or causing disturbance to a body of persons assembled for religious purposes. *Mustaffa v. Motilal.*

10 Cr. L. J. 160 :

2 I. C. 825.

—S. 297—Burial ground, if must be in use.

It is not necessary for the purposes of S. 297, Penal Code, that a burial ground should be in use. If it has been a burial ground and if there are visible graves in it, it becomes a depository for the remains of the dead; and any act of trespass with the specified intention or knowledge, by which the feeling of the relations of the dead are wounded, would come under the section. *Jhulam Sain v. Emperor.*

14 Cr. L. J. 117 :

18 I. C. 677 : 40 Cal. 548 :

17 C. W. N. 534.

—S. 297—Digging up graves and exposing bones of dead bodies by joint owner of grove land, if offence.

Where a joint owner in the course of demarcating his share in joint grove land, dug up certain graves which were in that grove and exposed the bones of the persons buried there, in spite of the remonstrances of their relations, is guilty of an offence under S. 297, Penal Code. *Ram Prasad v. Emperor.*

12 Cr. L. J. 532 :

12 I. C. 300 : 8 A. L. J. 927 : 33 All. 773.

—S. 297—Disturbance—What amounts to.

The grand-daughter-in-law of the complainant having died, the complainant and his relations took the body out to the cremation ground and were preparing to cremate it, when the accused came there and told them not to cremate the body, and on being asked why, said that they would state the reason to the Police: *Held*, that the mere utterance of the words "do not cremate the body," unaccompanied by any attempt to prevent the cremation, could not be regarded as a disturbance to the persons assembled for the performance of the funeral ceremonies within the meaning of S. 297, Penal Code. *Mangat v. Emperor.*

20 Cr. L. J. 145 (a) :

49 I. C. 337 : 2 P. R. 1919 Cr. :

4 P. W. R. 1919 Cr. : 44 P. L. R. 1919 :

A. I. R. 1919 Lah. 433.

—S. 297—Gist of offence—Offence under S. 297, gist of.

The gist of an offence under S. 297 is

PENAL CODE ACT (XLV OF 1860)

trespass, and before a person can be convicted under that section, it must be proved that there was a trespass by him with the intention and in the places mentioned in the section. *Jhari Singh v. Emperor*.

21 Cr. L. J. 443 :

56 I. C. 235 : A. I. R. 1920 Pat. 349.

————S. 297—Interpretation.

Per *LeRossignol, J.*—The word “trespass” in S. 297, Penal Code, has not any peculiar meaning. *Umar Din v. Emperor*.

16 Cr. L. J. 683 :

30 I. C. 731 : 23 P. R. 1915 Cr. :

40 P. W. R. 1915 Cr. :

A. I. R. 1915 Lah. 409.

————S. 297—Putting obstacles in burying dead child, if offence.

An accused person who deliberately puts obstacles in the way of a complainant burying his dead son because he has not joined the Khilafat Movement but does not use violence to him though he effectively boycotts him, is not guilty of an offence under S. 297, Penal Code, of having offered an indignity to the corpse of the dead child and cannot also be bound over to keep the peace inasmuch as the act is an act of boycotting and not a criminal act under any law. *Amanat v. Emperor*.

23 Cr. L. J. 72 :

65 I. C. 424 : 20 A. L. J. 93 :

A. I. R. 1922 All. 184.

————S. 297—Sexual intercourse in mosque, if offence.

Where a man and a woman enter a mosque and have sexual intercourse in it, they are guilty of an offence under S. 297, Penal Code. *Magsud Husain v. Emperor*.

24 Cr. L. J. 711 :

73 I. C. 935 : 21 A. L. J. 455 :

45 All. 529 : A. I. R. 1924 All. 9.

————S. 297—Trespass in burial place not in use, if offence.

A particular piece of land used to be a burial ground about 14 years ago. Since then under the orders of the Municipality, it had not been used for burying purposes, but there were graves still visible on it. The accused commenced to raise a shed over the grave of the complainant's relations with the knowledge that the feelings of the complainant would be likely to be wounded thereby: *Held*, that the accused was rightly convicted under S. 297, Penal Code. *Jhulam Sain v. Emperor*.

14 Cr. L. J. 117 :

18 I. C. 677 : 17 C. W. N. 534 : 40 Cal. 548.

————S. 297—Trespass—Meaning of.

Per *Richardson, J.*—The term “trespass” in S. 297, Penal Code, means any violent or injurious act, and is not restricted to the same meaning as that attached to the expression “criminal trespass” by S. 441 of the Code. *Jhulam Sain v. Emperor*.

14 Cr. L. J. 117 :

18 I. C. 677 : 17 C. W. N. 534 : 40 Cal. 548.

————S. 297—‘Trespass,’ meaning of.

S. 297, Penal Code, does not require the prosecution to prove that the trespass had

PENAL CODE ACT (XLV OF 1860)

been committed on a place set apart for the performance of funeral rites or as a depository for the remains of the dead. The section is equally satisfied if the prosecution are in a position to prove that the trespass occurred on any place of sepulchre. But where there have been only a few isolated and secret cases of burial in the course of many years on a piece of property, that would not be enough to constitute it a place of sepulchre within the meaning of the section. Per *Beaman, J.*—The trespass contemplated in S. 297 is such a trespass as is defined by the Penal Code. *Mustaffa v. Motilal*.

10 Cr. L. J. 160 :

2 I. C. 825.

————S. 297—“Trespass,” meaning of.

The term “trespass” in S. 297, Penal Code, appears to mean any violent or injurious act committed in such place and with such knowledge or intention as is defined in that section. *Mustan v. Emperor*.

25 Cr. L. J. 553 :

81 I. C. 41 : 1 Rang. 690 :

A. I. R. 1924 Rang. 106.

————S. 297—Trespass—Meaning of.

The word ‘trespass’ in S. 297 means ‘any violent or injurious act committed in such place and with such knowledge or intention as is defined in the section.’ *Abdul Kadir v. Abdul Kasim*.

33 Cr. L. J. 517 :

137 I. C. 872 : 36 C. W. N. 544 :

I. R. 1932 Cal. 392 : A. I. R. 1932 Cal. 459.

————S. 297—Trespass, meaning of.

The word ‘trespass’ in S. 297, Penal Code, does not mean criminal trespass as defined in other parts of the Code. In this section it must be taken to have been used in its original meaning as covering any injury or offence done coupled with entry upon property. *Magsud Husain v. Emperor*.

24 Cr. L. J. 711 :

73 I. C. 935 : 21 A. L. J. 455 :

45 All. 529 : A. I. R. 1924 All. 9.

————S. 297—Trespass—What amounts to.

Where, a vendee of a land which contains graves, enters on the land and destroys the graves, he enters not on his own property, but upon property which is *wagf* and which he cannot lawfully take possession of, and his entry on the graves for the purpose of destroying or levelling them is wrongful and amounts to a “trespass” on a place of sepulchre within the meaning of S. 297, Penal Code. *Umar din v. Emperor*.

16 Cr. L. J. 683 :

30 I. C. 731 : 23 P. R. 1915 Cr. :

40 P. W. R. 1915 Cr. : A. I. R. 1915 Lah. 409.

————S. 297—Trespass—What is.

Person put in possession by Civil Court—Damage done to graves in the land. Trespass is committed when feelings of persons interested in graves are likely to be wounded. *Abdul Kadir v. Abdul Kasim*.

33 Cr. L. J. 517 :

137 I. C. 872 : 36 C. W. N. 544 :

I. R. 1932 Cal. 392 : A. I. R. 1932 Cal. 459.

PENAL CODE ACT (XLV OF 1860)

—Ss. 297, 441—“Trespass,” meaning of—
Purchaser of land containing graves, if commits
trespass by destroying graves—Purchaser, if acquires
title in graves—*Vaqf*.

The word “trespass” in S. 297, Penal Code, has not the same meaning as is attached to “criminal trespass” in S. 441 of the same Code. It denotes there a wrongful act. An act of a person who destroys or disturbs a place of sepulchre with the intention of wounding the feelings of any person, or with the knowledge that the feelings of any person are likely to be wounded, is wrongful and amounts to a “trespass” within the meaning of S. 297, Penal Code, no matter whether the land in which the place of “sepulchre” is included does or does not belong to the persons who are guilty of the acts of destruction. *Umar Din v. Emperor*.

16 Cr. L. J. 683 :
30 I. C. 731 : 23 P. R. 1915 Cr.
40 P. W. R. 1915 Cr. :

—Ss. 297, 504—Conviction under—Legality of.

The accused had gone to a mosque of which he was a trustee, for midday prayer as usual. After the service he was asked by some others why he had, on former occasions, abused the *Maulvi* and the congregation. An altercation having ensued, he began to abuse all and sundry and was charged with an offence under S. 297, Penal Code : *Held*, (1) that the mere fact that the accused was a trustee of the mosque did not take the case out of the purview of S. 297 ; (2) but that inasmuch as the unpiousness began at the instance of other members of the congregation, S. 297 could not apply to the case ; (3) that the accused committed an offence punishable under S. 504, Penal Code, and thus being a cognate offence, there was no bar to an alteration of the finding. *Mus-tan v. Emperor*.

25 Cr. L. J. 553 :
81 I. C. 41 : I. Rang. 690 :
A. I. R. 1924 Rang. 106.

—S. 298—Offence under—What is.

Killing of cow in full view of Hindu houses is offence under S. 298. *Mir Chhiltan v. Emperor*.

38 Cr. L. J. 202 :
166 I. C. 373 (1) : 1936 A. L. J. 1197 :
9 R. A. 406 (1) : A. I. R. 1937 All. 13.

—S. 298—Scope.

S. 298, Penal Code, is much wider in its scope than S. 295 and includes any action which is known to wound the religious feelings of others. *Mir Chhiltan v. Emperor*.

38 Cr. L. J. 202 :
166 I. C. 373 (1) : 1936 A. L. J. 1197 :
9 R. A. 406 (1) : A. I. R. 1937 All. 13.

—Ss. 298, 295-A—Charge under S. 298—
Fact that accused intended to wound religious
feelings to draw attention to some matter in
need of reform, whether defence to charges
under.

It is no defence to proceedings under S. 298, Penal Code, that religious feelings were deliberately shocked or wounded by the

PENAL CODE ACT (XLV OF 1860)

defendant in order to draw attention to some matter in need of reform. Under S. 295-A, however, the prosecution must prove, more than under S. 298 ; they must show insult for the sake of insulting and with an intention which springs from malice and malice alone. To charge under this section, therefore, it would be a defence to say : “I had no malicious intention towards a class, but I did intend to wound or shock the feelings of an individual so that attention might, however rudely, be called to the reform which I had in view.” *The King v. Nga Shwe Hpi*.

40 Cr. L. J. 640 :
182 I. C. 96 : 1939 Rang. 302 :
11 R. Rang. 514 : A. I. R. 1939 Rang. 199.

—S. 299.

See also Penal Code, 1800, S. 300.

—S. 299—‘Causing death’, meaning of.

The expression “causing death” in S. 299, Penal Code, means putting an end to a human life, and all the three intentions mentioned in the section must be directed either deliberately to putting an end to a human life or to some act which, to the knowledge of the accused, is likely to eventuate in the putting an end to a human life. The knowledge must have reference to the particular circumstances in which an accused is placed. The intention of the accused must be judged, not in the light of actual circumstances, but in the light of what he supposed to be the circumstances. A man is not guilty of culpable homicide if his intention was directed to what he supposed to be a lifeless body. *In re : Palani Goundan*.

20 Cr. L. J. 404 :
51 I. C. 164 : 37 M. L. J. 17 :
1919 M. W. N. 340 : 42 Mad. 547 :
10 L. W. 45 : 26 M. L. T. 68 :
A. I. R. 1920 Mad. 862.

—S. 299—Culpable homicide and murder.

Culpable homicide when amounts to murder, stated. *Blitkari v. Emperor*.

35 Cr. L. J. 1113 :
150 I. C. 819 : 1934 O. L. R. 627 :
11 O. W. N. 851 : 7 R. O. 44 :
A. I. R. 1934 Oudh 405.

—S. 299—Culpable homicide—Evidence.

In order that a person should be guilty of culpable homicide, it is indispensable that the death of deceased should be connected with the act of violence or other primary cause, not merely by a chain of causes and effect, but by such direct influence as is calculated to produce the effect without the intervention of any considerable change of circumstances. *Nga Ba Min v. Emperor*.

37 Cr. L. J. 205 :
159 I. C. 1032 : 8 R. Rang. 309 :
A. I. R. 1935 Rang. 418.

—S. 299—Culpable homicide or murder.

Culpable homicide may not amount to murder : (a) where though the evidence is sufficient to constitute murder, one or more

PENAL CODE ACT (XLV OF 1860)

of the exceptions to S. 800, apply, or (b) where the degree of *mens rea* specified under S. 299 is present but not the special degrees referred to by S. 800. *Mahomed Hasan v. Emperor*.

36 Cr. L. J. 22 :
152 I. C. 271 : 28 S. L. R. 353 :
7 R. S. 80 : A. I. R. 1934 Sind 145.

———S. 299—*Culpable homicide or murder.*

Not only does the Code draw a distinction between intention and knowledge but fine distinctions are drawn between the degrees of intention to inflict bodily injury. *Mahomed Hasan v. Emperor*.

36 Cr. L. J. 22 :
152 I. C. 271 : 28 S. L. R. 353 :
7 R. S. 80 : A. I. R. 1934 Sind 145.

———S. 299—*Homicide—Ligature strangulation whether homicidal or suicidal—Presumption.*

There is no presumption in law that a ligature strangulation may or must be presumed to be homicidal and not suicidal. Even taking it as a presumption of fact, such a presumption cannot be safely made, and a finding that a particular strangulation was homicidal, cannot possibly be made to rest on this so-called presumption. *In re : Kanakasabai Pillai*.

41 Cr. L. J. 369 :
186 I. C. 704 : 1939 M. W. N. 883 :
50 L. W. 452 : 12 R. M. 682 :
A. I. R. 1940 Mad. 1.

———S. 299—*Interpretation.*

The words "or with the knowledge that he is likely by such act to cause death" in S. 299 of the Penal Code, must be read in the light of the language of S. 300 of the Penal Code, and so read, they are not applicable to a case where specific bodily injury is intentionally caused to a particular person. *Ram Asre v. Emperor*.

24 Cr. L. J. 513 :
73 I. C. 49 : 9 O. L. J. 490 :
26 O. C. 18 : A. I. R. 1923 Oudh 97.

———S. 299—*Nature of injury.*

Deceased dying due to ignorance and unskilful treatment of wound—Injuries only remote cause of death: *Held*, accused not guilty of culpable homicide. *Nga Ba Min v. Emperor*.

37 Cr. L. J. 205 :
159 I. C. 1032 : 8 R. Rang. 309 :
A. I. R. 1935 Rang. 418.

———S. 299—*Nature of weapon—Savage attack—Dangerous wounds followed by blood poisoning and fever—Murder.*

A person was savagely attacked with murderous weapons and was dangerously wounded, in consequence of which, he was detained in hospital for over 40 days where he developed symptoms of blood poisoning followed by brain fever and eventually died: *Held*, that the wounds were the cause of death and the accused were guilty of murder. *Nuro v. Emperor*.

15 Cr. L. J. 376 :
23 I. C. 744 : 7 S. L. R. 83 :
A. I. R. 1914 Sind 105.

———S. 299—*Private defence—Continued attack after the opponent has fallen down is not justified.*

PENAL CODE ACT (XLV OF 1860)

Where the deceased provoked the quarrel but the accused continued to beat him even after he fell to the ground: *Held*, that the accused were no longer exercising the right of private defence and their act was unjustifiable. *Phuman Singh v. Emperor*.

6 L. L. J. 483 : A. I. R. 1925 Lah. 230.

———Ss. 299, Exp. (1), 300 (2)—*Knowledge—Accelerating death of person suffering from disorder—Knowledge of disorder—Offence.*

Explanation (1) to S. 299, Penal Code, assumes that the bodily injury was inflicted with the intention of causing death or the knowledge that it would be likely to cause death. It was intended to repeat the English rule that an injury which accelerates the death of a dying man is deemed to be the cause of it, and where death has been caused, it is no defence that the deceased was suffering from a complaint which would have caused his death in any event. S. 300 (2) of the Code makes it clear that the offender is not responsible for death in such a case unless he knew that the condition of the deceased was such that his act was likely to cause death. *Sahdev v. Jumon Jolaha*.

19 Cr. L. J. 320 :
44 I. C. 336 : 4 P. L. W. 195 :
A. I. R. 1918 Pat. 625.

———S. 299, Expl. 2—*Culpable homicide or murder.*

Sufficient or likely to cause death. Death avoidable by proper treatment—*Faet* does not take away case from operation of S. 299. *Bharat Singh v. Emperor*.

34 Cr. L. J. 99 :
140 I. C. 706 : 9 O. W. N. 655 :
I. R. 1933 Oudh 20 : A. I. R. 1932 Oudh 279.

———S. 299, Expl. 2—*Injuries caused, not direct cause of death—Death as a result of gangrene—Accused, if guilty under S. 299.*

Where the deceased did not actually die from the injuries but died from the gangrene which set in consequence of some dirty substance, such as a bandage or the *da* with which the injuries were caused, coming into contact with one injury, although the injuries were not the direct cause of death, nevertheless under Expl. 2 to S. 299, Penal Code, the person who caused the injuries must be held to have caused the death. *Nga Paw v. Emperor*.

38 Cr. L. J. 103 :
165 I. C. 911 : 9 R. Rang. 229 :
A. I. R. 1936 Rang. 526.

———S. 299, Expl. 3—*Culpable homicide of newly born child—Human being, what necessary to constitute, English Law.*

Under the English Law, complete emergence is necessary to constitute the child a human being, but under S. 299, Explanation 3, Penal Code, though the causing of the death of a child in the mother's womb is not homicide, it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth though the child may not have breathed or been completely born. *Mst. Budho v. Emperor*.

17 Cr. L. J. 20 :
32 I. C. 148 : 29 P. R. 1915 Cr. :
A. I. R. 1916 Lah. 184.

PENAL CODE ACT (XLV OF 1860)

—Ss. 299, 300—*Attack by several persons—Attack with dangerous weapons by several persons upon one—Instantaneous death—Person inflicting injury not known—Offence.*

If there was a joint attack with dangerous weapons by four or five persons on one man and the latter died almost on the spot as a result of the injuries inflicted on him, at least the offence of culpable homicide must be said to have been made out, and the mere fact that it is not possible to say who inflicted the fatal injury will not be sufficient to support the finding that no offence of murder or culpable homicide had been committed. *In re: Mohideen Pichai Rowther.* 41 Cr. L. J. 337 : 186 I. C. 525 : 1939 M. W. N. 879 : 50 L. W. 557 : 12 R. M. 671 : A. I. R. 1940 Mad. 43.

—Ss. 299, 300—*Case under Ss. 299 and 300—Proper way to deal with, stated.*

The proper way, in which those who have to conduct criminal trials should approach the facts and apply the law in those cases where one person has, by doing some act, caused the death of another person is to deal with the matter by stages following: The trial Court must consider whether that act on the part of the accused amounts to culpable homicide. If it is established that an act which caused death was done either with one of the two intentions or with the knowledge necessary to cause that act to amount to culpable homicide, then and then only S. 300 comes into operation, and therefore the next thing to do is to ascertain whether the ingredients of S. 300 have been satisfied. *If the culpable homicide is murder:* If the prosecution has proved that the act either (a) was done by the accused with the intention of causing death, or (b) fulfilled one of the other requirements of S. 299 and S. 300, then it must further be considered whether on the facts of the particular case, the culpable homicide is brought down from the higher plane of murder, to which it has been raised, to the lower plane of culpable homicide not amounting to murder, by reason of the case falling within any of the Exceptions of S. 300. *If the culpable homicide is not murder:* If the culpable homicide is not murder, the only matter to be considered at this stage is whether the accused has established the right of private defence. *Nga Chit Tin v. The King.* 40 Cr. L. J. 725 : 183 I. C. 145 : 12 R. Rang. 45 : A. I. R. 1939 Rang. 225.

—Ss. 299, 300—*Culpable homicide not amounting to murder.*

Culpable homicide may not be murder, (1) where notwithstanding the mental state it is sufficient to constitute murder, still one of the exceptions applies, or (2) where the mental state, though within the description of S. 299, Penal Code, is not of the special degree of criminality required by S. 300 of the Code. It is erroneous to suppose that a case cannot be left to the Jury under S. 304, Penal Code, if the exceptions enumerated in S. 300 of the Code are held not to apply in the circum-

PENAL CODE ACT (XLV OF 1860)

stances of the case. *Emperor v. Upendra Nath Das.* 16 Cr. L. J. 561 :

30 I. C. 113 : 19 C. W. N. 653 : 21 C. L. J. 377 : A. I. R. 1915 Cal. 773.

—Ss. 299, 300—*Culpable homicide not proved to amount to murder—It is improper and useless to consider whether case falls within one of Exceptions to S. 300.*

The question as to whether the case is within one of the Exceptions to S. 300 does not arise for determination unless and until the prosecution has established a case of murder. If the prosecution has proved that culpable homicide (under S. 299) has been committed by the accused but has failed to prove that such culpable homicide amounted to murder (under S. 300), it is improper, and indeed useless, to consider whether any of the excluding factors are present. *Nga Chit Tin v. The King.* 40 Cr. L. J. 725 :

183 I. C. 145 : 12 R. Rang. 45 : A. I. R. 1939 Rang. 225.

—Ss. 299, 300—*Culpable homicide or murder—Murder and culpable homicide not amounting to murder, distinction between—Injuries on legs resulting in death—Offence.*

Where a man was beaten to such an extent that one of his thighs was a mass of bruises, both his legs were fractured below the knees and various other minor injuries were inflicted on the legs and on the trunk: *Held*, that the offenders must be held to have known that their act was likely to cause death and that the offence fell within the purview of Cl. (3) of S. 299, Penal Code, and was punishable under S. 304, Part II of the said Code. Generally speaking, it may be said that if the act done will, in all reasonable probability, result in death, the offence is murder, whereas if it is only likely to cause death, the offence is within S. 299, Penal Code. *Inder Singh v. Emperor.* 30 Cr. L. 141 :

113 I. C. 333 : I. R. 1929 Lah. 159 : 10 Lah. 477 : 30 P. L. R. 674 : A. I. R. 1929 Lah. 157.

—Ss. 299, 300—*Culpable homicide or murder.*

Per Sharf-ud-Din, J.—All murder is culpable homicide, but all culpable homicide is not murder. Subject to the five exceptions to S. 300, I. P. C., every act that falls within one or more of the four clauses of that section is murder and also falls within the definition of culpable homicide in S. 299, I. P. C., Every act that falls within any or more of the four clauses of S. 300, I. P. C., in respect of which there co-exist one or more of the sets of circumstances described in the five exceptions to that section, is, by that fact, taken out of S. 300, I. P. C., but the act notwithstanding continues to be within S. 299, and since it is not murder, it is culpable homicide not amounting to murder. Every act that falls within S. 299 and does not fall within S. 300, since it is not murder, is culpable homicide not amounting to murder. *Reaz-ud-Din v. Emperor.* 11 Cr. L. J. 295 (b) : 6 I. C. 251.

PENAL CODE ACT (XLV OF 1860)

—Ss. 299, 300—*Culpable homicide or murder—Question of murder does not arise unless commission of culpable homicide is proved.*

The basis of murder under S. 300 is culpable homicide as defined in S. 299. Therefore it is necessary in every case in which one person by his act has caused the death of another to inquire, whether culpable homicide has or has not been committed by the accused, for unless it has been, no question of murder can arise. *Nga Chit Tin v. The King.* 40 Cr. L. J. 725 : 183 I. C. 145 : 12 R. Rang. 45 : A. I. R. 1939 Rang. 225.

—Ss. 299, 300—*Culpable homicide or murder.*

Where there is no premeditation on the part of the accused who stabs the deceased fatally in the heat of passion upon a sudden quarrel and no undue advantage is taken of the deceased, the offence is one of culpable homicide not amounting to murder and Excep. IV to S. 300, Penal Code, applies. *Nga Nyi v. Emperor.* 38 Cr. L. J. 321 : 167 I. C. 114 : 9 R. Rang. 300 : A. I. R. 1937 Rang. 2.

—Ss. 299, 300—*Culpable homicide or murder—Whether offence is culpable homicide amounting to murder or not so amounting, how to be decided.*

Generally speaking, the proposition that murder is killing with the intention of killing or inflicting a fatal injury will cover broadly Cls. 1, 2 and 3 of S. 300, Penal Code. Cases under Cl. 4 of S. 300, Penal Code, are so rare that Judges can, in each case, well refer to the words of that clause and Illus. (d) as a sufficient guide. If the killing comes within any one of the four clauses, it is exceptions apart, murder. If the killing comes within the second part of S. 299, Penal Code, that which relates to the intention of causing a bodily injury likely to cause death, it comes under S. 304, Part 1, and if there is no intention to cause death or a bodily injury likely to cause death, but only knowledge that death is likely to be caused, the offence is under S. 304, Part 2, Penal Code. Cases under the exceptions to S. 300, Penal Code, will fall under S. 304, Part I. In murder cases, as in other cases, a man's intentions are to be judged by his acts in relation to the surrounding circumstances, but the provisions of the law of culpable homicide in India are merciful. The burden of proof in these cases, as in other cases, lies on the prosecution, and the distinction between "knowledge" and "intention" made in S. 299, Penal Code, and again in S. 304, Penal Code, in Parts 1 and 2, allows the Judge, when he thinks the prosecution have proved not intention but only knowledge to convict of the lesser offence. The intention of the accused should be judged at the time of striking the blow, which is the material time, but not at the time they left the house, which is not the material time. *Khudu v. Emperor.*

40 Cr. L. J. 375 (b) :
180 I. C. 418 : 32 S. L. R. 18 :
11 R. S. 173 : A. I. R. 1939 Sind 57.

PENAL CODE ACT (XLV OF 1860)

—Ss. 299, 300—*Intention to cause death, what amounts to.*

Where an injury is intentionally inflicted, the defence that no proper medical treatment was forthcoming, does not exonerate the person who caused the injury from guilt of murder if he intended that the injury shall be sufficient in the ordinary course of nature to cause death, or knew that it was likely to cause death to that person. It does not exonerate him from guilt of culpable homicide if death ensues as a natural or likely consequence. Such a person is deemed to have caused the death, and his degree of criminal responsibility must depend on the knowledge or intention to be gathered from the proved facts. *The King v. Abor Ahmed.* (F. B.) 38 Cr. L. J. 1097 : 171 I. C. 574 : 1937 Rang. 384 : 10 R. Rang. 165 : A. I. R. 1937 Rang. 396.

—Ss. 299, 300—*Knowledge.*

Knowledge, whether sufficient to establish offence of murder—During altercation, accused going out, fetching yoke-pin and striking accused on head with great force—Accused, held guilty of murder. *Nga Chit Tin v. The King.* 40 Cr. L. J. 725 : 183 I. C. 145 : 12 R. Rang. 45 : A. I. R. 1939 Rang. 225.

—Ss. 299, 300—*Nature of weapon.*

Held, that the last clause of S. 299 and the 4th clause of S. 300, Penal Code, do not apply to cases where bodily injury is intentionally caused : Held also, that in the case of a blow with a stick, the question whether the intention was merely to cause bodily injury likely to cause death, or to cause bodily injury sufficient in the ordinary course of nature to cause death is one of degree of probability, and depends generally on the character of the weapon and the way it was used. *Nga Na Ban v. Emperor.* 5 Cr. L. J. 306 : 13 Bur. L. R. 199 : U. B. R. Cr. 1906 Penal Code 33.

—Ss. 299, 300—*Nature of weapon—Nature of offence committed—Criterion—Nature of weapon used.*

In cases of death caused recklessly and without premeditation, a safer criterion to decide the nature of the offence committed is the nature of the weapon used. *Emperor v. Hashim.* 14 Cr. L. J. 459 : 20 I. C. 619 : 7 S. L. R. 29.

—Ss. 299, 300—*Private defence—Right of private defence, if can afford complete defence to culpable homicide and murder.*

The possibility of murder being reduced to culpable homicide through the exercise of right of private defence is also bound up with the possibility of such right going so far as to afford a complete defence not only to a charge of murder but also to a charge of the lesser offence of culpable homicide. *Nga Chit Tin v. The King.*

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

PENAL CODE ACT (XLV OF 1860)

———Ss. 299, 300—*Provocation—Charge of murder—Provocation—Insufficient—Reduction of sentence—Statement of accused pleading guilty, value of.*

A provocation though insufficient to bring a charge of murder within the exception to S. 300 may yet be sufficient for reduction of the sentence. *In re : Krushno Kariko.*

16 Cr. L. J. 611 :
30 I. C. 435 : A. I. R. 1916 Mad. 829.

———Ss. 299, 300—*Provocation—Culpable homicide not amounting to murder—Provocation.*

Where a person came out in a challenging manner to meet the accused and they had a fight, in the course of which, the father of the accused and himself were stabbed, whereupon the accused struck the challenger a blow which caused his death: *Held*, that the offence committed was culpable homicide not amounting to murder as there was grave provocation enough to deprive the accused of self-control and there was great probability that the accused acted while he had lost his self-control. *Murugaiya Nadan v. Emperor.*

12 Cr. L. J. 235 :
10 I. C. 262 : 1911, 2 M. W. N. 275 :
9 M. L. T. 480.

———Ss. 299, 300—*Provocation—Not grave and sudden but culmination of long period of swaggering and insult—Case does not fall within exception but sentence may be reduced.*

Where the provocation was not in the nature of immediate and grave provocation, but was the culmination of a long period of swaggering and insult which finally made the accused lose his temper, the offence is murder and does not fall within the exception which may reduce the offence to one of culpable homicide. But the provocation received, though not sufficient to reduce the crime from that of murder to one of culpable homicide, may nevertheless have been in its cumulative effect so exasperating as to render the crime one which might be punished in a manner similar to that in which the offence of culpable homicide might be punished in somewhat similar circumstances. *Nga Soe Myint v. Emperor.*

38 Cr. L. J. 366 :
166 I. C. 994 : 9 R. Rang. 303 :
A. I. R. 1937 Rang. 4.

———Ss. 299, 300—*Exception 5—Consent.*

Where the accused kills a woman above the age of 18 years at her request and with her consent, he is entitled to the benefit of Excep. 5 to S. 302, and is guilty of culpable homicide not amounting to murder punishable under the earlier part of S. 304. *Kanaga Kosvan v. Emperor.*

32 Cr. L. J. 659 :
131 I. C. 147 : 33 L. W. 218 :
1931 M. W. N. 393 : 60 M. L. J. 616 :
54 Mad. 504 : I. R. 1931 Mad. 483 :
A. I. R. 1931 Mad. 436.

———Ss. 299, 300, paras. 3 and 4—*Intention—Dhatura poisoning—Bodily injury likely to cause death—Offence whether amounts to murder.*

Where a person administers dhatura poison

PENAL CODE ACT (XLV OF 1860)

to another, it is likely or at least probable that he intended to cause such bodily injury as was likely to cause death and, therefore, he is guilty of murder. *Nanhu v. Emperor.*

24 Cr. L. J. 937 :
75 I. C. 361 : 45 All. 557 :
A. I. R. 1923 All. 608.

———Ss. 299, 300, 301—*Intention—Murder—Death of the person killed need not be intended.*

S with the intention of killing N gave him poisoned halva to eat. N ate a little, and threw the rest away and this was picked up by R who ate it and died: *Held*, that S was guilty of the murder of R. *Public Prosecutor v. Mushunooru Suryanarayanamoorthy.*

13 Cr. L. J. 145 :
13 I. C. 833 : 1912 M. W. N. 136 :
11 M. L. T. 127 : 22 M. L. J. 333.

———Ss. 299, 300, 302—*Murder.*

Where the accused had no legal excuse to go to a certain land in the possession of the party of the deceased armed with dangerous weapons to enforce their right or supposed right, and a fight ensued, and the injuries inflicted, though not premeditated, resulted in the death of the deceased: *Held*, per *Sharf-ud-Din* and *Teunon, JJ.* (*Chatterjee, J.*, dissenting) that the case came under Cl. 4 of S. 300, I. P. C., and a charge of murder ought to have been framed against the accused, and that the Judge's omission to do so vitiated the whole trial. An imperfect statement of elements constituting an offence under Cl. 1 of S. 304, of the failure of the Judge to direct the Jury that in law every man must be presumed to intend the natural and ordinary consequences of his acts, constitute very grave misdirection. *Reaz-ud-Din v. Emperor.*

11 Cr. L. J. 295 (b) :
6 I. C. 251.

———Ss. 299, 300, 302—*Sufficient or likely to cause death—Distinction between, whether bodily injury is likely to cause death and whether such injury is sufficient in ordinary course of nature to cause death.*

The distinction between whether a bodily injury intended to be inflicted is likely to cause death and whether such injury is sufficient in the ordinary course of nature to cause death is fine but appreciable, and it is a question of degree of probability. The matter would generally resolve itself into a consideration of the nature of the weapon used. Although such consideration may give rise to much anxious consideration and difficulty when the weapon used is the one so frequently employed in this country, namely, a *lathi*, there is no such difficulty when the weapon used is a rifle, and a rifle aimed at the head at a distance of about 2 feet. The injury intended to be inflicted, if there be intention, is one which transcends the possibility of a likelihood of death, and must come within the category of an "injury sufficient in the ordinary course of nature to cause death." *Daljit Singh v. Emperor.*

39 Cr. L. J. 92 :
172 I. C. 204 : 10 R. N. 177 :
A. I. R. 1937 Nag. 274.

PENAL CODE ACT (XLV OF 1860)

—Ss. 299, 300, 302, 304, 34, 325—*Knowledge—Death caused by single lathi blow—Other injuries not indicating determination to beat deceased to death.*

In a case where death has been caused by a single blow with a *lathi*, and the other injuries found on the body of the deceased do not indicate a determination to beat the deceased to death, it may be held that death was caused by the doing of an act with the knowledge that by such act it was likely to cause death. In such a case, the act of the striker can similarly only be brought within the provisions of clause fourthly in S. 300, Penal Code, which clause is based not upon intention but upon knowledge. *Zahid Khan v. King-Emperor.*

40 Cr. L. J. 187 :

179 I. C. 338 : 11 R. O. 163 :

1939 O. L. R. 22 : 1939 O. W. N. 7 :

14 Luck. 378 : A. I. R. 1939 Oudh 49.

—Ss. 299, 300, 304—*Applicability.*

The parts of Ss. 299, 300, 304, Penal Code, dealing with "knowledge," are applicable to a case in which bodily injury intended for a particular individual has resulted in death. Where a death has been caused by intended bodily injury inflicted by the accused on the deceased, the question of what knowledge must be attributed to the accused comes in only "as a means of arriving at his intention when he committed the act, and for that purpose, and not for the purpose of deciding whether the case falls within the last part of S. 304, must the question be considered. *Emperor v. Kotiya.*

15 Cr. L. J. 513 :

24 I. C. 601 : 7 Bur. L. T. 290 :

A. I. R. 1914 L. Bur. 197.

—Ss. 299, 300, 304—*Culpable homicide or murder—Culpable homicide not amounting to murder and murder, distinction between—Punishment.*

Per *Percival, J. C.*—If the act of an accused falls within either of the Cls. 1, 2 and 3 of S. 300 of the Penal Code but is covered by any of the five Exceptions, it is punishable under the first part of S. 304 and if the act falls within Cl. 4 of S. 300, but is covered by any of the Exceptions, it is punishable under the second part of S. 304. *Ghazi v. Emperor.*

28 Cr. L. J. 761 :

103 I. C. 841 : A. I. R. 1927 Sind 232.

—Ss. 299, 300, 304—*Culpable homicide or murder—Murder—Culpable homicide—Intention to cause injury sufficient in ordinary course of nature to cause death—Intention to cause injury likely to cause death.*

The distinction between the intention to cause injury sufficient in the ordinary course of nature to cause death, and the intention to cause injury likely to cause death, depends upon the degree of probability of death resulting from the act committed. Apart from cases falling within the second clause of S. 300, Penal Code, if from the intentional act of injury committed, the probability of death is high, the finding should be that the accused intended to cause death, or injury sufficient in the ordinary course of nature to cause death, and the con-

PENAL CODE ACT (XLV OF 1860)

viction should be of murder unless one of the exceptions applies ; if there was probability, in a less degree, of death ensuing from the act committed, the finding should be that the accused intended to cause injury likely to cause death and the conviction should be of culpable homicide not amounting to murder. *Po Sin v. Emperor.*

10 Cr. L. J. 359 :

3 I. C. 710 : 5 L. B. R. 80.

—Ss. 299, 300, 319, 320—*Murder or hurt—Hurt, grievous hurt and culpable homicide not amounting to murder, difference between—Death caused by injury not intended or likely to cause death.*

In a sudden quarrel with the deceased, the accused seized him by the testicles and squeezed them with considerable force and for a considerable time. The former, who was in a very unsound bodily condition, did not recover from the shock of the pain and died soon after. The medical evidence showed that the injury inflicted by the accused upon the deceased would not, in normal conditions, have endangered his life: *Held*, that the accused was guilty of causing simple hurt. Where death is caused as the result of an injury which is not intended to cause death, and was not in normal conditions likely to cause death, the offence can neither be grievous hurt nor culpable homicide not amounting to murder. It must then be a case of simple hurt. *Bai Jiba v. Emperor.*

18 Cr. L. J. 1010 :

42 I. C. 754 : 19 Bom. L. R. 823 :

A. I. R. 1917 Bom. 259.

—Ss. 299, 300 (2), 304—*Culpable homicide or murder—Murder—Culpable homicide—Intention—Nature of injury.*

A attacked his mother-in-law, Y, a woman of 55, with a *da*, but by mistake cut another woman, Z, on the arm. Z, who was 61 years of age, died from the effects of the wound, although the Civil Surgeon considered that the injury was not sufficient in the ordinary course of nature to cause death to a woman of her age. The Sessions Judge considered that the Second clause of S. 300, Penal Code, was applicable on account of Y's age: *Held*, that this clause was not applicable, because (1) as the injury was actually caused to Z although intended for Y, Y's age did not affect the question at all, and (2) in view of the medical evidence and of the fact that the injury was not on a vital part of the body, A could not be held to have intended such bodily injury as he knew to be likely to cause the death of either Y or Z, or such bodily injury as was likely to cause death. He was consequently only liable to sentence under the second part of S. 304, I. P. C. *Banu v. King-Emperor.*

9 Cr. L. J. 364 :

4 L. B. R. 367.

—Ss. 299, 300 (3), 304—*Culpable homicide or murder—Murder, culpable homicide not amounting to—Injuries inflicted not sufficient but likely to cause death—Offence.*

Where the injuries proved to have been inflicted were found not sufficient in the ordinary course of nature to cause death, but quite likely

PENAL CODE ACT (XLV OF 1860)

to have produced death : *Held*, that the offence committed did not amount to murder, but only to culpable homicide not amounting to murder. *Darhoon v. Emperor*. 16 Cr. L. J. 472 :

29 I. C. 104 : 8 S. L. R. 337 :
A. I. R. 1914 Sind 35.

—Ss. 299, 301, 304, 304-A—*Nature of weapon—Culpable homicide not amounting to murder—Accused committing house trespass and striking out wildly with a dangerous weapon—Intention—Knowledge—Rash or negligent act.*

A person who commits lurking house trespass by night, and in order to evade arrest, strikes out wildly with a dangerous weapon, utterly regardless whether his blows will or will not cause death or injury to any one of the inmates, and thereby netunly causes the death of a person, is guilty of culpable homicide under the second part of S. 304, Penal Code, although he never intended to cause death or such bodily injury as was likely to cause the death of any person. He is guilty of something far more serious than a mere "rash or negligent act not amounting to culpable homicide." *Gujjar v. Emperor*. 12 Cr. L. J. 591 :

12 I. C. 967 : 12 P. R. 1911 Cr. :
41 P. W. R. 1911 Cr.

—Ss. 299, 302, 304—*Culpable homicide or murder—Mere stuffing of cloth into mouth of deceased to silence him, if murder.*

Where an accused merely stuffed a cloth into the deceased's mouth in order to silence him and not with any idea of killing him, the offence is not murder but one punishable under S. 304, Penal Code. *In re : Sengoda Goundan*. 16 Cr. L. J. 614 (a) :

30 I. C. 438 : 1915 M. W. N. 621 :
18 M. L. T. 103 : A. I. R. 1916 Mad. 651.

—Ss. 299, 304, 326—*Murder or hurt—Murder—Intention to cause death, absence of—Grievous hurt.*

A dispute having arisen between one L and one B, the latter attacked the former with a stick. L, seeing that G was advancing to the help of B, ran into his house and came out with a chopper in his hand, with which he inflicted an incised wound on B's shoulder and one or two minor injuries. B subsequently died of septic pneumonia caused by the wound in his shoulder : *Held*, that the injury to which B subsequently succumbed not having been inflicted with such intention or knowledge as to bring the case within the definition of culpable homicide, L could be convicted only of an offence under S. 326, Penal Code. *Lalk Singh v. Emperor*. 20 Cr. L. J. 137 :

49 I. C. 169 : 17 A. L. J. 56 :
1 U. P. L. R. All. 42 : A. I. R. 1919 All. 185.

—S. 300.

—Administering *Dhatara* poison.

—Attack by several persons.

—Burden of proof.

—Burden of proving exception.

—Cases in which death ensues from violence used.

—Cases within Exception 5.

PENAL CODE ACT (XLV OF 1860)

—Culpable homicide.

—Death caused by *lathi* blow.

—*Dhatara* poisoning.

—Evidence.

—Exception to, when available.

—Grave and sudden provocation.

—Homicide.

—Injuries sufficient to cause death.

—Intention.

—Knowledge or intention.

—Motive.

—Murder.

—Offence under.

—Private defence.

—Provocation.

—Sentence.

—Sudden fight.

—Sufficient or likely to cause death.

—Temporary insanity.

—Use of deadly weapon.

—S. 300.

See also (i) Cr. P. C., 1898, Ss. 221, 207.

(ii) Criminal trial.

(iii) Penal Code, 1860, Ss. 34, 86,
119, 149, 299, 302.

—S. 300 — Administering *Dhatara* poison—*Presumption of knowledge.*

Per Madgavkar, J.—The fact that the object of the accused was only robbery and could have been achieved by mere intoxication sufficient to stupefy the victims without killing them, does not lead to an inference that the accused did not know that their act was likely to cause death or was so imminently dangerous, as in all probability, to cause death. Object is one thing, intention is another, and knowledge is quite a third. In the case of adult persons deliberately administering *dhatara* or some such poison or deleterious substance in such quantities as to kill many persons within a few hours on the spot, the burden is heavily on the accused to show why the ordinary presumption from an act so imminently dangerous and so probably fatal should not be drawn. *Emperor v. Shetya Timma Waddar*. 27 Cr. L. J. 1134 :

97 I. C. 654 : 28 Bom. L. R. 1003 :
A. I. R. 1926 Bom. 518.

—S. 300—Attack by several persons.

Many persons attacking deceased—One blow causing death of deceased by complicated fracture of skull—Person giving blow is guilty of murder—Such person not known—None held guilty of murder. *Emperor v. Koramulla Narasingudu*. 39 Cr. L. J. 139 :

172 I. C. 382 : 46 L. W. 486 :
1937, 2 M. L. J. 490 : 1937 M. W. N. 1124 :
10 R. M. 455 : A. I. R. 1937 Mad. 792.

—S. 300—Attack by several persons—*Murder by more than one person.*

Where two or more people band themselves together for the express purpose of taking a man's life and in a charge of murder they are found guilty, all of them may be sentenced to death even though there is no

PENAL CODE ACT (XLV OF 1860)

evidence as to who delivered the fatal blow.
In re : Pedda Tirumaligadu.

30 Cr. L. J. 628 :
116 I. C. 135 : 1929 M. W. N. 181 :
I. R. 1929 Mad. 519 : 29 L. W. 387 :
52 Mad. 147 : 56 M. L. J. 194 :
A. I. R. 1929 Mad. 342.

—S. 300—*Attack by several persons.*

When the accused's party pursued the complainants in three boats for a long distance and then when they had them in their power landed and attacked them with spears and killed three of them, their action does not come within Exception 4 to S. 300 and certainly amounts to murder. *Adil Mohamed v. Emperor.*

9 Cr. L. J. 32 :
8 C. L. J. 561.

—S. 300—*Burden of proof.*

In a murder case where the supposedly murdered man has disappeared and his body has never been found and he did not disappear under circumstances which render it inconceivable that he could still be alive, the prosecution must establish three facts : (1) that the injured man is really dead ; (2) that he met with a violent death ; and (3) that the accused persons are those who brought about his death. The onus upon the prosecution in these circumstances is much heavier than in ordinary cases. *Rajkumar Singh v. Emperor.*

29 Cr. L. J. 913 :
111 I. C. 721 : 9 P. L. T. 449 :
A. I. R. 1928 Pat. 473.

—S. 300—*Burden of proof.*

The burden of proving that the act of an accused charged with murder comes within the purview of any of the exceptions to S. 300, is upon the accused under S. 105, Evidence Act, and when he has failed to discharge that burden, he is, on his own showing, guilty of an offence under S. 302. *Ratan v. Emperor.*

34 Cr. L. J. 498 (2) :
143 I. C. 55 : 10 O. W. N. 7 :
8 Luck. 301 : I. R. 1933 Oudh 154 :
A. I. R. 1933 Oudh 148.

—S. 300—*Burden of proving exception.*

In order to take a case out of the category of murder, it is for the accused to show that his act was covered by one of the exceptions to S. 300, Penal Code. *Piare v. Emperor.*

20 Cr. L. J. 608 :
52 I. C. 224 : 17 A. L. J. 866 :
A. I. R. 1919 All. 389.

—S. 300—*Cases in which death ensues from violence used—Questions necessary to be considered in.*

In cases in which death ensues from violence used, and there is no evidence of intention other than what is to be inferred from the accused's act, it is necessary to consider whether the accused must have known, when committing the act, that (a) it might possibly, but was unlikely, to cause death or injury sufficient in the ordinary course of nature to cause death ; (b) it was likely to cause death or injury sufficient in the ordinary course of nature to cause death ; (c) it probably would

PENAL CODE ACT (XLV OF 1860)

cause death or injury sufficient in the ordinary course of nature to cause death. If the act falls within the first category, it would not amount to more than hurt or grievous hurt ; if under the second category, it would be culpable homicide not amounting to murder ; if under the third category, it would amount to murder. *Shwe Hla U. v. The King.*

1 Cr. L. J. 184 :
10 Bur. L. R. 29 : 2 L. B. R. 125.

—S. 300—*Case within Exception 5—Burden of proof.*

To bring it within any of the Exceptions under which *prima facie* murder is reduced to the lesser crime of culpable homicide, the person who committed the act causing death must show that the circumstances which he claims the benefit of, existed when he did the act. What a person claiming the benefit of Exception 5 has to show is that the person whose death he caused, consented to have the particular act, which caused death, done upon him, knowing, that it would cause his death or knowing that his life would be endangered thereby. *Po Set v. Emperor.*

11 Cr. L. J. 345 :
5 I. C. 988 : 5 L. B. R. 160.

—S. 300—*Culpable homicide amounting to murder, constituents of.*

In order to constitute the offence of culpable homicide amounting to murder, there should be a finding that the act which caused death was done with the intention of causing death, or with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death. An injury that is merely likely to cause death does not, of necessity, amount to murder. *Apalu v. Emperor.*

24 Cr. L. J. 919 :
75 I. C. 295 : 2 Bur. L. J. 94 :
1 Rang. 285 : A. I. R. 1923 Rang. 174.

—S. 300—*Culpable homicide not amounting to murder—Sentence.*

A case of murder which, owing to the application of one of the Exceptions to S. 300, is reduced to culpable homicide not amounting to murder, is punishable, so far as imprisonment is concerned, with a maximum term of ten years, if no intention is imputable to the accused under S. 299, but only the knowledge therein mentioned. *Nga Chit Tin v. The King.*

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

—S. 300—*Culpable homicide or murder.*

Accused assaulted the deceased and inflicted no less than fifty injuries, but no blow was inflicted on any vital part with sufficient violence to cause serious damage, such as fracture of the skull : *Held*, that the case fell under the second clause of S. 304, Penal Code. *Daraz v. Emperor.*

25 Cr. L. J. 1 :
75 I. C. 689 : A. I. R. 1923 Lah. 317.

—S. 300—*Culpable homicide or murder.*

An offence may amount to culpable homicide but not murder even though none of the

PENAL CODE ACT (XLV OF 1860)

Exceptions in S. 300 are applicable to the case. The clauses of S. 300 imply a direct mental intention and a special degree of criminality. *Raja Ram v. Emperor.* 36 Cr. L. J. 454 :

154 I. C. 93 : 1935 O. W. N. 140 :

7 R. O. 434 : A. I. R. 1935 Oudh 239.

————S. 300—*Culpable homicide or murder.*

Culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide. If it is the most probable result, it is murder. *Emperor v. Ratan.* 33 Cr. L. J. 561 :

138 I. C. 123 : 9 O. W. N. 285 :

I. R. 1932 Oudh 287 : A. I. R. 1932 Oudh 186.

————S. 300—*Death caused by lathi blow, if murder.*

If a man takes a *lathi* and deliberately assaults another on the head with the result that the skull is fractured, that act is murder unless the accused can show that it was removed from the category of murder by one of the exceptions to S. 300. *Piarc v. Emperor.* 20 Cr. L. J. 608 :

52 I. C. 224 : 17 A. L. J. 866 :

A. I. R. 1919 All. 389.

————S. 300—*Dhatara poisoning — Intention, how to be ascertained.*

In cases of *dhatara* poisoning it is always necessary to ascertain the object with which *dhatara* was administered, and the best indication of the intention of the offender can be gathered from the amount of *dhatara* administered. *Kesar Din v. Emperor.* 21 Cr. L. J. 319 :

55 I. C. 479 : 3 P. W. R. 1920 Cr. :

2 U. P. L. R. Lah. 21 : 4 P. L. R. 1920 :

A. I. R. 1920 Lah. 375.

————S. 300—*Evidence—Duty of Court.*

Where in a case in which an accused person is charged with murder, the prosecution evidence itself shows that the accused is entitled to the benefit of one of the Exceptions to S. 300, Penal Code, it is the duty of the Sessions Judge to give him that benefit, irrespective of the fact whether the accused has or has not relied upon the Exception. *Mangal Janda v. Emperor.* 25 Cr. L. J. 1077 :

81 I. C. 901 : A. I. R. 1925 Nag. 37.

————S. 300—*Evidence—Circumstantial evidence—Value of.*

A person cannot be convicted of murder on circumstantial evidence, unless the circumstances are such as to exclude all reasonable probability of his innocence. *Muhammad Yar v. Emperor.* 25 Cr. L. J. 939 :

81 I. C. 555 : 4 L. L. J. 235 :

A. I. R. 1922 Lah. 263.

————S. 300—*Evidence—Murder — Circumstantial evidence—Unsatisfactory evidence of identification of body—Conviction, whether sustainable.*

A conviction of murder cannot be sustained where the only circumstantial evidence against the accused is that the deceased was seized by the accused and the husband of the deceased

PENAL CODE ACT (XLV OF 1860)

in the road, placed on a camel and carried towards a canal in which her body was afterwards found completely dismembered, specially when the evidence of identification of the body is unsatisfactory, and there is no direct evidence connecting the accused with the commission of the crime. *Chuhar Singh v. Emperor.* 16 Cr. L. J. 89 :

26 I. C. 1001 : 221 P. L. R. 1915 :

40 P. W. R. 1914 Cr. :

A. I. R. 1914 Lah. 582.

————S. 300—*Evidence—Murder—Proof—Practice.*

Where one is charged with the murder of another, three facts obviously have to be established. First of all, that the person alleged to be murdered is dead ; secondly, that he died by the means alleged on the part of the prosecution ; and thirdly, that the accused intentionally took that part in causing his death which is attributed to him by the prosecution. *Emperor v. Ananda Bhau.* 3 Cr. L. J. 85 :

7 Bom. L. R. 985.

————S. 300—*Exception to, when available.*

If some persons were acting in the exercise of their right to defend their master against what was certainly a murderous assault, and, with such care and attention as was humanly possible at the moment and in the circumstances, believing that they could not protect their master from that assault otherwise than by striking the deceased with *lathis*, even at the imminent risk of hitting him and cracking his skull, their acts amply satisfy the conditions required to bring them within the terms of the second Exception to the definition of murder in S. 300, Penal Code. *Jaipal Kunbi v. Emperor.* 23 Cr. L. J. 313 :

66 I. C. 665 : A. I. R. 1922 Nag. 141.

————S. 300—*Grave and sudden provocation—What is—Intention—Intention sudden and impulse momentary—Whether mitigates offence.*

That the intention was sudden and the impulse momentary, and even uncontrollable, is no mitigation unless it can be shown that the acts was the result of grave and sudden provocation, as laid down in Exception 1 to S. 300, Penal Code. *Daljit Singh v. Emperor.* 39 Cr. L. J. 92 :

172 I. C. 204 : 10 R. N. 177 :

A. I. R. 1937 Nag. 274.

————S. 300—*Homicide—Injury not necessarily fatal but ordinarily sufficient to cause death—Death caused by infection setting in—Offence.*

Where a wound inflicted is not necessarily fatal but the injury is sufficient, in the ordinary course of nature, to cause death and the actual death is caused by an infection setting in the wound, this fact makes no difference to the criminal responsibility of the person charged. *Nga Myauk Nyo (a) Po Bein v. The King.* 39 Cr. L. J. 412 :

174 I. C. 338 : 10 R. Rang. 401 :

A. I. R. 1938 Rang. 56.

PENAL CODE ACT (XLV OF 1860)

————S. 300—Injuries sufficient to cause death.

Injuries inflicted several and very serious—
Offence held to be murder. *Tun Khine U v. The King.* 40 Cr. L. J. 49 :
178 I. C. 298 : 11 R. Rang. 223 :
A. I. R. 1938 Rang. 331.

————S. 300—Intention.

A person delivering a violent blow with a lethal weapon like a *dang* on a vulnerable part of the body such as the head, must be deemed to have intended to cause such bodily injury as he knew was likely to cause the death of the person to whom the injury was caused. *Sewa Singh v. Emperor.*

31 Cr. L. J. 1069 :
126 I. C. 572 : A. I. R. 1930 Lah. 490.

————S. 300—Intention.

A person is considered to intend the probable consequences of his act, and a person who hits another on the head with such force as to cause a complicated fracture, must be considered to have intended to cause such bodily injury as would, in the ordinary course of nature, cause death. *Emperor v. Koramulla Narasigadu.*

39 Cr. L. J. 139 :
172 I. C. 382 : 46 L. W. 486 :
1937, 2 M. L. J. 490 :
1937 M. W. N. 1124 : 10 R. M. 455 :
A. I. R. 1937 Mad. 792.

————S. 300—Intention.

A person plunging a dangerous weapon like a knife into a vital part of the body of the victim, is to be deemed to have intended to cause such injury as he knew was likely to cause death. *Mohammad v. Emperor.*

33 Cr. L. J. 375 :
137 I. C. 65 : I. R. 1932 Lah. 273 :
A. I. R. 1932 Lah. 254 (2).

————S. 300—Intention.

A person who strikes another's head with the sharp edge of an axe with sufficient force to break it, must be held to have acted with the intention described in S. 300 secondly and thirdly, Penal Code, and if the victim succumbs to the injury, the offence committed is that of murder. *Bahawal v. Emperor.*

33 Cr. L. J. 184 :
135 I. C. 670 : 32 P. L. R. 810 :
I. R. 1932 Lah. 126 :
A. I. R. 1932 Lah. 5.

————S. 300—Intention.

If a man, who is armed with a deadly weapon like a *sela*, thrusts that weapon into the chest of his victim and causes instantaneous death, he can have only one intention, namely, intention to murder. *Chand Singh v. Emperor.*

36 Cr. L. J. 696 :
155 I. C. 275 : 35 P. L. R. 715 :
7 R. L. 680 : A. I. R. 1934 Lah. 741.

————S. 300—Intention.

If a person strikes another on a vital part with a cutting instrument, the striker should be presumed to have intended to cause bodily injury sufficient in the ordinary course

PENAL CODE ACT (XLV OF 1860)

of nature to cause death, but it does not follow that the striker must be found guilty of murder: his act may fall under one of the Exceptions to S. 300, Penal Code. *Emperor v. Kotiya.*

15 Cr. L. J. 513 :
24 I. C. 601 : 7 Bur. L. T. 290 :
A. I. R. 1914 L. Bur. 197.

————S. 300—Intention—Means of ascertaining intention of accused—What is.

A cut Z on the head with a heavy chopper, slicing off a bit of the frontal bone and cutting the brain. Z died from the effect of the injury, but the medical evidence showed that the wound was not certain, although likely to cause death: Held, that A's intention must be inferred not merely from the actual consequences of his act, but from the act itself; and as the natural consequences of an act of the kind in question would be death, A must be presumed to have intended to cause death. *Po To v. Emperor.*

9 Cr. L. J. 5 :
4 L. B. R. 306.

————S. 300—Intention to cause death—Lathi blow on head—Fracture of skull.

Having regard to the great frequency with which a *lathi*, used in a melee, lights on the head even though not specially aimed at it, and the still higher percentage of cases in which a blow on the head with a *lathi* results in the death of the victim from a fractured skull, it would be contradictory to say that a person taking part in an assault with *lathis* does intend to break the victim's arm or leg but does not intend to break his skull, an injury which is undoubtedly sufficient in the ordinary course of nature to cause death. *Jaipal Kunbi v. Emperor.*

23 Cr. L. J. 313 (b) :
66 I. C. 665 : A. I. R. 1922 Nag. 141.

————S. 300—Intention—How determined.

Use of knife in sudden fight cannot mean accused intended to cause death—Intention depends on the way it is used, and nature of weapon is no consideration. *Nihal Singh v. Emperor.*

37 Cr. L. J. 87 :
159 I. C. 284 : 8 R. Pesh. 81 :
A. I. R. 1935 Pesh. 155.

————S. 300—Intention.

Where the act of the accused is so imminently dangerous that he must be deemed to know that it would, in all probability, cause death or at least such bodily injury as is likely to cause death, the mere fact that he had no deliberate intention of killing any particular individual does not take his cause outside the fourth clause to S. 300, Penal Code. *Bhagat Singh v. Emperor.*

31 Cr. L. J. 290 :
121 I. C. 726 : 31 P. L. R. 73 :
A. I. R. 1930 Lah. 266.

————S. 300—Intention.

Where two men together repeatedly strike another on his head with *lathis* with sufficient force to break his skull in several places, their offence must be held to fall

PENAL CODE ACT (XLV OF 1860)

under S. 300 (Thirdly), Penal Code. *Ilam Din v. Emperor*.
32 Cr. L. J. 1127 :
134 I. C. 205 : 32 P. L. R. 401 :
I. R. 1931 Lah. 909.

—S. 300—Intention and knowledge.

S. 300, Penal Code, says nothing about deliberation or previous preparation. It speaks only of intention and knowledge. If the act by which death is caused is done with the intention of causing death, the offence is murder, unless it falls within the Exceptions. *Sheo Shankar v. Emperor*.

27 Cr. L. J. 62 :
91 I. C. 238 : 2 O. W. N. 862 :
A. I. R. 1926 Oudh 148.

—S. 300—Knowledge of intention.

In the absence of any evidence to indicate that a blow on a particular part of a person was intended to be a blow on a more vital part, it must be held that the offender inflicted the blow where he intended. *Ram Asre v. Emperor*.

24 Cr. L. J. 513 :
73 I. C. 49 : 9 O. L. J. 490 : 26 O. C. 18 :
A. I. R. 1923 Oudh 97.

—S. 300—Knowledge of intention.

Obiter.—If there was an intention to cause death, and death was caused by a wound or wounds inflicted in pursuance of that intention, the case would be one of murder, even though none of the wounds which the accused inflicted were of a character which would, within the knowledge of the accused or in the ordinary course of nature, have proved fatal. *Ram Asre v. Emperor*.

24 Cr. L. J. 513 :
73 I. C. 49 : 9 O. L. J. 490 : 26 O. C. 18 :
A. I. R. 1923 Oudh 97.

—S. 300—Knowledge of intention.

The expression "I shall kill you," used by an assailant does not necessarily show an intention to commit murder. *Ram Asre v. Emperor*.

24 Cr. L. J. 513 :
73 I. C. 49 : 9 O. L. J. 490 : 26 O. C. 18 :
A. I. R. 1923 Oudh 97.

—S. 300—Motive—Accused caught red-handed—Absence of motive immaterial.

Where an offender is caught red-handed while committing a murder, the question of absence of motive becomes immaterial. *Fazal Din v. Emperor*.

31 Cr. L. J. 765 :
125 I. C. 55 : 30 P. L. R. 749 :
I. R. 1930 Lah. 567.

—S. 300—Murder—Evidence—Duty of Court.

In all such cases, the Sessions Judge should consider and come to a finding which must be clearly recorded that the degree of probability of death ensuing is so great as to bring the case within either the first or third clause of S. 300, Penal Code. *Apalu v. Emperor*.

24 Cr. L. J. 919 :
75 I. C. 295 : 2 Bur. L. J. 94 :
1 Rang. 285 : A. I. R. 1923 Rang. 174.

—S. 300—Murder—Evidence requisite.

Where the evidence given in the Court is

PENAL CODE ACT (XLV OF 1860)

obviously not reliable and the medical evidence shows that there is only one long cut on the deceased's body and it cannot be possibly determined who caused it, a conviction for murder is not sustainable though a wicked crime has thereby to go unpunished. *Bahaduri v. Emperor*.

38 Cr. L. J. 89 :
165 I. C. 889 : 9 R. L. 319.

—S. 300—Murder—Serious injury on head causing death—Intention—Onus—Burden of proof.

A person who strikes another violent blows on the head causing fracture of bones and death, must accept the onus of proving that his intention was not to cause such bodily injury as would, in all probability, cause death or that he did not know that the injury inflicted by him would, in all probability, cause death. *Bahaduri v. Emperor*.

28 Cr. L. J. 45 :
99 I. C. 77 : A. I. R. 1927 Lah. 63.

—S. 300—Murder under influence of drink—Intention.

Where the accused under the influence of liquor assaulted the deceased and literally beat him to death with lathis without any direct motive: *Held*, that the accused were guilty of murder under S. 300, Penal Code, as they must have known that their act was "so eminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death." *Pal Singh v. Emperor*.

18 Cr. L. J. 868 :
41 I. C. 980 : 28 P. R. 1917 Cr. :
35 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 226 :

—S. 300—Murder, what amounts to—Accused striking heavy blow on head of deceased with pestle in course of sudden quarrel—Death resulting—Offence is of murder.

A person who strikes a heavy blow on the head of another with a weapon such as a pestle, must be deemed to intend to cause such bodily injury as is likely to cause death, and even when such a blow is given in the course of a sudden quarrel between the accused and the deceased causing the death, the offence committed is one of murder. *In re : Currala Chinna Pichai Vadu*.

39 Cr. L. J. 979 :
177 I. C. 944 : 1938 M. W. N. 871 (1) :
48 L. W. 415 : 11 R. M. 395.

—S. 300—Offence under—Drunkenness, if answer to.

No general rule can be laid down that voluntary drunkenness is in all or even in the majority of cases, a reason for not passing the death sentence. *Nga Ohn Pe v. Emperor*.

38 Cr. L. J. 52 :
165 I. C. 762 : 9 R. Rang. 220 :
A. I. R. 1936 Rang. 477.

—S. 300—Private defence.

Accused while in possession of land, attacked with dangerous weapons—Accused in defence inflicting fatal injuries on some of the attackers resulting in their death—Accused, *held*, were entitled to take all necessary

PENAL CODE ACT (XLV OF 1860)

measures for their private defence—Conviction under S. 300 is not proper. *Ramsagar Gope v. Emperor.*

38 Cr. L. J. 139 :
166 I. C. 129 : 9 R. P. 261 :
3 B. R. 131 : 18 P. L. T. 21 :
A. I. R. 1936 Pat. 622.

———S. 300—*Private defence.*

There is no right of private defence against persons who are merely taking refuge in the offender's land from other persons trying to take their lives. *Adil Mohamed v. Emperor.*

9 Cr. L. J. 32 :
8 C. L. J. 561.

———S. 300—*Private defence of person.*

There is nothing to prevent an accused from raising the plea of self-defence in appeal. *Nur Dad v. Emperor.*

34 Cr. L. J. 462 :
142 I. C. 901 : 33 P. L. R. 718 :
I. R. 1933 Lah. 290 :
A. I. R. 1932 Lah. 606.

———S. 300—*Private defence of person or property.*

Obiter dictum.—Leniency may well be shown where the accused has acted in good faith for the protection of his person or property, and has erred only in the degree of force or violence used or in acting too hastily. *Nga Tun v. Emperor.*

17 Cr. L. J. 335 :
35 I. C. 511 : A. I. R. 1916 L. Bur. 63.

———S. 300—*Provocation.*

A person who kills another under provocation which is grave but not sudden, is not entitled to claim the benefit of Exception 1 to S. 300. *Bhopal v. Emperor.*

32 Cr. L. J. 1244 :
134 I. C. 596 (b) : 8 O. W. N. 528 :
I. R. 1931 Oudh 388 (2).

———S. 300—*Provocation.*

A sudden quarrel arose between the accused and the deceased, during which the deceased expressed his intention of attacking and kicking the accused and actually advanced towards him. A sudden fight ensued in which the accused used a clasp knife and inflicted a serious wound in the chest of the deceased which ultimately caused his death: *Held*, that the accused suffered sudden and grave provocation, and in the course of struggle, lost his power of self-control and did not inflict the injury with the intention of causing such bodily injury as was likely to cause death. In the circumstances, therefore, the proper conviction was one under S. 304 and not under S. 302. *Syed Ahmed v. The King.*

39 Cr. L. J. 300 :
173 I. C. 299 : 10 R. Rang. 335 :
A. I. R. 1938 Rang. 15.

———S. 300—*Provocation—Abuse, whether provocation.*

Merely abuse cannot be viewed as grave provocation in order to reduce the offence of murder to one of culpable homicide. *Partapa v. Emperor.*

25 Cr. L. J. 298 :
76 I. C. 970 : A. I. R. 1923 Lah. 408.

PENAL CODE ACT (XLV OF 1860)

———S. 300—*Provocation.*

Accused and father ploughing in field on hot day—Midday rest—Father asking accused to prevent bullocks from entering neighbouring fields—Refusal—Father throwing clod of earth on accused—Accused losing temper and assaulting father—Father's knowledge that accused's intelligence was below normal—Grave and sudden provocation held caused. *Bharanga Uraon v. Emperor.*

37 Cr. L. J. 221 :
160 I. C. 18 : 2 B. R. 157 :
8 R. P. 327 : A. I. R. 1935 Pat. 506.

———S. 300—*Provocation.*

Accused asked by deceased to go out to fields with him—Accused thinking it to be offer for unnatural intercourse using his dagger with fatal results: *Held*, there was no grave and sudden provocation. *Jumma Khan v. Emperor.*

36 Cr. L. J. 914 :
156 I. C. 6 : 7 R. Pesh. 113 :
A. I. R. 1935 Pesh. 59.

———S. 300—*Provocation.*

Accused came by chance upon his wife at a time when she was in the act of having intercourse with her paramour and killed her on the spot with an axe which he happened to be carrying at the time in the ordinary course of his occupation: *Held*, that the accused was guilty of an offence under S. 304-I, Penal Code, and not under S. 302. *Mangal Ganda v. Emperor.*

25 Cr. L. J. 1077 :
81 I. C. 901 : A. I. R. 1925 Nag. 37.

———S. 300—*Provocation.*

An arrest or attempted arrest by a private person, if not strictly justifiable by law, is not outside the provocation mentioned in Excep. I. *Abdul Aziz v. Emperor.*

35 Cr. L. J. 725 :
148 I. C. 574 : 14 P. L. T. 464 :
6 R. P. 490 : A. I. R. 1933 Pat. 508.

———S. 300—*Provocation—Burden of proof of.*

The burden of proving that the provocation was grave lies on the accused. *Ali Mohammad v. Emperor.*

37 Cr. L. J. 483 :
161 I. C. 414 : 8 R. S. 144 :
A. I. R. 1936 Sind 31.

———S. 300—*Provocation—Culpable homicide—Use of abusive language, whether 'grave provocation.'*

Merely calling a person 'a pig' or 'son of a pig' cannot constitute a grave provocation within the meaning of S. 300, Penal Code, especially in the case of a low caste man accustomed to the use of such abusive language. *Rahman v. Emperor.*

32 Cr. L. J. 61 :
127 I. C. 860 : 31 P. L. R. 891 :
I. R. 1930 Lah. 892 :
A. I. R. 1930 Lah. 344.

PENAL CODE ACT (XLV OF 1860)

—S. 300—Provocation.

Deceased catching hold of accused's tuft—Latter also catching tuft of deceased and stabbing him with knife: *Held*, case came within S. 300, Exception I. *Thirupathuran v. Emperor*.

36 Cr. L. J. 790 :
155 I. C. 408 : 67 M. L. J. 674 :
1934 M. W. N. 1358 :
40 L. W. 777 : 7 R. M. 579 :
A. I. R. 1934 Mad. 722.

—S. 300—Provocation.

Deceased, noted bad character, behaving in outrageous manner—Accused given grave and sudden provocation—Weapon used in retaliation: *Held*, accused was entitled to benefit of Exception I to S. 300. *Maung Ni v. Emperor*.

37 Cr. L. J. 411 :
161 I. C. 5 : 8 R. Rang. 447 :
A. I. R. 1936 Rang. 49.

—S. 300—Provocation.

Held, that to receive a grievous insult all in a moment at the mouth of a drunken man whose previous offence had been condoned, would amount to very grave provocation even to a man of the most philosophic temperament, especially where the accused is an ordinary youthful rustic, in whom unusual powers of self-control could not be expected: *Held* also, that the accused's act came within Excep. I to S. 300, and he was guilty of the offence of culpable homicide not amounting to murder. *Nga Paw Yin v. Emperor*.

37 Cr. L. J. 410 :
160 I. C. 1077 : 8 R. Rang. 446 :
A. I. R. 1936 Rang. 40.

—S. 300—Provocation.

Intrigue with accused's wife—Deceased singing provocative songs—Accused having controlled himself on previous occasions does not deprive him of benefit of Excep. 2—Sudden and grave provocation, held given. *Bahadur v. Emperor*.

36 Cr. L. J. 939 :
156 I. C. 427 : 7 R. Pesh. 122 :
A. I. R. 1935 Pesh. 78.

—S. 300—Provocation.

Mother of accused running away with her paramour—Paramour murdered by accused—Provocation to accused cannot be said to have been grave and sudden. *Jumma Fateh Moham-mad v. Emperor*.

34 Cr. L. J. 94 :
141 I. C. 40 : 33 P. L. R. 511 :
I. R. 1933 Lah. 55 : A. I. R. 1932 Lah. 438.

—S. 300—Provocation required by law.

In order that provocation may constitute a defence to a charge of murder, there must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man, and so as to lead the Jury to ascribe the act to the influence of that passion. The Court ought not to take into account the different degrees of mental ability in the prisoners who come before it. *Emperor v. Dinabandhu Ooriya*.

31 Cr. L. J. 737 :
124 I. C. 818 : A. I. R. 1930 Cal. 199.

PENAL CODE ACT (XLV OF 1860)

—S. 300—Provocation required by law.

In order to bring a case within the first Exception to S. 300, Penal Code, the provocation must be such as would upset, not merely a hasty and hot tempered person, but one of ordinary sense and calmness. *Sohrab v. Emperor*.

25 Cr. L. J. 1050 :
81 I. C. 826 : 5 Lah. 67 :
A. I. R. 1924 Lah. 450.

—S. 300—Provocation.

The grave and sudden provocation within the meaning of Exception 1 to S. 300, need not come from the victim within the hearing or sight of the offender. *Sumar Khamiso v. Emperor*.

33 Cr. L. J. 870 :
139 I. C. 772 : 26 S. L. R. 266 :
I. R. 1932 Sind 143 : A. I. R. 1932 Sind 168.

—S. 300—Provocation required by law.

The provocation contemplated by law is such as would upset not merely a hot tempered or hypersensitive person, but one of ordinary sense and calmness. *Khadim Hussain v. Emperor*.

27 Cr. L. J. 897 :
96 I. C. 209 : 7 Lah. 488 :
27 P. L. R. 805 : A. I. R. 1926 Lah. 598.

—S. 300—Provocation.

The provocation that will bring a case within Explanation 2, Excep. 1 to S. 300, must not be provocation given by anything done in obedience to the law. *Abdul Aziz v. Emperor*.

35 Cr. L. J. 725 :
148 I. C. 574 : 14 P. L. T. 464 :
6 R. P. 490 : A. I. R. 1933 Pat. 508.

—S. 300—Provocation.

The test to see whether the accused acted under grave and sudden provocation, is whether the provocation given was in the circumstances of the case, likely to cause a normal reasonable man to lose control of himself to the extent of inflicting the injury or injuries that he did inflict. *Saraj Din v. Emperor*.

36 Cr. L. J. 306 :
153 I. C. 204 : 35 P. L. R. 588 :
7 R. L. 399 (2) : A. I. R. 1934 Lah. 600.

—S. 300—Provocation, what is.

A person who flies into a passion without just cause and goes about slaughtering people, may be insane but, if he is sane, he cannot defend his action on the ground of provocation. *Lal Singh v. Emperor*.

22 Cr. L. J. 674 :
63 I. C. 610.

—S. 300—Provocation—What is.

Accused taking his wife away without rough-handling her—Deceased not having right to interfere threatening to attack accused—Such interference, amounts to grave and sudden provocation. *Nga Khanl v. Emperor*.

37 Cr. L. J. 569 :
162 I. C. 277 : 8 R. Rang. 556 :
A. I. R. 1936 Rang. 216.

—S. 300—Provocation—What is.

Further there is a very small distinction between the actual sight of an adulterous act

PENAL CODE ACT (XLV OF 1860)

and the realization of evidence which completely proves the most recent adultery. For instance, the feelings of a man who has just seen his wife's paramour leave her room and who finds her lying naked on the bed, must be taken to be identical with those of a man who has seen the adultery itself. *Sharif v. Emperor*. 24 Cr. L. J. 273 : 71 I. C. 993.

—S. 300—Provocation.

When the complainant's side deliberately provoked a conflict and there was no previous intention on the part of the accused to kill anybody, the proper sentence would be one of transportation for life. *Bahawal v. Emperor*.

33 Cr. L. J. 184 :
135 I. C. 670 : 32 P. L. R. 810 :
I. R. 1932 Lah. 126 : A. I. R. 1932 Lah. 5.

—S. 300—Provocation.

Where the fatal attack is not a premeditated one and the victims are injured in the heat of passion upon a sudden quarrel and the accused has neither taken undue advantage nor acted in a cruel or unusual manner, the extreme penalty of death is not called for. *Preman v. Emperor*. 28 Cr. L. J. 966 :

105 I. C. 678 : 26 P. L. R. 363 :
A. I. R. 1928 Lah. 93.

—S. 300—Provocation—Whether sudden.

Accused knowing of his sister's going to the deceased for illicit connection—Accused going to the spot with the intention of killing the culprit if found with his sister—Provocation is not sudden. *Mehra Mistak v. Emperor*.

35 Cr. L. J. 1378 :
151 I. C. 751 : 7 R. L. 184 :
A. I. R. 1934 Lah. 103.

—S. 300—Sentence.

Accused's brother-in-law going to *pwe* drunk and abusing people—Deceased striking him—Accused appearing and stabbing deceased—Proviso (1) to S. 300 does not apply but extreme penalty is not called for. *Nga Po Aung Gyaw v. Emperor*. 37 Cr. L. J. 467 :

161 I. C. 578 : 8 R. Rang. 487 :
A. I. R. 1936 Rang. 115.

—S. 300—Sentence.

The normal sentence for murder is death, and the passing of the alternative sentence, would be justified only where there is a mitigating circumstance, such as, the absence of an actual intention to kill. *Kra Chan U. v. Emperor*. 25 Cr. L. J. 207 :

76 I. C. 575 : 2 Bur. L. R. 103 :
A. I. R. 1923 Rang. 247.

—S. 300—Sentence.

Unless there are extenuating circumstances, the person who is found to be guilty of murder should receive the extreme penalty of the law. *Emperor v. Dinabandhu Ooriya*.

31 Cr. L. J. 737 :
124 I. C. 818 : A. I. R. 1930 Cal. 199.

—S. 300—Sentence.

Where a person has been charged with murder and sentenced to transportation for life,

PENAL CODE ACT (XLV OF 1860)

it is only in a really extreme case that the sentence should be enhanced to one of death by the High Court. *In re : Pedda Tirumaligadu*. 30 Cr. L. J. 628 :

116 I. C. 135 : 1929 M. W. N. 181 :
I. R. 1929 Mad. 519 : 29 L. W. 387 :
52 Mad. 147 : 56 M. L. J. 194 :
A. I. R. 1929 Mad. 342.

—S. 300—Sudden fight.

Accused armed with hatchet attacking deceased unarmed—Case not one of sudden fight—Offence not proved to be committed in the heat of passion—Exceptions 2 and 4 do not apply. *Ali Mohammad v. Emperor*.

37 Cr. L. J. 483 :
161 I. C. 414 : 8 R. S. 144 :
A. I. R. 1936 Sind 31.

—S. 300—Sudden fight.

In order to take advantage of Excep. 4 to S. 300, it must be shown that the offender did not take undue advantage or act in a cruel or unusual manner. *Nur Dad v. Emperor*.

34 Cr. L. J. 462 :
142 I. C. 901 : 33 P. L. R. 718 :
I. R. 1933 Lah. 290 :
A. I. R. 1932 Lah. 606.

—S. 300—Sudden fight.

Murder—Several injuries on unarmed person, including six on head—Case did not fall under Exception 1 to S. 300. *Khair 'Din v. Emperor*.

32 Cr. L. J. 1254 :
134 I. C. 829 : I. R. 1931 Lah. 1021 :
A. I. R. 1931 Lah. 280.

—S. 300—Sudden fight.

Person thrusting knife into the abdomen of another—Party fight—Fight not started by accused—Sentence of transportation awarded. *Bhagwana v. Emperor*.

34 Cr. L. J. 711 :
144 I. C. 292 : 34 P. L. R. 255 :
I. R. 1933 Lah. 445 :
A. I. R. 1933 Lah. 434.

—S. 300—Sudden fight.

Sudden fight—Every one trying to hit one of opposite party—No thought of private defence : *Held*, offence committed was culpable homicide. *Sundar Lal v. Emperor*.

36 Cr. L. J. 1145 :
157 I. C. 422 : 1935 A. W. R. 340 :
8 R. A. 188 : A. I. R. 1935 All. 438.

—S. 300—Sudden fight.

Sudden quarrel—Death—Absence of deliberate intention—Sentence of five years reduced to two years. *Emperor v. K. T. Keshan*.

35 Cr. L. J. 174 (2) :
146 I. C. 695 : 34 P. L. R. 993 :
6 R. L. 268 : A. I. R. 1933 Lah. 851 (2).

—S. 300—Sudden fight.

Where in a sudden quarrel, the accused deals a single blow with a *dang* on the head of his antagonist, an old man whose weakness and enlarged spleen might have hastened his death which ensues, the accused is guilty not of murder but of culpable homicide not

PENAL CODE ACT (XLV OF 1860)

amounting to murder. *Gurcharan Singh v. Emperor*. 36 Cr. L. J. 629 :

155 I. C. 77 (a) : 35 P. L. R. 371 :
7 R. L. 636 : A. I. R. 1934 Lah. 467.

———S. 300—Sufficient or likely to cause death.

If a person stabs another in the chest or abdomen with sufficient force to penetrate such structures, he must be held to have intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death. *Abdul Aziz v. Emperor*.

35 Cr. L. J. 725 :
148 I. C. 574 : 14 P. L. T. 464 :
6 R. P. 490 : A. I. R. 1933 Pat. 508.

———S. 300—Temporary insanity—Knowledge of nature of act—Causing death—If guilty of murder.

The accused in a murder case was found to be subject to recurring fits of insanity but there was no proof that at the time the murder was committed, he was incapable of knowing the nature of his act. It appeared further that he had a motive against the deceased, avoided and resisted arrest and was, to all appearances, perfectly sane during the investigation in the Committing Court and in the Sessions Court: *Held*, (1) that he was not devoid of knowledge that he was doing what was wrong and contrary to law; (2) that since there was a distinct possibility that at the time he may have been suffering from temporary mental derangement of some sort, a sentence of transportation would meet the case. *Mallu v. Emperor*. 25 Cr. L. J. 576 :

81 I. C. 64 : A. I. R. 1923 Lah. 619.

———S. 300—Use of deadly weapon.

Criterion for applying Excep. 4 is position of parties with respect to arms—Deceased unarmed—Accused causing one grievous hurt : *Held*, offence was murder. *Jumma Khan v. Emperor*. 36 Cr. L. J. 914 :

156 I. C. 6 : 7 R. Pesh. 113 :
A. I. R. 1935 Pesh. 59.

———S. 300, Excep. I—Grave and sudden provocation—Onus.

The onus of proving grave and sudden provocation such as would reduce the offence of murder to one of culpable homicide not amounting to murder, is on the accused person. *Rakha v. Emperor*. 27 Cr. L. J. 438 :

93 I. C. 230 : 2 Lah. Cas. 62 :
6 Lah. 171 : A. I. R. 1925 Lah. 399.

———S. 300, Excep. 1—Provocation.

Accused knowing about infidelity of his sister and that she and her lover were in a certain building—Going armed and breaking open the lock of room and killing sister and her lover—Exception 1 to S. 300 does not apply—Provocation, held not sudden. *Imam Bakhsh v. Emperor*. 38 Cr. L. J. 637 :

168 I. C. 923 : I. L. R. 1937 Lah. 206 :
9 R. L. 686 : 40 P. L. R. 44 :
A. I. R. 1937 Lah. 562.

PENAL CODE ACT (XLV OF 1860)

———S. 300, Excep. 1—Provocation.

Accused not betrothed to girl but having intrigue with her—Sanction by custom—No obligation of marriage unless girl becomes pregnant by him—Accused seeing her in act of sexual intercourse with deceased—Accused killing deceased—Offence committed. *Murgi Munda v. Emperor*. 40 Cr. L. J. 786 :

183 I. C. 499 : 18 Pat. 101 :
12 R. P. 162 : 5 B. R. 955 :
20 P. L. T. 802 : A. I. R. 1939 Pat. 443.

———S. 300, Excep. 1—Provocation.

Accused seeing deceased through hole in closed door committing adultery with his wife—Accused waiting till deceased came back, lay down and began dozing and then stabbing him to death—Exception 1 applies. *Balku v. Emperor*. 39 Cr. L. J. 956 (b) :

177 I. C. 821 : 1938 A. L. J. 689 :
11 R. A. 227 : I. L. R. 1938 All. 789 :
1938 A. W. R. 473 :
A. I. R. 1938 All. 532.

———S. 300, Excep. 1—Provocation—Continuing under influence of provocation—Act, whether must immediately follow provocation.

Accused suspected his wife of being intimate with one M and frequently remonstrated with, and warned her; one night accused and his wife were sleeping in the courtyard of their *haveli* when, after some little time, accused awoke and found his wife's bed unoccupied, his suspicions being aroused, he immediately proceeded to the *khola* adjoining the *haveli* where he found his wife and M together; he attacked M and killed him, and then attacked his wife and killed her also: *Held*, that the provocation received by the accused was grave and sudden, and he continued to be under the influence of provocation until he had killed his wife, and that he was entitled to the mitigation provided in Exception 1 to S. 300, Penal Code. *Kadir Bakhsh v. Emperor*. 23 Cr. L. J. 563 :

68 I. C. 403 : 2 L. L. J. 406 :
A. I. R. 1920 Lah. 501.

———S. 300, Excep. 1—Provocation—Cousin killing cousin and her parents, resenting her liaison—Provocation, whether grave and sudden.

Where a cousin of a girl resenting her liaison kills her and her parents, a couple of days after the last visit by her paramour, it cannot be said even if the girl had sung on the fateful morning some love songs which reminded the cousin of the girl's immoral relations with her paramour, that he acted under grave and sudden provocation, though he may have been feeling the disgrace to the family. *Khadim Hussain v. Emperor*. 27 Cr. L. J. 897 :

96 I. C. 209 : 7 Lah. 488 :
27 P. L. R. 805 : A. I. R. 1926 Lah. 598.

———S. 300, Excep. 1—Provocation—Deceased leading unchaste life—Deceased abusing accused—Stick blow proving fatal—Grave and sudden provocation.

The deceased who was the wife of the accused was leading an immoral life. The husband

PENAL CODE ACT (XLV OF 1860)

significantly asked his wife not to be very often absent from home. The deceased abused the accused. This exasperated the accused who picked up a stick which happened to be lying at the spot and gave her a couple of blows with it which proved fatal: *Held*, that in judging the conduct of the accused, one must not confine himself to the actual moment when the fatal blow was struck but must take into consideration the previous conduct of the woman as well and the case was covered by Exception 1 to S. 300, Penal Code, as the accused had acted under grave and sudden provocation. *Jan Muhammad v. Emperor*.

30 Cr. L. J. 1044 :
119 I. C. 323 : I. R. 1929 Lah. 867 :
30 P. L. R. 652 : A. I. R. 1929 Lah. 861.

———S. 300, Excep. 1 — *Provocation — Death caused in fit of anger, if murder.*

Accused on learning that his daughter had contracted an illicit intimacy with a *Mochi*, in a fit of anger killed not only the daughter but also his two wives who had connived at the intimacy: *Held*, that the case did not fall within the first Exception to S. 300, Penal Code, and the accused was guilty of murder. *Sohrab v. Emperor*.

25 Cr. L. J. 1050 :
81 I. C. 826 : 5 Lah. 67 :
A. I. R. 1924 Lah. 450.

———S. 300, Excep. 1—*Provocation—Death of wife caused by husband — Strangulation—Benefit of doubt, if can be given.*

Accused who was living on very good terms with his wife killed her suddenly one night by twisting her own hair round her throat. There was no premeditation and no preparation: *Held*, that in the absence of any evidence the accused was entitled to the benefit of the doubt as to whether some sudden and grave provocation did not arise which temporarily deprived him of self-control. *Malla v. Emperor*.

25 Cr. L. J. 519 :
77 I. C. 983 : 5 L. L. J. 528 :
A. I. R. 1923 Lah. 691.

———S. 300, Excep. 1—*Provocation—Grave and sudden provocation—Question of fact—Accused's wife, found sitting on same charpoy with her paramour—Provocation, nature of.*

Whether provocation is grave and sudden such as to deprive the accused of the power of self-control, is a question of fact to be determined upon the peculiar circumstances of each case. In deciding the question, the Court must take into account the condition of the mind in which the offender was at the time of the provocation. Where the accused found seated on the same *charpoy* with his wife, her paramour whom he had expelled from his house only a day previously: *Held*, that the accused must be considered to have received a grave and sudden provocation. *Des Raj v. Emperor*.

29 Cr. L. J. 454 :
108 I. C. 902.

———S. 300, Excep. 1—*Provocation—Grave and sudden provocation, what amounts to.*

Before a person can claim the benefit of

PENAL CODE ACT (XLV OF 1860)

Exception 1 to S. 300, Penal Code, he must prove (i) that he was deprived of the power of self-control, and (ii) that the provocation was so grave and sudden as to reasonably justify such loss of self-control. In other words, it ought to be distinctly shown not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action but that that feeling had an adequate cause. In the absence of such proof, the atrocity of the offence will not be mitigated and the offender will not be able to escape the legal consequences of his act. *Lal Singh v. Emperor*.

22 Cr. L. J. 674 :
63 I. C. 610.

———S. 300, Excep. 1—*Provocation—Grave and sudden provocation, what constitutes.*

The accused asked his wife to sever her connection with her paramour but she declined to do so. Thereupon there was a quarrel between the accused and his wife, in the course of which, the accused lost his temper and in a fit of anger, killed his wife: *Held*, that there was no grave and sudden provocation within the meaning of Exception 1 to S. 300, Penal Code, but there was provocation entitling him to the lesser penalty of transportation for life. *Ibrahim v. Emperor*.

29 Cr. L. J. 347 :
108 I. C. 166 : A. I. R. 1928 Lah. 544.

———S. 300, Excep. 1—*Provocation—Held, there was grave and sudden provocation and Exception 1 applied.*

Accused had been gravely and suddenly provoked when ploughing his field and had been forced into a fight; he had then retired and been followed; he had not had time to recover from the effects of the provocation, when again being taunted, he killed another person: *Held*, that in these circumstances, Exception 1 to S. 300 should be applied, thus reducing the offence to one of culpable homicide not amounting to murder. *Tahir Hazrat Gul v. Emperor*.

38 Cr. L. J. 568 :
168 I. C. 394 : 9 R. Pesh. 127 :
A. I. R. 1937 Pesh. 33.

———S. 300, Excep. 1—*Provocation—Husband finding wife in bed with paramour and killing both—Grave and sudden provocation—Offence.*

The accused on returning home late at night found his wife in the same bed with her paramour who escaped, but the accused ran after and killed him with a knife. He then came back to his own house and killed his wife: *Held*, (1) that the paramour's presence in the house was a grave and sudden provocation sufficient to deprive the accused of his power of self-control, and the accused's act in killing the paramour and his wife was, in such circumstances, culpable homicide not amounting to murder. *Raham Shah v. Emperor*.

26 Cr. L. J. 534 :
85 I. C. 374 : 6 L. L. J. 437 : 1 Lah. Cas. 527 :
A. I. R. 1925 Lah. 114.

PENAL CODE ACT (XLV OF 1860)

—S. 300, Excep. 1—Provocation.

Husband seeing wife committing adultery but killing her lover after taking time for deliberation—Case does not fall within Excep. 1 to S. 300—Case, however, recommended to Local Government, *Jagar Beg Jal v. Emperor*.

38 Cr. L. J. 1057 :
171 I. C. 314 : 39 P. L. R. 479 :
10 R. L. 184 : A. I. R. 1937 Lah. 692.

—S. 300, Excep. 1—Provocation.

In the course of a quarrel between the party of the accused and that of the deceased, the deceased came out of his house shouting for the accused. The accused who was then standing near a tree in front of his house near by abused in return and defied the deceased and told him to come on. The deceased then caught hold of the accused by the tuft and gave him two blows with the fist. There was a struggle and the deceased held the accused firm by the tuft. The accused then gave a fatal blow to the deceased on the left side with a dagger which he had in his hand: *Held*, that though the first provocation of the deceased in calling out for the accused was not grave and sudden, it was aggressive and the second provocation, i. e., seizing the accused by the tuft was grave and sudden and the stabbing being directly attributable to it, Exception 1 to S. 300 applied to the case and the accused was not guilty of murder but of the lesser offence of culpable homicide not amounting to murder. *In re : Guturi Nagadu*.

29 Cr. L. J. 7 :
106 I. C. 314 : 1927 M. W. N. 796 :
I. L. T. 40 Mad. 253 :
A. I. R. 1928 Mad. 136.

—S. 300, Excep. 1—Provocation—*Intrigue, wife carrying on with another—Husband asking wife to live amicably—Shameless answer—Grave and sudden provocation.*

The accused's wife was carrying on an intrigue with a neighbour and the matter was brought before the *punchayat*. The *punchayat*, however, advised her to live amicably with her husband. Next morning, the husband suggested that they should leave the village and go and settle in another village. Her reply was: "You go, I shall not. If you try too much to stop me, you will have to wash your hands of me and I shall go away." Upon this he assaulted her so severely that she died; *Held*, that the answer given by the deceased of a determination to leave him and disgrace him was sufficient to cause grave and sudden provocation, and that consequently, the act of the accused fell within Exception 1 to S. 300, Penal Code. *Gurdin v. Emperor*.

26 Cr. L. J. 3 :
83 I. C. 482 : A. I. R. 1925 Oudh 288.

—S. 300, Excep. 1—Provocation, meaning and effect.

The question of provocation is a psychological question, and one cannot apply consi-

PENAL CODE ACT (XLV OF 1860)

derations of social morality to such a question. *Kota Potharaju v. Emperor*.

33 Cr. L. J. 273 :
136 I. C. 314 (1) : 35 L. W. 141 :
1931 M. W. N. 1137 :
I. R. 1932 Mad. 282 (1) :
A. I. R. 1932 Mad. 25 (1).

—S. 300, Excep. 1—Provocation.

Mere vulgar abuse is not such a grave and sudden provocation as is contemplated by Exception 1 to S. 300, but may be a sufficient reason for not imposing the capital sentence. *Abdullah v. Emperor*.

33 Cr. L. J. 338 :
136 I. C. 715 : 33 P. L. R. 382 :
I. R. 1932 Lah. 251 :
A. I. R. 1932 Lah. 369.

—S. 300, Excep. 1—Provocation—Provocation grave and sudden—What is.

If a man comes home and finds a person actually misbehaving with a relation of his, there is a provocation grave and sudden, and his blood can hardly be expected to cool down in the course of a few seconds. *Dini v. Emperor*.

27 Cr. L. J. 572 :
94 I. C. 140 : A. I. R. 1926 Lah. 485.

—S. 300, Excep. 1—Provocation—Provocation, sudden and grave—Loss of self-control—Abnormal temperament—Unfaithful mistress—Demand to allow nose-cutting—Resistance—Palliating circumstances.

Where an accused armed with a pistol and a knife, dealing with a perfectly unarmed and helpless woman who is his mistress and not his wife and is not found by him in any compromising circumstances or in any act which would justify intense resentment, discovers during conversation with her that she has gone wrong with other lovers, which fact he clearly must have anticipated and which he never could hope to avoid and attempts to compel the woman to have her nose cut off, any resistance which the woman may make to this barbarous mutilation would not confer any right, legal or moral, upon the accused to kill her outright and does not in any way palliate the offence of murder, though nose-cutting be a penalty commonly inflicted by husbands on unfaithful wives in the locality to which the accused belongs. *Bodhraj v. Emperor*.

25 Cr. L. J. 105 :
76 I. C. 105.

—S. 300, Excep. 1—Provocation—Suspicion of unchastity of sister, if grave and sudden provocation.

Not far from his house the accused met his sister travelling with a stranger. He took no immediate action but quietly brought them home and sat down and talked with them, and after satisfying himself that there were, to his mind, grounds for suspecting them of misbehaviour with one another, he deliberately fell upon them and killed both of them on the spot with his hatchet: *Held*, that the mere suspicion could not amount to grave provocation within the meaning of Penal Code and that in the

PENAL CODE ACT (XLV OF 1860)

circumstances of the case, the provocation was not sudden. *Emperor v. Rahim Khan*.

15 Cr. L. J. 501 :

24 I. C. 589 : 7 S. L. R. 118 :

A. I. R. 1914 Sind 136.

-----S. 300, Excep. 1—*Provocation, what is.*

Being slapped on the back by another, whether sufficient provocation so as to deprive person slapped, of his power of self-control. *Nga Chit Tin v. The King*.

40 Cr. L. J. 725 :

183 I. C. 145 : 12 R. Rang. 45 :

A. I. R. 1939 Rang. 225.

-----S. 300, Excep. 1—*Provocation—What should Court consider in deciding whether provocation was grave and sudden, stated.*

In deciding whether the provocation was grave and sudden within the meaning of Excep. 1 to S. 300, Penal Code, it is not open to an accused person to show that he was a person of particular excitability or of a particular mental instability or of a particularly volatile temperament. While it is the offender whom the Court regards when considering the question whether he was deprived of the power of self-control by grave and sudden provocation, it decides whether this was so by the test of the "reasonable man," the ordinary normal man of the community to which the offender belongs. Each case must be dealt with on its own facts. The law against murder, however, is not lightly to be relaxed. *Ghulam Mustafa Gahno v. Emperor*.

40 Cr. L. J. 778 :

183 I. C. 389 : 1939 Kar. 199 : 12 R. S. 52 :

A. I. R. 1939 Sind 182.

-----S. 300, Excep. 1 and 2—*Provocation.*

Accused seeing his brother struck by deceased with cart *prop*, stabbing deceased and killing him — Case held fell under Exceptions 1 and 2 to S. 300. *Po Mye v. The King*.

41 Cr. L. J. 634 :

188 I. C. 578 : 1940 Rang. 109 :

13 R. Rang. 5 : A. I. R. 1940 Rang. 129.

-----S. 300, Excep. 1, 302—*Provocation—Grave and sudden provocation—Burden of proof—No premeditated motive—Fault of accused—Sentence.*

The burden of proving that the accused acted under sudden and grave provocation which deprived him of the power of self-control, lies on the accused. Where the accused, a young man of 20, had no sufficient motive for a premeditated murder and the probability was that there must have been some violent quarrel between him and the deceased: Held, that it was not a case for the capital sentence. *Pirithi v. Emperor*.

26 Cr. L. J. 349 :

84 I. C. 653 : 6 L. L. J. 323 :

A. I. R. 1924 Lah. 654.

-----S. 300, Excep. 1, 302—*Provocation—What is—Grave and sudden provocation, husband seeing paramour of his wife leaving his house—Wife's annoying reception of his remonstrances—Husband killing the wife.*

PENAL CODE ACT (XLV OF 1860)

The accused returned home unexpectedly and met the paramour of his wife coming out of his house, he remonstrated with his wife and was annoyed by her reception of his remonstrances, and killed her with a *hoe* which was lying near him: Held, that the act of the accused was covered by the 1st Exception to S. 300, Penal Code. *Ralia v. Emperor*.

14 Cr. L. J. 208 :

19 I. C. 208 : 3 P. R. 1913 Cr. :

209 P. L. R. 1913.

-----Ss. 300, Excep. 1, 302—*Provocation—What is—Wife found by husband sitting with lover—Death caused by husband—Grave and sudden provocation—Offence.*

Accused's wife left her house after giving the accused his midday meal. She went to a grove and there met her lover. The accused after finishing his meal took up a *banka* and went in search of his wife. He found her sitting with her lover and killed her with the *banka*: Held, that the provocation although grave was not sudden as to deprive the accused of his self-control and that Exception 1 to S. 300, Penal Code, did not, therefore, apply and the accused was guilty of murder. *Chainu v. Emperor*.

27 Cr. L. J. 65 :

91 I. C. 241 : A. I. R. 1926 Oudh 272.

-----Ss. 300, Excep. 1, 302—*Provocation—Woman of loose character—Refusal to admit husband to sexual intercourse—Killing wife, if murder.*

Accused killed his wife, whom he knew to be a woman of depraved character, because she refused to have sexual intercourse with him on the night of the occurrence and also abused him. The woman had often before refused such intercourse; Held, that the accused could not be said to have acted under grave and sudden provocation, and was guilty of murder. *Ghazi v. Emperor*.

23 Cr. L. J. 140 :

65 I. C. 572 : 1 P. W. R. 1922 Cr. :

4 U. P. L. R. Lah. 49.

-----Ss. 300, Excep. 1, 302, 304—*Provocation—Grave and sudden provocation—Alteration between husband and wife—Abuse of husband by wife, if culpable homicide not amounting to murder.*

Deceased was in the habit of going away from her husband's house though she was not ill-treated there. One day the husband, on having heard that she was running away from the house, followed her to a grove and tried to persuade her to accompany him back home but she refused and gave him foul abuse. He thereupon struck her with a chopper which he happened to carry at the time, but which he had not taken with him with the intention of hitting her, and caused her death; Held, that the conduct of the wife amounted to grave and sudden provocation, the case was one of culpable homicide not amounting to murder under S. 304, Penal Code. *Mahadeo v. Emperor*.

24 Cr. L. J. 808 :

74 I. C. 712 : 9 O. L. J. 597 :

A. I. R. 1923 Oudh 112.

PENAL CODE ACT (XLV OF 1860)

—Ss. 300, Excep. 1, 302, 304—*Provocation—Wife discovered in flagrante delicto with another man—Provocation, grave and sudden.*

When a husband finds his wife in *flagrante delicto* with another man, he is deprived of the power of self-control by grave and sudden provocation and if he kills the wife in the heat of the moment, his case falls within S. 300, Exception 1 of the Penal Code, and he is guilty of the offence under the first part of S. 304 and not under S. 302. *Sharif v. Emperor.*

24 Cr. L. J. 273 :
71 I. C. 993.

—Ss. 300, Excep. 1, 302, 304—*Provocation—Wife leading immoral life—Remonstrance—Provocation—Death caused by stabbing—Murder—Culpable homicide.*

Accused's wife led a grossly immoral life. After a recent act of unchastity, the accused remonstrated with her and instead of showing repentance she replied that she would continue in the course to which he objected. The accused became enraged and struck her with a stick. She struggled with him and got hold of his fingers and bit them. Accused then lost control of himself, took out a knife and stabbed her repeatedly with it with the result that she died from the injuries. *Held*, that the immediate provocation offered to the accused at the time of his remonstrance coming on the top of all that had gone before was sufficient to bring the case within Exception 1 to S. 300, Penal Code, and to reduce the offence of the accused from murder to one of culpable homicide. *Sukhai v. Emperor.*

26 Cr. L. J. 1228 :
88 I. C. 844 : A. I. R. 1925 All. 676.

—Ss. 300, Excep. 1, 302, 304, Part 1—*Provocation.*

Accused was attracted to his mother's house by hearing a noise at midnight and on arriving there found that the deceased had his arms round his unmarried sister. The accused thereupon inflicted several *lathi* blows on the deceased as the result of which the latter died. *Held*, that the accused had received grave and sudden provocation and his offence amounted to culpable homicide not amounting to murder. *Mohammad Yar v. Emperor.*

25 Cr. L. J. 685 :
81 I. C. 173 : 5 L. L. J. 40 :
A. I. R. 1924 Lah. 62.

—Ss. 300, Excep. 1, 304—*Provocation—Wife seen in company with paramour—Husband killing her, if guilty of murder.*

Where an accused sees his wife in company with her paramour and kills her, he must be held to have acted under grave and sudden provocation and the offence committed is culpable homicide not amounting to murder. *Fatta v. Emperor.*

30 Cr. L. J. 481 :
115 I. C. 476 : 10 L. L. J. 508 :
I. R. 1929 Lah. 396.

—Ss. 300, Excep. 1, 304, Part 1—*Provocation—Accused seeing his wife with her paramour but not in act of intercourse—Accused killing wife—Offence—Sentence.*

PENAL CODE ACT (XLV OF 1860)

Where the accused found his wife who was six months advanced in pregnancy and her paramour together in his house but not in the act of sexual intercourse and killed her on provocation : *Held*, that taking into account the nature and temper of these people of the class of the accused, when their honour, or perhaps the possession—of their women was concerned, the case fell within Exception 1 to S. 300, Penal Code : *Held*, however, that this was not a case where the provocation was so extreme as to call for a lighter sentence. *Noukar Mouldino v. Emperor.*

38 Cr. L. J. 968 :
170 I. C. 827 : 10 R. S. 73 :
31 S. L. R. 460 : A. I. R. 1937 Sind 212.

—Ss. 300, Excep. 1, 326—*Provocation—Death caused by single thrust of pen-knife without premeditation, if murder or hurt.*

In connection with the marriage of accused with one *Musammal I*, a certain ceremony was to be performed on a certain date. On the day so fixed, the accused found one *Musammal N* taking *Musammal I* who was from her village, and when he remonstrated with her she told him that the ceremony would not take place on that day and abused him. The accused thereupon attacked the women with a pen-knife and inflicted one injury on each in the abdomen, as the result of which *Musammal N* died, but *Musammal I* survived : *Held*, (1) that the conduct of *Musammal N* amounted to the giving of grave and sudden provocation within the meaning of Exception 1 to S. 300, Penal Code : (2) that, however, it must be presumed that the accused intended to cause grievous hurt to the women and was, therefore, guilty of an offence under S. 326, Penal Code. *Allah Din v. Emperor.*

24 Cr. L. J. 663 :
73 I. C. 695 : A. I. R. 1924 Lah. 234.

—S. 300, Excep. 1 — *Provocation—S. 304.*

Accused killing another man found in his wife's bed in attempt to commit adultery with her—Accused held entitled to the benefit of Exception 1 of S. 300. *Hussain v. Emperor.*

41 Cr. L. J. 15 :
184 I. C. 432 : I. L. R. 1939 Lah. 278 :
41 P. L. R. 761 : 12 R. L. 223 :
A. I. R. 1939 Lah. 471.

—S. 300, Excep. 2—*Private defence.*

In order to claim the benefit of Exception 2, S. 300, Penal Code, the accused must show that they had no intention of causing more harm than was necessary. *Jalal v. Emperor.*

25 Cr. L. J. 811 :
81 I. C. 347 : A. I. R. 1923 Lah. 232.

—S. 300, Excep. 2—*Private defence—Proclaimed offender murdering Police Official trying to arrest him—Publication of proclamation not proved, if murder.*

A proclaimed offender was tried for murdering a Police Officer trying to arrest him. The prosecution failed either to file the statement referred to in Cl. 3, S. 87, Cr. P. C., or to adduce any other evidence of publication : *Held*, that the accused was entitled to the

PENAL CODE ACT (XLV OF 1860)

benefit of Exception 2 to S. 300, Penal Code, and was guilty of culpable homicide not amounting to murder. *In re : Kayambu Tevan.*

17 Cr. L. J. 78 :

32 I. C. 670 : A. I. R. 1917 Mad. 652.

———S. 300, Excep. 2—*Private defence of person—Culpable homicide not amounting to murder—Self-defence—Causing more injury than necessary.*

Where the accused, who was concealing himself from the Police, was seized by the deceased and two others, and in order to rescue himself, he struck the deceased two severe blows on the head and shoulder, with an axe, which he had in his hand at the time, in consequence of which blows, the deceased expired within a week : *Held*, that the accused exceeded his right of private defence in that he caused more harm than was necessary to resist the unauthorized attempt of the deceased to place him in confinement. *Farid v. Emperor.*

12 Cr. L. J. 81 :

9 I. C. 452.

———S. 300, Excep. 2—*Private defence of property—Culpable homicide—Firing at person mistaken for thief—Fatal injury—Offence.*

The accused fired at a person a gun loaded with a slug, one inch long, in the mistaken belief that he was a thief, the shot was fired in order to protect certain fruit from being stolen. The shot resulted in the death of the person fired at. It was found that the accused had no reason to apprehend anything more serious than the theft of certain fruit, and that he must have known that the shot was likely to cause death : *Held*, that the accused was not entitled to the benefit of the second exception to S. 300, Penal Code. *Thekkumthathalil Kelukutti v. Emperor.*

13 Cr. L. J. 782 :

17 I. C. 414.

———Ss. 300, Excep. 2, 304—*Private defence—Absence of warning, effect of.*

The right of private defence arises when a man is seen with a stick trailing in his hand and for the purpose of committing theft. But when the person exercising the right is with a companion who is armed, it is the duty of the former to warn the person to drop the stick and to surrender, and the failure to do so brings the case under the 2nd Exception to S. 300, Penal Code. Firing the first shot in the air is not sufficient warning for this purpose. A long term of imprisonment is not called for in such cases. *Nga Tun v. Emperor.*

17 Cr. L. J. 335 :

35 I. C. 511 : A. I. R. 1916 L. Bur. 63.

———Ss. 300, Excep. 2, 304—*Private defence of person—Death caused by use of knife in a scuffle.*

Three men trespassed by night into the house of the accused, seized him and tried to drag him forcibly out of the house. There was a scuffle between the accused and his assailants. The latter was unarmed and the accused had no reason to believe that he was in danger of death or grievous hurt but he believed that he could not escape from his assailants without

PENAL CODE ACT (XLV OF 1860)

using knife which he picked up and used, stabbing one to death and wounding the other of his three assailants. On his trial for murder, the accused did not plead that he had used the knife in his self-defence : *Held*, that as it was in evidence that the accused had to struggle against three persons, the Court was not only entitled but bound to take into consideration the accused's right of self-defence : *Held*, further, that on the facts proved, the accused had exceeded his right of private defence but being within the 2nd Exception to S. 300, Penal Code, was not guilty of murder but of culpable homicide not amounting to murder. *In re : Garugu Ramayya.*

12 Cr. L. J. 18 :

8 I. C. 1088 : 8 M. L. T. 462.

———Ss. 300, Excep. 2, 304—*Private defence of property—Right of private defence of property—Lathi blow struck without premeditation—Death—Right of private defence exceeded—Offence.*

The accused, who was appointed to protect the crops of a field, went round one night and saw in the darkness a man cutting the crop. The thief on seeing the accused arose. Upon this the accused who was armed with a lathi, at once struck him a blow on the head, felling him to the ground, with the result that he died that very night : *Held*, that the case fell under Exception 2, S. 300, Penal Code, that the accused exceeded the right of private defence of property, and that the conviction of the accused should be under S. 304 and not under S. 325, Penal Code. *Emperor v. Kallu.*

22 Cr. L. J. 741 :

64 I. C. 133.

———Ss. 300, Excep. 2, 304, 326, 104—*Private defence—Culpable homicide, and grievous hurt by dangerous weapons—Right of private defence of property and of body—Cr. P. O., Ss. 59, 46.*

Where accused, who were two of the persons, that pursued some thieves, one midnight seeing them taking cotton pods in their fields, killed one, who was unarmed and caused grievous hurt to another, who was armed with an iron bound stick, with their swords in a scuffle that ensued only between them and two of the thieves, the other pursuers having been left behind or not reached in time and the rest of the thieves having gone ahead or not turned on them, and where the evidence was uncertain as to who beat which : *Held*, that the thieves might be or were thought to be in possession of a few handfuls of cotton or some other property when they left, but that the right of private defence in the mere recovery of property in the light of Ss. 103, 104, 105, Cl. (2), I. P. C., would evidently not extend to causing death or grievous hurt, that the accused might be taken to have followed them with an idea to secure them in order that they being unrecognised, their pilfering might not go unpunished and that should the thieves turn on their pursuers, the latter would have, of course, a complete right of self-defence against them ; that in this case, as the armed thief

PENAL CODE ACT (XLV OF 1860)

struck his pursuers with his stick, any injury inflicted on him short of causing his death which was necessary to secure his arrest and to protect his captors from injury, was justifiable; that the death of the deceased who was unarmed, caused by repeated sword-cuts was not justifiable; that both the accused were jointly responsible for his death and that the offence in the light of Exception 2 to S. 300 would fall under S. 304. *Emperor v. Koli Mepa Bhaga*.

1 Cr. L. J. 285.

————S. 300, Excep. 4—*Applicability*.

Exception 4 to S. 300, Penal Code, is meant to apply to cases wherein, in whatever way the quarrel originated, the subsequent conduct of both the parties puts them upon an equal footing. *Karam Singh v. Emperor*.

27 Cr. L. J. 459 :

93 I. C. 251 : 8 L. L. J. 93 :

27 P. L. R. 132 : A. I. R. 1926 Lah. 219.

————S. 300, Excep. 4—*Fight—Origin, not known—Presumption*.

Where there is no sufficient reliable evidence to come to a conclusion as to how a fight commenced, it should be presumed that it took place suddenly. *Karam Singh v. Emperor*.

27 Cr. L. J. 459 :

93 I. C. 251 : 8 L. L. J. 93 :

27 P. L. R. 132 : A. I. R. 1926 Lah. 219.

————S. 300, Excep. 4—*Private defence—Use of knife—No risk of serious hurt to person using—Offence*.

Exception 4 to S. 300, Penal Code, does not apply to the case of an accused, who uses a knife where there is no appreciable risk of even serious hurt to his person. *In re : Muthumada Nandan*.

16 Cr. L. J. 747 :

31 I. C. 347 : A. I. R. 1915 Mad. 1214.

————S. 300, Excep. 4—*Provocation—Grave and sudden provocation—Accused dealing one blow on head and one on leg of deceased—'Acting in cruel and unusual manner,' meaning of*.

Where during a fight which arose out of a sudden quarrel and which was unpremeditated, the accused struck one blow on the head, and another blow on the leg, of his opponent with a lathi and the latter died on account of the injuries : *Held*, that the accused could not be said to have acted 'in a cruel or unusual manner' within the Fourth Exception to S. 300, Penal Code, and could be convicted only under S. 304, Part II, Penal Code. *Nur Khan v. Emperor*.

31 Cr. L. J. 289 :

121 I. C. 724 : 30 P. L. R. 487 :

A. I. R. 1929 Lah. 719.

————S. 300, Excep. 4—*Provocation—Murder and culpable homicide—Provocation, premeditation and intention*.

According to a custom in a village, the accused, a Havildar (guard) of the grain-yard was provided with a quilt by the deceased, a villager, in his turn. After the time for which it had been lent had expired, the deceased asked for it, but the accused declined to restore it until he was supplied with another.

PENAL CODE ACT (XLV OF 1860)

A dispute arose, in which each grasped one end of it and then the Havildar struck the deceased with a light stick and the deceased retaliated by throwing a brass pot he had in hand and inflicting a cut below the accused's eye. The accused then rushed into a hut to take his sword and inflicted a mortal wound on the deceased's back as he was re-tying his turban disarranged in the fight : *Held*, that the accused had received great provocation, such a blow being extremely painful : that he was entitled to Exception 4 of S. 300, and that he was guilty under the 1st part of S. 304. *Emperor v. Abram Raja*.

1 Cr. L. J. 888.

————S. 300, Excep. 4—*Sudden fight*.

Accused and deceased simultaneously preparing for assault and fighting—Sudden fight—Accused's case falls within Excep. 4. *Nga Ba Shin v. Emperor*.

34 Cr. L. J. 783 :

144 I. C. 420 : I. R. 1933 Rang. 109 :

A. I. R. 1933 Rang. 142.

————S. 300, Excep. 4—*Sudden fight—Accused taking undue advantage and acting brutally, if murder*.

Where during the course of a sudden fight upon a sudden quarrel, the accused struck a terribly violent blow with a lathi upon another who had not inflicted any injuries worth the name on the accused and who had not the worst of the encounter and the latter died on account of the blow : *Held*, that the act of the accused was not covered by Exception 4 to S. 300, Penal Code, inasmuch as the accused took undue advantage of the other and acted in a brutal and cruel manner and that the accused was, therefore, guilty of murder. *Amarnath Singh v. Emperor*.

30 Cr. L. J. 173 :

113 I. C. 481 : 5 O. W. N. 391 :

I. R. 1929 Oudh 65 : A. I. R. 1928 Oudh 282.

————S. 300, Excep. 4—*Sudden fight—Attacking unarmed person with dagger is taking undue advantage*.

When a man attacks an unarmed person with a dagger, he takes undue advantage and acts in a cruel manner. *Umar Khushal v. Emperor*.

41 Cr. L. J. 574 :

188 I. C. 313 : 12 R. Pesh. 46 :

A. I. R. 1940 Pesh. 1.

————S. 300, Excep. 4—*Sudden fight—Death caused in sudden fight*.

A dispute arose over the payment of the rent of a certain field between the three accused and the deceased. The former attacked the deceased and his nephew with lathis and a regular fight took place between the parties. The result was that considerable injuries were caused on both sides and that the deceased was killed : *Held*, (1) that lathis being lethal weapons, the accused must have known that they were likely to cause death ; (2) that the case fell under Exception 4 to S. 300, Penal Code, and that all the accused were guilty of an offence under S. 304, Penal Code. *Emperor v. Gulab*.

19 Cr. L. J. 953 :

47 I. C. 805 : 16 A. L. J. 731 :

40 All. 686 : A. I. R. 1918 All. 420.

PENAL CODE ACT (XLV OF 1860)

—S. 300, Excep. 4 — *Sudden fight — Exception 4 to S. 300, if applies when there is no quarrel.*

In order to bring a case within Exception 4 to S. 300, it is necessary to establish *inter alia* that the act was done upon a sudden quarrel, and where, therefore, there is no quarrel either sudden or otherwise, it is unnecessary to look further and enquire whether there have been established any of the other facts which are essential for the purpose of bringing a case within this exception. *Nga Ohit Tin v. The King.*

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

—S. 300, Excep. 4 — *Sudden fight — Murder—Culpable homicide not amounting to murder—Attack without premeditation and in the heat of passion.*

Where, in the course of a faction fight, the accused inflicted a fatal wound on the deceased who was not actually engaged in the fight and who cried out that he was unarmed: *Held*, that it was hardly safe to assume that the accused, in the heat of the fight when he had himself probably been wounded already, could be aware that the deceased had no offensive intention and could have heard that the deceased was unarmed. The accused was, therefore, given the benefit of the 4th Exception to S. 300, Penal Code. *Nga Thwe v. Emperor.*

13 Cr. L. J. 272 :
14 I. C. 656 : 5 Bur. L. T. 17.

—S. 300, Excep. 4 — *Sudden fight — Murder in sudden fight.*

If two men are fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such a weapon must be held to take an undue advantage and not to be entitled to the benefit of Exception 4 to S. 300, Penal Code. *Po Kin v. Emperor.*

1 Cr. L. J. 1128 :
2 L. B. R. 320.

—S. 300, Excep. 4 — *Sudden fight — Sudden and unpremeditated fight—Accused taking undue advantage—Offence.*

Where the accused took undue advantage by attacking another with a formidable weapon when he was lying on a *charpoy* unarmed and unable to defend himself, Exception 4 to S. 300, Penal Code, does not apply even if the fight was sudden and without premeditation and the act was committed in the heat of passion. *Sher Alam v. Emperor.*

28 Cr. L. J. 415 :
101 I. C. 191.

—S. 300, Excep. 4 — *Sudden fight — Test to be applied while considering whether Exception 4 to S. 300 applies to facts of case, stated.*

Whether or not the killing was premeditated is not the first test to be applied when considering whether the exception of "a sudden fight in the heat of passion" is applicable to any given set of facts. The first test is

PENAL CODE ACT (XLV OF 1860)

whether the act of the accused which caused the deceased's death was done without premeditation. The distinction is not to be ignored. If the other essentials necessary to bring a case within Exception 4 to S. 300 are also established, such as, whether the accused acted in the heat of passion or whether the accused acted in a manner which was either cruel or unusual and the exception is thereby brought into play, the effect would be to reduce what would otherwise be murder, to culpable homicide not amounting to murder. *Nga Ohit Tin v. The King.*

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

—S. 300, Excep. 4 — *Sudden fight — Want of sufficient evidence of motive to commit murder—Offence if culpable homicide not amounting to murder.*

Where, in a charge of murder it was proved that there was a fight between the accused and the deceased person, in the course of which, the latter received injuries and died, but there was not sufficient evidence of the cause of the fight or of the motive that induced the accused to deliberately murder the deceased; *Held*, that the accused might properly be given the benefit of the fourth Exception to S. 300, Penal Code, and convicted of the offence of culpable homicide not amounting to murder. *In re : Kithar Khan.*

11 Cr. L. J. 191 :
4 I. C. 1116 : 5 M. L. T. 207.

—S. 300, Excep. 4—*When established.*

The fact that an offence was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, is not alone sufficient for the application of Exception 4 to S. 300. It must also be found that the offender did not take any undue advantage and did not act in a cruel or unusual manner. *Ram Nath v. Emperor.*

35 Cr. L. J. 115 :
146 I. C. 563 : 10 O. W. N. 986 :
6 R. O. 145 (1) : A. I. R. 1933 Oudh 438.

—Ss. 300, Excep. 4, 304-1—*Sudden fight — Death caused by blows with knife—Injuries caused to accused person—Explanation, absence of—Sudden fight—Presumption—Offence.*

Accused inflicted four injuries on the person of the deceased with a clasp knife, one of them in the abdomen which proved fatal. The accused himself received numerous injuries, some of them on the head, in respect of which no explanation was given in the evidence for the prosecution. It was found that the deceased at the time of the attack upon him was armed with a stick: *Held*, (1) that under the circumstances, it must be presumed that there was a sudden and unpremeditated fight between the accused and the deceased, but that the accused had exceeded his right of private defence in giving the deceased several injuries, one of them on a very vital part of the body; (2) that the act of the accused fell within the provisions of the 4th Exception to S. 300, Penal Code

PENAL CODE ACT (XLV OF 1860)

and that he was, therefore, guilty of an offence under S. 304-1 of the Code. *Feroze v. Emperor*. 27 Cr. L. J. 26 :

91 I. C. 58 : 2 Lah. Cas. 109 :
7 L. L. J. 533 : A. I. R. 1925 Lah. 633.

———Ss. 300, Excep. 4, 34—*Attack by several persons—Liability—Two accused charged with murder—Finding of Jury that one of them came within Exception 4 to S. 300—S. 34, if can be applied against other.*

Two accused were charged with murder. The Jury acquitted them of this charge but found that one of them brought himself within Exception 4 to S. 300, I. P. C. : Held, that when once the Jury were satisfied that one of the accused had brought himself within the Exception 4, there was no room for the application of S. 34 against the other at all. *Asmat Sheik v. Emperor*. 41 Cr. L. J. 383 :

186 I. C. 847 : 70 C. L. J. 299 :
12 R. C. 534 : A. I. R. 1940 Cal. 147.

———Ss. 300, Excep. 4, 302—*Knowledge or intention—Presumption of intention from nature of act—Sentence—Extreme penalty, when to be inflicted.*

A person delivering a violent blow with a lethal weapon like a *dang* on a vulnerable part of the body such as the head, must be deemed to have intended to cause such bodily injury as he knew was likely to cause the death of the person to whom the injury was caused. *Premam v. Emperor*. 28 Cr. L. J. 966 :

105 I. C. 678 : 26 P. L. R. 363 :
A. I. R. 1928 Lah. 93.

———Ss. 300, Excep. 4, 302, 100—*Sudden fight—Accused striking deceased with sickle and killing him—Deceased unarmed, if murder.*

Where the accused who, in a sudden fight, strikes an unarmed person with a sickle, thereby causing his death, and himself getting a few scratches on his back, Exception 4 of S. 300, Penal Code, does not apply. He cannot plead the right of self-defence, his action being cruel and unusual, and he is guilty under S. 302. He has no right of private defence, also because he had no occasion to apprehend death or grievous hurt. Few scratches on his back does not give him this right, the burden of proving which being on him. *Mir Zaman v. Emperor*. 39 Cr. L. J. 142 :

172 I. C. 499 : 10 R. Pesh. 39 :
A. I. R. 1937 Pesh. 101.

———Ss. 300, Excep. 4, 302, 304—*Sudden fight—Use of weapon by accused against unarmed person—Exception 4 to S. 300, if applies.*

The using of a weapon by one person against an unarmed person in a sudden fight is not within the limits of Exception 4 to S. 300, Penal Code, of a sudden fight, because it is expressly provided that no unfair or undue advantage must be taken by one of the combatants if the plea of sudden fight is to be raised by way of exception. *Syed Ahmed v. The King*. 39 Cr. L. J. 300 :

173 I. C. 299 : 10 R. Rang. 335.
A. I. R. 1938 Rang. 15.

PENAL CODE ACT (XLV OF 1860)

———S. 300, Excep. 5—*Consent—Homicide with consent of victim Offence.*

Where the accused killed his step-father, who was an infirm old man, with his consent in order to involve some of their enemies in trouble by charging them with the murder : Held, that the case was covered by the fifth Exception to S. 300, Penal Code, and that the accused was guilty of an offence under S. 304, Part I of the Code. *Ujagar Singh v. Emperor*. 19 Cr. L. J. 125 :

43 I. C. 413 : 45 P. R. 1917 Cr. :
A. I. R. 1918 Lah. 145.

———Ss. 300, Excep. 5, 302—*Consent.*

Accused killing deceased with her own consent—Offence held, culpable homicide and not murder. *In re : Nainamuthu Kannappan*. 41 Cr. L. J. 322 :

186 I. C. 479 : 1939 M. W. N. 1132 :
50 L. W. 784 : I. L. R. 1940 Mad. 428 :
1940, 2 M. L. J. 89 : 12 R. M. 661 :
A. I. R. 1940 Mad. 138.

———Ss. 300, Excep. 5, 302—*Consent—Murder—Consent of victim approaching age of eighteen—Benefit of Exception—If can be given.*

The consent given by the victim who though not yet eighteen is approaching that age, mitigates the gravity of the offence of murder in the sense of making it unnecessary to pass the extreme sentence of death. *Masum Ali v. Emperor*. 30 Cr. L. J. 855 :

117 I. C. 890 : I. R. 1929 Lah. 714 :
A. I. R. 1929 Lah. 50.

———S. 300, Fourthly—*Committing act without excuse for running risk of causing death.*

Where knowledge on the part of an accused person is established under S. 300, a further question as to whether the accused struck the blow without any excuse for incurring the risk of causing such bodily injury as was likely to cause death arises. Such question, however, does not arise where one of the three intentions under S. 300 is established. *Nga Chit Tin v. The King*. 40 Cr. L. J. 725 :

183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

———S. 300, Thirdly—*Death caused by single blow, if murder—Criteria for determining.*

Where a person causes the death of another by a single blow from a stick, the criteria for determining whether or not he has committed the offence of murder, are the nature of the weapon used, its size and weight, the manner in which it is used and the actual injuries caused. If the injuries are so severe and uncommon as to indicate the use of terrific force, the offence falls under S. 300, thirdly, of the Penal Code, i. e., that he intended to cause injury sufficient in the ordinary course of nature to cause death, even though the weapon used is not such as would, of necessity, have caused fatal injury. *Nga Khan v. Emperor*. 23 Cr. L. J. 111 :

65 I. C. 495 : 11 L. B. R. 115 :
A. I. R. 1921 L. Bur. 4.

PENAL CODE ACT (XLV OF 1860)

———S. 300, Paras, 2, 4—Scope.

S. 300, paragraph 2 of the Penal Code is only intended to be invoked when some injury which would not, in the ordinary course of nature, cause death was known to be likely to cause death by the offender in consequence of the latter being aware of some abnormal condition of the deceased. S. 300, paragraph 4 of the Penal Code, can never be invoked in a case where there was an intention of causing specific bodily injury to a particular person, it only applies to a case of dangerous action without an intention to cause specific bodily injury to any person. *Ram Asre v. Emperor*.

24 Cr. L. J. 513 :
73 I. C. 49 : 9 O. L. J. 490 : 26 O. C. 18 :
A. I. R. 1923 Oudh 97.

———S. 300, para. 4—Interpretation.

As paragraph 4 in S. 300 is the most difficult paragraph in the section, it is very undesirable to invoke it where it is not applicable. *Ram Asre v. Emperor*.

24 Cr. L. J. 513 :
73 I. C. 49 : 9 O. L. J. 490 : 26 O. C. 18 :
A. I. R. 1923 Oudh 97.

———S. 300, Part IV—Applicability.

The provision in the fourth part of S. 300, Penal Code, applies to a person who commits an act of the nature referred to and has no intention of causing an injury to any particular individual. Where the accused has deliberately fired shots at the deceased, this provision does not apply. *Manindra Lal Das v. Emperor*.

38 Cr. L. J. 868 :
170 I. C. 29 : 41 C. W. N. 1187 : 10 R. C. 121 :
A. I. R. 1937 Cal. 432.

———Ss. 300, 302—Accused in drunken state firing at wife to silence her without intending to hit her—If offence of murder.

Where the accused in a fit of drunken recklessness fired a shot to silence his haggard wife and the shot hit her even though it was not intended to hit her and the Judge convicted the accused of murder without considering whether the crime amounted to murder or only manslaughter: *Held*, that even though the act of the accused was a crime, the conviction for murder was illegal. *Benjamin Knowles v. Emperor*.

31 Cr. L. J. 701 :
124 I. C. 578 : 34 C. W. N. 599 :
59 M. L. J. 127 : 32 L. W. 929 :
A. I. R. 1930 P. C. 201.

———S. 300, 302—Burden of proving exception under.

Accused admitting that he took part in killing—Onus to prove that his case falls under Exceptions to S. 300 is on him, *Nihal Singh Dewa Singh v. Emperor*.

41 Cr. L. J. 576 :
188 I. C. 326 : 42 P. L. R. 1 : 13 R. L. 27 :
A. I. R. 1940 Lah. 157.

———Ss. 300, 302—Culpable homicide or murder—Murder and culpable homicide, distinction between—Act done with intent to

PENAL CODE ACT (XLV OF 1860)

cause bodily injury likely to cause death, whether murder.

A blow on the head with a *lathi* is certainly likely to cause death, and the person who inflicts a *lathi* blow on the head of another person, must be presumed to have the intention of causing such bodily injury as is likely to cause death. But it does not necessarily follow that a *lathi* blow on the head is always sufficient in the ordinary course of nature to cause death. The essence of the crime of murder under Cl. (2) of S. 300, Penal Code, is that there must be the intention of causing such bodily injury as the offender knows is likely to cause death, and, for a conviction of an offence under Cl. (3) of S. 300, it must be shown that the injury which the person intended to cause was such as to be sufficient in the ordinary course of nature to cause death. If a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death, his offence comes under S. 209, and it is only if the intention was to cause bodily injury, which injury was sufficient in the ordinary course of nature to cause death, that the offence would come under S. 300, Cl. (3). *Gahbar Pande v. Emperor*.

29 Cr. L. J. 17 :
106 I. C. 433 : I. L. T. 40 Pat. 28 :
9 P. L. T. 286 : 7 Pat. 638 :
A. I. R. 1928 Pat. 169.

———Ss. 300, 302—Duty of Court—Court should consider nature of weapon and force used in deciding intention and knowledge required under S. 300.

The proper way in which to decide whether an offence has or has not been committed under S. 300 read with S. 302, Penal Code, is to apply the words of the section to the facts and to see how the facts satisfy the essentials of the section. But it is obvious that the nature of the material object used and the force used must be useful guides to the trial Court in arriving at a decision as to whether the intention and knowledge referred to in S. 300, Penal Code, can be attributed to the accused. *Public Prosecutor v. Bandi Pedda Venkata Nari*.

38 Cr. L. J. 1109 :
171 I. C. 694 : 1937 M. W. N. 456 :
45 L. W. 698 : 1937, 1 M. L. J. 743 :
I. L. R. 1937 Mad. 684 : 10 R. M. 386 :
A. I. R. 1937 Mad. 634.

———Ss. 300, 302—Intention—How determined.

The intention of the man who kills another, is a matter of fact which has got to be determined in order to decide whether the offence is murder or merely culpable homicide. A person who stabs another in the abdomen with sufficient force to penetrate the abdominal walls must undoubtedly be held to have intended to cause injury sufficient in the ordinary course of nature to cause death. But it must be understood that that means that it is his intention in the ordinary way because all presumptions with regard to in-

PENAL CODE ACT (XLV OF 1860)

tention are rebuttable. *Emperor v. Nga E Pe*.
(F. B.) 37 Cr. L. J. 1050 :

164 I. C. 884 : 9 R. Rang. 165 :
A. I. R. 1936 Rang. 421.

———Ss. 300, 302—*Intention—Stabbing in abdomen—Injury, nature of, if offence of murder.*

If a person stabs another in the abdomen with sufficient force to penetrate the abdominal walls and the internal viscera, he must be held to have intended to cause injury sufficient in the ordinary course of nature to cause death. *Nathu v. Emperor*.

29 Cr. L. J. 369 :
108 I. C. 268.

———Ss. 300, 302—*Knowledge—Blow with dah on forehead—Intention—Offence—Sentence—Voluntary drunkenness—Whether reason for not passing death sentence.*

It is idle to say that a blow with a *dah* on the forehead could have been delivered without the accused's knowing that it was sufficient in the ordinary course of nature to cause death. The offence in such a case is murder. *Nga Ohn Pe v. Emperor*.

38 Cr. L. J. 52 :
165 I. C. 762 : 9 R. Rang. 220 :
A. I. R. 1936 Rang. 477.

———Ss. 300, 302—*Leg cut by assailant, if murder if death results.*

A man who cuts another even on the leg with such ferocity and with such a weapon that the leg is almost severed, the muscles and bones being completely cut, must be presumed to have intended to cause injury sufficient in the ordinary course of nature to cause death, and if death results, is guilty of murder, unless the case is shown to fall within the exceptions mentioned in S. 800 of the Penal Code. *Kra Chan U v. Emperor*.

25 Cr. L. J. 207 :
76 I. C. 575 : 2 Bur. L. R. 103 :
A. I. R. 1923 Rang. 247.

———Ss. 300, 302—*Murder—Dhatara poisoning—Sentence of death when appropriate.*

Though a person accused of murder by administering *dhatara* poison can be convicted under S. 802, Penal Code, even though his primary object was only to stupefy the victims and to rob them inasmuch as he must be held to have done the act with the knowledge that he was likely to cause death, the question whether death sentence should be passed depends on the circumstances of each case. *Khelawan v. Emperor*.

27 Cr. L. J. 1400 :
98 I. C. 712 : A. I. R. 1927 All. 104.

———S. 300, 302—*Murder—Explosive Substances Act (VI of 1908) Ss. 3, 5—Preparation of bomb—Explosion of bomb buried in a place causing death of a man, if offence of murder.*

The prisoner got a blacksmith to make an iron arch, a material and essential feature of the bomb, some ten days before the explosion; when questioned at the time of procuring it, he gave a false name and address and falsely stated that it was required for the purpose of distillation. Ten days

PENAL CODE ACT (XLV OF 1860)

after the iron arch was procured by the prisoner, it was found to form part of a bomb which was buried in a frequented footpath and which exploded and killed one C. The prisoner gave no explanation for these facts, but simply denied their truth: *Held*, that the prisoner could not be convicted on the above facts, under S. 302, Penal Code, or under S. 8 of Act VI of 1908, but that he was guilty under S. 8 of the latter Act. The fact that the accused gives no explanation of the facts that appear strongly against him, does not relieve the prosecution from the obligation of adducing such affirmative evidence as leaves no room for any reasonable doubt as to whether the accused is guilty of the offence with which he is charged. *In re; Ohukkapalli Ramayya*.

11 Cr. L. J. 222 :
6 I. C. 51 : 1910 M. W. N. 77 :
7 M. L. T. 314 : 20 M. L. J. 657.

———Ss. 300, 302—*Presumption.*

In the majority of cases, the question of intention is merely a question of knowledge, and it must be assumed that a man intends the natural or necessary consequences of his own acts. The accused must be assumed to have known that bodily injury, sufficient in the ordinary course of nature to cause death, would be the consequence of stabbing with a knife in the back. And, if the accused is assumed to have acted with this knowledge, he must necessarily be assumed to have had the intention, since assuming the knowledge, the law will allow no other explanation of the act to be given. *Nyo Hla Aung v. Emperor*.

12 Cr. L. J. 477 :
12 I. C. 85 : 4 Bur. L. T. 221.

———Ss. 300, 302—*Provocation.*

Death caused by use of knife in sudden fight on grave provocation, offence held, culpable homicide not amounting to murder. *Khurkhur v. Emperor*.

31 Cr. L. J. 433 :
122 I. C. 577 : 11 P. L. T. 366 :
A. I. R. 1929 Pat. 518.

———Ss. 300, 302—*Provocation.*

Deceased exhibiting poster against leader of accused's community—Accused as a result, stabbing and killing deceased—He having knowledge of poster two days previous—There was held no grave and sudden provocation and sentence of death was proper. *Aziz Ahmad Jan Mohammad v. Emperor*.

39 Cr. L. J. 695 :
176 I. C. 89 : 40 P. L. R. 119 :
11 R. L. 161 : A. I. R. 1938 Lah. 355.

———Ss. 300, 302—*Provocation—Murder—No premeditation—Death sentence, propriety of.*

Where murder has been committed on provocation, without any premeditation, in the heat of passion, it is not necessary to inflict the death penalty. *Abdul Alim v. Emperor*.

27 Cr. L. J. 1392 :
98 I. C. 608 : A. I. R. 1927 All. 105.

PENAL CODE ACT (XLV OF 1860)

———Ss. 300, 302—*Sentence—Grounds for imposing lesser penalty.*

The fact that no adequate motive for the murder has been made out is not a ground for not imposing the extreme penalty of death on a murderer and a feeling of doubt as to the guilt of the accused is a matter to be considered *before* but not *after* the verdict; it has no place in the determination of the sentence after conviction. It has long been well-established law that unless extenuating circumstances can be found, a murderer must be sentenced to death. *Khudu Rajak v. Emperor.*

31 Cr. L. J. 727 :
124 I. C. 841 : 11 P. L. T. 166 :
A. I. R. 1930 Pat. 262.

———Ss. 300, 302—*Sentence—Infliction of lesser sentence—Grounds must be adequate.*

The reason for passing the lesser sentence in a case of murder must be express and adequate. The fact that the murderer is the husband and was jealous of his murdered wife is no ground for not imposing capital sentence and a feeling of doubt as to the guilt of the accused is a matter to be considered before but not after the verdict and should have no place in the determination of the sentence after conviction. *Sohrai v. Emperor.*

31 Cr. L. J. 721 :
124 I. C. 836 : 11 P. L. T. 148 :
9 Pat. 474 : A. I. R. 1930 Pat. 247.

———Ss. 300, 302, 304—*Assault causing death, if offence of murder.*

The accused, two in number, who were incensed against the deceased, committed a brutal assault upon the latter who was defenceless and unarmed, and caused his death: *Held*, that the accused were guilty of murder. *Garib v. Emperor.*

20 Cr. L. J. 767 :
53 I. C. 495 : 17 A. L. J. 985 :
A. I. R. 1919 All. 445.

———Ss. 300, 302, 304—*Injury of a vital character—Absence of intention to cause death, if offence.*

Accused, suspecting his wife of infidelity, stabbed her 4 times on the back with a clasp-knife. She ran up to the deceased, her aunt, for protection and clasped her arms round deceased's waist. Deceased begged accused not to stab his wife. Accused then plunged the knife into deceased's back: *Held*, per *Sundara Aiyar and Abdur Rahim, JJ.* (*Spencer, J. dissenting*).—That the accused was only guilty of culpable homicide not amounting to murder, as he had no intention of killing the deceased, or of causing a vital injury, i. e., a wound, at a place and of a character which would naturally cause death. Per *Abdur Rahim, J.*—"The wound actually inflicted was, no doubt, sufficient in the ordinary course of nature to cause death, but that is not enough to bring the case under S. 302, Penal Code. To make the offence murder, it must be shown that the accused *intended* to inflict such injury." *In re : Perumal Naiken.*

13 Cr. L. J. 129 :
13 I. C. 817 : 1912 M. W. N. 193.

PENAL CODE ACT (XLV OF 1860)

———Ss. 300, 302, 304—*Intention and knowledge—Murder—Several persons beating one unarmed man to death with lathis.*

Five persons armed with lathis assaulted one unarmed man and beat him to death. They also beat another man who had come to the rescue of the deceased with the result that he too died: *Held*, (1) that all the assailants must be taken to have had knowledge that their act must, in all probability, cause death or such bodily injury as was likely to cause death; (2) that they were all guilty of murder. *Hanuman v. Emperor.*

14 Cr. L. J. 685 :
21 I. C. 1005 : 11 A. L. J. 926 : 35 All. 560.

———Ss. 300, 302, 304—*Sudden provocation, culpable homicide not amounting to murder.*

The accused having heard the cries of a woman who was being beaten by her husband on the road, came to her rescue and rescued her from the husband. Subsequently, the accused and the woman lived together with mutual consent but they were not married. The woman was major. While they were together passing along the road-side one day they met the brother of the woman who seeing her caught her hand and dragged her away from the accused. The accused fired at the brother who died on the spot and ran away with the woman. He was prosecuted under S. 302, Penal Code, for murder: *Held*, the brother had no legal right to take her by force when he met her with the accused and the accused had a right to protect her. The accused, however, could not have believed that her brother was likely to cause her grievous injury or death or that his assault was being made with any of the intentions which would have entitled the accused under S. 100, Penal Code, to cause his death. But he acted under grave and sudden provocation. Accused, however, must be accredited with the intention of causing the deceased's death and hence, since he carried his intention into execution, he was guilty of culpable homicide not amounting to murder punishable under the first part of S. 304, Penal Code. *Mir Akbar v. Emperor.*

39 Cr. L. J. 339 :
173 I. C. 698 : 10 R. Pesh. 54 :
A. I. R. 1937 Pesh. 86.

———Ss. 300, 302, 304—*Provocation—Culpable homicide not amounting to murder—Sentence.*

Where the accused saw his sister and her paramour coming out of the *hujra* of a mosque, and, receiving an insulting answer from the latter, there and then attacked and killed him: *Held*, that the provocation received by the accused was both grave and sudden. The sentence of transportation for ten years passed by the Sessions Judge on the accused under S. 304 (1), Penal Code, was reduced to one of rigorous imprisonment for four years. *Jafar v. Emperor.*

2 Cr. L. J. 705 :
6 P. L. R. 492.

PENAL CODE ACT (XLV OF 1860)

—Ss. 300, 302, 325—*Murder or hurt—Death caused by single blow delivered suddenly—Murder—Grievous hurt,*

Deceased and his friend gave a beating to the accused. All three were young men of 18 years of age. The following day the accused saw the deceased unexpectedly and forthwith formed the design of hitting him in return for the beating which he had received on the previous day. He thereupon struck the deceased a violent blow on the back of the head with a hockey stick which he had in his hand at the time. He was taken home and became unconscious after about half an hour and died on the following morning as the result of internal bleeding and a clot of blood on the surface of the brain: *Held*, that under the circumstances of the case and having regard to the conduct of the accused, it could not be safely inferred that the bodily injury which he intended to inflict was sufficient in the ordinary course of nature to cause death and that the accused was guilty of an offence under S. 325, Penal Code. *Ghulam Jilani v. Emperor*. 26 Cr. L. J. 1118 :

88 I. C. 286 : 2 L. C. 37 :

7 L. L. J. 573 : A. I. R. 1925 Lah. 559.

—Ss. 300, 302, 326—*No intention to cause grievous hurt but knowledge that such hurt is likely to be caused—Injured person dying—Offence, if falls under S. 300.*

A person can be guilty of voluntarily causing grievous hurt who does not intend to cause grievous hurt but only knows himself likely to cause grievous hurt; and if he did not intend to cause grievous hurt but only knew himself likely to cause grievous hurt, it would probably not fall under any of the clauses of S. 300, and so would not be murder. *Emperor v. Koramutla Narasingadu*.

39 Cr. L. J. 139 :

172 I. C. 382 : 46 L. W. 486 :

1937, 2 M. L. J. 490 : 1937 M. W. N. 1124 :

10 R. M. 455 : A. I. R. 1937 Mad. 792.

—Ss. 300, 304—*Burden of proof of exception under—Accused's statements and circumstances whether can establish exception.*

Although under the Evidence Act the burden of proving an exception under the Penal Code is on the accused person, it does not follow that the circumstances together with the accused person's statement cannot be sufficient evidence to establish the exception in his favour. *Mangalia v. Emperor*.

27 Cr. L. J. 1395 :

98 I. C. 707 : A. I. R. 1927 All. 119.

—Ss. 300, 304—*Culpable homicide or murder—Culpable homicide, when murder.*

Culpable homicide is not murder unless the act by which the death is caused is done with the intention stated in one or more of the clauses of S. 300. Where the question is, whether the injuries caused are sufficient in the ordinary course of nature to cause death, the nature of the weapon used and of the injuries caused must be taken into consideration. *Daro v. Emperor*. 25 Cr. L. J. 1 :

75 I. C. 689 : A. I. R. 1923 Lah. 317.

PENAL CODE ACT (XLV OF 1860)

—Ss. 300, 304—*Provocation.*

Accused devoted to wife who finding fault with him not allowing to stay with her—Accused finding her eight months advanced in pregnancy—Accused enquiring whether she cohabited with certain person—Wife replying in affirmative—Accused stabbing her: *Held*, no murder but mere culpable homicide—Fact of two lives killed should not be taken into account for sentence. *Nga Saw Maung v. Emperor*. 39 Cr. L. J. 137 :

172 I. C. 395 : 10 R. Rang. 245 :

A. I. R. 1937 Rang. 466.

—Ss. 300, 304—*Provocation—Culpable homicide not amounting to murder—Provocation, grave and sudden—Wife found lying with stranger, murder of.*

Where an accused, finding his wife inside his house lying on a cot with a man with whom she had previously had an intrigue, murdered the wife: *Held*, that the provocation caused by the wife and the man being found lying together on the cot in view of the previous intrigue was sufficiently grave and sudden to disturb the equanimity of the accused, so that the case fell within the Exception contained in S. 300, Penal Code, and that the accused should accordingly be convicted under S. 304, I. P. C. *Ajudhi v. Emperor*. 16 Cr. L. J. 625 :

30 I. C. 499 : 2 O. L. J. 463 :

A. I. R. 1915 Oudh 126.

—Ss. 300, 304—*Wife receiving injury on her head—Offence.*

Where the sole inmates of a house were a man and his two wives and it was found that the elder wife was habitually ill-treated and half-starved by her husband, she was admitted to hospital suffering from a serious injury to the head from the effects of which she died three days after but she was too ill to make any statement and there was no indication that the injury was accidental or self-inflicted, the explanation given by the husband as to the injury being unsatisfactory and highly improbable: *Held*, that the presumption was that the injury was caused by her husband: *Held*, also, that to inflict such an injury on the head of a woman already reduced by ill-treatment to such a poor condition was an act which warrants the finding that the culprit must have known that it was likely that death would be the result and was sufficient to bring him under S. 304, Part 2, Penal Code. *Rahim Dad v. Emperor*.

14 Cr. L. J. 283 :

19 I. C. 715 : 3 P. W. R. 1913 Cr. :

150 P. L. R. 1913.

—Ss. 300, 322, 325, 326—*Murder or hurt—Murder—Culpable homicide—Grievous hurt—Stabbing by pen-knife—Death caused—Offence.*

There can be no conviction for murder or for culpable homicide not amounting to murder where the *corpus delicti* is not established. Culpable homicide is murder where the party inflicting the injury does it either with the intention that it should cause death or with

PENAL CODE ACT (XLV OF 1860)

the knowledge that it may do so. It will not be murder if the case falls within any of the Exceptions noted under S. 300, Penal Code. Where there is neither intention, knowledge, nor likelihood that the injury will or can result in death, the offence would be neither murder, nor culpable homicide not amounting to murder, but would be 'voluntarily causing grievous hurt' under S. 322 and the conviction in such a case would be either under S. 325 or S. 326 according to the nature of the weapon used. *Ghulam Mohay-ud-Din v. Emperor*.

22 Cr. L. J. 658 :
63 I. C. 450 : 3 L. L. J. 581 :
A. I. R. 1922 Lah. 26.

———Ss. 300, 326—*Murder or hurt—Stone throwing—Death caused by stone—Wound inflicted with sword—Offence.*

In a mutual stone throwing between the deceased's party and the accused started by the former, a stone hit the deceased and ruptured his liver. As he lay on the ground, D, one of the accused, came forward with a sword and struck him a blow which caused a serious wound on the deceased's leg. The deceased ultimately died from the effects of the injury caused by the stone: *Held*, (1) that the accused could not be convicted of murder inasmuch as they were acting in self-defence, there was no intention to cause death, and it was not known who threw the fatal stone; (2) that D was guilty of causing grievous hurt by a dangerous weapon. *Dattu Nana Pawar v. Emperor*.

19 Cr. L. J. 93 :
43 I. C. 253 : 19 Bom. L. R. 902 :
A. I. R. 1918 Bom. 247.

———Ss. 300, 411—*Proof—Murder—Dis-honestly receiving stolen property—Proof of murder—Production by accused of ornaments of the deceased, if sufficient.*

The accused admitted that the deceased was at his house immediately before his death, and declared that he fell from the roof and his respiration stopped. He also admitted that he had subsequently taken the body and thrown it into the tank where it had been afterwards found. It was also admitted and proved that he had produced the ornaments which the boy was wearing on the morning on which he was missed, from a hole underneath a tree near the tank where the boy's body was found. But he did not admit that he had anything to do with the boy's death. The medical evidence showed that the deceased might have been either intentionally or accidentally strangled: *Held*, that there is little moral doubt of the accused's guilt; yet there is not sufficient legal evidence that he had killed the boy, and that in these circumstances, he can only be found guilty of an offence under S. 411, I. P. C. *Emperor v. Rajani Kanto Koer*.

1 Cr. L. J. 10 :
8 C. W. N. 22.

———Ss. 300, 411—*Stolen property belonging to the murdered man in possession of accused if sufficient for conviction of murder—Evidence.*

Where the only evidence against an accused person is a bundle of cloth which he produced

PENAL CODE ACT (XLV OF 1860)

and which is identified as having been stolen from a person proved to have been murdered, and there is no admissible evidence against him upon the record to connect him more directly with the murder, it is impossible to do more than convict him under S. 411, Penal Code. *Ahmad v. Emperor*.

14 Cr. L. J. 275 :
19 I. C. 707 : 220 P. L. R. 1913 :
23 P. W. R. 1913 Cr.

———Ss. 300 (1), 302—*Provocation—Accused killing paramour of prostitute while engaged in sexual intercourse, if offence of murder.*

It is well-established law that if a husband discovers his wife in the act of adultery and thereupon kills her, he is guilty of manslaughter only and not of murder. But this rule has no application where the woman concerned is not the wife of the accused but only a public woman. *Emperor v. Dinabandhu Ooriya*.

31 Cr. L. J. 737 :
124 I. C. 818 : A. I. R. 1930 Cal. 199.

———S. 300 (1), (2) and 302—*Attack by several persons.*

An attack was made on the deceased by six persons, which was of a violent and determined character, no less than 16 wounds were found on the body of the deceased, and his spleen, which was in a healthy condition, was severely ruptured in several places by the injuries inflicted on him: *Held*, that the persons who attacked him either intended to cause his death, or they attacked him in such a brutal manner, regardless of the consequences, well knowing that they would be likely to cause his death, and that the offence was murder. *Elem Molla v. Emperor*.

11 Cr. L. J. 417 :
6 I. C. 921 : 37 Cal. 315.

———Ss. 300, Cls. (1), (3), 300, 149, 302—*S. 300, Cls. (1) and (3), scope and applicability.*

Nine accused armed with weapons attacking and inflicting numerous wounds on deceased—Injury to vital parts avoided—Deceased dying shortly afterwards—Accused held guilty under Cl. (3), S. 300, if not under Cl. (1). *Rahman Samail v. Emperor*.

40 Cr. L. J. 712 :
182 I. C. 900 : I. L. R. 1939 Lah. 77 :
41 P. L. R. 443 : 12 R. L. 83 :
A. I. R. 1939 Lah. 245.

———S. 300, Cls. 1 to 4—*Murder, brutal assault with lathis when amounting to.*

A brutal assault with lathis resulting in the death of the person assaulted, does not ordinarily amount to murder unless the accused intended to cause death [S. 300 (1)] or to cause such bodily injury as is sufficient in the ordinary course of nature to cause death [S. 300 (3)]. *Saidino v. Emperor*.

16 Cr. L. J. 710 :
30 I. C. 998 : 9 S. L. R. 99 :
A. I. R. 1915 Sind 23.

———S. 300 (2)—*Scope.*

Constitutional or peculiar defect leading to death as result of injuries, not sufficient to cause death—Accused not proved to have

PENAL CODE ACT (XLV OF 1860)

knowledge of presence of such defect—Case does not fall under S. 300 (2). *Waryam Sher Mohammad v. Emperor*. 40 Cr. L. J. 314 : 180 I. C. 62 : 11 R. L. 658 ; A. I. R. 1938 Lah. 834.

———S. 300 (c)—*Loss of temper*—Lathi blow causing fracture of skull—*Offence*.

A person who loses his temper and strikes another person on the head with a lathi causing extensive fracture of the skull resulting in the death of the deceased within a few hours, is *prima facie* guilty of murder under S. 300, Cl. (c), Penal Code. *Sheo Darshan v. Emperor*. 26 Cr. L. J. 1503 : 90 I. C. 159 : A. I. R. 1926 Oudh 27.

———S. 300 (3)—*Evidence*—*Murder*—*Medical opinion based on misconception of facts, value of*—*Injury likely to cause death*.

A Medical Officer's opinion that the injuries inflicted were not serious, which is based upon a misconception of facts, should be disregarded when the evidence shows that the injuries inflicted were one inch deep and they pierced the pleura, which, in the ordinary course of events, is sufficient to cause death. *Public Prosecutor v. Thandavan Chetty*. 16 Cr. L. J. 543 : 29 I. C. 671 : A. I. R. 1916 Mad. 1015.

———S. 300 (3)—*Injury causing death*.
Number of serious injuries—Its cumulative effect causing death though each not sufficient to cause death—Case held fell under S. 300 (3). *Sher Mohammad v. Emperor*. 40 Cr. L. J. 314 : 180 I. C. 62 : 11 R. L. 658 ; A. I. R. 1938 Lah. 834.

———S. 300 (3)—*Intention*—*Murder*—*Blow with lathi causing extensive fracture of skull and death*—*Presumption of intention to cause injury likely to cause death from result of injury*.

Where the accused struck a single blow with a lathi on the head of another with sufficient force to cause extensive fracture of the skull and the latter was killed : *Held*, that the best criterion of the force and character of the blow was the result which it effected, and in the absence of indications to show that the accused had intended to cause any other sort of injury, he must be held to have intended to cause an injury, sufficient in the ordinary course of nature to cause death. *Sewa Singh v. Emperor*. 31 Cr. L. J. 1069 : 126 I. C. 572 : A. I. R. 1930 Lah. 490.

———Ss. 300 (3), 302, 304—*Death caused by single blow, if murder*.

Deceased threatened accused, who lost his temper, and rushing out brought an iron-shod stick, with a single blow of which he killed the former : *Held*, that, having regard to the fact that death was caused by a single blow, it was possible that the blow struck by the accused exceeded in violence the injury he had in view at the moment of striking it, and that, therefore, the accused should be convicted of culpable homicide not amounting to murder under the second part of S. 304, Penal Code,

PENAL CODE ACT (XLV OF 1860)

and not of murder. *Sardarkhan Jaridkhan v. Emperor*. 17 Cr. L. J. 530 : 36 I. C. 578 : 41 Bom. 27 : 18 Bom. L. R. 793 : A. I. R. 1916 Bom. 191.

———S. 300 (4)—*Applicability*—Cl. (4) applies only when no other clause applies.

Cl. (4) of S. 300, Penal Code, comes into play only if no other clause applies and where the intention of the assailants as inferred from the result of their act could at least be that of causing such bodily injuries as the assailants would have known to be likely to cause the death of their victim, the invocation of Cl. (4) is altogether erroneous. *Hasta Ismail v. Emperor*. 38 Cr. L. J. 1073 : 171 I. C. 351 : 39 P. L. R. 327 : 10 R. L. 187 : A. I. R. 1937 Lah. 593.

———S. 300, Cl. 4—*Conviction under*—*Legality of*.

Mother jumping into well and causing death of her child tied to her back is not guilty of murder under S. 300, Cl. 4. *Supadi v. Emperor*. 26 Cr. L. J. 1016 (b) : 87 I. C. 840 : 27 Bom. L. R. 604 : A. I. R. 1925 Bom. 310.

———S. 300, Cl. (4)—*Death caused by administering dhatura*—*Object to facilitate robbery, offence, if murder*.

The accused, two wandering Wadaris aged 60 and 40, respectively, pretending to possess supernatural powers of discovering hidden treasure, took five villagers to a field belonging to one of them and, in order to facilitate robbery administered *dhatura* to the five persons in the food which was cooked for them there, as a result of which three of them died on the spot and the two others, who took less food, recovered their consciousness only after four days' treatment in a hospital : *Held*, that the accused must be presumed under the circumstances to have known that the nature of their act was likely to cause death and were guilty of murder under S. 300, Cl. (4), Penal Code. *Emperor v. Shetya Timma Waddar*. 27 Cr. L. J. 1134 : 97 I. C. 654 : 28 Bom. L. R. 1003 : A. I. R. 1926 Bom. 518.

———S. 300, Cl. 4—*Fourth clause and first three clauses*—*Distinction*.

The cases in which the fourth clause of S. 300, Penal Code, has any application, are extremely rare, and though it is not easy, and perhaps not desirable, to attempt to define with any strictness, the kind of cases in which that clause comes in, still there is one very broad distinction between it and the first three clauses—in the latter, the important thing is an intention to kill or to hurt, while the fourth clause says nothing about intention. *Nawab v. Emperor*. 15 Cr. L. J. 610 : 25 I. C. 522 : 263 P. L. R. 1914 : 31 P. R. 1914 Cr. : 45 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 98.

———S. 300, Cl. 4—*Scope*.

The fourth clause of S. 300, Penal Code, is intended primarily and especially to apply to

PENAL CODE ACT (XLV OF 1860)

cases in which there has been no intention to cause death or bodily injury to any specified individual. *Jhagru Gond v. Emperor*.

2 Cr. L. J. 746 :
1 N. L. R. 34.

———S. 300 (4)—*Scope of.*

Although culpable homicide may have been committed without premeditation and in a sudden fight and also in the heat of passion upon a sudden quarrel, if it appears that the accused had used a hatchet on another unarmed man and had struck a blow on the latter's head with a hatchet splitting the skull while under no reasonable apprehension of injury to himself, he cannot claim the benefit of Exception 4 to S. 300, Penal Code. *Kanshi v. Emperor*.

27 Cr. L. J. 566 :
94 I. C. 134 : 8 L. L. J. 188 :
27 P. L. R. 244 : A. I. R. 1926 Lah. 361.

———S. 300 (4), III (c)—*Death caused by single lathi blow, if murder.*

If a person, owing to a quarrel and exchange of abuse and without intending to kill, causes the death of another by delivering a single lathi blow on his head, he must be taken to have known when striking the blow that his act was so imminently dangerous that it must, in all probability, cause death, and if he does the act without any excuse, he is guilty of murder and his case comes under S. 300, Cl. (4), Illustration (c), Penal Code. *Emperor v. Umrao*.

24 Cr. L. J. 753 :
74 I. C. 257 : 21 A. L. J. 316 :
A. I. R. 1923 All. 355.

———Ss. 300 (4), 302, 304-A, 309—*Mother jumping into well and causing death of her child tied to her back, if guilty of attempt to commit suicide.*

Accused who was harassed and ill-treated by her husband, in a fit of disappointment and annoyance jumped into a well with the object of drowning herself. At the time when she jumped into the well she had her child tied at her back, but she was not conscious of the fact and the result was that although the accused escaped, the child died : *Held*, that the accused was guilty of attempting to commit suicide. *Supadi v. Emperor*.

26 Cr. L. J. 1016 :
87 I. C. 840 : 27 Bom. L. R. 604 :
A. I. R. 1925 Bom. 310.

———Ss. 300, Cl. (4), 307, 511—*Attempt to murder, what constitutes.*

If the person committing an act knows that it is so imminently dangerous that it must, in all probability cause death or such bodily injury as is likely to cause death and commits the act without any just cause or excuse but death is not caused, he is guilty of attempt to murder. *Bhagat Singh v. Emperor*.

31 Cr. L. J. 290 :
121 I. C. 726 : 31 P. L. R. 73 :
A. I. R. 1930 Lah. 266.

———Ss. 301, 299—*Intention to murder some one else, effect of—Murder—Poisoning.*

The accused prepared sweets and put into

PENAL CODE ACT (XLV OF 186

them poison with the intention of her husband. The husband with s partook of it. One of the other consequence of it : *Held*, that the ac in law guilty of murder, inasmuch intention of causing death is not the of causing death to any particula *Jeoni v. Emperor*.

17 Cr. L.
36 I. C. 473 : 15 A.
A. I. R. 1917

———S. 302.

———Abettor.
———Acquittal.
———Arsenic poisoning.
———Attack by several persons.
———Benefit of doubt.
———Circumstantial evidence.
———Common intention.
———Concerted attack.
———Confession by co-accused.
———Conviction.
———Corroboration of approver's story.
———Death caused by arsenic.
———Death sentence.
———Drunkenness.
———Duty of Court.
———Duty of prosecution.
———Evidence.
———Extenuating circumstances.
———Grave provocation.
———Grave suspicion.
———Homicidal suicidal wounds.
———Inference.
———Ingredients of offence under.
———Injury resulting in death.
———Insufficient proof.
———Intention.
———Interference by High Court.
———Intoxicated state of mind, effect of.
———Knowledge.
———Miscellaneous.
———Motive.
———Murder.
———Neglect of victim.
———Offence under.
———Plea of guilty.
———Poisoning—proof.
———Power of High Court.
———Pre-arranged fight.
———Presumption.
———Presumptive evidence of murder.
———Private defence.
———Provocation.
———Punishment.
———Retrial, necessity of.
———Rioting and murder.
———Sentence.
———Suspicion.
———Transportation for life.

———S. 302.

See also (i) Confession.

(ii) Cr. P. C., 1898, Ss. 195, 196-A, 236, 237, 238, 269 (3), 271, 274, 276, 297, 417, 423, 439, 537.

(iii) Criminal trial.

(iv) Evidence.

(v) Evidence Act, 1872, Ss. 24, 32, 114.

PENAL CODE ACT (XLV OF 1860)

(vi) Penal Code, 1860, Ss. 33, 34, 79, 80, 84, 86, 96, 97, 99, 109, 114, 147, 148, 149, 201, 203, 299, 300, 300 Exception 4, 300 Exception 5, 300 Cls. (1) (3), 302, 304, 304-A, 304-II, 325, 326, 304, 411.

-----S. 302—Abettor.

A person who instigates others to beat the deceased and they inflict several injuries on him resulting in his death, cannot escape responsibility for abetment of murder and he should be convicted under S. 302. *Machhia v. Emperor*.

35 Cr. L. J. 301 :
147 I. C. 109 : 6 R. L. 331 :
A. I. R. 1933 Lah. 928.

-----S. 302—Acquittal—Murder—First report not mentioning accused—Eye-witness failing to identify accused at investigation—Circumstantial evidence, value of.

Where in a trial for murder it appeared that the first report did not name the murderer, that the only eye-witness who professed to have seen the murder, could not identify the murderer before the Police and that the only evidence against the accused consisted in the production of a blood-stained *kurtia* from the house where he and his brothers resided and his pointing out a blood-stained knife which was concealed in a bush on the way from the deceased's house to his own : *Held*, (1) that in the absence of any direct evidence connecting the accused with the murder, the circumstantial evidence that had been produced was altogether insufficient for conviction ; (2) that the mere fact that it had not been shown who else could have committed the murder, was no ground for holding that the accused must have committed it and he was, therefore, entitled to an acquittal. *Tajoo v. Emperor*

17 Cr. L. J. 279 :
34 I. C. 999 : 22 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 325.

-----S. 302—Acquittal under—Charge of murder—Conviction for grievous hurt—Acquittal.

Where a person tried for an offence under S. 302, Penal Code, is convicted of an offence under S. 326 of the Code, he must be deemed to have been acquitted of the offence under S. 302. *Emperor v. Kan Thein*.

27 Cr. L. J. 1393 :
98 I. C. 705 : 5 Bur. L. J. 80 :
4 Rang. 140 : A. I. R. 1926 Rang. 154.

-----S. 302—Arsenic poisoning—Murder—Duty of prosecution—Examination of viscera and analysis by Chemical Analyser, necessity of.

It is of the utmost importance in a case of arsenic poisoning that the prosecution must prove that a lethal dose of opium, that is, two grains or upwards had been administered. There ought to be a careful examination of the viscera of the body and an analysis by a competent analyser showing from the amount of arsenic found in the viscera that at least a lethal dose must have been administered. Mere examination of vomit or night soil is

PENAL CODE ACT (XLV OF 1860)

totally insufficient and it would be extremely dangerous to rely upon some traces of arsenic found in either of these two things. *Emperor v. Sikandar*.

31 Cr. L. J. 862 :
125 I. C. 585 : 1930 A. L. J. 1405 :
A. I. R. 1930 All. 532.

-----S. 302—Attack by several persons—Concerted attack by several persons armed with lathis—Death of victim, liability of attackers.

Where five persons joined in beating an elderly person and beat him so mercilessly with lathis that his skull was fractured and eleven ribs were broken, and as a result of injuries, he died two days afterwards : *Held*, that all the assailants were guilty of murder and that it was immaterial by whose lathi the fatal injury was inflicted. *Umed v. Emperor*.

24 Cr. L. J. 826 :
74 I. C. 858 : 45 All. 727 :
21 A. L. J. 623 : A. I. R. 1924 All. 145.

-----S. 302—Benefit of doubt.

All accused persons taking part in abduction—Doubt as to who committed murder—Possibility of others having joined after abduction—Absence of proof of ingredients of offence under S. 149—Benefit of doubt on charge of murder should be given. *Ahmad v. Emperor*.

35 Cr. L. J. 426 :
147 I. C. 401 : 6 R. L. 393 :
A. I. R. 1933 Lah. 1035 (2).

-----S. 302—Benefit of doubt—Case not established beyond possibility of reasonable doubt—Benefit of doubt was given to accused—Criminal trial.

Where the prosecution theory in a murder case was presumably built on the opinion first expressed by an expert witness (Civil Surgeon) whom the accused had no proper opportunity to cross-examine but who subsequently modified his opinion, and there were other infirmative circumstances in the prosecution case, the benefit of doubt was given to the accused. *Jammun Ram v. Emperor*.

A. I. R. 1923 Lah. 189.

-----S. 302—Benefit of doubt—Circumstantial evidence—Murder—Poisoning—Possession of food vessels containing poison.

Where the circumstantial evidence relied on does not exclude the reasonable possibility of some person other than the accused having committed the crime, the accused must be given the benefit of the doubt. When a man dies as the result of arsenic poisoning, the mere fact that food vessels and a grinding stone for the preparation of food produced by the wife of the deceased contained arsenic, does not necessarily exclude the possibility of the poison having been introduced by some outside agency. *Daulat Bai v. Emperor*.

25 Cr. L. J. 424 :
77 I. C. 600 : A. I. R. 1923 Lah. 537.

-----S. 302—Benefit of doubt.

Conviction must be based on evidence and not because Judge is morally convinced of accused's guilt. *Emperor v. Sanika Munda*.

36 Cr. L. J. 195 :
152 I. C. 832 : 7 R. P. 263 :
A. I. R. 1934 Pat. 19.

PENAL CODE ACT (XLV OF 1860)

————S. 302—*Benefit of doubt—Death caused by gun-shot—Accident or design, determination of.*

During the course of a fight between the party of the accused and the party of the complainants, a member of the latter party was killed by a shot from a gun but the Court was unable to determine definitely whether the shot had been fired by one of the accused or was the result of the gun going off of itself during the struggle for its possession: *Held*, that the accused must be given the benefit to the doubt and that a conviction was not justified. *Kundan Singh v. Emperor*. 26 Cr. L. J. 1191 : 88 I. C. 711 : 6 L. L. J. 271 : A. I. R. 1924 Lah. 720.

————S. 302—*Benefit of doubt.*

If the Court finds that the proof adduced at best leads to strong suspicion but falls short of the requisite standard, the Court should give the benefit of the doubt to the accused. *Emperor v. Eddula Venkata Subba Reddi*.

33 Cr. L. J. 51 (2) :
134 I. C. 1143 : 34 L. W. 128 :
61 M. L. J. 608 : 1931 M. W. N. 1177 :
54 Mad. 931 : I. R. 1932 Mad. 7 :
A. I. R. 1931 Mad. 689.

————S. 302—*Benefit of doubt—Murder—Circumstances under which murder committed not clear—Conviction, legality of.*

It is unsafe to convict a person of murder where the circumstances under which it has been committed are not very clear and are somewhat mysterious and the charge has not been clearly brought home to the accused. *Abdul Ghani v. Emperor*. 28 Cr. L. J. 116 : 99 I. C. 324 : 8 L. L. J. 559 : 28 P. L. R. 27 : A. I. R. 1927 Lah. 51.

————S. 302—*Benefit of doubt — Murder — Evidence opposed to probabilities.*

Where a girl of 15 and a boy of 13 years deposed to having seen the accused throw the deceased down more than once and did not state the fact to persons they would have ordinarily reported to, and further withheld the fact from the Police and the Magistracy for a long time after the incident: *Held*, acquitting the accused, that the matter was not under the circumstances free from doubt. *In re : Erikala Subbadu*.

7 Cr. L. J. 216 :
2 M. L. T. 496.

————S. 302—*Benefit of doubt.*

The evidence was not satisfactory and that the accused was entitled to the benefit of the doubt. *Lalu Rahim Mirasi v. Emperor*.

35 Cr. L. J. 615 :
148 I. C. 164 : 6 R. L. 509 (1) :
A. I. R. 1934 Lah. 10.

————S. 302—*Circumstantial evidence, as basis of conviction.*

Circumstantial evidence in order to furnish a basis for conviction requires a high degree of probability that is, sufficiently high that a prudent man, considering all the facts and realising that the life or liberty of the

PENAL CODE ACT (XLV OF 1860)

accused depends upon the decision, feels justified in holding that the accused committed the crime. *Dina v. Emperor*.

29 Cr. L. J. 640 :
109 I. C. 912.

————S. 302—*Circumstantial evidence.*

There is no rule or principle of law which prohibits the imposition of a death sentence in cases where the evidence is purely circumstantial. Where the Court is satisfied beyond reasonable doubt of the guilt of the accused, the fact that the evidence is circumstantial and not direct, is not a factor which should *per se* affect the sentence. A consideration of the species of evidence on which the guilt of an accused is found, should not of itself determine the nature of the evidence. Circumstantial evidence like any other must, in every case, be tested, weighed and prevail or not by its own inherent proving force. *Muniandi v. Emperor*.

16 Cr. L. J. 28 :
26 I. C. 332 : 1 L. W. 1007 :
16 M. L. T. 535 : 1915 M. W. N. 34 :
A. I. R. 1915 Mad. 542.

————S. 302—*Circumstantial evidence, value of.*

The fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired, may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. If there are two persons who answer the above description, the circumstantial evidence loses its weight very substantially. An elementary principle of sifting evidence is to test it in the light of probabilities. *Nibaran Chandra Roy v. Emperor*.

6 Cr. L. J. 304 :
11 C. W. N. 1085.

————S. 302—*Circumstantial evidence, when proper Murder—Evidence that accused announced his intention to murder, value of.*

It is unsafe to convict a person of murder on circumstantial evidence, where the separate pieces of circumstantial evidence relating to the movements of the accused and which converge on his guilt bear palpable signs of conviction and do not fit in with the conduct of rational persons. In a murder case evidence of a casual witness to the effect that the accused had announced to him his intention to murder the deceased should not ordinarily be believed. *Sambhu Patra v. Emperor*.

31 Cr. L. J. 438 :
122 I. C. 587 : A. I. R. 1931 Pat. 169.

————S. 302—*Common intention.*

Arrest of gang of dacoits—One of the dacoits shooting at pursuers—Death of one of the pursuers—Other members cannot be convicted for murder. *Lekha Singh v. Emperor*.

34 Cr. L. J. 101 :
140 I. C. 892 : 9 O. W. N. 977 :
I. R. 1933 Oudh 26 :
A. I. R. 1933 Oudh 53.

PENAL CODE ACT (XLV OF 1860)

—S. 302—Common intention—Murder—Several persons causing death with deadly weapons.

Where four persons armed with deadly weapons pursue a fifth, set upon him and kill him, it must be held that their common intention was to cause his death or to cause such bodily injury as was likely to cause death. In such a case, all those who take part in the murderous assault are guilty of murder. *Bhag Singh v. Emperor*.

23 Cr. L. J. 721 :

69 I. C. 449 : A. I. R. 1924 Lah. 415.

—S. 302—Common intention—Murder.

Where two men with the common intention of murdering a person set upon him and one of them fires a shot which kills him, both of them are guilty of murder under S. 302, Penal Code. *Mian Khan v. Emperor*.

26 Cr. L. J. 612 :

85 I. C. 836 : A. I. R. 1923 Lah. 293.

—S. 302—Concerted attack.

Large number of men armed with spears rushing at another and plunging spears into his body—Inference as to common intention arises and all are guilty. *Bharat Singh v. Emperor*.

37 Cr. L. J. 32 :

159 I. C. 155 (2) : 1935 A. W. R. 53 :

8 R. A. 387 : A. I. R. 1935 All. 362.

—S. 302—Concerted attack.

Large number of people attacking and killing deceased—Each individual's part not distinguishable—Common intention not proved : *Held*, all should be tried under S. 149 read with S. 302. *Nga Ba Din v. Emperor*.

37 Cr. L. J. 196 :

159 I. C. 1050 : 8 R. Rang. 317 :

A. I. R. 1935 Rang. 406.

—S. 302—Concerted attack—Murder—Injuries inflicted resulting in death—Penalty, proper.

Where a number of men armed with *lathis* make a concerted attack upon another man and practically kill him on the spot, inflicted injuries on the head, the result of blows which must have been struck either with the intention to kill, or, at any rate, with the intention to cause hurt such as the strikers must have known to be imminently likely to result in the death of the person struck, the penalty prescribed by the law as the proper penalty in cases of murder should be inflicted on the ringleader, at least, of such an assault. *Sipahi Singh v. Emperor*.

24 Cr. L. J. 106 :

71 I. C. 934 : 20 A. L. J. 900 : 45 All. 130 :

A. I. R. 1923 All. 88.

—S. 302—Concerted attack.

Where several persons armed with lethal weapons, such as *lathis* and *kantas*, assault a single person and strike him several times on a vital part of the body, not only the person who actually inflicted the fatal blow, but all are guilty of causing his death. *Chait Singh v. Emperor*.

36 Cr. L. J. 249 :

153 I. C. 81 : 11 O. W. N. 1543 :

7 R. O. 286 : A. I. R. 1935 Oudh 110.

PENAL CODE ACT (XLV OF 1860)

—S. 302—Confession by co-accused—Confession exculpating maker, whether can be used as against co-accused.

Two accused persons who were charged with having committed murder and having subsequently robbed the deceased, made statements accusing each other of the murder but confessing that each of them had taken part in the robbery : *Held* (1) that the confession made by each accused could not, so far as it related to the murder, be used as against the other, inasmuch as the maker of the confession exculpated himself, and the confessions being mutually contradictory could not be relied upon; (2) that so far as the confession related to the robbery, they were valuable evidence both as against the person making the confession and as against the co-accused with regard to the robbery and also as leading to the inference that the robbery and the murder were parts of the same transaction and were committed by the same person. *Mian Khan v. Emperor*.

26 Cr. L. J. 612 :

85 I. C. 836 : A. I. R. 1923 Lah. 293.

—S. 302—Conviction, based on uncorroborated testimony of 'accomplice', legality of—Suspected participator in crime appearing as prosecution witness, statement of, weight of—Presumption.

A prosecution witness, against whom there is, apart from his own statement, ground for suspicion that he was himself a participator in the very crime for which the accused are on their trial, though, strictly speaking, not an "accomplice," stands, in view of the provisions of S. 114, Evidence Act, practically on the same basis as an "accomplice." Therefore a conviction ought not to be based on the sole uncorroborated testimony of such a witness. The principle laid down by S. 114, Evidence Act, is one of very wide application, which covers not merely the particular instances given in the illustrations to the said section, but all sorts of analogous cases in which the actual facts are distinguishable from the facts presumed by any one of the illustrations but are equally amenable to the general principle enunciated by the section itself. *Rustam Singh v. Emperor*.

15 Cr. L. J. 410 :

24 I. C. 146 : 1 O. L. J. 95 :

A. I. R. 1914 Oudh 176.

—S. 302—Conviction, if justified—Murder—Body not identified.

Four days after the disappearance of a certain person from a village, a dead body was found floating in the canal, fifty miles from the village. The body was not definitely identified as that of the missing person. Suspicion, however, fell on the accused, who was a reversioner of the missing man, as the murderer of the latter, the only evidence against him being that he pointed out two places at which blood-stained earth was found : *Held*, that the body not having been satisfactorily identified, the remaining evidence was not sufficient to

PENAL CODE ACT (XLV OF 1860)

justify the conviction of the accused for the murder of the missing man. *Jaglu v. Emperor*.

25 Cr. L. J. 173 :
76 I. C. 397 : 5 L. L. J. 417 :
A. I. R. 1924 Lah. 168.

—S. 302—Conviction, if proved—Murder—Proof of offence—Circumstantial evidence—Conviction of one of two persons, when uncertain who fired the fatal shot, in the absence of common intention.

Where the Sessions Judge in a trial on a charge of gun-shot murder against *N* found that *N* and another person *L* were seen immediately after the report of the gun at the scene of occurrence each with a gun in his hand, but he did not find which of them fired the fatal shot, his only finding being that either *N* or *L* fired the shot that killed the deceased, and there was no finding in the judgment that *N* and *L* had a common intention and acted in concert and that the gun was fired in furtherance of their common intention: *Held*, that the legal inference from these findings must be that neither *N* nor *L* was guilty of the offence of murder. *Nibaran Chandra v. Emperor*.

6 Cr. L. J. 304 :
11 C. W. N. 1085.

—S. 302—Conviction, illegality of—Person discovered near dead body immediately after murder holding weapon with which offence could have been committed, whether guilty.

Immediately after the commission of a murder, a half-witted brother of the deceased was discovered sitting in a corner of the room in which the murder was committed holding in his hand a weapon with which the injuries found on the person of the deceased could have been caused. The weapon was, however, not blood-stained and there was no other evidence connecting the brother with the murder of the deceased: *Held*, that under the circumstances of the case it would not be safe to convict the brother of the murder of the deceased. *In re : Karupana Pillai*.

28 Cr. L. J. 279 :
100 I. C. 359 : A. I. R. 1927 Mad. 1112.

—S. 302—Conviction of murder, maintainability of—Guilt to be established beyond doubt—Murder by poisoning—Proof.

In a murder case, a Court has to be satisfied not of the probabilities but of the certainty beyond any reasonable doubt that the accused is guilty. In a case of murder by poisoning with arsenic, it was [not shown that the accused had arsenic in her possession or that she gave anything to eat to the deceased: *Held*, that the conviction for murder could not be maintained. *Anandi v. Emperor*.

17 Cr. L. J. 102 :
32 I. C. 838 : A. I. R. 1916 All. 363.

—S. 302—Conviction on circumstantial evidence, if justified—Murder—Sentence of death, whether can be passed—Sufficiency of evidence.

The accused came to the deceased village and became the guest of the deceased. A

PENAL CODE ACT (XLV OF 1860)

third person gave a sum of money to the deceased in the presence of the accused. The accused and the deceased slept near each other on that night. The deceased was found murdered in the morning. The accused had hurriedly disappeared before dawn and was discovered at a place some miles away. The money which belonged to the deceased was in his possession and there were blood stains on his shirt: *Held*, that the evidence was incompatible with any hypothesis except that the accused had murdered the deceased and the accused could be sentenced to death on this evidence. *Karim Bakhsh v. Emperor*.

31 Cr. L. J. 780 :
125 I. C. 205 : A. I. R. 1929 Sind 179.

—S. 302—Conviction, propriety of—Murder—Identity of culprits well-known to villagers—No evidence forthcoming except that of brothers of deceased.

Where in a murder case the fact of murder was established, but in spite of the fact that a large number of villagers had come to the scene of occurrence and were well aware of the identity of the murderers, no evidence was forthcoming as to who the real culprits were except the evidence of two of the brothers of the deceased, and their evidence was unreliable: *Held*, that it was unsafe to base a conviction on the statement of the deceased's brothers in the circumstances of the case. *Saudagar Singh v. Emperor*.

31 Cr. L. J. 971 :
126 I. C. 157 : A. I. R. 1929 Pat. 527.

—S. 302—Conviction under, legality of—Murder—Death, proof of—Attempt to murder.

Before a conviction of murder can be obtained, the Court must be satisfied that the person alleged to have been murdered is actually dead, and that there is no possibility of a reasonable doubt on the point. Where a man was brutally attacked with *lathis* by several persons and after being beaten into unconsciousness, was removed by his assailants and was never seen again: *Held*, that the assailants could not be convicted of murder as it was not certain that their victim was dead. *Bandhu v. Emperor*.

25 Cr. L. J. 900 :
81 I. C. 436 : 22 A. L. J. 340 :
A. I. R. 1924 All. 662.

—S. 302—Corroboration of approver's story—Murder—Spots of blood on clothes—Motive.

The discovery of minute spots of blood on an Indian's shirt cannot be regarded as any material corroboration of the story of an approver that the person on whose shirt spots of blood have been found took part in the murder. The mere fact that there was motive for the accused to do away with the deceased, does not amount to sufficient corroboration of an approver's statement so as to justify a conviction. *Jit Singh v. Emperor*.

26 Cr. L. J. 875 :
86 I. C. 811 : 26 P. L. R. 124 :
A. I. R. 1925 Lah. 526.

PENAL CODE ACT (XLV OF 1860)

———S. 302—Death caused by arsenic—*Murder—Offence.*

Accused administered arsenic to a boy of nine years of age with the object of preventing the boy's father from giving evidence against the accused in a criminal trial. The boy died from the effects of the poison: *Held*, that the accused was guilty of murder, inasmuch as he knew that the act committed by him was so imminently dangerous that it must, in all probability, cause to the boy such bodily injury as was likely to cause death. *Gauri Shankar v. Emperor.*

19 Cr. L. J. 382 :
44 I. C. 686 : 16 A. L. J. 178 :
40 All. 360 : A. I. R. 1918 All. 283.

———S. 302—Death sentence—*Murder conviction for—Conviction based on circumstantial evidence.*

Where an accused person is found guilty of murder, the fact that the conviction is based on circumstantial evidence is not a ground for not imposing a sentence of death, provided the Court is satisfied beyond reasonable doubt that the accused is guilty, and that the circumstances of the case require the imposition of the death sentence. *Paramandi v. Emperor.*

22 Cr. L. J. 396 :
61 I. C. 524 : 40 M. L. J. 461 :
13 L. W. 377 : 44 Mad. 443 :
A. I. R. 1921 Mad. 423.

———S. 302—Death sentence—*Murder—Premeditation, absence of.*

The mere absence of premeditation is not, in every case, a sufficient ground for imposing the lesser penalty for murder. Everything depends on the circumstances of the particular case. *In re : Bhyri Rajayya.*

22 Cr. L. J. 613 :
63 I. C. 149 : 13 L. W. 612 :
A. I. R. 1921 Mad. 303.

———S. 302—Drunkenness, when a good plea for mitigating offence.

Insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged. Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. *Ramsingh v. Emperor.*

39 Cr. L. J. 72 :
172 I. C. 167 : 10 R. N. 171 :
I. L. R. 1938 Nag. 305 :
A. I. R. 1937 Nag. 386.

———S. 302—Duty of Court.

Per Kendall, A. J. C.—Where certain facts are proved on the side of the prosecution and the accused instead of explaining them denies that they are facts, the Court is bound to take notice of his attitude in arriving at its decision. *Hira Lal v. Emperor.*

26 Cr. L. J. 225 :
84 I. C. 49 : 27 O. C. 188 :
A. I. R. 1925 Oudh 78.

PENAL CODE ACT (XLV OF 1860)

———S. 302—Duty of Prosecution.

The weakness of the defence in answer to a charge cannot be allowed to bolster up a weak case for the prosecution. The prosecution must not only establish the guilt of the accused, but it should be established beyond any reasonable doubt. *Hira Lal v. Emperor.*

26 Cr. L. J. 225 :
84 I. C. 49 : 27 O. C. 188 :
A. I. R. 1925 Oudh 78.

———S. 302—Evidence.

Absence of legal evidence based on legal testimony—Conviction for murder cannot be based on mere suspicions—No eye-witness—Confession retracted—Blood-stains found on clothes of accused—Conviction, held not proper. *Ohhulkan v. Emperor.*

36 Cr. L. J. 246 :
153 I. C. 52 : 11 O. W. N. 1540 :
7 R. O. 281 : A. I. R. 1935 Oudh 33.

———S. 302—Evidence.

Arsenic poisoning—Nature of proof necessary, indicated. *Happu v. Emperor.*

35 Cr. L. J. 280 :
146 I. C. 1089 : 1934 A. L. J. 173 :
6 R. A. 397 : A. I. R. 1933 All. 837.

———S. 302—Evidence.

Blood-stains on clothes of accused—Failure to give explanation makes the evidence sufficient corroboration against accused. *Malla Marhela v. Emperor.*

35 Cr. L. J. 213 :
146 I. C. 701 : 16 N. L. J. 186 :
6 R. N. 93 : A. I. R. 1933 Nag. 352.

———S. 302—Evidence—Disposal of corpse—Circumstantial evidence of murder.

That a person has disposed of the corpse of a murdered man is strong circumstantial evidence that the person disposing of the corpse is the murderer. *Andal Shah v. Emperor.*

26 Cr. L. J. 909 :
88 I. C. 973 : 18 S. L. R. 185 :
A. I. R. 1925 Sind 306.

———S. 302—Evidence—Evidence Act (I of 1872), S. 32—Murder case—Vague dying declaration of accused, whether sufficient for conviction.

Where the only evidence against the accused in a case of murder was that the deceased had shortly before his death made a statement to the doctor that the accused had called him and asked him to drink some *bhang* and that he took a good quantity of *bhang* and after that he began to feel some peculiar sensation: *Held*, that though the statement made by the accused to the doctor was admissible in evidence as a dying declaration under S. 32, Evidence Act, the statement required corroboration in order to convict the accused of murder. *Bullu Singh v. Emperor.*

31 Cr. L. J. 136 :
120 I. C. 474 : A. I. R. 1929 Pat. 249.

PENAL CODE ACT (XLV OF 1860)

———S. 302—*Evidence—Finding of small spots of human blood on garments of inhabitants of the Delta—Probative value of—Criminal trial.*

Finding of small spots of human blood on the clothes of the inhabitants of the Delta is of very slight probative value as they can always be accounted for otherwise. If a mosquito bites a man through his clothes and it is squashed, as often happens, the victim's clothes may have a patch of blood of any size up to three quarters of an inch in diameter and it may be imagined that that blood is the blood of the victim which has been sucked into the mosquito's stomach or what corresponds to it, and if that blood is transferred to a garment, from the Imperial Serologist's point of view, it is still human blood. Its short stay in the mosquito would not greatly change its normal characteristics. *Terugu v. Emperor.*

38 Cr. L. J. 49 :

165 I. C. 758 : 9 R. Rang. 218 :

A. I. R. 1936 Rang. 468.

———S. 302—*Evidence.*

Illegitimate child—Possession of opium by mother—Death of child due to opium—Inference is mother caused its death by administering opium to it. *Mst. Alam Bibi v. Emperor.*

33 Cr. L. J. 448 :

137 I. C. 259 : 33 P. L. R. 223 :

I. R. 1932 Lah. 318 : A. I. R. 1932 Lah. 297.

———S. 302—*Evidence.*

In cases of alleged arsenical poisoning, the questions requiring determination are : did the deceased die of arsenic poison and had the poison been administered to the deceased by the accused. *Gaya Kunwar v. Emperor.*

35 Cr. L. J. 700 :

148 I. C. 600 : 11 O. W. N. 312 :

6 R. O. 421 : A. I. R. 1934 Oudh 62.

———S. 302—*Evidence, insufficiency of—Accused found concealing in reeds when arrested—Recovery of blood-stained shirt and sua from him—No evidence as to extent of blood-stains on shirt—No evidence that sua was used by him—Such evidence is not sufficient to warrant his conviction.*

Where the only evidence against an accused charged with murder is the evidence of the recovery of the blood-stained shirt and the blood-stained sua and the fact that he concealed himself in the reeds at the time of his arrest, such evidence is inconclusive. Where there is nothing on the record as to the extent of the blood-stains on the shirt, it is impossible to judge whether they were caused in committing a murder or were obtained by the accused in the course of his ordinary pursuits. The mere recovery of a blood-stained sua is not sufficient to fix the guilt upon the accused. The mere fact that he produced it does not necessarily mean that it was he who used it. His hiding to avoid arrest is by itself a circumstance which creates no more than a suspicion against him. The accused cannot, therefore, be convicted of murder upon such evidence. *Buta Singh v. Emperor.*

40 Cr. L. J. 697 :

182 I. C. 694 : 41 P. L. R. 16 (2) :

12 R. L. 65 : A. I. R. 1939 Lah. 194.

PENAL CODE ACT (XLV OF 1860)

———S. 302—*Evidence.*

Murder by poisoning—Points to be proved stated—Evidence of motive is of secondary importance—Nature of Chemical Examiner's evidence indicated—Symptoms of arsenic poisoning considered. *Mst. Gajrani v. Emperor.*

34 Cr. L. J. 754 :

144 I. C. 357 : 1933 A. L. J. 1617 :

I. R. 1933 All. 414 : A. I. R. 1933 All. 394.

———S. 302—*Evidence—Murder—Case cannot succeed on unsatisfactory nature of defence—Evidence of one person establishing guilt—Sufficiency of, for conviction.*

A charge of murder cannot succeed on the unsatisfactory nature of the defence, unless the prosecution has positively proved its case to the Court's reasonable satisfaction. In such a case, the evidence of one person is nonetheless sufficient, if that evidence establishes the appellant's guilt beyond any reasonable doubt. *Nga Po Nyan v. Emperor.*

38 Cr. L. J. 299 :

166 I. C. 840 : 9 R. Rang. 279 :

A. I. R. 1937 Rang. 8.

———S. 302—*Evidence—Murder—Circumstantial evidence—No direct evidence—Conviction, whether legal.*

In a murder case, stress can be fairly laid on the absence of direct proof and the inferential nature of the prosecution case. But where the evidence points to the accused alone and admits of no reasonable doubt, the accused can rightly be convicted. *Mahammad Kasim v. Emperor.*

16 Cr. L. J. 195 :

27 I. C. 755 : 1914 M. W. N. 718 :

A. I. R. 1915 Mad. 627.

———S. 302—*Evidence—Murder—Circumstantial evidence—Sentence.*

The proof must be more cogent in criminal cases than in civil cases, but the ultimate test can only be the personal and mental attitude of the person whose duty it is to consider the evidence before him. Purely circumstantial evidence, however overwhelming and convincing it may be, has the character which must have some loophole for the contingency, however remote and infinitesimal, of possible error. Although it is wholly illogical, in cases of a trial for murder to accept facts as proved for the purpose of conviction and to throw any doubt on such proof in considering the question of sentence, yet this is an illogicality which has been fully and consistently recognised by the Court. An accused convicted of murder merely upon circumstantial evidence should not be visited with a sentence which is irrevocable. The Court is reluctant to launch a person into eternity except in a case of exceptional strength. *Abdul Wahab v. Emperor.*

25 Cr. L. J. 97 :

76 I. C. 97.

———S. 302—*Evidence—Murder—Discrepancy in evidence of eye-witnesses—Necessity of independent evidence of factum of offence—Absconding of accused.*

A person accused of murder had absconded and been in hiding for several years. There were discrepancies in the evidence of the eye-

PENAL CODE ACT (XLV OF 1860)

witnesses as variously recorded: *Held*, that though the fact of the absconding was evidence against him, the independent evidence of the factum of the offence was necessary to make out a satisfactory case; and that, as the evidence was untrustworthy, it could not justify his conviction. *Emperor v. Rasavika*.

1 Cr. L. J. 905.

—S. 302—*Evidence—Murder—Possession of ornaments worn by deceased, soon after murder, whether raises presumption of complicity in murder.*

The possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft and this particular fact of presumption commonly forms a material element of evidence in cases of murder. This presumption would be particularly applicable where there is satisfactory proof that the article discovered was habitually worn by the deceased and was worn by the deceased shortly before the murder. *Emperor v. Chintamani Shahu*.

31 Cr. L. J. 1229:

127 I. C. 557: A. I. R. 1930 Cal. 379.

—S. 302—*Evidence—Murder—Report made by deceased to Police concerning incident showing motive for attack, admissibility of.*

The deceased was in charge of certain property on behalf of his employer. A party of men employed by a rival claimant of the property demanded the keys of the property from the deceased, and on the latter's refusal to deliver up the keys, he was assaulted by the accused. The deceased made a report of the incident to the Police. The following morning the deceased was stabbed with a knife and died as the result of the wound: *Held*, that the report made by the deceased to the Police of the assault upon him by the accused on the previous day in connection with the dispute relating to possession was admissible in evidence under S. 32, Cl. (1) of the Evidence Act. *Chunilal v. Emperor*.

26 Cr. L. J. 1121:

88 I. C. 353: 7 N. L. J. 144:

A. I. R. 1924 Nag. 115.

—S. 302—*Evidence.*

When the body of the person said to have been murdered is not forthcoming, the strongest possible evidence as to the fact of the murder should be insisted on. *Fatch Mohammad v. Emperor*.

36 Cr. L. J. 83:

152 I. C. 376: 28 S. L. R. 387:

7 R. S. 92: A. I. R. 1934 Sind 139.

—S. 302—*Evidence.*

Where during the course of a trial an objection is taken to the admissibility of a piece of evidence, it is imperative for the trial Judge to decide at once whether the evidence tendered is admissible. If he holds it to be inadmissible, he should not let it find a place on the record and the assessors should be warned that anything that was said in their hearing on the point must not be taken into consideration; should the Judge

PENAL CODE ACT (XLV OF 1860)

decide that the evidence is admissible, he should take and record the evidence of all the witnesses on the point. The accused made a statement during investigation by Police as to his having thrown a *darri* and a *gandasa* into the canal. In consequence of the statement, the Police recovered the *darri* and the *gandasa* from a neighbouring village, having discovered from a boy the fact that the *darri* and *gandasa* had been found in the place pointed out by the accused: *Held*, that there was immediate connection between the statement and the discovery and that the statement was admissible in evidence. *Kapur Singh v. Emperor*.

20 Cr. L. J. 305:

50 I. C. 481: 98 P. L. R. 1918:

A. I. R. 1919 Lah. 184.

—S. 302—*Evidence.*

Where the only evidence against the accused is the retracted confession of the accused himself and the mention of his name in the retracted confessions of his co-accused, conviction is not justifiable. *Khitoli v. Emperor*.

35 Cr. L. J. 192:

146 I. C. 905: 10 O. W. N. 937:

6 R. O. 190: A. I. R. 1933 Oudh 404.

—S. 302—*Extenuating circumstances, absence of—Murder—Motive—Absence of eye-witness—In absence of direct evidence, convict of murder not liable to capital sentence.*

Where an accused was the only person found near his wife when she was murdered by a gunshot, and where, when the witnesses attracted by the report of the shot, told him to open the door of his compound, he refused to do so, saying he feared his money would be robbed, and in trial, could give no explanation of her death, while the fired weapon was found within the throwing distance of the compound, and there was documentary evidence showing that he had believed her to be misbehaving: *Held*, that the alternative theories of her being murdered by a thief or a paramour in an enclosed compound being not the least proved by the evidence on the record, it could fairly be guessed that the jealous husband, on seeing the wife go out probably to perform some natural offence, at once concluded that she was going to meet some lover, and rushing at her shot her: *Held*, also that, though the accused's mind was poisoned by suspicions, there were not extenuating circumstances, but that, there being no direct evidence, he should not be sentenced to death. *Emperor v. Soni Naran Jiwa*.

2 Cr. L. J. 359.

—S. 302—*Extenuating circumstance.*

Absence of personal grudge is no ground for passing lesser sentence. *Asu Ram v. Emperor*.

34 Cr. L. J. 372:

142 I. C. 620: 34 P. L. R. 427:

I. R. 1933 Lah. 225: A. I. R. 1933 Lah. 623.

—S. 302—*Extenuating circumstances.*

Accused overcome with passion or insult by brother—Provocation not sufficient to

PENAL CODE ACT (XLV OF 1860)

convert offence into culpable homicide—Existence of premeditation but period between entertaining idea to kill and killing short—Provocation held sufficient ground for not inflicting death penalty. *Mominuddi Sardar v. Emperor*. 36 Cr. L. J. 1254 : 158 I. C. 67 : 39 C. W. N. 262 : A. I. R. 1935 Cal. 591.

———S. 302—*Extenuating circumstances*.

Harsh treatment by deceased zamindar towards accused tenants would not affect nature of crime of their having killed him brutally. *Emperor v. Palan*. 33 Cr. L. J. 537 : 137 I. C. 817 : 9 O. W. N. 350 : I. R. 1932 Oudh 275.

———S. 302 — *Extenuating circumstance—Killing by repeated blows—Husband murdering wife in suspicion of misconduct—Punishment—Transportation*.

The fact that a person is killed with repeated blows conclusively negatives the plea that there was no intention to kill the deceased or that the deceased was killed by her mistake. A murdered his wife. He alleged that he caught her in the act of adultery with one S whom only he intended to kill. From the evidence it appeared that there was doubt about the immediate circumstances under which the crime was committed, and that there was indication of misconduct on the part of the deceased wife: *Held*, that although the accused should be convicted of murder, the Court was justified in the circumstances in not imposing the capital sentence. *Rakhia v. Emperor*. 12 Cr. L. J. 214 : 10 I. C. 119 : 157 P. L. R. 1911.

———S. 302—*Extenuating circumstances*.

Murder—Accused encouraged by mischievous literature to commit crime—Motive not personal enmity—Mere youth is not an extenuating circumstance—Death sentence awarded. *Hari Kishan v. Emperor*. 34 Cr. L. J. 720 : 144 I. C. 294 : 34 P. L. R. 691 : I. R. 1933 Lah. 443 : A. I. R. 1933 Lah. 305.

———S. 302 — *Extenuating circumstance—Murder—Extreme youth of accused—Lesser sentence*.

Extreme youth furnishes a ground for passing the lesser sentence of transportation for life for an offence under S. 302 of the Penal Code, *Sheobalak v. Emperor*. 29 Cr. L. J. 400 : 108 I. C. 442 : 11 N. L. J. 7 : A. I. R. 1928 Nag. 108.

———S. 302—*Extenuating circumstances*.

Murder of brother by brother—Sentence—Fact that accused was the only surviving son of widowed mother and that accused was filled with remorse after crime is not an extenuating circumstance. *Mominuddi Sardar v. Emperor*. 36 Cr. L. J. 1254 : 158 I. C. 67 : 39 C. W. N. 262 : A. I. R. 1935 Cal. 591.

———S. 302 — *Extenuating circumstances—Murder—Sentence—Murder in the heat of passion*.

A sentence of death should ordinarily be

PENAL CODE ACT (XLV OF 1860)

passed for the crime of murder unless there are extenuating circumstances, and a mere absence of aggravating circumstances is not enough to justify a sentence of transportation for life. The fact that a murder was committed without premeditation in the heat of passion upon a sudden quarrel is not an extenuating circumstance. *Emperor v. Nga Mayal Kaing*. 18 Cr. L. J. 113 : 37 I. C. 465 : A. I. R. 1917 L. Bur. 91.

———S. 302 — *Extenuating circumstances—Murder—Sentence—Youth of offender, consideration of*.

Ordinarily youth is in itself an extenuating circumstance in murder cases as in other criminal cases. Cases of extreme depravity do occur in which the youth of the accused may not be a sufficient reason for imposing the lesser sentence. But the youth of the criminal is a circumstance which should always be taken into account by Sessions Courts in exercising the discretion vested in them by S. 302, I. P. C. *Chit Tha v. Emperor*. 19 Cr. L. J. 648 : 45 I. C. 840 : 9 L. B. R. 165 : 11 Bur. L. T. 100 : A. I. R. 1918 L. Bur. 58.

———S. 302 — *Extenuating circumstances—Murder—Sex or age of murderer—Leniency—Practice—Enhancement of sentence—Revision*.

The age or the sex of a murderer cannot generally of itself be sufficient reason for a leniency in sentence. If there are other reasons which very nearly justify the passing of the lesser sentence but do not quite do so, or when it is doubtful whether they do so or not, then the youth or the sex of the criminal may certainly tip the scale to the side of mercy. It is not the practice of this Court to call on an accused person *proprio motu* to show cause why his sentence should not be enhanced, but to leave it to the Local Government to apply in revision for an enhancement, if so advised. *Kachria Mahar v. Emperor*. 22 Cr. L. J. 757 : 64 I. C. 277 : A. I. R. 1922 Nag. 65.

———S. 302 — *Extenuating circumstances—Murder—Youth—Punishment, principle of awarding*.

Youth is a ground which a Court can properly take into consideration in determining the punishment to be awarded for murder. The framers of the Penal Code have made it discretionary with Judges, even in cases of murder, to consider mitigating circumstances in awarding punishment. Punishment should be as moderate as is consistent with the object aimed at. The law indicates the gravity of an act by the maximum penalty and the Courts have to judge whether the act committed falls short of the maximum degree of gravity, and if so, by how much. *Nga Tha Kin v. Emperor*. 12 Cr. L. J. 448 : 11 I. C. 792 : U. B. R. 1911 I, 87.

PENAL CODE ACT (XLV OF 1860)

———S. 302—*Extenuating circumstance.*

Refusal of deceased to let accused have unnatural intercourse with him—Accused stabbing the deceased with *churri*—Sentence of death—Youth of accused is not an extenuating circumstance. *Bhagwan Chand v. Emperor.*

35 Cr. L. J. 619 :
148 I. C. 191 : 6 R. L. 512 :
A. I. R. 1934 Lah. 20.

———S. 302—*Extenuating circumstances—Sudden quarrel—Accused plunging knife into heart and causing immediate death—Offence, nature of—Inference of intention to cause injury likely to cause death.*

Where the accused who belonged to a peaceful trading community, in the course of a sudden quarrel, plunged a knife in the heart of the deceased, in a fit of anger, and the deceased died in a few minutes: *Held*, (1) that the weapon used, the part of the body aimed at and pierced, and the violence with which the blow was inflicted, led to the inference that, even if the accused did not intend to cause death, he intended to cause such bodily injury as was likely to cause death and the accused was, therefore, guilty of murder; (2) that as the assault followed a sudden quarrel without premeditation, it was not necessary to exact the extreme penalty of death. *Bhana Mal v. Emperor.*

31 Cr. L. J. 731 :
124 I. C. 680 : A. I. R. 1930 Lah. 154.

———S. 302—*Extenuating circumstances.*

The *Baluchi* custom of killing for unchastity is no extenuation of the crime of murder and cannot be taken into consideration in the mitigation of sentence. *Kaim v. Emperor.*

36 Cr. L. J. 497 :
153 I. C. 976 : 28 S. L. R. 279 :
7 R. S. 151 : A. I. R. 1935 Sind 44.

———S. 302—*Extenuating circumstance.*

The fact that a murder was committed when the offender was being brought to bay and in his desire to escape, is not an extenuating circumstance. *Monoranjan v. Emperor.* (R. B.)

33 Cr. L. J. 722 :
139 I. C. 213 : I. R. 1932 Cal. 603 :
A. I. R. 1932 Cal. 818.

———S. 302—*Extenuating circumstances.*

The gravity of an offence of deliberate murder is in no way lessened because the accused was starving. *Nga Ywa v. Emperor.*

36 Cr. L. J. 336 :
153 I. C. 390 : 12 Rang. 616 :
7 R. Rang. 208 : A. I. R. 1935 Rang. 49.

———S. 302—*Extenuating circumstance—What is.*

Accused belonging to peaceful community is no extenuating circumstance. *Lachhmi Narain v. Emperor.*

33 Cr. L. J. 497 (2) :
137 I. C. 691 : 33 P. L. R. 580 :
I. R. 1932 Lah. 347 :
A. I. R. 1932 Lah. 500.

———S. 302—*Extenuating circumstances.*

Where a boy of 17 committed murder with-

PENAL CODE ACT (XLV OF 1860)

out premeditation under a sudden impulse: *Held*, that he should be given a *locus penitentiae* and the irrevocable sentence of death should not be passed upon him. *Yara v. Emperor.*

34 Cr. L. J. 375 :
142 I. C. 654 : 34 P. L. R. 414 :
I. R. 1933 Lah. 233 (2) :
A. I. R. 1933 Lah. 229.

———S. 302—*Extenuating circumstances.*

Whether or not a man who has committed an atrocious crime is truly penitent, is a matter which ought not to be taken into consideration in deciding the question of sentence, though it might perhaps be a circumstance which might induce the Local Government, in the exercise of its prerogative, to remit the death penalty. *Mominuddi Sardar v. Emperor.*

36 Cr. L. J. 1254 :
158 I. C. 67 : 39 C. W. N. 262 :
A. I. R. 1935 Cal. 591.

———S. 302—*Extenuating circumstances.*

Youth alone does not justify imposition of lesser penalty in every case. *Tiri v. Emperor.*

32 Cr. L. J. 941 :
132 I. C. 716 : 9 Rang. 81 :
I. R. 1931 Rang. 204 :
A. I. R. 1931 Rang. 171.

———S. 302—*Extenuating circumstance—Youth of accused, if strong ground for not passing death sentence.*

Youth of the accused convicted under S. 302, Penal Code, is a sufficiently strong reason for not passing a death sentence on him. *Mohammad Din Mchar Din v. Emperor.*

39 Cr. L. J. 488 :
174 I. C. 881 : 40 P. L. R. 401 :
10 R. L. 618 : I. L. R. 1937 Lah. 658 :
A. I. R. 1938 Lah. 200.

———S. 302—*Grave provocation.*

Deceased contracting criminal intimacy with accused's wife—Murder—Grave provocation is made out justifying lesser sentence. *Mahadeo v. Emperor.*

32 Cr. L. J. 712 :
131 I. C. 431 : 13 N. L. J. 107 :
I. R. 1931 Nag. 95.

———S. 302—*Grave suspicion, if sufficient for conviction—Accused's statement not incriminating himself, whether confession—Identification when sufficient to convict.*

An accused's statement which does not incriminate himself, is not a confession and cannot be used against his co-accused. Identification, unless conclusive, cannot be made the basis of a conviction specially when the identifiers are nervously upset and do not mention the striking features of the accused in their first information. The gravest suspicion against the accused will not suffice to convict them of a crime unless evidence establishes it beyond all doubt. *Nga Po Thein v. Emperor.*

16 Cr. L. J. 25 :
26 I. C. 329 : 8 Bur. L. T. 35 :
A. I. R. 1915 L. Bur. 115,

PENAL CODE ACT (XLV OF 1860)

———S. 302—Homicidal and suicidal wounds—*Distinction.*

The fact that the body of the deceased was found lying flat with its face downwards, having several throat wounds by razor, only one of them being severe, indicated that the wound was suicidal and not homicidal. *Emperor v. Sheo Chandra Prasad.*

39 Cr. L. J. 66 :
172 I. C. 171 : 18 P. L. T. 683 :
4 B. R. 113 : 10 R. P. 292 :
A. I. R. 1937 Pat. 652.

———S. 302—Inference—*Attack causing death—Motive inadequate—Injuries, majority of, simple.*

Where motive for an attack resulting in death is inadequate, and there is the further fact that most of the injuries inflicted are slight, the safer inference to draw is that the accused neither intended to cause death nor knew that they were likely to cause death. *Dial Singh v. Emperor.*

27 Cr. L. J. 547 :
93 I. C. 1043 : A. I. R. 1926 Lah. 419.

———S. 302—Inference of guilt, legality of—*Murder of woman—Buried ornaments, disclosure of, by accused.*

Where a person charged with the murder of a woman, digs up ornaments belonging to the deceased, buried in a place that does not belong to him, nor is, in his possession, the only conclusion that can be drawn from his having shown the place is that he knew that the ornaments were there and not that he had stolen the same or had actually participated in the act of concealing them there, and the fact is not sufficient to prove his guilt. *Rullia Ram v. Emperor.*

26 Cr. L. J. 257 :
84 I. C. 321 : 5 L. L. J. 325 :
A. I. R. 1923 Lah. 438.

———S. 302—Inference of guilt—*Murder—Recovery of property belonging to deceased.*

The mere recovery of property belonging to the deceased from a place pointed out by a person accused of the murder cannot be regarded as a proof that the accused was a murderer. In order to justify the guilt, from circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *Mirza v. Emperor.*

27 Cr. L. J. 993 :
96 I. C. 849.

———S. 302—Inference of homicidal tendency—*Murder motiveless.*

The circumstance of an act of murder being apparently motiveless, is not a ground from which the existence of a powerful and irresistible influence or homicidal tendency can be safely inferred. *Inayat v. Emperor.*

29 Cr. L. J. 1006 :
112 I. C. 222.

PENAL CODE ACT (XLV OF 1860)

———S. 302—Ingredient of offence under—*Intention—Murder and culpable homicide—Distinction.*

To constitute the offence of murder, there must be the intention to kill or to inflict such bodily injury as is known to be sufficient in the ordinary course of nature to cause death. It is sufficient to constitute the offence of culpable homicide if the offender causes death by doing an act with the knowledge that he is likely by such act to cause death. Intoxication should be taken into consideration in cases where intention on the part of the accused is necessary to constitute the offence. If the accused was so drunk as to be unable to form the intent to kill, the offence would be one of manslaughter only, i.e., culpable homicide only. *Nga Hpeik v. The King.*

39 Cr. L. J. 689 :
176 I. C. 103 : 11 R. Rang. 29 :
A. I. R. 1938 Rang. 219.

———S. 302—Injury resulting in death—*Possibility of better treatment saving life—Offence.*

The mere fact that more prompt or better treatment would have saved the deceased will not exonerate a person, who intentionally inflicts a deadly injury, from liability for murder. *Mammi v. Emperor.*

29 Cr. L. J. 345 :
108 I. C. 164.

———S. 302—Insufficient proof—*Accused pointing out place where corpse lay—Offence.*

The mere circumstance of the accused pointing out the place where the corpse of the deceased was found lying, though it may create suspicion, is not sufficient to bring the guilt home to him. *Ghulam Muhammad v. Emperor.*

30 Cr. L. J. 375 :
114 I. C. 719 : 30 P. L. R. 269 :
I. R. 1929 Lah. 319 :
A. I. R. 1929 Lah. 558.

———S. 302—Insufficient proof—*Mere proof against accused that he knew where corpse was concealed—Whether sufficient to support charge of murder.*

Where the only thing proved against the accused is that he was aware of the place where the corpse was concealed, it is quite insufficient to support a charge of murder. *Abdul Jalil v. Emperor.*

40 Cr. L. J. 792 :
183 I. C. 433 : 69 C. L. J. 344 :
12 R. C. 159 : A. I. R. 1939 Cal. 539.

———S. 302—Intention.

A person inflicting a violent blow on the head of his victim with a lethal weapon such as an iron-shod *dang* must be presumed to intend to cause such injury as he knew was likely to cause death. *Bishna v. Emperor.*

33 Cr. L. J. 378 :
137 I. C. 86 (1) : 33 P. L. R. 130 :
I. R. 1932 Lah. 283 (1) :
A. I. R. 1932 Lah. 244.

PENAL CODE ACT (XLV OF 1860)

———S. 302—*Intention.*

Accused firing shot gun nt close range—
Indention of intention to commit murder—
Offence falls under S. 302. *Rajendra Prasad
Singh v. Emperor.* 34 Cr. L. J. 1071 :
145 I. C. 771 : 6 R. P. 202 :
A. I. R. 1933 Pat. 147.

———S. 302—*Intention.*

Accused in drunken state striking deceased—
Deceased chased and struck with second
weapon on breaking of the first—Intention
to cause death should be presumed—But
taking his drunken state and unpremeditated
nature of attack, deceased was sentenced to
transportation. *Nga Kyin Bao v. Emperor.*
34 Cr. L. J. 1245 :
146 I. C. 216 : 6 R. Rang. 79 :
A. I. R. 1933 Rang. 278.

———S. 302—*Intention.*

Accused inciting others to cut deceased to
death—Death of deceased as result—Accused
is guilty of murder read with S. 34. *Nga Po
Kyow v. Emperor.* 35 Cr. L. J. 41 :
146 I. C. 392 : 11 Rang. 354 :
6 R. Rang. 93 : A. I. R. 1933 Rang. 236.

———S. 302—*Intention.*

Accused strongly suspecting fidelity of his
wife—Summoning of paramour—Accused net-
ing with deliberation—Confession of wife in
paramour's presence—Accused stabbing
paramour to death—Offence is murder and
not culpable homicide not amounting to
murder—Sentence awarded was transportation
for life. *Imbichi Koya v. Emperor.*
35 Cr. L. J. 694 :
148 I. C. 590 : 1933 M. W. N. 543 :
39 L. W. 190 : 66 M. L. J. 213 :
6 R. M. 499 : A. I. R. 1934 Mad. 176.

———S. 302—*Intention.*

Blows by rice pounder on head: *Held*,
deceased must be regarded to have intended
to cause injury sufficient in ordinary course
to cause death. *Nga Mye v. Emperor.*
37 Cr. L. J. 181 :
159 I. C. 902 : 8 R. Rang. 288 :
A. I. R. 1935 Rang. 427.

———S. 302—*Intention.*

Blows inflicted on abdomen with heavy
sharp cutting] weapon—Intention to cause
such bodily injury as assailant knew was
likely to cause victim's death can be inferred.
Bhikari v. Emperor. 35 Cr. L. J. 1113 :
150 I. C. 819 : 1934 O. L. R. 627 :
11 O. W. N. 851 : 7 R. O. 44 :
A. I. R. 1934 Oudh 405.

———S. 302—*Intention.*

Causing of several wounds on the head and

PENAL CODE ACT (XLV OF 1860)

neck with sharp cutting weapon should be
presumed to be done with intention of causing
death. The crime is murder. *Bhojo v. Emperor.*
36 Cr. L. J. 223 :
152 I. C. 1032 : 7 R. S. 106 :
A. I. R. 1934 Sind 172.

———S. 302—*Intention.*

Criminals who assault and kill officers of the
law who interfere with them in the com-
mission of a felony, are guilty of murder.
Balai Bauri v. Emperor. 36 Cr. L. J. 184 :
152 I. C. 636 : 7 R. P. 226 :
A. I. R. 1934 Pat. 603.

———S. 302—*Intention—Death caused by
violent blow from taken—Murder.*

A *laska* is a deadly weapon and a person who
strikes a blow on the head of another with
such a weapon and with such a violence as to
cut through the skull does so with the intention
of causing death or such bodily injury as is
likely to cause death, and if death is caused as
the result of such a blow, he is guilty of the
offence of murder. *Tek Singh v. Emperor.*
26 Cr. L. J. 1251 (b) :
88 I. C. 995 : 7 L. L. J. 175 :
A. I. R. 1925 Lah. 373.

———S. 302—*Intention.*

Drunkenness—Voluntary intoxication short of
proved inepneity to form intention necessary
to constitute crime, does not rebut presump-
tion that a person intends the natural conse-
quences of his acts. *Bishna v. Emperor.*
33 Cr. L. J. 378 :
137 I. C. 86 (1) : 33 P. L. R. 130 :
I. R. 1932 Lah. 283 (1) :
A. I. R. 1932 Lah. 244.

———S. 302—*Intention, effect of—Death
caused intentionally—Accused is not entitled to
benefit of exceptions under S. 300.*

Accused had enticed away the sister of the
deceased. The deceased and the accused with
his brother who were armed with a spear met
at first before the house of the deceased near a
mosque where abuse was exchanged and
demand was made by the deceased to the
accused to return his sister. At the persuasion
of a relation the accused retreated being
followed by the deceased and between the two
mohallas where each lived at a spot at a
considerable distance from the houses of each,
the accused struck a blow with the spear to
deceased who in no time succumbed to the
fatal wound: *Held*, the accused did cause the
death of the deceased intentionally and he is
not entitled to the benefits of any exception to
S. 300, I. P. C., but under the circumstances
it was not necessary to impose the capital
sentence. *Muhammad, son of Shadbad v.
Emperor.* A. I. R. 1923 Lah. 195.

PENAL CODE ACT (XLV OF 1860)

—S. 302—*Intention.*

If one person causes the death of another, then if his intention was to cause death or to cause bodily injury sufficient in the ordinary course of nature to cause death, the offence would be murder, even though death resulted in a way different from that expected by the assailant. The intention to be presumed in cases of blows on the head with a stick has to be judged in the light of the common knowledge of mankind upon the dangers and results of striking a person on the head. As a general rule, when one blow only is delivered with a stick, the intention requisite for murder cannot be presumed. *Baba Naya v. Emperor.*

29 Cr. L. J. 487 :
109 I. C. 215 : 5 Rang. 817 :
A. I. R. 1928 Rang. 64.

—S. 302—*Intention—Ingredient—Doubt as to intention of accused—Circumstances doubtful.*

A question of intention is a question of fact. A state of a man's mind is as much a question of fact as the state of his digestion. In a case of murder, where 'intention' is one of the essential elements of the offence, it is always necessary that there should be a definite finding as to whether the necessary guilty intention is or is not present, and when it is reasonably doubtful upon the evidence of the prosecution whether this intention is present, then the accused is entitled to the benefit of that reasonable doubt, and he must be acquitted of the charge of murder even if he is to be convicted of the charge of culpable homicide not amounting to murder. *Ghulam Hyder Imam Baksh v. Emperor.*

39 Cr. L. J. 460 :
174 I. C. 497 : 31 S. L. R. 480 :
10 R. S. 254 : A. I. R. 1938 Sind 63.

—S. 302—*Intention.*

Injuries on the head which have fractured the skull are sufficient in the ordinary course of nature to cause death, and the person who inflicted them, must be presumed to have had the intention of causing injuries so sufficient. *Nga Thein Maung v. Emperor.*

37 Cr. L. J. 290 :
160 I. C. 459 : 8 R. Rang. 383 :
A. I. R. 1936 Rang. 46.

—S. 302—*Intention.*

Intention of the accused is to be judged by the results of his acts. *Nawab v. Emperor.*

33 Cr. L. J. 580 :
138 I. C. 410 : 33 P. L. R. 279 :
I. R. 1932 Lah. 486 : A. I. R. 1932 Lah. 308.

—S. 302—*Intention—Joint assault—Intention of accused—Inference of intention to cause death or injuries likely to cause death—Liability of assailants.*

Four persons deliberately lay in wait for another intending to beat him with lathis. One of them told the others while they were beating, to kill the person assaulted and the latter died owing to the injuries sustained :

PENAL CODE ACT (XLV OF 1860)

Held, that, under the circumstances, the assailants must be held to have intended to cause the death of the deceased or to cause him such injuries as would, in the ordinary course of nature, cause death and all of them were guilty of an offence under S. 302, Penal Code. *Sukhwa v. Emperor.* 30 Cr. L. J. 890 :
118 I. C. 190 : I. R. 1929 All. 846 :
A. I. R. 1929 All. 707.

—S. 302—*Intention—Murder by poisoning—Proof.*

Before a person can be convicted of murder or hurt by means of poisoning, it must be proved that he knowingly administered poison to the deceased with at least the intention of causing him hurt, and the most natural way of doing this would be to show, that he had obtained or was in possession of poison when it was administered to the deceased. *Emperor v. Sukhu Bawa.*

25 Cr. L. J. 165 :
76 I. C. 389 : 38 C. L. J. 155.

—S. 302—*Intention—Murder—Injury by spear resulting in death—Offence.*

The use of a spear against a human being is very often attended with fatal consequences. Therefore, when a person causes an injury with a spear resulting in death, he must be deemed to have intended to cause an injury which, in the ordinary course of nature, would result in death. *Banta Singh v. Emperor.*

31 Cr. L. J. 444 :
122 I. C. 491 : A. I. R. 1930 Lah. 457.

—S. 302—*Intention—Murder—Several injuries on face—Vital part not attacked—Disfigurement.*

The infliction of eight severe wounds on the face of the deceased with a hatchet is a clear indication that something more than mere disfigurement was intended by the person who inflicted the wounds, and the latter must be taken to have intended to cause the death of the deceased or to cause such bodily injuries as he knew to be likely to cause death. *Kutab Ali v. Emperor.*

12 Cr. L. J. 597 :
12 I. C. 973 : 14 P. R. 1911 Cr. :
42 P. W. R. 1911 Cr.

—S. 302—*Intention—Murder.*

Three Parmar Grassias who had a long feud with the deceased, murdered him with a sword, a bludgeon, and a stick. Their examinations before the Police led to the discovery of the deceased's clothes and weapons used, both of which were blood-stained. They were identified by servants and relatives. The accused made confessions before a Magistrate, but at the trial, retracted them as extorted under fear of violence : *Held*, that as the confessions were corroborated by production and identification of the weapons and the clothes, the former injured by blows and the latter cut and blood-stained in a way entirely tallying with their confessions ; they might be accepted as both voluntary and genuine ; and that it was immaterial who used the sword, the other

PENAL CODE ACT (XLV OF 1860)

weapons being equally capable of causing death and their intention being clearly to do so. *Emperor v. Shivsingji Bhimji*.

1 Cr. L. J. 891.

———S. 302—*Intention—Presumption—Whether guilty of murder.*

If one deliberately administers a common poison, the effects of which are well-known, it is no defence to say that one failed to grade the exact dose correctly so as to cause some injury short of death. The question whether a person knows what he is administering and knows what its effects will be, is of course a question of fact in the particular case. Where it is proved that one person has administered poison to another causing his death by mixing it with his food, the question is whether his explanation raises a reasonable doubt as to his guilt. *Minai v. Emperor*.

39 Cr. L. J. 405 :

174 I. C. 386 : 10 R. N. 382 :

A. I. R. 1938 Nag. 318.

———S. 302—*Intention — Several persons participating—Intention.*

Where in a trial under S. 302, Penal Code, it is impossible, from the nature of the injuries inflicted, to come to any other conclusion than that the persons who committed the crime, if there were more than one, had a clear and determined intention of doing the victim to death, it is immaterial which of the participants in the crime struck the fatal blow. *Baldeo Koeri v. Emperor*.

22 Cr. L. J. 433 :

61 I. C. 785 : 6 P. L. J. 241 :

2 P. L. T. 565 : A. I. R. 1921 Pat. 122.

———S. 302—*Intention — Severe blow by chopper on forehead of victim—Death caused—Offence.*

When a person strikes a severe blow with a chopper on the forehead of another person resulting in the latter's death, the former must be held to have intended to cause death or such bodily injury as is sufficient in the ordinary course of nature to cause death. *Chandogi v. Emperor*.

31 Cr. L. J. 79 :

120 I. C. 274 : A. I. R. 1930 Lah. 60.

———S. 302—*Intention.*

Striking with formidable *lathi* and fracturing skull—Intention to cause injury which would be likely to cause death can be assumed—Persons giving only one blow each—Nature of their offence comes under S. 304, Part II. *Langar Jhena v. Emperor*.

35 Cr. L. J. 101 :

146 I. C. 496 : 6 R. L. 240 :

A. I. R. 1933 Lah. 930.

———S. 302—*Intention.*

The ordinary rule in criminal cases is, and must be, that intention is to be inferred from a person's acts. Where a man strikes another on the head with a sharp instrument with such force as to penetrate the brain, the only possible intention that can be inferred is an intention to cause an injury which the accused knew would be

PENAL CODE ACT (XLV OF 1860)

likely, and indeed bound, to cause death. *Emperor v. Samat Kala*.

35 Cr. L. J. 829 :

148 I. C. 1004 : 6 R. B. 316 :

36 Bom. L. R. 210 :

A. I. R. 1934 Bom. 156.

———S. 302—*Intention to murder—Inference from nature of injuries—Presence or absence of injuries on vital parts, effect of.*

If a man is killed as a result of innumerable blows, none of which in itself is sufficient to cause death, and if the assailants have deliberately avoided striking any vital part, under such circumstances, the inference may be drawn that by avoiding dealing blows upon vital parts of the body they showed that they did not intend to cause death but rather have carefully avoided causing death. On the other hand, if the circumstances show that a prolonged thrashing has been deliberately administered with knowledge of the assailants that such a thrashing must, in the ordinary course of nature, result in death, the assailants are guilty of murder. *Basanta v. Emperor*.

28 Cr. L. J. 763 :

103 I. C. 843 : A. I. R. 1927 Lah. 654.

———S. 302—*Intention.*

Where a widow is found to have thrown her illegitimate child in a well with the intention of destroying it and thus causing its death, the offence is murder (she was transported for life but her case was recommended for revision of sentence to Local Government). *Emperor v. Bai Pani Ramji*.

2 Cr. L. J. 193.

———S. 302—*Intention.*

Where action resulting in death continues and is impossible [of being dissolved into separate actions involving several motives, intention to cause death is presumed and accused hold guilty of murder. *Emperor v. Gajjan Singh*.

32 Cr. L. J. 483 :

130 I. C. 321 : I. R. 1931 Lah. 257 :

A. I. R. 1931 Lah. 27.

———S. 302—*Intention.*

Where out of two women, *R* and *S* (daughter and mother), *R* gave birth to a female child and *S* alone attended her and the infant, while in their custody, died of sulphate of copper poisoning soon after its birth, the presumption is that both of them have administered the poison and they are guilty of murder even in the absence of a clear motive for committing the crime. Such a circumstance is sufficient to corroborate their confession of guilt retracted by them at the time of trial. In such a case, capital sentence is not justifiable. *Saidan v. Emperor*.

11 Cr. L. J. 717 :

8 I. C. 815 : 43 P. W. R. 1910 Cr.

———S. 302—*Intention and knowledge—Culpable homicide — Statement of witness in Police investigation—Statement retracted before Committing Magistrate and Sessions Judge—Evidential value.*

It is not safe to rely upon a statement

PENAL CODE ACT (XLV OF 1860)

made by a witness before the Police during the investigation but retracted before the Committing Magistrate and the Sessions Judge. The offence of culpable homicide presupposes an intention or knowledge of likelihood of causing death. The intention must be directed either deliberately to putting an end to human life or to some act which, to the knowledge of the accused, is likely to eventuate in the putting an end to human life. The knowledge must have reference to the particular circumstances in which the accused is placed and the intention demanded by the section must stand in some relation to the person who is alive. *Ganpat v. Emperor*.

25 Cr. L. J. 356 :

77 I. C. 292 : A. I. R. 1924 Nag. 281.

———S. 302—*Intention and knowledge—Striking with dah—Skull divided and brain exposed—Presumption—Disease causing death, natural and probable result of injury—Person inflicting injury, responsibility of.*

A man who strikes another on the head with *dah* with such force as to divide the skull right through and expose the brain, must be held to know that he will inflict injury that may be sufficient in the ordinary course of nature to cause death, and therefore, must be held to intend the natural consequences of his act. When the disease which actually causes death is meningitis, peritonitis, tetanus, pneumonia, etc., etc., and it is natural and probable result of the injury which the person inflicting the injury has caused, the person who inflicts the injury must be held responsible for the disease arising from the injury. *Nga Ba U. v. Emperor*.

39 Cr. L. J. 217 :

172 I. C. 926 : 10 R. Rang. 289 :

A. I. R. 1937 Rang. 429.

———S. 302—*Interference by High Court.*

Where the appellant was found guilty of having murdered a child of eight years, and the Sessions Judge who tried him, imposed a sentence of transportation for life, having regard to his youth and to the fact that the evidence was purely circumstantial: *Held*, that in the circumstances of the case, the High Court was not prepared to interfere with the sentence. *Munlandi v. Emperor*.

16 Cr. L. J. 28 :

26 I. C. 332 : 1 L. W. 1007 :

16 M. L. T. 535 : 1915 M. W. N. 34 :

A. I. R. 1915 Mad. 542.

———S. 302—*Intoxicated state of mind, effect of—Murder—Provocation.*

The fact that the accused, who was convicted of murder, was intoxicated, does not affect the presumption as to his intention and cannot relieve him of responsibility for his action. But it may be considered in estimating the probable effect on his mind of the words or actions of others, and in determining whether provocation given was grave and sudden. *Nga San v. Emperor*.

1 Cr. L. J. 473 :

2 L. B. R. 204.

PENAL CODE ACT (XLV OF 1860)

———S. 302—*Knowledge.*

A man, who has either hacked a fellow-creature about in a most merciless fashion or has practically pounded him to death, cannot escape conviction of murder, if in consequence of such injuries his victim succumbs, by merely urging that he was careful to avoid injuring a vital part of the latter's body. *Kutab Ali v. Emperor*.

12 Cr. L. J. 597 :

12 I. C. 973 : 14 P. R. 1911 Cr. :

42 P. W. R. 1911 Cr.

———S. 302—*Knowledge,*

Accused armed with spears and lathis—Injuries sustained suggesting intention of accused—Offence under S. 302, held made out. *Muzaffar v. Emperor*.

35 Cr. L. J. 626 (2) :

148 I. C. 36 : 6 R. L. 528 :

A. I. R. 1933 Lah. 296.

———S. 302—*Knowledge.*

Death caused by strangulation—Accused, a man of thirty—Ignorance as to effect of applying pressure on neck cannot be pleaded. *Jahana v. Emperor*.

34 Cr. L. J. 1213 :

146 I. C. 224 : 6 R. L. 189 :

A. I. R. 1933 Lah. 511.

———S. 302—*Knowledge—Dhatara administered in large quantity—Death caused—Intention not to kill.*

Where *dhatara* poison is administered in large quantity so as to cause immediate death, an offence under S. 302, I. P. C., is committed. The accused may not have intended to cause death, but he must be held to have known that his act in giving a dangerous substance in such a quantity was likely to cause death. *Emperor v. Gutali*.

9 Cr. L. J. 383 :

1 I. C. 765 : 31 All. 148 :

6 A. L. J. 129.

———S. 302—*Knowledge.*

Ignorance of the actual causes which may bring about another's death in consequence of a blow cannot affect the question of the striker's knowledge and intention when striking the blow. If actual knowledge and experience do not do so, instinct at least tells every man that to hit another human being any violent blow on the head may possibly result or is likely to result or will probably result in serious injury to the person struck, but knowledge, belief or expectation of the amount of injury that may be caused must depend upon what is used in inflicting the blow and the force with which the blow is delivered. *Baba Naya v. Emperor*.

29 Cr. L. J. 487 :

109 I. C. 215 : 5 Rang. 817 :

A. I. R. 1928 Rang. 64.

———S. 302—*Knowledge—Knowledge that act is likely to cause death insufficient.*

Knowledge that the act is likely to cause death is insufficient for conviction under Cl. 4 of S. 300, but is sufficient for conviction

PENAL CODE ACT (XLV OF 1860)

tion under 2nd part of S. 304. *Nga Po Sow v. Emperor.*

2 Bur. L. J. 99 : A. I. R. 1924 Rang. 33.

—S. 302—Knowledge—Murder.

A man who deliberately strikes a blow with a weapon, such as a *lathwa*, on the head of another who is held in position, so that he can make no mistake as to what he is doing, must know that his act is so imminently dangerous that it must, in all probability, cause death, and the circumstances are aggravated when the murderer is not one of those taking part in the original quarrel. *Bantu v. Emperor.*

23 Cr. L. J. 711 :

69 I. C. 439 : A. I. R. 1923 Lah. 68.

—S. 302—Knowledge—Offence of murder or culpable homicide, when constituted.

It is not only an intention to kill that constitutes an offence of murder or of culpable homicide. If a person does an act with the knowledge that his act is likely to cause death, or such bodily injury as is likely to cause death, he can be guilty of culpable homicide or even of murder in that case also. *Dildar Khan v. Emperor.*

39 Cr. L. J. 330 :

173 I. C. 339 : 1938 O. W. N. 184 :

10 R. O. 220 : 1938 O. L. R. 108 :

A. I. R. 1938 Oudh 88.

—S. 302—Knowledge or intention.

The man who plunges a knife into another man's stomach, must know that it would cause death or such bodily injury as is likely to cause death, and that hence death would be the probable result of his act. The man who does such an act therefore, must be held to intend to cause death or such bodily injury as is likely to result in death, for a man is presumed to intend the natural consequence of his action. If he had not that knowledge or intention in the circumstances and he did the act with some other knowledge or intention then it is for him to prove it, for that is a fact peculiarly within his own knowledge. The presumption that one must be taken to intend the natural and probable consequence of his act—a rule of English Law which, originally a rule of Evidence, has acquired the dignity of a legal axiom, is not always quite easy to apply to the Indian Criminal Law in view of the distinction that the Penal Code makes between intention and knowledge. *Gul Khan v. Emperor.*

29 Cr. L. J. 546 :

109 I. C. 482 : 47 C. L. J. 240 :

32 C. W. N. 345 : I. L. T. 49 Cal. 116 :

A. I. R. 1928 Cal. 430.

—S. 302—Knowledge—Persons armed with spears—Killing deceased to pulp with lathi end of spear and not using sharp end—Intention—Offence, if murder.

Where men armed with weapons like spears refrain from using the sharp end but beat to pulp the victim with the lathi end, they can be found guilty of murder. Where people, as in this case, kill a man by beating

PENAL CODE ACT (XLV OF 1860)

him on all parts of the body with weapons like *lathis*, the inevitable inference is that they intend to kill or know that such a beating is likely to cause death. *Bachna Singh v. Emperor.*

38 Cr. L. J. 1077 :

171 I. C. 353 : 10 R. L. 191 :

I. L. R. 1937 Lah. 231 :

A. I. R. 1937 Lah. 632.

—S. 302—Knowledge—Sentence—Assault with lathis—Fracture of skull—Person giving fatal blow not identified.

When men use their *lathis* with the result that a man's skull is fractured, it must be taken in the absence of special circumstances, that they know that they were doing an act so eminently dangerous that it must, in all probability, cause such bodily injury as is likely to cause death. It is wrong to think that there is any practice that in a case of an assault by several persons where the particular person who struck the fatal blow cannot be identified, the capital sentence should not be inflicted. *Parshadi v. Emperor.*

30 Cr. L. J. 559 :

116 I. C. 19 : 1929 A. L. J. 244 :

I. R. 1929 All. 499 : A. I. R. 1929 All. 160.

—S. 302—Knowledge—Wife administering arsenic to husband—Death of husband—Offence—Murder—Act so imminently dangerous that it must, in all probability, cause death.

Where a woman administers to her husband a well-known poison like arsenic, she must be taken to know that her act is so imminently dangerous that it must, in all probability, cause death, and if death ensues, she is guilty of murder. *Emperor v. Chhallarpal Singh.*

32 Cr. L. J. 126 :

128 I. C. 282 : 7 O. W. N. 980 :

I. R. 1931 Oudh 42 : A. I. R. 1930 Oudh 502.

—S. 302—Miscellaneous.

Charge under S. 306—No proof that five or more took part—Splitting up of charge into charges under Ss. 302 and 302 is illegal. *Madhusingh Kaiharala v. Emperor.* (S. B.).

34 Cr. L. J. 524 (2) :

143 I. C. 14 : 36 C. W. N. 880 :

I. R. 1933 Cal. 339 : A. I. R. 1933 Cal. 294.

—S. 302—Miscellaneous.

Conviction and sentence for offence under S. 307 still in force—Subsequent trial and conviction under S. 302 is not barred. *Arsala Khan v. Emperor.*

36 Cr. L. J. 813 :

155 I. C. 287 : 7 R. Pesh. 101 :

A. I. R. 1935 Pesh. 18.

—S. 302—Miscellaneous—Evidence—Prosecution witnesses related to murdered man—Whether reason for discarding their evidence.

In a case of murder the fact that the prosecution witnesses are relatives of the murdered man is no valid reason for discarding their evidence. What would be of importance is that the witnesses had enmity with the accused. The interests of the relatives is undoubtedly to see the true criminal prosecuted, they have no interest in accusing any one

PENAL CODE ACT (XLV OF 1860)

falsely unless they have enmity. *Dilawar v. Emperor.* 37 Cr. L. J. 751 :

163 I. C. 143 : 38 P. L. R. 695 :

8 R. L. 1023 : A. I. R. 1936 Lah. 233.

————S. 302—Miscellaneous.

First Information Report mentioning natural death due to a fall on a log of wood—Deceased old and infirm—Prosecution evidence vague and unreliable—Medical evidence not definite—Conviction under S. 302 not proper. *Subkaran v. Emperor.* 35 Cr. L. J. 992 :

149 I. C. 473 : 11 O. W. N. 722 :

6 R. O. 564 : A. I. R. 1934 Oudh 286.

————S. 302 — Miscellaneous — Murder — Aconite poisoning—Tests—Discoloration of nails and teeth after death, significance of—Medical evidence.

Aconite poison may be extracted from organic liquids by means of the Stas's process for separation of alkaloids. It may also be detected by applying the taste and that of the physiological action on animals such as mice or frogs. Discoloration of the teeth and nails after death may be caused by intense irritation. Even in the absence of medical evidence, a conclusion of death by poisoning could be a good conclusion. *Umrao v. Emperor.* 30 Cr. L. J. 1118 :

119 I. C. 870 : 6 O. W. N. 681 :

I. R. 1929 Oudh 550 : A. I. R. 1929 Oudh 516.

————S. 302—Miscellaneous—Murder—Grave and sudden provocation.

Without plea or proof, the Court is precluded from assuming that the offence was committed under grave and sudden provocation. *Emperor v. Thippiah.* 9 Cr. L. J. 520 :

13 M. C. C. R. 40.

————S. 302—Motive.

Held (Per *Mosely and Mackney, JJ.*) that the accused's suspicion that the deceased's son had murdered his brother was no palliation of, or justification for, the accused's conduct in murdering the father and that the sentence of death was proper. *Nga Po U v. Emperor.* 37 Cr. L. J. 297 :

160 I. C. 466 : 8 R. Rang. 387 :

A. I. R. 1936 Rang. 38.

————S. 302—Motive.

Illiterate and superstitious young woman killing child of another woman, believing her to be "evil shadow" who caused death of her children—Lesser punishment awarded and recommendation under S. 401, Cr. P. C., made to Local Government for further mitigation. *Sardaran v. Emperor.* 34 Cr. L. J. 1251 :

146 I. C. 228 : 6 R. L. 193 :

A. I. R. 1933 Lah. 718.

————S. 302—Motive—Motive for crime, necessity of proving.

It is not necessary for the prosecution in order to establish a charge of crime to prove a motive for it, much less the adequacy of that motive. *Chandu v. Emperor.* 29 Cr. L. J. 378 :

108 I. C. 370 : A. I. R. 1928 Lah. 657.

PENAL CODE ACT (XLV OF 1860)

————S. 302—Motive — Murder — Motive, proof of, if necessary, in upholding conviction.

Where two accused T and G were convicted of murder and sentenced to death by the Sessions Judge, and the motive of one of them, T, for the murder was satisfactorily proved, while as against the other accused G, there was no satisfactory evidence of any such motive, the High Court upheld the conviction, and confirmed the sentence, holding that although if it had to rely to any great extent upon motive being proved to its satisfaction, its conclusion might have been different in the case of the accused G, still as it was satisfied upon the evidence that the Sessions Judge was right in his conclusion that G was actually present with T at the time the murder was committed, it was not necessary for the High Court to come to any definite conclusion as to what the motive was on the part of G. *Torap Ali v. Emperor.* 17 Cr. L. J. 386 :

35 I. C. 818 : A. I. R. 1917 Cal. 492.

————S. 302—Motive—Murder—Proof—Suspicion—Weapons, discovery of.

Suspicion cannot be a substitute for proof. The mere fact that accused dug out a weapon stained, not with human blood, but with the blood of a ruminant animal, coupled with a motive to get rid of the deceased, is not sufficient to establish that the accused was guilty of causing the death of the deceased. *Sural Singh v. Emperor.* 26 Cr. L. J. 28 :

83 I. C. 508 : A. I. R. 1923 Lah. 42.

————S. 302—Motive.

When the facts are clear, it is immaterial that no motive has been proved by the prosecution. The motive which induces a man to act is known to him and him alone. Motive, though not a *sine qua non* for bringing an offence home to the accused, is relevant and important on the question of intention. *Gul Khan v. Emperor.* 29 Cr. L. J. 546 :

109 I. C. 482 : 47 C. L. J. 240 :

32 C. W. N. 345 : I. L. T. 40 Cal. 116 :

A. I. R. 1928 Cal. 430.

————S. 302—Murder—Accused inflicting serious injuries—Victim dying of pneumonia—Offence.

Where a person received grievous injuries and was detained in hospital, and as a result of these injuries, pneumonia supervened and the victim died: *Held*, that the perpetrators of the attack upon him were guilty of murder. *Fazla v. Emperor.* 29 Cr. L. J. 678 :

110 I. C. 230 : A. I. R. 1928 Lah. 851.

————S. 302—Murder—Causing death of woman under the belief that she is a witch.

The accused, a member of an aboriginal tribe, killed a woman under the impression that she was a witch and was responsible for the illness of his wife and daughter. The facts showed that he was not labouring under any hallucination, but that he knew he was killing a human being and also that he was aware of the nature of his act. The Assessors found that he was not insane and that he was

PENAL CODE ACT (XLV OF 1860)

guilty of murder and agreeing with this verdict, the Sessions Judge sentenced him to death: *Held*, that he had been rightly convicted of murder. *Mato Ho v. Emperor*.

21 Cr. L. J. 603 :
57 I. C. 171 : 1 P. L. T. 282 :
1921 Pat. 76 : A. I. R. 1921 Pat. 63.

—S. 302—Murder—Circumstantial evidence justifying conviction.

In a case of murder, the evidence against the accused was that the deceased was last seen alive in his company, that he disappeared immediately after the event and that instead of accounting for the disappearance, he set up a palpably false defence that he did not know the deceased and did not accompany the latter to the scene of offence: *Held*, that these facts and circumstances were sufficient to bring the offence of murder home to the accused. *Fazal Din v. Emperor*.

31 Cr. L. J. 138 :
120 I. C. 529 : A. I. R. 1930 Lah. 265.

—S. 302—Murder—Death avoidable by proper treatment—Whether alters nature of crime—Sentence for murder—Provocation—Lesser punishment.

A person may be guilty of murder notwithstanding that death would have been avoided if the injured person had submitted to proper treatment. A person may be guilty of murder when the immediate cause of death is the treatment administered, and the question whether the treatment was proper treatment does not arise, provided that it was administered *bona fide* by a competent physician or surgeon: *Held*, that although the provocation did not amount to provocation of a nature which would reduce the crime to one of culpable homicide not amounting to murder, yet it was a factor which must be taken into consideration when considering the question of sentence and that the provocation was sufficient to justify the Court sentencing the accused to transportation for life and not to death. *Emperor v. Nga San Pai*.

37 Cr. L. J. 1119 :
165 I. C. 245 : 9 R. Rang. 199 :
14 Rang. 643 : A. I. R. 1936 Rang. 442.

—S. 302—Murder—Death caused as direct result of stabbing by accused—Offence.

Where an accused has stabbed the deceased on a vital part of the body and the deceased has died as a direct result of that injury and the injury is one which, in the ordinary course will cause death, the accused is guilty of murder. The mere fact that the deceased might have been saved if expert medical attention had been afforded at once, makes no difference as to the nature of the crime. *In re: Mahanti Sreeramulu*.

41 Cr. L. J. 491 :
187 I. C. 632 : 1939 M. W. N. 1129 :
50 L. W. 787 : 12 R. M. 748 :
A. I. R. 1940 Mad. 293.

—S. 302—Murder—Death caused by attack with sharp-edged weapon—Offence.

In the course of an altercation, accused suddenly struck the deceased with a sharp-edged weapon causing two wounds of a penetrating

PENAL CODE ACT (XLV OF 1860)

nature, one of which completely perforated the heart and the other penetrating the abdomen, divided the intestines, from the effect of which the deceased died at once: *Held*, that having regard to the nature of the wounds inflicted, the accused must be deemed to have intended to cause death or at least such bodily injury as was likely to cause death and was, therefore, guilty of murder. *Lachman Singh v. Emperor*.

27 Cr. L. J. 238 :
92 I. C. 222 : 7 L. L. J. 582 :
A. I. R. 1926 Lah. 143.

—S. 302—Murder—Death caused by lathi blow on head—Offence.

Accused committed an unprovoked assault upon the deceased, rushing out at him by surprise and striking him upon the head with lathi. The blow fractured the skull of the deceased from temple to temple and caused his death: *Held*, that the accused was guilty of the offence of murder. *Suraj v. Emperor*.

27 Cr. L. J. 766 :
95 I. C. 286 : 3 O. W. N. 451 :
13 O. L. J. 646.

—S. 302—Murder—Death from apoplexy or epilepsy—Finger nail marks—Theory as to cause of death should succeed and not precede collection of evidence.

Where there were scratches on the throat of the deceased such as would be produced by the nails of the hands, it is necessary to be cautious in coming to a conclusion as to the cause of death, for the effects of apoplexy, epilepsy, and other like diseases might be mistaken for those of manual strangulation. A theory as to the cause of death should succeed, and not precede, the collection of evidence. otherwise it is a matter of common knowledge that the evidence may be made to fit in with the theory. *Emperor v. Gaya Nath Dass*.

4 I. C. 286 :
13 C. W. N. 622.

—S. 302—Murder—Dhatura poisoning, death caused by—Offence.

Though *dhatura* is not a deadly poison, yet if administered in a large quantity, it often proves fatal. Therefore, where a person administers a large quantity of *dhatura* to another person which results in the latter's death, he must be deemed to have intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, and must be held guilty of the offence of murder. *Rana v. Emperor*.

31 Cr. L. J. 140 :
120 I. C. 531 : A. I. R. 1930 Lah. 90.

—S. 302—Murder—Discovery of hatchet and dang, through the instrumentality of the accused, from a tury-heap accessible to anybody—Presence of injuries on the person of the accused—Proof cannot be said to be sufficient to hold the accused guilty.

The mere facts that the accused pointed out a heap of tury belonging to some unknown zamindar which was accessible to anybody and from which were recovered a hatchet and a dang which turned out to be blood-stained and that the accused had some injuries on his

PENAL CODE ACT (XLV OF 1860)

person were held to be not sufficient to prove him guilty of being concerned in the murder. *Chhajju, son of Mangu v. Emperor.*

10 L. L. J. 58 :
A. I. R. 1928 Lah. 335.

———S. 302—Murder—Evidence—Accused carrying token—Blood on token—Agriculturists.

Many zemindars carry tokens which are used for their ordinary work as agriculturists, and there is nothing significant in the fact that the accused left his house with a token in his hand shortly after the deceased had gone out and that the latter was subsequently found to have been killed as the result of numerous wounds inflicted on him with a sharp-edged instrument. A zemindar in the use of a token might very easily cut himself and in this way get blood on it. The presence of a little blood on a token, therefore, produced by a person accused of murder is not a very suspicious circumstance. *Barhati v. Emperor.*

25 Cr. L. J. 426 :
77 I. C. 602 : A. I. R. 1923 Lah. 539.

———S. 302—Murder—Evidence—Retracted confession.

An accused was charged with a murder of a young woman. Within a short time after the murder, the accused confessed to the murder and said that he had taken the jewels from her corpse and concealed them in the cattle shed. He went to the cattle shed and produced them. The confession was subsequently retracted but it was sufficiently corroborated by other evidence. The Sessions Judge acquitted the accused on the ground of certain discrepancies in the evidence: *Held*, that the acquittal of the accused was a clear miscarriage of justice. The evidence proved beyond the possibility of any reasonable doubt that he was guilty of the murder. *Public Prosecutor v. Raju Naicken.*

39 Cr. L. J. 1006 :
178 I. C. 115 : 1938 M. W. N. 609 :
48 L. W. 150 : 11 R. M. 406 :
A. I. R. 1938 Mad. 806.

———S. 302—Murder—Gentle tap with heavy iron rod on head of deceased—Accused must be presumed to know that death would result.

If one man hits another on the head with a heavy iron rod, even if it is only a comparatively gentle tap, he must be held to know that death would be a natural and probable result of his action, if that tap does in fact cause the death of the person injured. *Nga Sil Tun v. Emperor.*

39 Cr. L. J. 79 :
172 I. C. 134 : 10 R. Rang. 228 :
A. I. R. 1937 Rang. 401.

———S. 302—Murder—Grave and sudden provocation—Husband killing wife's lover when asleep—Sentence.

Where the accused left his wife for eight months exposed to temptation, during which period, she misbehaved and became pregnant and on returning home he killed her lover when he was asleep: *Held*, that the accused was not entitled to a lenient treatment and must receive a capital sentence, inasmuch as the murder could not be said to have been

PENAL CODE ACT (XLV OF 1860)

committed on grave and sudden provocation. *Pateshwari Prasad v. Emperor.*

29 Cr. L. J. 465 :
109 I. C. 113 : 5 O. W. N. 160 :
A. I. R. 1928 Oudh 241.

———S. 302—Murder—Grave and sudden provocation—Improper overtures by deceased to accused—Penalty.

Where the deceased made improper overtures to the accused, who was her step-son and the latter in a fit of resentment, stabbed her with a knife to death: *Held*, (1) that the act of the deceased did not amount to grave and sudden provocation and the accused was guilty of murder; (2) that the act might, however, be taken into consideration in passing the sentence, and was a sufficient ground for not inflicting the penalty of death. *Allah Din v. Emperor.*

31 Cr. L. J. 229 :
121 I. C. 185 : A. I. R. 1930 Lah. 415.

———S. 302—Murder—Grievous hurt—Death caused by superinfection of pneumonia—Offence.

Where a person inflicted grievous injuries on another, and as a result of these injuries, pneumonia supervened and the latter died: *Held*, that the offence committed was that of murder. *Nur Muhammad v. Emperor.*

31 Cr. L. J. 198 :
121 I. C. 65 : I. R. 1930 Lah. 161.

———S. 302—Murder—Heavy billet of wood—Death caused by blow on head.

A person who, in the absence of grave or sudden provocation, strikes another person on the head with a heavy billet of wood, must know that he is likely to fracture that person's skull and to cause his death and is, therefore, guilty of murder. *Kesar Singh v. Emperor.*

26 Cr. L. J. 398 :
84 I. C. 942 : 6 L. L. J. 527 :
A. I. R. 1925 Lah. 244.

———S. 302—Murder.

Held, on facts that though the blow might have been struck in a quarrel, yet the circumstances were such that the accused could not possibly pray in aid any of the exceptions to S. 300, I. P. C. The blows were extremely vicious and savage ones, and the person who struck them must have either intended to cause death or cause such bodily injury as would, in the ordinary course of nature, result in death. Even the most illiterate and ignorant person would realise that a savage blow with an axe in the region of the abdomen and spine was bound to cause death or injury which would result in death. The accused, therefore, was guilty of the offence of murder. *Emperor v. Girdhari Teli.*

41 Cr. L. J. 587 :
188 I. C. 429 : 6 B. R. 693 :
13 R. P. 9 : A. I. R. 1940 Pat. 605.

———S. 302—Murder—Injury caused sufficient in ordinary course of nature to cause death,—Offence—Intention to cause such injury, if must be proved.

To establish the offence of murder, it is not sufficient that the injury inflicted was in fact sufficient in the ordinary course of nature to

PENAL CODE ACT (XLV OF 1860)

cause death, it must further be proved that the assailant intended to cause an injury of this kind. Where it is doubtful whether the accused had the intention of causing injury sufficient in the ordinary course of nature to cause death, he must be given the benefit of this doubt, a blow inflicted with a sharp-edged weapon with such violence as to sever completely the upper arm is one which is intended to cause such bodily injury as is likely to cause death and constitutes an offence of culpable homicide not amounting to murder under Cl. (1) of S. 304, Penal Code. *Nga Aung Nyun v. The King*. 39 Cr. L. J. 561 :

175 I. C. 345 : 10 R. Rang. 485 :
A. I. R. 1938 Rang. 156.

—S. 302—Murder—Intention—Depth of wound not less than five inches—Blow delivered with great force.

Where the total depth of the injury from the point of entry into the body was not less than five inches, and it is obvious that the blow with which the wound was inflicted must have been delivered with great force and the injury was necessarily fatal, the presumption arises that the person who inflicted it intended to cause death, and, therefore, *prima facie* that that person is guilty of the offence of murder. *Nga Po Htwe v. Emperor*. 38 Cr. L. J. 183 :

166 I. C. 419 : 9 R. Rang. 253 :
A. I. R. 1936 Rang. 474.

—S. 302—Murder.

It was found as established that the accused and the deceased left the house of the latter together on a certain evening shortly after sunset. The next morning the dead body of the deceased was discovered in a field at a short distance from his house. The medical evidence showed that death had occurred at the most within the two hours from the time when the deceased left his house. There was some slight evidence as to a motive which the accused might have for doing away with the deceased: *Held*, that the charge of murder against the accused had been established. *Hira Lal v. Emperor*. 26 Cr. L. J. 225 :

84 I. C. 49 : 27 O. C. 188 :
A. I. R. 1925 Oudh 78.

—S. 302—Murder.

It was found that the corpse of the deceased, a boy, proved to have been murdered by a sharp-edged instrument, was found floating in a canal on the 5th April, 1917, that the accused had an unnatural intimacy with the deceased, that the deceased and the accused were seen in company on the evening of the 30th March after which the deceased was never seen alive again, that the accused pointed out a spot in the canal where he said he had thrown a *darri* and a *gandasa* and that a *darri* and a *gandasa* were actually found in the canal bed at that spot: *Held*, that these facts were sufficient to justify the finding that the accused murdered the deceased. *Kapur Singh v. Emperor*. 20 Cr. L. J. 305 :

50 I. C. 481 : 98 P. L. R. 1918 :
A. I. R. 1919 Lah. 184.

PENAL CODE ACT (XLV OF 1860)

—S. 302—Murder—Lathi used to break every limb—Death—Offence, if murder.

If weapons like *lathis* or the blunt side of axes are used in order to break every limb of a man's body, it is just as surely a murder as if the head had been smashed. *Dilawar v. Emperor*. 37 Cr. L. J. 751 :

163 I. C. 143 : 38 P. L. R. 695 :
8 R. L. 1023 : A. I. R. 1936 Lah. 233.

—S. 302—Murder—Motive, inadequacy of, effect of.

Where the evidence of the accused having committed the offence of murder is clear, it is immaterial whether the motive alleged for the offence is or is not adequate. *Shera v. Emperor*. 28 Cr. L. J. 258 :

100 I. C. 226 : A. I. R. 1927 Lah. 729.

—S. 302—Murder—Murder by throttling—Absence of injuries on neck—Inference.

If the object which is employed to compress the windpipe is broad and pliable, there need be no injury to the bony structures of the neck. Pressure by the sole of the foot or by the palm of the hand placed across the neck of an unresisting victim would cause death by asphyxia without necessarily causing injury to the bones or tissues of the neck. The absence of such injury does not, therefore, indicate that the approver is not telling the truth, when he says that the deceased was throttled. *In re: Velu Naicken*. 40 Cr. L. J. 913 :

184 I. C. 302 : 1939 M. W. N. 611 :
1939, 2 M. L. J. 202 : 12 R. M. 431 :
50 L. W. 920 : A. I. R. 1939 Mad. 737.

—S. 302—Murder—Death caused by lathis—Blows inflicted by several accused—Offence.

Where several persons attack another with *lathis* and cause his death, they are all guilty of the offence of murder. *Dulli v. Emperor*. 20 Cr. L. J. 22 :

48 I. C. 502 : 16 A. L. J. 918 :
A. I. R. 1918 All. 65.

—S. 302—Murder of one by blow aimed at another—Offence.

Where a blow aimed at one person lights upon another and kills him, the offence committed by the assailant is the same as it would have been if the blow had struck the intended victim. *Suba v. Emperor*. 29 Cr. L. J. 280 :

107 I. C. 764 : A. I. R. 1928 Lah. 344.

—S. 302—Murder, offence of.

Accused was offered a post under P. W. D. in connection with land demarcation. He accepted it and was appointed for one month to deal with encroachment cases. One of the cases handed over to him was that of the deceased. The accused perused the papers and had a talk with the deceased and attempted to persuade him to agree to the demarcation of the disputed land. The deceased refused to do so and promised to produce papers to satisfy him that his claim was just. The accused was apprehensive that

PENAL CODE ACT (XLV OF 1860)

he would resist the demarcation which he proposed to carry out, and to facilitate his object, he drafted a complaint under S. 107, Cr. P. C., and asked a Pleader to file it, in proper Court. When he went to the spot, he took several boundary stones with him, which were carried by a large number of coolies. He had with him his own orderly, who carried his pistol. There was also a camera with the accused to take a photograph of any incident that might occur. The deceased resisted the accused by abuse and throwing stones but the accused in his zeal to perform his duties, fired shots at the deceased and the result was that the deceased died: *Held*, that the accused was the aggressor and that he was not entitled to the right of private defence, full or restricted. He was guilty of murder. *Z. D. Samuel v. Emperor*.

38 Cr. L. J. 477 :
167 I. C. 564 : 9 R. Pesh. 92 :
A. I. R. 1937 Pesh. 23.

————S. 302—Murder—Offender raw youth—Sentence.

Where a man of seventeen years of age is engaged in a murder under the influence of people very much older than himself, he may be awarded the lesser penalty, i.e., transportation for life instead of death. *Charagh Din v. Emperor*.

36 Cr. L. J. 313 :
153 I. C. 228 : 7 R. L. 411 :
A. I. R. 1934 Lah. 786.

————S. 302—Murder—Person causing fracture and killing by lathi blow—Offence held murder.

A *lathi* is a lethal weapon and any one who uses it on the head of another with such force as to fracture the skull, must know that he is doing an act which, in all probability, must cause death, and the offence is murder. *Raja Ram v. Emperor*.

40 Cr. L. J. 14 :
178 I. C. 162 : 11 R. O. 96 :
1938 O. L. R. 469 : 1938 O. W. N. 1057 :
14 Luck. 328 : A. I. R. 1938 Oudh 256.

————S. 302—Murder—Poisoning by Dhatura.

Dhatura is a common poison frequently used to cause death, and the effects of *dhatura*, plants of which are often to be found in villages, are well-known to the villagers. It may be that *dhatura* is sometimes administered in fairly large doses with the intention of stupefying the victim, but there is no doubt that if a person consciously administers *dhatura* and administers a fatal dose, that person is guilty of murder for the intention to cause bodily injury is clear, and knowledge of the results of the poison can safely be imputed. Therefore, once it is established that a woman with a motive to get rid of her husband in order to facilitate her intrigue with her paramour has administered in his food a fatal dose of *dhatura*, the conclusion to be drawn is that she has committed murder unless her explanation is such as to create some doubt in the mind of the Court. *Minai v. Emperor*.

39 Cr. L. J. 405 :
174 I. C. 386 : 10 R. N. 382 :
A. I. R. 1938 Nag. 318.

PENAL CODE ACT (XLV OF 1860)

————S. 302—Murder—Premeditation, absence of—Sentence.

The absence of proof of premeditation to commit murder would be a good ground for not passing the sentence of death. *A. Plet v. Emperor*.

37 Cr. L. J. 449 :
161 I. C. 297 : 8 R. Rang. 465 :
A. I. R. 1936 Rang. 28.

————S. 302—Murder—Sentence—Accused receiving provocation while drunk—Proper sentence.

Where an offence committed is undoubtedly murder, the drunkenness of the accused being drunk is not sufficient to reduce the crime to anything below that of murder. But a drunken man may be provoked by a taunt which could not, in any way, ruffle the temper of a man who is in his sober senses. Where, therefore, an accused commits murder while drunk as a result of a provocation, however slight, it is a case in which maximum punishment should not be given. *Nga Po Than v. The King*.

40 Cr. L. J. 67 :
178 I. C. 431 : 11 R. Rang. 232 :
A. I. R. 1938 Rang. 448.

————S. 302—Murder—Sentence—Exenuating circumstances.

Where in a charge of murder it is found that although it could not be said that the accused was insane or did not know the nature of his actions, it appeared that he was in an abnormal mood when he committed the offence, there is sufficient reason for not inflicting the extreme sentence. *Nga Po Sva v. Emperor*.

37 Cr. L. J. 435 :
161 I. C. 250 : 8 R. Rang. 462 :
A. I. R. 1936 Rang. 113.

————S. 302—Murder—Sentence—Extreme youth.

Though mere youth may not, in itself, be a reason for not hanging a murderer, extreme youth may be such a reason. *Mohan Lal v. Emperor*.

32 Cr. L. J. 682 :
131 I. C. 276 (2) : I. R. 1931 Lah. 404 :
A. I. R. 1931 Lah. 177.

————S. 302—Murder—Sentence—Mitigating circumstances.

Where the accused had undergone protracted sufferings through the obstinacy, viciousness and flagrant immorality of the deceased, his wife, whom he pushed into the river, there is a mitigating circumstance entitling the accused to a lenient sentence. *Ghulam Muhammad v. Emperor*.

36 Cr. L. J. 683 :
155 I. C. 265 : 35 P. L. R. 746 :
7 R. L. 673 : A. I. R. 1934 Lah. 675 (2).

————S. 302—Murder—Sentence.

The extreme penalty of law should not be passed, where the attack is unpremeditated and the accused acts under the impulse of the moment. *Inayat Khan v. Emperor*.

36 Cr. L. J. 1335 :
158 I. C. 336 : 16 Lah. 589 :
37 P. L. R. 705 : A. I. R. 1935 Lah. 94.

PENAL CODE ACT (XLV OF 1860)

—S. 302—Murder—Sentence.

There is no rule of law that if there be no eye-witnesses to a murder, the accused should not be sentenced to death. *Tulsi Gangota v. Emperor*.

34 Cr. L. J. 395 :
142 I. C. 613 (2) : 14 P. L. T. 96 :
I. R. 1933 Pat. 165 : A. I. R. 1933 Pat. 180.

—S. 302—Murder—Sentence—Youth of accused.

Youth alone in every case is not such an extenuating circumstance as would justify the imposition of the lesser penalty in case of murder, but it should be taken into consideration with the other facts. *Nga Kan v. Emperor*.

37 Cr. L. J. 463 :
161 I. C. 574 : 8 R. Rang. 484 :
A. I. R. 1936 Rang. 71.

—S. 302—Murder—Severe injuries inflicted by accused—Victim dying due to gangrene caused by injuries.

Where a person is seriously injured by the accused, and as a result of the injuries, gangrene sets in and becomes the immediate cause of death of the victim, the accused is guilty of an offence under S. 302, Penal Code. *Lal Singh v. Emperor*.

39 Cr. L. J. 265 :
173 I. C. 30 : 10 R. L. 393 :
A. I. R. 1938 Lah. 31.

—S. 302—Murder—Single blow by rice-pounder on deceased while intervening in struggle between accused and another—Murder, if committed.

Where the deceased intervenes during the struggle between the accused and another person and is fatally struck by the accused on the head with a blow of a rice-pounder, so heavy as to require ordinarily the use of both the hands for its use, the accused can be convicted of murder, even if the death results from a single blow. *Public Prosecutor v. Bandi Pedda Venkata Nari*.

38 Cr. L. J. 1109 :
171 I. C. 694 : 1937 M. W. N. 456 :
45 L. W. 698 : 1937, 1 M. L. J. 743 :
I. L. R. 1937 Mad. 684 : 10 R. M. 386 :
A. I. R. 1937 Mad. 634.

—S. 302—Murder, what amounts to—Assailants engaged in a brawl—Member of one party striking member of the other side who is empty-handed and not an active participant with hatchet—Offence.

Where during a brawl in which the assailants on both sides are using sticks, a member of one side intervenes with a hatchet and strikes over the head of a member of the other side, who is empty-handed and taking no active part in the fight and kills him in consequence, he commits murder and not culpable homicide not amounting to murder. *Madaru v. Emperor*.

29 Cr. L. J. 230 :
107 I. C. 177 : 5 O. W. N. 29 :
A. I. R. 1928 Oudh 221.

—S. 302—Murder, what amounts to.

When a man stabs another in a vital part, such as that described in the medical evidence in this case, he must be held to have intended

PENAL CODE ACT (XLV OF 1860)

to cause death, and if death ensues either directly from the wound or in consequence of the wound creating conditions, which give occasion to the appearance of a fatal disease, the person inflicting the wound is guilty of murder. *Nga Doe v. Emperor*.

1 Cr. L. J. 909 :
10 Bur. L. R. 171.

—S. 302—Murder—When constitutes.

Accused assaulting deceased with intention of causing his death, and after rendering him unconscious, placing him on railway line where death is caused by running train—No evidence that accused carried deceased to railway line under belief that he was dead—Offence committed is murder. *Nchal Mahito v. Emperor*.

41 Cr. L. J. 276 :
186 I. C. 256 : 18 Pat. 485 :
6 B. R. 316 : 12 R. P. 505 :
A. I. R. 1939 Pat. 625.

—S. 302—Murder.

When several persons join in beating another with lathis and inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder, without distinction. *Sikandar v. Emperor*.

32 Cr. L. J. 645 :
131 I. C. 122 : 32 P. L. R. 414 :
A. I. R. 1931 Lah. 536.

—S. 302—Murder.

Where the accused, a girl of 16, was held guilty of deliberately killing her husband by means of arsenic poison which she mixed up with the food cooked and served up by herself to the husband : *Held*, that in consideration of her age, she should be transported for life instead of suffering the extreme penalty of death. *Emperor v. Jasha Bewa*.

6 Cr. L. J. 154 :
11 C. W. N. 904.

—S. 302—Murder.

Where the accused, in a drunken state, stabbed his wife, owing to her refusal to start with him for a certain place, which resulted in her death and the injuries inflicted were such that the accused should have known that they were likely to cause death : *Held*, that the accused was guilty of the offence under S. 302, Penal Code, and not of the lesser offence under S. 304, Penal Code. *Batcha Sahib v. Emperor*.

14 Cr. L. J. 115 :
18 I. C. 675 : 1913 M. W. N. 556.

—S. 302—Murder—Whether there should be injury on head for committing murder.

It is wholly unnecessary to injure the head of a person in order to kill him. One of the methods of killing in this country with a sharp weapon is to attack the stomach. An accused inflicting no less than 44 injuries on the body of the deceased can be convicted of murder, even though there is no injury on the head. *Jagar Beg Jal v. Emperor*.

38 Cr. L. J. 1057 :
171 I. C. 314 : 39 P. L. R. 479 :
10 R. L. 184 : A. I. R. 1937 Lah. 692.

PENAL CODE ACT (XLV OF 1860)

————S. 302—*Murder and theft—Evidence—Unexplained possession of stolen property—Inference.*

When the charge is that an accused person committed murder and theft in a building and the unexplained possession of stolen property is the only circumstance appearing in the evidence against that accused, the accused cannot be convicted of murder unless the Court is satisfied that possession of the property could not have been transferred from the deceased to the accused except by the former being murdered. *In re: Sogiamuthu Padayachi.* 27 Cr. L. J. 394 : 93 I. C. 42 : A. I. R. 1926 Mad. 638.

————S. 302—*Murder or culpable homicide.*

A stab wound which penetrates the wall of the abdominal cavity ought to be held to be one which is sufficient to cause death in the ordinary course of nature. *Maung Pyan v. Emperor.* 37 Cr. L. J. 214 : 159 I. C. 1058 : 8 R. Rang. 320 : A. I. R. 1935 Rang. 408.

————S. 302—*Murder or culpable homicide.*

Accused attempting to strangle deceased and placing her on railway line while unconscious—Decapitation by train: *Held*, acts were intimately connected and latter act followed immediately on former act and accused is guilty of murder. *Kaliappa Goundan v. Emperor.* 34 Cr. L. J. 1109 : 145 I. C. 953 : 1933 M. W. N. 745 : 38 L. W. 522 : 65 M. L. J. 597 : 57 Mad. 158 : 6 R. M. 164 : A. I. R. 1933 Mad. 798.

————S. 302—*Murder and culpable homicide.*

Distinction pointed out. *Kaliappa Goundan v. Emperor.* 34 Cr. L. J. 1109 : 145 I. C. 953 : 1933 M. W. N. 745 : 38 L. W. 522 : 65 M. L. J. 597 : 6 R. M. 164 : 57 Mad. 158 : A. I. R. 1933 Mad. 798.

————S. 302—*Murder or culpable homicide not amounting to murder—Husband and wife only living together—Death of wife—Cause of death not ascertained—Presumption against husband.*

Where A and his wife only were living together and the death of his wife occurs at his house and the circumstances relating to her death are absolutely unknown and A does not admit that he has killed her, the dissatisfaction of A with her and his ill-treatment of her as well as his attempt to dispose of her body are not sufficient to bring home the offence of murder to him, but in the absence of exculpating circumstances, which he has to prove, he can be found guilty of culpable homicide not amounting to murder. *Gopal Singh v. Emperor.* 6 Cr. L. J. 260 : 2 P. W. R. Cr. 64.

————S. 302—*Murder or culpable homicide.*

Injury with axe on [head — Clean-Cut

PENAL CODE ACT (XLV OF 1860)

fracture of skull—Accused held guilty of murder. *Balai Bauri v. Emperor.*

36 Cr. L. J. 184 : 152 I. C. 636 : 7 R. P. 226 : A. I. R. 1934 Pat. 603.

————S. 302—*Murder or hurt.*

Fight during drunken brawl—One blow given resulting in death—Offence, is under S. 326 and not under S. 302 or 306. *Gokal Chand v. Emperor.* 35 Cr. L. J. 1407 (2) : 151 I. C. 760 : 36 P. L. R. 88 : 7 R. L. 203 : A. I. R. 1934 Lah. 477.

————S. 302—*Murder or hurt.*

Five persons beating two—Death of one five days after by grievous hurt—Conviction under S. 302—149 is not proper and it should be under S. 325—147. *Mohan Singh v. Emperor.* 35 Cr. L. J. 1355 : 151 I. C. 391 : 7 R. L. 123 (2) : A. I. R. 1934 Lah. 486.

————S. 302—*Murder or hurt.*

Injuries not necessarily sufficient to cause death in the ordinary course of nature—Death due to meningitis and compression of brain—No connection between this and injuries—Offence falls under S. 326. *Chanan Das v. Emperor.* 35 Cr. L. J. 1283 : 151 I. C. 238 : 7 R. L. 113 : A. I. R. 1934 Lah. 368.

————S. 302—*Murder or hurt.*

Stab wound puncturing liver and diaphragm—Death—Murder is committed. *Nga Tin Han v. Emperor.* 35 Cr. L. J. 434 : 147 I. C. 440 : 6 R. Rang. 146 : A. I. R. 1933 Rang. 423.

————S. 302—*Neglect of victim.*

The idea, that the victim of a murderous assault must take such great care of his health and that he does not by any neglect or omission on his part hasten the advent of his death, is not countenanced by any provision of the Penal Code. *Bhikhari v. Emperor.* 35 Cr. L. J. 1113 : 150 I. C. 819 : 11 O. W. N. 851 : 7 R. O. 44 : A. I. R. 1934 Oudh 405.

————S. 302—*Offence under, what amounts to—Murder or culpable homicide.*

The fact that there were two assailants and only one blow was struck, and that it is not shown who struck that blow, is not sufficient to reduce an offence which otherwise amounts to murder, to one under S. 304-II or S. 325. *Sher Singh v. Emperor.*

32 Cr. L. J. 1083 : 133 I. C. 887 : 32 P. L. R. 537 : I. R. 1931 Lah. 855 : A. I. R. 1931 Lah. 538.

————S. 302—*Plea of guilty, when should be accepted.*

Before a plea of guilty is accepted in a case in which the accused is charged with murder, the record should clearly show that the person who is charged understands and admits such facts as would bring the offence within the

PENAL CODE ACT (XLV OF 1860)

definition of murder and that he does not plead any of the exceptions set out in the Penal Code. *Nga Han v. Emperor*.

20 Cr. L. J. 540 :
51 I. C. 780 : 3 U. B. R. 1919, 137 :
A. I. R. 1919 U. Bur. 23.

————S. 302—Poisoning—Proof of—Murder—Case of death.

Before a person can be convicted of murder by poisoning, it is essential to prove that the death of the deceased was caused by poison and that the poison was administered to him by the accused. Where the cause of death cannot be ascertained with certainty, a conviction for murder by poisoning cannot be sustained. *Gurdevi v. Emperor*.

26 Cr. L. J. 593 :
85 I. C. 817 : A. I. R. 1923 Lah. 325.

————S. 302—Power of High Court.

Where a trial has ended in the complete acquittal of the accused person, it is not open to the High Court in the exercise of its revisional jurisdiction to convict him of any offence. The utmost that it can do, in the absence of an appeal against the acquittal by the properly constituted authorities, is to order a new trial. *Dullit v. Emperor*.

20 Cr. L. J. 22 :
48 I. C. 502 : 16 A. L. J. 918 :
A. I. R. 1918 All. 65.

————S. 302—Pre-arranged fight, effect of—Death caused in pre-arranged fight—Murder—Private defence, right of.

Where members of two rival factions armed with deadly weapons take part in a pre-arranged fight, and deaths are caused on either side, no question of the exercise of the right of private defence arises, and all those who take part in the fight are guilty of the offence of murder. *Madat Khan v. Emperor*.

27 Cr. L. J. 283 :
92 I. C. 659 : 7 L. L. J. 628 :
27 P. L. R. 47 : A. I. R. 1926 Lah. 221.

————S. 302—Presumption—Murder—Evidence—Accused pointing out spots where occurrence took place—Proof.

In a murder case, when an accused person is able successfully to point out not one spot but several connected with the occurrence, there is a presumption that he had something to do with the murder. *Matu v. Emperor*.

18 Cr. L. J. 6 :
36 I. C. 838 : 18 P. R. 1917 :
A. I. R. 1916 Lah. 3.

————S. 302—Presumptive evidence of murder—Trial for murder and robbery—Recent possession of stolen articles.

In cases in which murder and robbery have been shown to form parts of one transaction, recent and unexplained possession of stolen property in the absence of circumstances tending to show that the accused was only the receiver of the property, would not be only presumptive evidence against the prisoner on the charge of robbery but also on the charge

PENAL CODE ACT (XLV OF 1860)

for murder. *Public Prosecutor v. Chirreddi Munayya*.

12 Cr. L. J. 589 :
12 I. C. 652 : 21 M. L. J. 1071 :
1911, 2 M. W. N. 478.

————S. 302—Private defence.

Faction A going to attack with stick members of faction B—Faction B joined by companions with spears and hatchets—One of A getting spear thrust and dying on the spot—Right of private defence is not available to B—Other members of B present at assault can be convicted under S. 302 read with S. 34. *Ram Baz v. Emperor*.

35 Cr. L. J. 1441 :
151 I. C. 887 : 7 R. L. 213 :
A. I. R. 1934 Lah. 11.

————S. 302—Private defence.

In a case where on a charge of murder, the plea of self-defence is rejected, the offence can only fall under S. 302, Penal Code. *Faqir Mohammad v. Emperor*.

33 Cr. L. J. 570 :
138 I. C. 217 : 33 P. L. R. 287 :
I. R. 1932 Lah. 431.

————S. 302—Provocation.

Accused and deceased having illicit relation with same woman—Deceased not prepared to give up connection—Conduct of deceased cannot be said to give grave provocation to accused and will not mitigate his crime of brutal murder. *Emperor v. Shankar*.

35 Cr. L. J. 894 :
149 I. C. 69 : 11 O. W. N. 636 :
6 R. O. 514 : A. I. R. 1934 Oudh 222.

————S. 302—Provocation.

Accused having illicit relations with deceased for a long time with husband's connivance—Death of husband—Deceased commencing intrigue with another man—Accused killing deceased—Provocation—Sentence reduced to transportation. *Sheo Baran Singh v. Emperor*.

35 Cr. L. J. 232 :
146 I. C. 929 : 6 R. A. 379 :
A. I. R. 1933 All. 533.

————S. 302—Provocation.

Grave and sudden provocation to be an effective defence must be expressly pleaded and then supported by cogent evidence. *Suleman v. Emperor*.

34 Cr. L. J. 404 :
142 I. C. 741 : 15 N. L. J. 129 :
I. R. 1933 Nag. 134.

————S. 302—Punishment, object of.

The object of punishment is not revenge but protection of society, and the fact that the prisoner may have considered it a meritorious act to rid the village of the deceased, ought not to have any influence upon the sentence. The plea of low intellect and unbalanced mind is not a good ground for mitigation of sentence. The policy of the law is to fix the maximum penalty, leaving it to the discretion of the Court to award such punishment as would meet the circumstances of the case; that having regard to the motive proved in this case, and to the fact that the murder was committed in the honest, though unfounded belief of saving the life and alleviating the sufferings of others, a sentence of transporta-

PENAL CODE ACT (XLV OF 1860)

tion for life would meet the ends of justice.
Mato Ho v. Emperor. 21 Cr. L. J. 603 :

57 I. C. 171 : 1 P. L. T. 282 :
1921 Pat. 76 : A. I. R. 1921 Pat. 63.

———S. 302—Retrial, necessity of.

The statements in the inquest reports are not evidence in a case but where these inquest reports have been filed, it is incumbent upon the Sub-Inspector who reduced the statements in inquest reports to writing, immediately after the discovery of the dead bodies, to explain the difference between them and the evidence given by him. He should be cross-examined with regard to this difference. Where he is not so cross-examined, and since the statements in the inquest reports cannot be used to discredit the evidence of the Sub-Inspector unless they are put to him under the provisions of S. 145, Evidence Act, it is necessary to order a retrial. *Tharhepedekayil Veeeranjutti Haji v. Emperor.* 39 Cr. L. J. 947 :

177 I. C. 808 ; 1938 M. W. N. 868 :
1938, 2 M. L. J. 618 : 48 L. W. 615 :
11 R. M. 387.

———S. 302—Rioting and Murder.

Where a mob has murdered certain men, the only inference which can be drawn is that the common object of the mob was murder. If any of the accused did not share that common object, it is for them to prove that fact. *Rambit v. Emperor.* 35 Cr. L. J. 919 :

149 I. C. 210 : 4 A. W. R. 191 :
6 R. A. 872 : A. I. R. 1934 All. 776.

———S. 302—Sentence.

According to the evidence, there was no provocation to the accused on the part of the deceased ; the actions of the former showed great ferocity and disregard of human life, and there were absolutely no extenuating circumstances : *Held*, that if a lesser sentence than that of death were passed in such a case, it would be an act of mercy. *Emperor v. Nga Shwe Gon.* 1 Cr. L. J. 665 :

10 Bur. L. R. 123.

———S. 302—Sentence.

Accused challenging deceased to fight—First blow struck by deceased—Both drunk—Fatal injuries inflicted by accused—Though accused is guilty of murder, lesser penalty should be imposed. *Nga Sein Ge v. Emperor.* 35 Cr. L. J. 1065 :

149 I. C. 1176 : 6 R. Rang. 376 :
A. I. R. 1934 Rang. 10.

———S. 302—Sentence—Accused's knowledge of guilt—Conviction.

An accused can rightly be convicted under S. 302, Penal Code, if he knows what he is doing when he strikes the deceased on the head with a hatchet and also knows that his act is imminently dangerous to life. But where there is no premeditation nor any enmity between the accused and the deceased or his relation and the attack on the deceased is the result of foul language used by

PENAL CODE ACT (XLV OF 1860)

him, the extreme penalty of law is not called for. *Indar Singh v. Emperor.* 31 Cr. L. J. 815 :

125 I. C. 325 : A. I. R. 1930 Lah. 545.

———S. 302—Sentence—Accused not actually striking but armed to meet eventualities and accompanying his associate—Offence—Provocation grave but not sudden—Extreme penalty of law.

Where an accused did not actually inflict any injury on the deceased but accompanied his co-accused on his murderous errand and was his confederate throughout, being himself armed with a weapon to meet all eventualities : *Held*, that he was in the eye of law just as much responsible for the murder of the deceased as his associate whose hand had actually struck the fatal blow. Where a murder is committed on a provocation which though not sudden was grave and likely to leave its sting behind, the extreme penalty of law need not be exacted. *Shera v. Emperor.* 30 Cr. L. J. 637 :

116 I. C. 613 : I. R. 1929 Lah. 549 :
A. I. R. 1929 Lah. 791.

———S. 302—Sentence—Accused sixteen years of age murdering deceased half hour after receiving provocation from deceased—Circumstances held justified lesser punishment.

Where the accused was only sixteen years old and had committed murder by a blow with a *dah* on the back of the neck of the deceased half an hour after the accused had received some provocation from the deceased : *Held*, that the circumstances afforded ample justification for the imposition of the lesser penalty. *Nga Chit Tee v. The King.* 41 Cr. L. J. 706 :

188 I. C. 858 : 13 R. Rang. 29 :
A. I. R. 1940 Rang. 140.

———S. 302—Sentence.

Accused who was a raw youth of 17 or 18 years of age with no experience of the world, stabbed the deceased with a knife under unknown circumstances and caused his death : *Held*, that the accused was guilty of murder but that under the circumstances, the sentence of transportation for life would meet the ends of justice and that it was not necessary to pass the sentence of death upon him. *Ohunilal v. Emperor.* 26 Cr. L. J. 1121 :

88 I. C. 353 : 7 N. L. J. 144 :
A. I. R. 1924 Nag. 115.

———S. 302—Sentence.

Accused with spears lying in wait for deceased expecting him to come that side to carry on intrigues with a girl who was betrothed to one of them and intending to kill if he came—Accused are guilty of murder—Provocation is not sudden—Deceased persisting in intrigues with girl betrothed to accused is sufficient reason to commute death sentence to transportation. *Nur Ilahi v. Emperor.* 35 Cr. L. J. 1476 :

151 I. C. 1012 : 7 R. L. 236 :
A. I. R. 1934 Lah. 239.

PENAL CODE ACT (XLV OF 1860)

—S. 302—Sentence.

Age of the accused is a factor which ought to be taken into consideration in determining the sentence to be imposed. *Muniandi v. Emperor*.

16 Cr. L. J. 28 :
26 I. C. 332 : 1 L. W. 1007 :
16 M. L. T. 535 : 1915 M. W. N. 34 :
A. I. R. 1915 Mad. 542.

—S. 302—Sentence—Attempt to murder—Trial by Sessions Judge, desirability of—Sentence, quantum of.

Cases of attempt to murder which vary greatly in gravity should ordinarily be tried by Sessions Judges and not by Assistant Sessions Judges whose powers are limited to inflicting a sentence of seven years' imprisonment. Where the accused attempted to murder one of his relations by giving *dhatura* poison, and the victim remained unconscious for two days and would have died but for the treatment received in a hospital: *Held*, that a sentence of five years was insufficient. *Emperor v. Ghura*.

30 Cr. L. J. 544 :
115 I. C. 846 : 6 O. W. N. 43 :
I. R. 1929 Oudh 286 : A. I. R. 1929 Oudh 150.

—S. 302—Sentence—Body of murdered person not discovered.

Where an offence of murder is proved, the mere fact that the body of the murdered man is not found, is not a sufficient reason for not awarding capital sentence. *Ram Nath v. Emperor*.

27 Cr. L. J. 460 :
93 I. C. 252 : 3 O. W. N. 204 :
1 Luck. 327 : 13 O. L. J. 484 :
A. I. R. 1926 Oudh 234.

—S. 302—Sentence—Brutal murder—Youth of accused, whether ground for lesser penalty.

When the murder committed is of a very brutal nature, the mere youth of the accused is no ground for imposing the lesser penalty of transportation. *Muhammad Sultan v. Emperor*.

29 Cr. L. J. 211 :
107 I. C. 99.

—S. 302—Sentence—Conviction for murder on circumstantial evidence—Whether should not be visited with extreme penalty.

The Judge is either satisfied that the accused is guilty or he is not. There can be only two positions. If he is satisfied, the accused must get the normal punishment, if he is not, the accused must be acquitted. There is no middle course at all in judging the guilt of the accused. It is wrong to say that an accused convicted of murder merely upon circumstantial evidence should not be visited with extreme penalty. *Gulzaman Mirzaman v. Emperor*.

41 Cr. L. J. 132 :
185 I. C. 208 : 12 R. Pesh. 33 :
A. I. R. 1939 Pesh. 47.

—S. 302—Sentence—Gr. P. C., 1898, S. 367 (5)—Murder—Drunkenness, whether extenuating circumstances.

Unless drunkenness either amounts to unsoundness of mind so as to enable insanity to be pleaded by way of defence, or the degree

PENAL CODE ACT (XLV OF 1860)

of drunkenness is such as to establish incapacity in the accused to form the intent necessary to constitute the crime, it is neither a defence nor a palliation, and, therefore, the fact that an accused person was drunk at the time when he committed a murder, is not a reason for inflicting upon him the lesser penalty provided by law as a punishment for that offence. *Waryam Singh v. Emperor*.

27 Cr. L. J. 764 :
95 I. C. 284 : 7 Lah. 141 :
27 P. L. R. 332 : A. I. R. 1926 Lah. 428.

—S. 302—Sentence—Dead body not discovered—Evidence of death only retracted confession—Proper sentence whether death or transportation.

The circumstance that the body of the murdered person is not discovered, makes it necessary for the Court to proceed with care and caution, but it is no ground for changing the sentence from death to transportation for life. Where the dead body does not appear and the *factum* of death is established by nothing but a retracted confession, there is a suitable case where the sentence of transportation may be awarded instead of the heavier sentence. *Ragha v. Emperor*.

26 Cr. L. J. 1431 :
89 I. C. 903 : 23 A. L. J. 821 :
A. I. R. 1925 All. 627.

—S. 302—Sentence.

Death by blow with heavy stick. No real intention to murder—Punishment of transportation for life held sufficient. *Kesava Chetti v. Emperor*.

32 Cr. L. J. 623 (2) :
130 I. C. 847 : 1931 M. W. N. 266 :
A. I. R. 1931 Mad. 420.

—S. 302—Sentence—Death caused by beating—Drunkenness.

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. Where accused who have beaten a man to death had primed themselves with drink in order to wreak vengeance on the deceased and to beat him mercilessly, they cannot escape the penalty of death on the ground of drunkenness. *Sheru v. Emperor*.

27 Cr. L. J. 630 :
94 I. C. 406 : 27 P. L. R. 294 :
7 Lah. 50 : A. I. R. 1926 Lah. 232.

—S. 302—Sentence—Death caused by dangerous weapon—Murder.

Two persons who were armed with *chhavis* attacked the deceased, who was their enemy, and inflicted two incised wounds on his head, one of which fractured his skull and caused his death: *Held*, that both of them were equally responsible for the result of their joint assault, and were guilty of an offence under S. 302, Penal Code, the appropriate sentence being one of death. In a case of murder, the

PENAL CODE ACT (XLV OF 1860)

sentence of death should ordinarily be imposed unless there is a mitigating circumstance which would justify the Court in awarding the lesser sentence prescribed by the law. The mere facts that only one blow proved fatal, does not furnish any adequate ground for not inflicting the sentence of death. *Waryam Singh v. Emperor*.

24 Cr. L. J. 935 :
75 I. C. 359 : 6 L. L. J. 62 :
A. I. R. 1923 Lah. 598.

—S. 302—Sentence—Death caused by hatchet blow by one accused—Second accused present but not taking part in assault—Murder.

G and O, two brothers, proceeded to the house of the deceased, the former being armed with a hatchet and the latter with a stick. On arriving at the house of the deceased, G gave a blow on the neck of the deceased with the hatchet as the result of which the latter died. O did not use his stick but stood near while G attacked the deceased: *Held*, that both G and O were guilty of the offence of murder and that while G fully deserved the punishment of death, O who appeared to be acting under the influence of his brother and had inflicted no injury upon the deceased, should be sentenced only to transportation for life. *Gulab v. Emperor*.

26 Cr. L. J. 1133 :
88 I. C. 365 : 2 Lah. Cas. 14 :
7 L. L. J. 479 : A. I. R. 1925 Lah. 584.

—S. 302—Sentence.

Deceased, paramour of accused, persisting in carrying on illicit intimacy—Accused getting disgusted with deceased—Poisoning—Sentence—Extreme penalty should not be exacted. *Pathani v. Emperor*.

36 Cr. L. J. 217 :
152 I. C. 1077 : 35 P. L. R. 559 :
7 R. L. 361 : A. I. R. 1934 Lah. 673.

—S. 302—Sentence—Deliberate and brutal murder—Motive for the crime—Unfounded suspicion of the fidelity of wife—Yielding to the feeling of jealousy—Reason for not inflicting the extreme penalty of the law.

When a husband entertaining an unfounded suspicion of his wife's chastity yields to the feeling of jealousy and murders her deliberately, he is entitled to the consideration of the Court, and his case does not call for the extreme penalty of law. *Emperor v. Dina Bandhu Moitra*.

1 Cr. L. J. 62 :
8 C. W. N. 218.

—S. 302—Sentence.

Doubt as to guilt is no reason for lesser penalty—Accused must be given benefit of doubt and acquitted. *Mosaddi Rai v. Emperor*.

34 Cr. L. J. 427 :
142 I. C. 841 (2) : 13 P. L. T. 702 :
11 Pat. 807 : I. R. 1933 Pat. 180 :
A. I. R. 1933 Pat. 100.

—S. 302—Sentence—Exceeding right of private defence.

When an accused, on being severely beaten, inflicted a mortal wound in a vital portion on the deceased's body, and where he did

PENAL CODE ACT (XLV OF 1860)

not show that the deceased was armed: *Held*, that the accused was guilty of murder under S. 302; that the burden of proving that he came under any of the exceptions of S. 300 lay upon him, but that, as offence was committed in the heat of provocation, the extreme penalty should not be passed. *Emperor v. Bhimji Jeram*.

1 Cr. L. J. 491.

—S. 302—Sentence—Extenuating circumstances.

Brutal crime premeditated and carried out brutally—Youth of accused is not an extenuating circumstance. *Bhikhari v. Emperor*.

35 Cr. L. J. 1113 :
150 I. C. 819 : 1934 O. L. R. 627 :
11 O. W. N. 851 : 7 R. O. 44 :
A. I. R. 1934 Oudh 405.

—S. 302—Sentence—Extenuating circumstances.

The mere fact that a conviction for murder is based on circumstantial evidence is no reason why the sentence of death should not be imposed. Nor is the fact that the accused originally intended to commit another offence, but finding some difficulty in carrying out that offence, changed his mind and committed murder, an extenuating circumstance justifying the imposition of the lesser penalty. On the one hand absence of ascertainable motive comes to nothing if the crime is proved to have been committed by the other evidence; on the other, to ekc out a weak case by way of motive apparently tending towards possible crime, is a very unsatisfactory and dangerous process. Motive may, however, be referred to in considering the question of sentence. Though the fact that a conviction is solely based on circumstantial evidence is, by itself, no ground for not inflicting the sentence of death, it is not improper to inflict a lesser sentence where there are other circumstances demanding the exercise of such discretion; as for instance, the absence of a strong motive coupled with the possibility of the murder having been committed without premeditation and under a temporary derangement of the mind due to the fear of being prosecuted and convicted for a criminal offence. In imposing sentence in a capital case, the discretion vested in the Courts should be judicially exercised. But the exercise of such discretionary powers in any particular case must depend on its own facts considered in the light of various circumstances such as the magnitude of the mischief which the crime has a tendency to produce, the effect of the punishment in preventing similar crimes, the motive or inducement to the crime, disposition of the criminal aggravating or mitigating circumstances and the like and not on the long cherished, now exploded, theory of a tooth for a tooth and an eye for an eye. *Mohammad Yusif v. Emperor*.

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

—S. 302—Sentence.

Fight between two men—Weaker one calling for help to separate them—Accused coming and stabbing the stronger—Accused drunk—

PENAL CODE ACT (XLV OF 1860)

No premeditation: *Held*, offence though murder, extreme penalty was uncalled for. *Maung Pyan v. Emperor*. 37 Cr. L. J. 214 : 159 I. C. 1058 : 8 R. Rang. 320 : A. I. R. 1935 Rang. 408.

—S. 302—Sentence—Husband killing unchaste wife on provocation—Lesser penalty.

An accused who had seen his wife taking to her paramour asked her to mind her ways. She replied that she did not like to live with him and said that she would again elope with her paramour. The accused threw a piece of cloth round her neck and twisted it till she died. He then cut her throat and threw the body into a well: *Held*, that the accused was clearly guilty of murder but the case was a fit one for imposing the lesser penalty. *Khanun v. Emperor*.

31 Cr. L. J. 759 : 125 I. C. 49 : 11 L. L. J. 461 : A. I. R. 1930 Lah. 171.

—S. 302—Sentence.

In every case of a conviction on a charge of murder, the law regards the sentence of death as the normal and the appropriate sentence. Where the Court sees fit to pass the lesser sentence of transportation for life, it must record its reasons for so doing. *Abdullah v. Emperor*.

27 Cr. L. J. 193 : 92 I. C. 145 : A. I. R. 1924 All. 233.

—S. 302—Sentence, measure of.

Accused was placed upon his trial for the murder of his child and stated to the Committing Magistrate that he thought he was the cause of the child's death, he was drunk and did not know what he did. The plea of drunkenness was repeated to the Sessions Judge, who convicted him of murder and sentenced him to death: *Held*, that the sentence was, in the circumstances, most undesirable, without any evidence to ascertain whether there was or was not anything to justify a conviction for a lesser offence or for passing a sentence of transportation for life upon a conviction for murder. *Nga Han v. Emperor*.

20 Cr. L. J. 540 : 51 I. C. 780 : 3 U. B. R. (1919) 137 : A. I. R. 1919 U. Bur. 23.

—S. 302—Sentence, measure of—Murder—Provocation, grave but not sudden, effect of.

A capital sentence is not justified where a murder is committed under provocation, very serious though not sudden. *Puran v. Emperor*.

17 Cr. L. J. 190 : 33 I. C. 830 : 3 O. L. J. 19 : A. I. R. 1916 Oudh 138.

—S. 302—Sentence—Murder by father of newly born illegitimate child—Mitigating circumstances.

In the murder of her newly born illegitimate child by a woman, there are mitigating circumstances sufficient to reduce the appropriate penalty of death very much below a sentence of transportation for life. Most of those circumstances apply, though certainly in a less degree, to the case of the father of

PENAL CODE ACT (XLV OF 1860)

such a child, more especially where the mother is his own sister. *Dhanja Kunbi v. Emperor*. 25 Cr. L. J. 63 : 75 I. C. 767 : A. I. R. 1924 Nag. 119.

—S. 302—Sentence—Murder by grandmother of her grandchild—No justification—Sentence, appropriate.

Where an old woman of 50 years of age, who had long hated her daughter-in-law and resented her intrusion and had worked herself up to a frenzy of hatred against her, taking advantage of her absence from the house, entered it and murdered her five years old grandchild with horrible cruelty, and nothing was alleged by her or suggested on her behalf which could, if established, have afforded any sort of legal or moral justification, the mere fact that the case rests on circumstantial and not direct evidence should not affect the passing of the death sentence. *In re : Rasammal*.

16 Cr. L. J. 20 : 26 I. C. 324 : A. I. R. 1915 Mad. 821.

—S. 302—Sentence—Murder—Capital sentence, when not to be passed.

There is a certain degree of reluctance on the part of Judges to pass a capital sentence when the substantial part of the evidence which the prosecution rely upon is evidence recorded without an oath or affirmation as required by the Oaths Act. *Hari Ramji Pavar v. Emperor*.

19 Cr. L. J. 593 : 45 I. C. 497 : 20 Bom. L. R. 365 : A. I. R. 1918 Bom. 212.

—S. 302—Sentence—Murder committed by several accused—Person inflicting fatal blow unknown—Whether ground for giving lesser sentence—Sentence passed lesser but legal—Interference.

When once the guilt of murder is proved, the proper penalty to be is a matter for the discretion of the Judge and it is by no means true to say that merely because there is doubt as to which of several of the accused inflicted the fatal blow, this is a sufficient ground for withholding the death sentence in the case of any or all of them. But a person who has even wrongly got the benefit of a lenient sentence at his trial, may sometimes be allowed to benefit by his good fortune, provided the sentence passed is one which is legal. *Tun Khine U v. The King*.

40 Cr. L. J. 49 : 178 I. C. 298 : 11 R. Rang. 223 : A. I. R. 1938 Rang. 331.

—S. 302—Sentence—Murder—Conviction on appeal against acquittal.

Though ordinarily the Courts refrain from passing the capital sentence on a person who is convicted of murder on appeal against an acquittal, capital sentence may be passed where the attack was particularly ferocious and the accused acted in a high-handed and unusually cruel manner. *Niamat Khan v. Emperor*.

32 Cr. L. J. 51 : 127 I. C. 850 : 31 P. L. R. 411 : I. R. 1930 Lah. 882 : A. I. R. 1930 Lah. 409.

PENAL CODE ACT (XLV OF 1860)

————S. 302—Sentence—Murder—Death of infant caused by blow from heavy weapon—Accused suffering from ill-treatment of husband—Youth of accused—Sentence—Recommendation for mercy.

Accused, who was a young woman of fifteen years of age, being roused to frenzy by the ill-treatment of her husband, seized the first weapon that came to her hand and made a murderous attack on her step-son in order to avenge herself against her husband and caused the death of the infant. The weapon used by her was a very heavy one: *Held*, (1) that the intention of the accused was to cause death and that she was, therefore, guilty of the offence of murder; (2) that considering the age of the accused and the other circumstances of the case, the capital sentence was uncalled for and that a lesser sentence even than one of transportation for life would meet the ends of justice and that the record of the case should be forwarded to the Local Government in order that it may take action, if it deemed it suitable to do so, under S. 401 of the Cr. P. C. *Daulan v. Emperor*. 26 Cr. L. J. 1373 : 89 I. C. 461 : 2 Lah. Cas. 57 : A. I. R. 1926 Lah. 144.

————S. 302—Sentence — Murder — Joint commission—Some taking minor part—Lesser sentence.

If a murder is committed by two persons, and one of them takes some minor part and is acting under the influence of the other, it may sometimes be a case for reduction of the sentence in the case of the man who was acting under the influence of the other, especially where the evidence against him depends primarily on a confession. *Dur Mohammad v. Emperor*.

32 Cr. L. J. 178 : 128 I. C. 684 : I. R. 1931 Sind 12 : A. I. R. 1930 Sind 305.

————S. 302—Sentence — Murder — Mere youth of accused and likelihood of reforming, whether extenuating circumstances—Duty of Court to impose capital sentence.

There is no law which justifies a Court in not passing a sentence of death on a person convicted of murder merely because he is young. The consideration that the accused may still reform, is one which should be excluded entirely in all cases, where a capital sentence can be inflicted. *Emperor v. Bhagwandin*.

32 Cr. L. J. 83 : 128 I. C. 80 : 7 O. W. N. 767 : I. R. 1931 Oudh 16 : A. I. R. 1931 Oudh 89.

————S. 302—Sentence—Murder — Minority of accused.

A person who has not reached the legal age of discretion, should not be made to pay the death penalty when the law allows an alternative punishment. *Thakura Singh v. Emperor*.

30 Cr. L. J. 65 : 113 I. C. 177 : 10 L. L. J. 463 : I. R. 1929 Lah. 138 : A. I. R. 1929 Lah. 64.

PENAL CODE ACT (XLV OF 1860)

————S. 302—Sentence.

Murder of husband committed by reason of and at bidding of spirit—Murder with brutality—No pretence of grief—No motive—Full confession : *Held*, extreme penalty uncalled for. *Sukni Ohamian v. Emperor*. 37 Cr. L. J. 513 : 162 I. C. 25 : 2 B. R. 410 : 8 R. P. 506 : A. I. R. 1936 Pat. 245.

————S. 302—Sentence—Murder of wife by husband—Sentence—Suspicion of unchastity, whether extenuation.

Mere suspicion of a wife's conduct is not extenuation of a deliberate murder of the wife by the husband. In such a case, the extreme penalty of law is the only proper sentence. *In re ; Dasan*.

30 Cr. L. J. 630 : 116 I. C. 142 : 1929 M. W. N. 269 : I. R. 1929 Mad. 526 : 30 L. W. 229 : A. I. R. 1929 Mad. 495.

————S. 302—Sentence.

Murder under belief that victim was a sorcerer. Lesser sentence is sufficient. *In the matter of : Lakhna Sawra*. (F. B.)

33 Cr. L. J. 663 : 139 I. C. 81 : I. R. 1932 Cal. 570 : A. I. R. 1932 Cal. 815.

————S. 302—Sentence—Murder — Provocation.

A person who was trusted and treated with hospitality by another, seduced the latter's wife and persisted in remaining in his house after having been requested to leave. The injured man killed the seducer. There was no evidence to indicate the circumstances which led to the commission of the murder : *Held*, that the conduct of the deceased was certainly provoking, and, in the absence of the evidence to indicate the circumstances of the crime, it was not a case for the infliction of the extreme penalty of the law, but for a sentence of transportation for life. *Khandu v. Emperor*.

29 Cr. L. J. 41 : 106 I. C. 457.

————S. 302—Sentence— Murder — Several accused—No evidence as to who struck the fatal blow—Conviction.

Where there are several persons accused of murder and there is no reliable evidence as to who struck the fatal blow, it is not safe to differentiate the guilt of the accused and sentence some of them to the extreme penalty of the law. *In re ; Butari Ohinna Vorjah*.

12 Cr. L. J. 48 : 9 I. C. 288 : 9 M. L. T. 103.

————S. 302— Sentence— Murder — Several persons convicted—Death sentence, imposition of.

In deciding as to whether some or all of a

PENAL CODE ACT (XLV OF 1860)

number of persons are to be sentenced to death after a conviction for murder, it has long been settled that *prima facie* all the persons convicted should be sentenced to the extreme penalty, and it is only where special circumstances are shown in favour of any individual that the Court sentences such individual to the alternative punishment of transportation for life. It is not the practice of the Court, however, save in extreme cases, to call upon the accused to show cause why the sentence should not be enhanced. *Shafi Khan v. Emperor*.

30 Cr. L. J. 737 :

117 I. C. 176 : 8 Pat. 181 :

I. R. 1929 Pat. 384 : A. I. R. 1929 Pat. 161.

———S. 302—Sentence—Murder—Several persons joining together to murder another and murdering him—Circumstances showing intention to murder—Case of each indistinguishable—Each should get death sentence.

Where several persons join together to murder another and do murder him under such circumstances that there can be no doubt that the intention was to murder, each and every one of them ought to receive the sentence of death unless there is any circumstance to distinguish one case from another. *Chanan v. Emperor*.

38 Cr. L. J. 342 :

166 I. C. 1005 : 17 Lah. 536 :

38 P. L. R. 909 : 9 R. L. 459.

———S. 302—Sentence.

No premeditation—Sudden quarrel and abuse—Accused striking one blow—Sentence of death held not proper. *Nand Lal v. Emperor*.

37 Cr. L. J. 307 :

160 I. C. 606 (1) : 38 P. L. R. 111 :

16 Lah. 1098 : 8 R. L. 571.

———S. 302—Sentence—Number of accused involved in murder—Sentence of death should not be passed on all—Court should try to discriminate.

In cases where many persons are involved in a crime under S. 302, Penal Code, the Court should hesitate to pass sentence of death on all of them, and try to discriminate. Infliction of sentences of death on all accused in one and the same case, is apt to fail in the effect which such sentences would otherwise have. A number of persons were involved in a murder of a woman which was deliberate and premeditated. One of them cut the throat of the woman while others who were under his influence held the woman and facilitated the crime. There was no extenuating circumstance : *Held*, that the person cutting the throat shall be sentenced to death while the rest to transportation for life. *Emperor v. Nibharesh Mandal Mohor Mandal*.

39 Cr. L. J. 479 :

174 I. C. 803 : 66 C. L. J. 351 :

10 R. C. 726 : A. I. R. 1938 Cal. 295.

———S. 302—Sentence—Premeditated murder by person setting out to execute their own sentence of death—Absence of immediate provocation and hasty action in response : *Held*, sentence of death was proper.

The High Court will always set its face against private individuals, whether they be Baloochis or members of any other tribe, executing

PENAL CODE ACT (XLV OF 1860)

their own sentences of death. A band of armed Baloochis, setting out deliberately to execute a sentence of death which they or others had passed, committed a deliberate, audacious and premeditated murder. There was no immediate provocation and hasty action in response, but the accused set themselves as executioners : *Held*, that the only proper sentence was the sentence of death. But as Government had not moved, for enhancement of sentence of transportation for life and some considerable time had passed, the sentences were confirmed and not enhanced. *Muhammad Murid Bnd v. Emperor*.

38 Cr. L. J. 953 :

170 I. C. 605 : 30 S. L. R. 354 :

10 R. S. 63 : A. I. R. 1937 Sind 239.

———S. 302—Sentence—Proper sentence—State of public feeling or fact that number of murderers exceeds number of victims, whether admissible reason for refraining from passing death sentence.

It is no part of the duty of a Judge to be influenced by public feeling. His duty is to administer the law. The law says that the proper sentence for murder is death, and whenever a person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reasons why the sentence of death was not passed. The state of public feeling is not an admissible reason for refraining from passing the sentence of death. Nor is it permissible to refrain from sentencing the murderers to death merely because their numbers exceed the numbers of their victims. When the number of persons have together planned and executed the murder of a single person, each of them must be sentenced to death unless there are some legal reasons for not doing so. *In re : Sambhangi Lakshumanna*.

40 Cr. L. J. 249 :

179 I. C. 682 : 48 L. W. 730 :

1938 M. W. N. 1166 : 1938, 2 M. L. J. 1028 :

11 R. M. 614 : A. I. R. 1939 Mad. 109.

———S. 302—Sentence—Extenuating circumstances.

Where there was doubt about cause of quarrel and accused was a lad of 17 or 18 : *Held*, extreme penalty of the law was not called for. *Nga Kan v. Emperor*.

37 Cr. L. J. 463 :

161 I. C. 574 : 8 R. Rang. 484 :

A. I. R. 1936 Rang. 71.

———S. 302—Sentence—Mere youth of accused, whether ground for not imposing capital sentence.

The mere fact that the accused is a young man of 19 or 20 years of age, is a wholly insufficient reason for not imposing the death sentence in the case of a ruthless and brutal murder. *Amir v. Emperor*.

20 Cr. L. J. 1017 :

112 I. C. 345 : A. I. R. 1928 Lah. 531.

———S. 302—Sentence—Sudden murder.

Where the commission of murder is not deliberate but is committed suddenly on sudden provocation, a sentence of transportation may

PENAL CODE ACT (XLV OF 1860)

be passed in lieu of the extreme penalty of death. *Gaman v. Emperor*. 30 Cr. L. J. 571 : 116 I. C. 187 : 11 L. L. J. 1 :

I. R. 1929 Lah. 459 : A. I. R. 1928 Lah. 913.

———S. 302—*Sentence—Tender age of accused, effect of—Confirmation of death sentence.*

Although in cases of deliberate murder, death sentence should ordinarily be imposed, yet the tender age of the accused may, by itself, be a sufficient reason for awarding the sentence of transportation for life. A High Court may decline to confirm a death sentence when it is of opinion that it would be wrong and improper that the sentence should be carried out. *Madha v. Emperor*.

27 Cr. L. J. 955 :
96 I. C. 507 : 22 N. L. R. 104 :
A. I. R. 1926 Nag. 461.

———S. 302—*Sentence.*

The fact that a murder was caused by a single blow is not a ground for passing the lesser sentence. *Sullan v. Emperor*.

32 Cr. L. J. 1219 :
134 I. C. 793 : 12 Lah. 442 :
32 P. L. R. 925 : I. R. 1931 Lah. 1001 :
A. I. R. 1931 Lah. 749.

———S. 302—*Sentence.*

The fact that the deceased had been carrying on an illicit intrigue with the wife of the accused, is sufficient reason for not imposing the extreme penalty on the accused. *Sarabjit v. Emperor*.

35 Cr. L. J. 189 (2) :
146 I. C. 817 : 10 O. W. N. 771 :
6 R. O. 185 : A. I. R. 1933 Oudh 382.

———S. 302—*Sentence.*

The lesser sentence was never intended to be imposed in a case where there appears to be some doubt. If the Court at the end of a case is left in any reasonable doubt about the matter, it must acquit. *Jadda Ahir v. Emperor*.

36 Cr. L. J. 1496 :
158 I. C. 1041 : 8 R. A. 362 :
1935 A. W. N. 806 : A. I. R. 1935 All. 919.

———S. 302—*Sentence.*

The question of sentence must be determined upon the gravity of the offence irrespective of the circumstance whether the body has or has not been discovered. *Munda v. Emperor*.

32 Cr. L. J. 493 :
130 I. C. 331 : I. R. 1931 Lah. 267 :
A. I. R. 1931 Lah. 25.

———S. 302—*Sentence.*

The sentence of transportation for life is the minimum sentence that can be legally passed for an offence under S. 302. *Raja Ram Tewari v. Emperor*.

35 Cr. L. J. 185 :
146 I. C. 888 : 10 O. W. N. 835 :
6 R. O. 188 : A. I. R. 1933 Oudh 399.

———S. 302—*Sentence, transportation for life.*

Accused No. 1, a watchman, and the deceased, a Police patel, slept in a watch-house on the night of the offence. They were on bad terms and a few days previously a quarrel had taken

PENAL CODE ACT (XLV OF 1860)

place between this accused's son (accused 2) and the deceased about the former's wife. The deceased had been occasionally firing his gun in his rounds. At 1 a.m. there was a report of a gun. The persons awakened did not see or hear any one running away out of, or passing in, the village. Accused No. 1 was then seen coming to the village gate and shouting once. This showed that unless held or gagged he would have cried and that this accused either took an active part in the offence or aided and abetted it. This accused alleged that he called the deceased on being awakened by the report and receiving no reply went to the gate and saw two men running away and that on return he found the deceased's clothes on fire which he put out. There were blood-stains on this accused's turban and also on accused 2's jacket. There was also a retracted statement of the latter's wife that he changed his blood-stained clothes that night. The fired matchlock belonged to accused 2 but was found hidden in the watch-house : *Held*, as to accused 1 that he was undoubtedly guilty, his story being improbable and not agreeing with evidence and that he should be transported for life, and as to accused 2 that he was not guilty, the evidence being not sufficient to prove his guilt. *Emperor v. Suleman Sadhul*. 1 Cr. L. J. 619.

———S. 302—*Sentence.*

Where a boy of 18 is convicted almost entirely on his own confession, and according to that confession, he was acting under instructions from, and semi-compulsion by his elder brother, who was the prime mover in the affair, the extreme penalty of the law is not called for. *Mi Hein v. Emperor*.

34 Cr. L. J. 835 :
144 I. C. 829 : 6 R. Rang. 11 :
A. I. R. 1933 Rang. 134.

———S. 302—*Sentence.*

Where a Judge finds that the murder committed was premeditated, cold-blooded and brutal in the extreme, and suggests no extenuating circumstances, he is not justified in mitigating the sentence. *Amir Singh v. Emperor*.

33 Cr. L. J. 576 (2) :
138 I. C. 327 : 33 P. L. R. 158 :
I. R. 1932 Lah. 463 : A. I. R. 1932 Lah. 245.

———S. 302—*Sentence.*

Where an accused person is found guilty of murder, the sentence of death has been considered as the normal sentence and the sentence of transportation for life as the abnormal sentence for which reasons are required to be given by the Judge why the sentence of death is not passed. It is wrong to construe S. 307, Cr. P. C., as laying down that in a case of murder, death sentence is to be passed as a matter of course unless there is sufficient reason to the contrary. In fixing the measure of punishment, the Court is not to be guided by the said section but by various other matters, for instance, the enormity or otherwise of the crime and the particular circum-

PENAL CODE ACT (XLV OF 1860)

stances under which the accused committed it.
Emperor v. Dukari Chandra Karmakar.

31 Cr. L. J. 817 :
125 I. C. 305 : 33 C. W. N. 1226 :
A. I. R. 1930 Cal. 193.

———S. 302—Sentence.

Where in a murder case it is not established who inflicted the fatal blow on the deceased, the extreme penalty of law need not be exacted from the accused. *Tara Singh v. Emperor.*

33 Cr. L. J. 457 :
137 I. C. 282 : 33 P. L. R. 1 :
I. R. 1932 Lah. 328 : A. I. R. 1932 Lah. 189.

———S. 302—Sentence.

Where several persons are convicted of rioting and of murder committed with a view to prosecution of the common object of the rioters, *prima facie* all the persons so convicted should be sentenced to the extreme penalty. *Mosaddi Rai v. Emperor.*

34 Cr. L. J. 427 :
142 I. C. 841 (2) : 13 P. L. T. 702 :
11 Pat. 807 : I. R. 1933 Pat. 180 :
A. I. R. 1933 Pat. 100.

———S. 302—Sentence.

Where the murder is not a premeditated one but the result of anger and passions engendered in a sudden quarrel, it is not a case where a sentence of death is necessary in the interests of justice. *Girja Prasad Singh v. Emperor.*

36 Cr. L. J. 438 :
153 I. C. 999 (2) : 7 R. A. 655 :
1935 A. L. J. 54 : 1935 A. W. R. 64 :
A. I. R. 1935 All. 346 (2).

———S. 302—Sentence.

When the person convicted of cold-blooded murder is a boy of 15 or 16, he should not be hanged. Remission of death sentence is proper. *Ghunnai v. Emperor.*

35 Cr. L. J. 448 :
147 I. C. 630 : 1934 A. L. J. 143 :
3 A. W. R. 419 : 6 R. A. 530 :
A. I. R. 1934 All. 132.

———S. 302—Sentence—Wife's murder—Evidence purely circumstantial—Extreme penalty—Enhancement.

The fact that a conviction for murder is rested on circumstantial evidence is itself no ground for not passing the death sentence. Where a husband deliberately murders his wife with a view to enter into a second marriage, death is the only appropriate remedy. The crime of wife's murder must be rigorously dealt with. *Ohava Indaramma v. Emperor.*

30 Cr. L. J. 971 :
118 I. C. 817 : 1929 M. W. N. 270 :
I. R. 1929 Mad. 849 :
A. I. R. 1929 Mad. 667.

———S. 302—Sentence—Wife of accused, of loose character and conceiving from stranger when at parent's house—Giving birth to illegitimate child on return to husband's house—Accused chafed by fellow villagers—Accused feeling insulted killing her—Extreme penalty held uncalled for.

The deceased was a person of loose character,

PENAL CODE ACT (XLV OF 1860)

and while living in her parent's village, she conceived from a stranger and came to her husband's house in a stage of pregnancy. She then gave birth to an illegitimate child in his house, and he was chafed by his fellow villagers who "congratulated" him on the birth of a son, whereupon he murdered her: *Held*, that this was not a case in which the extreme penalty of the law should be imposed on him. The ends of justice would be met by imposing a sentence of transportation for life. *Kartar Singh v. Emperor.*

39 Cr. L. J. 769 :
176 I. C. 666 : 11 R. L. 224 :
40 P. L. R. 854 : A. I. R. 1938 Lah. 556.

———S. 302—Sentence—Young girl of 15 killing her new-born child—Transportation, held was not appropriate sentence.

Where a young girl of 15 kills her newly-born illegitimate baby, a sentence of transportation for life is wholly inappropriate. In England it is always assumed that a girl who commits such a murder at such a time is hardly responsible for her actions, it being well-known that child birth produces occasionally peculiar reactions in the mother. The Government was requested to reduce the sentence of transportation for life to a sentence for a short period. *Talian v. Emperor.*

39 Cr. L. J. 718 :
176 I. C. 272 (b) : 40 P. L. R. 23 :
11 R. L. 194 : A. I. R. 1938 Lah. 473.

———S. 302—Sentence—Youth how far an extenuating circumstance.

Youth alone is not such a circumstance as would justify the imposition of the lesser penalty prescribed for an offence under S. 302, Penal Code, but when there is the additional circumstance of want of motive for the crime and the probability of the accused being merely a tool in the hands of third persons, the lesser penalty may be inflicted. *Harnamun v. Emperor.*

29 Cr. L. J. 682 :
110 I. C. 234 : A. I. R. 1928 Lah. 855.

———S. 302—Sentence—Youth, how far factor in reducing sentence.

If an offence of murder is proved against the accused, his youth standing by itself cannot justify the Court in refraining from passing a sentence of death. *Sukhwaria Chamarin v. Emperor.*

25 Cr. L. J. 147 :
76 I. C. 291 : A. I. R. 1924 Nag. 29.

———S. 302—Sentence—Youth—Murder—Youth, whether ground for lesser penalty—Insanity, what constitutes.

Youth alone in every case is not such an extenuating circumstance as would justify the imposition of the lesser penalty for murder. Primarily the capital sentence is the normal punishment for the offence of murder and the Judge must give reasons for imposing the lesser penalty. *Ismail v. Emperor.*

29 Cr. L. J. 540 :
109 I. C. 364.

———S. 302—Sentence—Youth of accused—Murder prompted by feelings of veneration for founder of religion—Death sentence, propriety of. The mere fact that a murderer is 19 or 20

PENAL CODE ACT (XLV OF 1860)

years of age and that his act was prompted by feelings of veneration for the founder of his religion and anger at one who had scurrilously attacked him, is not a sufficient reason for not imposing the sentence of death. *Ilam Din v. Emperor*.

30 Cr. L. J. 1125 :

120 I. C. 1 : 11 L. L. J. 533 :

I. R. 1929 Lah. 915 :

A. I. R. 1930 Lah. 157.

———S. 302—*Suspicion, if good basis for conviction—Evidence regarding motive and production of corpse—Conviction for murder, propriety of—Circumstantial evidence.*

It is not safe to base a conviction under S. 302, Penal Code, where the only evidence against the accused is the presence of motive and the production of the corpse by him. However suspicious the circumstances may be, suspicion alone cannot be regarded as sufficient for a conviction. *Farzand Ali v. Emperor*.

29 Cr. L. J. 252 :

107 I. C. 482 : 29 P. L. R. 33.

———S. 302—*Suspicion.*

Suspicion, however strong, furnishes no legal grounds for a conviction on a charge of wilful murder. *Ratan v. Emperor*.

34 Cr. L. J. 498 (2) :

143 I. C. 55 : 10 O. W. N. 7 :

8 Luck. 301 : I. R. 1933 Oudh 154 :

A. I. R. 1933 Oudh 148.

———S. 302—*Transportation for life—Whether accused had completed 16 years of age, doubtful—Motive definite—Assault brutal—Held, lesser penalty would satisfy the ends of justice.*

Where the accused committed murder with a definite motive, the assault being a very brutal one, and there was a doubt whether he had completed his 16 years of age : *Held*, that the accused was at a time of life when what will not be considered as a circumstance sufficient to upset a man of more mature years may upset him and send him off his balance quite materially, and taking into account the doubt that existed with reference to his having completed his 16th year of age, the sentence of death was unsuitable to the case and that sentence of transportation for life would adequately meet the ends of justice. *Nga Saw Htun v. Emperor*.

38 Cr. L. J. 1022 :

171 I. C. 125 : 10 R. Rang. 131 :

A. I. R. 1937 Rang. 121.

———Ss. 302-34—*Common intention—Two persons charged under Ss. 302, 34—Common intention to commit murder must be held before conviction for murder : Held, on facts, offence was culpable homicide not amounting to murder.*

Where two persons charged under S. 302-34 can be held guilty of murder, it must be held that their common intention was the common intention to commit the crime of murder. Where two ordinary Burmans went to the house of the deceased with bamboo sticks and not *dah* : *Held*, that then common intention was not a common intention to commit the offence of murder. But when these two persons went together, each armed with a bamboo, it must have been within

PENAL CODE ACT (XLV OF 1860)

the contemplation of both of them that the result of their assault upon the deceased was likely to be his death, and hence it must be presumed that they had the common intention of causing such injury as was likely to cause the death of the deceased. Consequently, the common intention was to commit the offence of culpable homicide not amounting to murder. *Nga Tike Maung v. Emperor*.

38 Cr. L. J. 284 :

166 I. C. 701 : 9 R. Rang. 276 :

A. I. R. 1937 Rang. 24.

———Ss. 302, 34—*Concerted attack.*

Where a concerted attack is directed against the head of the victim which was smashed, attack is made with the knowledge that the injury inflicted is sufficient in the ordinary course of nature to cause death and the offence is murder, and whether the attack is an attack by a individual or a concerted attack by more than one person, each person will be presumed to know the consequences of his act. It is not necessary that the common action should be the result of a premeditated plan, but the precise intention of the assailants acting in concert is a matter of inference from their conduct. *Lati v. Emperor*.

39 Cr. L. J. 131 :

172 I. C. 367 : I. L. R. 1937 Nag. 388 :

10 R. N. 200 : A. I. R. 1937 Nag. 335.

———Ss. 302-34—*Murder.*

Where each assailant mercilessly belaboured a prostrate victim, dealing more than one blow on the head resulting in fractures of the skull and breaking of ribs with laceration of a lung and a kidney, it is murder and not culpable homicide not amounting to murder on the part of the assailants, although it cannot be ascertained which of them was actually responsible for the particular fatal blows, and the conviction for murder under S. 302 read with S. 34 of the Penal Code is correct. *Lati v. Emperor*.

39 Cr. L. J. 131 :

172 I. C. 367 : 10 R. N. 200 :

I. L. R. 1937 Nag. 388 :

A. I. R. 1937 Nag. 335.

———Ss. 302-34, 460—*Common intention, absence of—Armed gang entering house at night to abduct woman—Scuffle—Death of one and grievous hurt to another—Offence—Sentence.*

While abducting a woman, for which purpose a number of persons armed with *chhavis* and *dangs* entered a house at night, some of them attacked an inmate of the house with *lathis*. He died and grievous hurt was caused to another : *Held*, that in the circumstances, a common intention to commit culpable homicide amounting to murder, or culpable homicide not amounting to murder, could not possibly be imputed to them, and in the absence of such an intention, the charge under S. 302-34 could not possibly be sustained but as the crime was particularly heinous and the ends of justice required that the maximum sentence should be imposed on them, the conviction of the accused for the major offence must be altered from one under

PENAL CODE ACT (XLV OF 1860)

Ss. 302-34 to that under S. 400, Penal Code, and the sentence of transportation for life imposed on each accused affirmed. *Mohammada v. Emperor*.

38 Cr. L. J. 30 :

165 I. C. 874 : 9 R. L. 315 :

38 P. L. R. 1150 : A. I. R. 1936 Lah. 911.

———Ss. 302, 97—*Murder—Accused beginning quarrel by acting improperly towards deceased's wife—When asked by deceased to leave the place, not doing so—Fight ensuing—Accused stabbing deceased causing his death—Accused held, was guilty of murder and had no right of self-defence.*

An accused began a quarrel by acting in an improper manner towards the deceased's wife, and when he was asked by the deceased and the deceased's wife to leave the scene peacefully, he declined to do so. Consequently, a fight ensued in which the accused stabbed the deceased with a knife, who died as a result: *Held*, that the accused had no right of self-defence and was guilty of murder. *The King v. Nga Pu Gyi*.

40 Cr. L. J. 59 :

178 I. C. 413 : 11 R. Rang. 231 :

A. I. R. 1938 Rang. 441.

———Ss. 302, 107, 318—*Murdering a newly-born child—Throwing alive a newly-born child into an open pit.*

'Where a woman, who had thrown her newly-born child naked into a pit in an open place, said in her first statement that she did give birth to it but that it died after delivery, while her second statement was that she at once threw it away there without looking at it, and where the witnesses, who said that the child was alive when thrown away, contradicted themselves and each other at every point: *Held*, that she was guilty under S. 318, and not under S. 302, I. P. C. *Emperor v. Woman Behni Bechar*.

3 Cr. L. J. 317.

———Ss. 302, 109—*Abettor—Person acting as go-between and procuring murderers—Punishment of.*

A person who acts as a go-between and procures murderers, is just as guilty as the actual murderers or the persons in whose interest the murder is committed and is, therefore, liable to the same punishment as the murderers. *Faqir Singh Sudh Singh v. Emperor*.

40 Cr. L. J. 897 :

184 I. C. 219 : 41 P. L. R. 333 :

12 R. L. 183 : A. I. R. 1939 Lah. 429.

———Ss. 302, 109, 110, 111, 323—*Benefit of doubt—Murder, abetment and hurt—Absence of common object—Court's order where President dissented from assessor—Proof of motive—Untrue medical certificate and witnesses tampered with.*

In a case of murder *A* was charged with the principal offence and *B* with abetment. Complainant, an eye-witness, who was on inimical terms with *A*, adhered to his main story throughout except in several other particulars and was supported by 3 other eye-witnesses, who had, however, named *B* as the principal offender before the investigat-

PENAL CODE ACT (XLV OF 1860)

ing Police Officers, though they mentioned *A* some months after to the Police Superintendent. There was no direct evidence that *B* knew *A* had the weapon. The other two bullets which had gone wide, were found out with their marks by the Police in the presence of a *Panch: Held*, by the President, who believed the complainant, that there being in India in murder cases no minimum limit of witnesses, a single witness, if believed, was sufficient to justify a conviction; that as regards the abettor, it was only fair to assume that he had asked *A* to use his cane, and that therefore he was not guilty of abetting the murder. Per assessors, that it was not possible to place any reliance on what the other witnesses subsequently stated, and that therefore it remained to consider whether the responsibility of the principal offence could be fixed on either of them, but that *B* dropped out of question when he was not charged by the prosecution with the principal offence and particularly when the President had thought fit to find him not guilty of abetment with which they agreed that a balance of proof was not sufficient; and that though *A* did not escape without suspicion, he was entitled to a benefit of doubt. *Emperor v. Manubhu Umedsing*.

1 Cr. L. J. 1027.

———Ss. 302, 120-B—*Evidence—Murder of charge before Jury.*

The appellant and two other persons were originally committed to the Court of Session and the Committing Magistrate charged all three of them under S. 120-B, read with S. 302, Penal Code. He also charged the appellant under S. 302, Penal Code, and the other accused, under Ss. 302-34, Penal Code. When the three accused persons were brought before the Court of Session, the Public Prosecutor withdrew the charge under S. 302 and S. 302-34, with the consent of the Court and an order was recorded acquitting the accused on these charges. The charge on which the trial actually took place was under S. 120-B-302 and the trial proceeded with the aid of assessors. The prosecution case mainly rested on the evidence of the approver: *Held*, that the corroborative evidence was not of any value with respect to the charge actually framed and could not be used to justify a conviction on that charge. The offence as on facts found was one of pure and simple murder and the charge of conspiracy substituted after withdrawing the main charge was misconceived. The practical effect of this alteration in the charge was that the appellant was deprived of his right to be tried by a Jury. In view of the evidence upon the record and the nature and quality of the so-called corroborative evidence and of the character of the approver himself, the case was not a fit one for directing the retrial of the appellant before a Jury upon a substantive charge of murder. *Benoy Bhusan Chatterjee v. Emperor*.

40 Cr. L. J. 166 :

179 I. C. 156 : 11 R. C. 481 :

A. I. R. 1938 Cal. 857.

———Ss. 302, 120-B, 109, 115, 364—*Sentence—Person charged under Ss. 302, 120-B—Conspiracy to murder.*

PENAL CODE ACT (XLV OF 1860)

A person charged with an offence under S. 302 read with S. 120-B, Penal Code, can be convicted either under S. 302, read with S. 109, if the conspiracy to murder is established, or under S. 302, read with S. 115, if such conspiracy is not established. In either case, he cannot be sentenced to 10 years' rigorous imprisonment, and such punishment is illegal. *Alimjan Bibi v. Emperor*. 39 Cr. L. J. 31 : 171 I. C. 944 : I. L. R. 1937, 1 Cal. 484 : 10 R. C. 323 : A. I. R. 1937 Cal. 578.

———Ss. 302, 147, 148—*Conviction, illegality of charge to Jury—Misdirection.*

The death of the deceased was due to the effect of all the injuries inflicted by several accused combined. The common object specified in the charges under Ss. 148 and 147 was not to kill the deceased but merely to assault him, yet all the accused were charged with the substantive offence of murder under S. 302. The Judge explained to the Jury the provisions of Ss. 300 and 299, I. P. C., and endeavoured to make them understand the exact difference between murder and culpable homicide not amounting to murder. The Jury ultimately convicted all the accused under S. 302 : *Held*, that the conviction was illegal and the whole procedure amounted to misdirection and non-direction to the Jury inasmuch as no alternative charges for lesser offences under Ss. 304, 326 or 325 were framed nor were the principles of S. 34 or S. 149, explained to the Jury. *Judagi Gope v. Emperor*. 41 Cr. L. J. 738 : 189 I. C. 426 : 21 P. L. T. 349 : 6 B. R. 805 : 13 R. P. 121 : A. I. R. 1940 Pat. 417.

———Ss. 302, 149 — *Constructive multiple murder—Charge—Separate heads of charge for each murder, necessity of.*

Three persons killed three others respectively in an affray with a common object and as a part of the same series of transactions. They were all convicted under S. 302 read with S. 149, Penal Code, on one charge : *Held*, (1) that the proper procedure would have been to have had three separate heads of charge; (2) that it was unsafe to proceed upon the basis of S. 149, Penal Code, and unless the Appellate Court could go through all the facts and make a new finding for itself, the conviction could not be upheld. *Azimuddy v. Emperor*. 28 Cr. L. J. 99 : 99 I. C. 227 : 44 C. L. J. 253 : 54 Cal. 237 : A. I. R. 1927 Cal. 17.

———Ss. 302, 149—*Sentence —Illegality.*

Where the Sessions Judge convicted the accused under Ss. 302 and 149, Penal Code, and sentenced them to various terms of imprisonment : *Held*, that the sentences were not according to law as the lowest sentence for an offence under S. 302, Penal Code, is transportation for life. *In re : Duraisami Tevan*. 12 Cr. L. J. 145 : 9 I. C. 885 : 9 M. L. T. 510.

———Ss. 302, 149—*Sentence of 10 years' imprisonment.*

PENAL CODE ACT (XLV OF 1860)

A sentence of ten years' rigorous imprisonment passed upon an accused person in respect of an offence under S. 302-149 is illegal. *Bishu Nath v. Emperor*.

153 I. C. 978 : 1935 O. W. N. 145 : 7 R. O. 423 : A. I. R. 1935 Oudh 190.

———Ss. 302, 149—*Sentence.*

Sentence for an offence under S. 302-149, Penal Code, must be not less than transportation for life. *Kuar Koeri v. Emperor*.

38 Cr. L. J. 1007 : 170 I. C. 785 : 18 P. L. T. 416 : 10 R. P. 170 : 3 B. R. 794 : A. I. R. 1937 Pat. 497.

———Ss. 302, 149, 34—*Intention — One member of unlawful assembly committing offence under S. 302 during prosecution of its common object—Responsibility of every member.*

Where one of the members of an unlawful assembly who is armed with a spear commits an offence under S. 302, I. P. C., when the unlawful assembly was prosecuting its common object which was unlawful, every member of the assembly is equally responsible under the terms of S. 149. It is immaterial whether any member individually intended to commit that offence or not. "Intention" is dealt with in S. 34, and can be considered in those cases only which are governed by it. *Sohna v. Emperor*. 41 Cr. L. J. 348 :

186 I. C. 603 : 41 P. L. R. 802 : 12 R. L. 420 : A. I. R. 1940 Lah. 53.

———Ss. 302, 149, 34, 141, 144—*Murder committed during dacoity.*

Where a gang of persons making preparations to commit dacoity was discovered and pursued by a body of villagers who succeeded in arresting two members of the gang, and just about this time one of the dacoits at large fired his gun and killed one of the pursuing party : *Held*, that inasmuch as the separation of the two accused from the gang was prior to the murder, neither S. 149 nor S. 34, Penal Code, applied, and the accused could not be held liable for a murder committed by a member of the gang to which they no longer belonged ; that the accused assembly of about 20 persons in a field at dead of night, many of these persons being armed with deadly weapons, was undoubtedly an unlawful assembly within the meaning of S. 141, Penal Code, and since both the accused were so armed, they were liable to punishment under S. 144. *Emperor v. Hari Bijal*. 16 Cr. L. J. 745 :

31 I. C. 345 : 17 Bom. L. R. 906 : A. I. R. 1915 Bom. 247.

———Ss. 302, 201—*Charge of murder—Accused found guilty under S. 201 also—Proper avenue of approach in such cases stated—Question of offence under S. 201, when to be considered.*

Where the accused is charged with murder but he is also found guilty of an offence under S. 201, Penal Code, the proper avenue of approach is, first and foremost to consider

PENAL CODE ACT (XLV OF 1860)

whether the case under S. 302, Penal Code, has been made out. If so, that is an end of the matter. If, on the other hand it is thought that the case under that section was not proved, then, and only then, would it be proper to consider whether an offence under S. 201, Penal Code, has been established. *Mangal Singh v. Emperor*. 38 Cr. L. J. 573 :

168 I. C. 432 : 1937 O. W. N. 540 :

9 R. P. C. 284 : 3 B. R. 501 :

41 C. W. N. 805 : 39 P. L. R. 426 :

1937 O. L. R. 297 : 1937 M. W. N. 633 (2) :

46 L. W. 33 : I. L. R. 1937 Lah. 371 :

1937 A. W. R. 1014 : 31 S. L. R. 300 :

39 Bom. L. R. 960 : 64 I. A. 134 :

1937, 2 M. L. J. 684 P. C. :

A. I. R. 1937 P. C. 179.

———Ss. 302, 201—*Duty of prosecution—Statements by accused to Police, relied on by prosecution to convict them under S. 201, if can be used to prove case of murder.*

If the prosecution wishes to rely on the statements made by the accused to the Police to convict them of an offence under S. 201, Penal Code, then they can only do so by showing by other evidence the falsity of these statements. These statements themselves can certainly not be used as substantive evidence in proof of the truth of the prosecution case of murder and conspiracy to murder, in whole or in part. They cannot be relied on as both true and false. *Shewakram Issardas v. Emperor*.

40 Cr. L. J. 661 :

182 I. C. 464 : 12 R. S. 8 :

A. I. R. 1939 Sind 130.

———Ss. 302, 201—*Evidence.*

Where the statement made by the accused is "I have murdered the woman and buried the dead body, etc." the words 'murdered the woman' are not admissible only because the rest of the sentence makes quite good sense and is sufficient to identify the body and to lead to its discovery. The words "murdered the woman" are not sufficient to identify the woman with one murdered, and this evidence is not sufficient for convicting the accused under S. 302. The accused, however, can be convicted under S. 201, Penal Code. *In re : Koria A. Venkataswami*.

39 Cr. L. J. 977 :

177 I. C. 909 : 1938 M. W. N. 866 :

48 L. W. 332 : 11 R. M. 394.

———Ss. 302, 201—*First Information Report by one accused, admissibility of—Accused tried for murder or for offence under S. 201 in the alternative—Admissibility to convict accused either under S. 302 or S. 201.*

In a trial for offence under S. 302 or 201, a first information by the accused which clearly deeply incriminates him in the crime though intended to exculpate and being in a nature of a confessional statement made to the Police, is inadmissible in evidence at the trial either to convict him of murder or of the lesser offence under S. 201, Penal Code. Moreover, while accused persons can undoubtedly in certain cases be tried for murder and convicted of causing evidence to disappear, there is evidence usually

PENAL CODE ACT (XLV OF 1860)

other than the mere statements of the accused to show that they do cause evidence to disappear, though in a trial for an offence under S. 201, Penal Code, the first information can be made the basis of a conviction, but in such a case, the accused is not tried for murder and his first information is not a confession. *Shewakram Issardas v. Emperor*.

40 Cr. L. J. 661 .

182 I. C. 464 : 12 R. S. 8 :

A. I. R. 1939 Sind 130.

———Ss. 302, 201, 72—*Joinder of charges, legality of—Trial of accused under Ss. 302 and 201 in one trial, legality.*

An accused may be tried at one trial both for murder under S. 302, I. P. C., and for causing the disappearance of evidence of it under S. 201, I. P. C. It is not necessary that only a person completely innocent of the murder can be convicted under S. 201. *Nebti Mandal v. Emperor*.

41 Cr. L. J. 910 :

190 I. C. 457 : 19 Pat. 369 : 7 B. R. 59 :

13 R. P. 220 : 22 P. L. T. 98 :

A. I. R. 1940 Pat. 1089.

———Ss. 302, 201, 72—*Punishment—Charge in the alternative under S. 302 and 201—Position may arise for punishment under S. 72.*

Where the charge is framed in the alternative in respect of offence under Ss. 302 and 201, the position may arise as contemplated by S. 72, I. P. C. It may be open to the Court to give judgment that a person is guilty of one of several offences specified in the judgment, but it is doubtful of which of these offences he is guilty. Such a finding is in accordance with S. 367 (3), Cr. P. C., and will have the consequence that under S. 72, I. P. C., the offender is to be punished for the offence for which the lowest punishment is provided, the same punishment not being provided for all. *Nebti Mandal v. Emperor*.

41 Cr. L. J. 910 :

190 I. C. 457 : 19 Pat. 369 : 7 B. R. 59 :

13 R. P. 220 : 22 P. L. T. 98 :

A. I. R. 1940 Pat. 289.

———Ss. 302, 299, 325—*Grievous hurt—Death caused by beating of sticks on body—Culpable homicide and grievous hurt—Intention and knowledge.*

Where some accused intentionally beat a person with sticks on the arm and body and he died from peritonitis three days afterwards, *hcd*, that the Court was not justified in holding their intention and knowledge to be of the kind requisite for culpable homicide, but that the injuries had come under the category of grievous hurt. And where one of several accused who was present at an offence of beating had no motive, but the witnesses said he took part in it, he was acquitted on the ground that there might be a possibility that the witnesses were mistaken in thinking so. *Emperor v. Bhagu Sava*.

1 Cr. L. J. 903.

———Ss. 302, 300, Excep. 1—*Murder—Provocation.*

Provocation given by the sight of misconduct on the part of a mistress is in the eyes of

PENAL CODE ACT (XLV OF 1860)

law a very different thing from provocation given by the sight of misconduct on the part of a wife. The accused and the deceased were both carrying on an intrigue with a certain widow. On the night in question, the deceased visited her, and shortly afterwards the accused arrived. While he was still outside her room the deceased went out of the room. The two men had some words, and then started struggling with each other. In the end, the accused dealt the deceased two blows on the head with his *lathi* and the deceased expired while he was being carried to the hospital: *Held*, that every case must be decided on its own facts and in the present case, although the accused was doubtless provoked by finding his rival at his mistress's house: *Held*, however, that in view of the fact that he received a certain amount of provocation; and acted without premeditation, there was just sufficient reason to substitute for the sentence of death the sentence of transportation for life. *Sheo Ram v. Emperor*.

38 Cr. L. J. 938 :
170 I. C. 341 : 10 R. O. 37 :
1937 O. L. R. 454 : 1937 O. W. N. 917 :
A. I. R. 1937 Oudh 457.

———Ss. 302, 330, Cls. 3 and 4—*Intention, absence of—No injuries on vital parts—Intention to give a thrashing only was inferred.*

Where so far as the external marks of violence afford an indication, assailants had desisted from striking on any vital part of the body, and the only serious injuries above the waist were those inflicted on the two cheeks. The medical witness, however, found the soft tissues of the head and the lining of the brain congested but he did not disclose the exact cause of this congestion: *Held*, having regard to the nature of the injuries and in view of the fact that the assailants scrupulously avoided the vital parts of the body, they did not intend either to cause death or to cause such bodily injury as they knew was likely to cause death. Nor does the case come within the purview of clauses "thirdly" and "fourthly" of S. 300. *Ramza v. Emperor*.

6 L. L. J. 533 : A. I. R. 1923 Lah. 319.

———Ss. 302, 300, 304—*Benefit of doubt—Accused held entitled to benefit of doubt and that the case came under Exception 4 to S. 300 and that the accused was guilty under S. 304, first part.*

The deceased had contracted an illicit intimacy with the wife of the accused. When the accused had remonstrated with the deceased, there had been an altercation and the deceased had given him a beating. He had told the accused to desist from the intrigue with his wife and had warned him not to come near his house. Nevertheless one evening the deceased had gone past the accused's house. On his return the accused saw the deceased and with the intention of remonstrating, he took a *kulhari* with him and the quarrel ensued resulting in death: *Held*, that the facts were clearly just consistent with the hypothesis that only object of the accused was to remonstrate

PENAL CODE ACT (XLV OF 1860)

with the deceased for his conduct in coming past his house again. It was true that the accused took a *kulhari* with him, but it was also equally true that the deceased used to go about armed with a *dang* and had on a previous occasion, beaten the accused. Therefore, he could quite well think that the result of his remonstrating might be that he would be attacked and therefore might have taken the *kulhari* to protect himself in the case of attack and not necessarily as a weapon of offence. The facts were equally consistent with that there was a deliberate intention to attack. The accused, therefore, was entitled to the benefit of doubt and the case came under Exception 4 to S. 300, Penal Code, and the offence fell under the first part of S. 304. *Bakhsha Mohammad v. Emperor*.

40 Cr. L. J. 928 :
184 I. C. 325 : 41 P. L. R. 315 :
12 R. L. 209 : A. I. R. 1939 Lah. 426.

———Ss. 302, 304—*Conviction for murder—Distinction—Intending to cause injury, accused striking deceased on head with heavy wooden bar knowing it would cause death—S. 302, Part II, if applies—Conviction under S. 302, propriety of.*

The second part of S. 304, Penal Code, deals with cases where the act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. If a person intending to cause an injury to another person strikes him on the head with a heavy wooden bar with the knowledge that it is likely to cause death, it cannot be held that he did not intend to cause the injury that he knew he was likely to cause. There is no alternative but to convict the accused of murder punishable under S. 302, Penal Code. *Aung Than v. The King*.

39 Cr. L. J. 255 :
173 I. C. 92 : 10 R. Rang. 310 :
A. I. R. 1937 Rang. 540.

———Ss. 302, 304—*Culpable homicide not amounting to murder—Murder and culpable homicide not amounting to murder, distinction between.*

If an act which an accused person is said to have committed falls within any of the explanations to S. 300, Penal Code, and does not fall within any of the Exceptions, the act is murder, but if it does fall under one or other of those explanations and also falls within any of the Exceptions enacted in S. 300, the act is one of culpable homicide not amounting to murder. *Ram Lal v. Emperor*.

28 Cr. L. J. 1029 :
106 I. C. 213 : 1 Luck. Cas. 579 :
A. I. R. 1928 Oudh 15.

———Ss. 302, 304—*Death by accident, if offence—Shooting party.*

The accused went into the jungle with his companions to shoot pig. He took up his position and waited in the jungle while his companions proceeded to beat the pig towards him. A boar was driven in his direction and the accused fired. The ball, however, missed the boar and hit one of the beaters causing his immediate death: *Held*, that the death was

PENAL CODE ACT (XLV OF 1860)

the result of an accident and was not due to any such negligence on the part of the accused as would bring his act within the purview of S. 304-A of the Penal Code and the accused was not guilty of any offence. *Basant Singh v. Emperor.*

29 Cr. L. J. 487 :
109 I. C. 215 : 9 L. L. J. 482 :
29 P. L. R. 45 : A. I. R. 1927 Lah. 880.

———Ss. 302, 304—*Duty of Magistrate—Deceased attacked and killed—Magistrate's duty to ascertain nature of offence.*

Where a person is attacked and killed, it must be decided whether the assailant is guilty of culpable homicide, and if so, whether the culpable homicide does or does not amount to murder. If it is found that the offence committed is culpable homicide not amounting to murder, it must further be made clear whether the offence falls under Part I or Part II of S. 304, Penal Code. *Emperor v. Manga.* 30 Cr. L. J. 573 :
116 I. C. 190 : I. R. 1929 Lah. 462 :
A. I. R. 1928 Lah. 868.

———Ss. 302, 304—*Intention—Death caused by violent kick—Offence.*

Accused taxed his wife with consorting and flirting with other men and she replied "what does it matter", he, thereupon, struck her on the cheek and she fell down abusing him. The accused then gave a forcible kick on the prostrate body of the woman on her side which caused her immediate death: *Held*, though the accused could be exonerated, from the intention or knowledge requisite for an offence falling under S. 302, Penal Code, the circumstances fully justified the inference that in kicking the deceased, accused knew he was likely to cause death so as to render him guilty of an offence under the latter part of S. 304 of the Code. *In re: Marimuthu.*

24 Cr. L. J. 721 :
73 I. C. 961 : 18 L. W. 188 :
1923 M. W. N. 796 : A. I. R. 1924 Mad. 41.

———Ss. 302, 304—*Intention — Murder—Four persons deliberately thrashing one unarmed man—Death caused by beating — Offence — Precedents, criminal, value of.*

Where four persons set upon an unarmed man, knocked him down and gave him a most merciless thrashing with sticks breaking his bones and ribs and causing the fracture of his skull, which resulted in his death: *Held*, that the assailants must be considered to have committed these acts with the intention either of causing death or of causing such injuries as they knew to be likely to cause death and that, therefore, they were guilty of murder. Previous decisions in criminal cases, proceeding as they do on their own set of facts, seldom afford any very great assistance in deciding the nature of an offence. *Samand Singh v. Emperor.*

20 Cr. L. J. 157 :
49 I. C. 396 : 3 P. R. 1919 Cr. :
5 P. W. R. 1919 Cr. : A. I. R. 1919 Lah. 382.

PENAL CODE ACT (XLV OF 1860)

———Ss. 302, 304—*Intention—Sudden fight—Death caused by striking with pocket knife—Conviction for murder, legality of.*

Where an accused in a sudden fight struck a blow with a pocket clasp-knife at another who was grappling with him from behind and the latter died as a result of the blow: *Held*, that the accused can be convicted only under S. 304 and not under S. 302 inasmuch as he cannot be held to have had the intention necessary to constitute murder. *Jagat Singh v. Emperor.*

28 Cr. L. J. 87 :
99 I. C. 119 : 8 L. L. J. 51 :
27 P. L. R. 6.

———Ss. 302, 304—*Intention.*

Where four persons attacked one man, who, in consequence of the attack, died subsequently: *Held*, that the assailants are guilty under S. 302, Penal Code, if the common intention of the assailants was to cause death or bodily injury likely to cause death or sufficient in the ordinary course of nature to cause death; and under S. 304 if their common intention was to make a violent assault upon the deceased and they knew that they were likely to cause his death. Their intention must be gathered from what they said and what they did at the time of the attack. *Musai v. Emperor.*

13 Cr. L. J. 159 :
13 I. C. 847.

———Ss. 302, 304—*Murder or culpable homicide.*

Murder and culpable homicide not amounting to murder—Distinction between pointed out. *Nga Po Nyein v. Emperor.*

35 Cr. L. J. 43 :
146 I. C. 315 : 6 R. Rang. 91 :
A. I. R. 1933 Rang. 338.

———Ss. 302, 304—*Murder or culpable homicide—Stabbing with intention of causing injury likely to cause death resulting in death—Offence.*

Where the accused stabbed a person with the intention of causing such injury as was likely to cause death and death supervened: *Held*, that he should be convicted under S. 304, and not under S. 302, Penal Code, *Maung Aung Tun v. Emperor.*

17 Cr. L. J. 544 :
36 I. C. 592 : A. I. R. 1916 L. Bur. 32.

———Ss. 302, 304—*Offence, nature of—Quarrel—Provocation—Striking in sudden anger with heavy weapon—Death.*

As a result of a quarrel between two women, one of whom was the wife of the accused, the accused was provoked, and in sudden anger, struck the other woman a heavy blow on the head with a very thick *lathi* and fractured her skull and caused her death: *Held*, that the circumstances did not lead to the inference of an intention to kill or of knowledge that the act was so imminently dangerous as in all probability to cause death, and consequently the accused could not be convicted of murder

PENAL CODE ACT (XLV OF 1860)

but only under the second part of S. 304, Penal Code. *Ram Jolaha v. Emperor.*

28 Cr. L. J. 541 :
102 I. C. 349 : 8 P. L. T. 594 :
A. I. R. 1927 Pat. 406.

———Ss. 302, 304—*Power of High Court—Cr. P. C., Ss. 423, 439—Murder—Culpable homicide not amounting to murder—Death caused by wound in abdomen—Appcal—Revision.*

If a person stabs another with a dagger or a knife in the abdomen, with sufficient force to penetrate the abdominal walls and the internal viscera, he must be held to have intended to cause an injury sufficient in the ordinary course of nature to cause death. Where a person convicted under S. 304, Penal Code, appeals to the High Court and the Court also takes action under S. 439, Cr. P. C., it has power to alter the conviction into one under S. 302, Penal Code, and to set aside the implied acquittal of the appellant under that section, because in such a case, the High Court is acting both under S. 423 and S. 439, Cr. P. C. *On Shree v. Emperor.*

25 Cr. L. J. 247 :
76 I. C. 711 : 1 Rang. 436 :
A. I. R. 1924 Rang. 93.

———S. 302, 304—*Provocation, effect of.*

Among persons of class of the accused, a slight beating of the wife, such as the deceased gave to his wife, is an ordinary event which would not be likely to rouse severe resentment, but no doubt the accused did resent seeing his aunt being beaten by the deceased, and in his drunken condition his passions were probably easily aroused and he resented this occurrence more than he would have done if he had been sober. There was provocation which ought to be taken into account in deciding whether sentence of death should be passed, and in assessing this provocation, the Court was entitled to take into account the drunken condition of the accused at the time and the effect of this drunkenness upon his sensibilities: *Nga Po Nyun v. Emperor.*

37 Cr. L. J. 902 :
164 I. C. 206 : 9 R. Rang. 66 :
A. I. R. 1936 Rang. 325.

———Ss. 302, 304 — *Sentence — Death by strangulation—Sentence.*

The accused had been appointed a *rakha* to watch certain crops of gram. The deceased came to the field and began to steal the stuff. Thereupon the accused and the deceased quarrelled and proceeded to fight. The accused got the deceased down and strangled him to death with his hands: *Held*, that the accused was guilty of an offence punishable under the 2nd part of S. 304, Penal Code, and that sentence of four years' rigorous imprisonment was quite sufficient to meet the ends of justice in the case. *Sundar Singh v. Emperor.*

13 Cr. L. J. 478 :
15 I. C. 318 : 6 P. W. R. 1912 Cr. :
68 P. L. R. 1912.

———Ss. 302, 304—*Sentence—Murder—Abuse—Grave and sudden provocation.*

Accused who was 19 years of age was abused by the deceased, and in anger, killed the

PENAL CODE ACT (XLV OF 1860)

deceased: *Held*, that the accused had received some provocation and though the provocation could not be said to be grave and sudden such as to reduce his offence from murder to that of culpable homicide not amounting to murder, yet in view of the provocation and the extreme youth of the accused, the extreme penalty of death was not called for in the case. *Mangal Singh v. Emperor.*

28 Cr. L. J. 217 :
99 I. C. 1017 : 27 P. L. R. 15.

———Ss. 302, 304-A—*Abetment — Administering poison as a love potion—Rash and negligent act.*

Where arsenic oxide was deliberately administered to a man as a love potion by his wife with the connivance of her mother who had procured the stuff in some way and given it to her daughter: *Held*, that as to deal in this way as a love potion with almost deadly form of poison is to act both rashly and negligently in whatever walk of life the person so doing may be, an offence under S. 304-A, Penal Code, was clearly made out against the wife, and the mother was guilty of abetment. *Emperor v. Ramaya Chennappa.*

16 Cr. L. J. 305 :
28 I. C. 641 : 17 Bom. L. R. 217 :
A. I. R. 1915 Bom. 297.

———Ss. 302, 304-A — *Intention to cause death, absence of — Death caused by love potion.*

Where death is caused by the administration to a person of a substance which is believed by the accused to be a love potion, the accused cannot be convicted of murder, unless it is shown clearly and without possible doubt that the intention of the accused was to cause death. The proper conviction in such a case is one under S. 304-A, Penal Code. *Phulmani Mundain v. Emperor.*

25 Cr. L. J. 449 :
77 I. C. 801 : 1924 Pat. 13 :
A. I. R. 1924 Pat. 635.

———Ss. 302, 304, Part I—*Duty of prosecution — Doubt as to whether accused committed murder or culpable homicide not amounting to murder—Held, he should be convicted for lesser offence.*

It is for the prosecution to prove their case of murder, and if upon a review of all the available evidence a doubt arises as to whether appellant committed murder or whether he committed culpable homicide by reason of exceeding the right of private self-defence, he is entitled to be found guilty of the lesser offence only. *Nga Pyu Thin v. Emperor.*

38 Cr. L. J. 1095 :
171 I. C. 586 : 10 R. Rang. 164 :
A. I. R. 1937 Rang. 343.

———Ss. 302, 304, 1st part—*Intention.*

Where a person when drunk struck another on the head with a billet of wood which dazed him, and immediately after struck a third person, in consequence of which blow that person died at once: *Held*, that the accused

PENAL CODE ACT (XLV OF 1860)

must be deemed to have intended to cause an injury to deceased which he knew would be likely to cause death; but it was not necessary in the circumstances to impute to him the intention of causing an injury which in the ordinary course of nature would cause death. *Nga Po Lu v. Emperor*.

12 Cr. L. J. 524 :
12 I. C. 292 ; 4 Bur. L. T. 253.

—Ss. 302, 304-II—*Knowledge—Murder, ingredients of—Infliction of injuries sufficient to cause death to accused's knowledge—Offence.*

Where there is no finding that the accused intended to cause the death of the deceased or that he intended to cause such injuries as are likely to result in death or that he intended to cause such injuries as would, in the ordinary course of nature, cause death, but all that the Judge finds is that the injuries caused by the accused were such as he must have known were quite sufficient to, and probably would cause death, the offence committed is one under S. 304-II, Penal Code, and not under S. 302. *Lehna Singh v. Emperor*.

28 Cr. L. J. 590 :
102 I. C. 558 ; 9 L. L. J. 365 :
28 P. L. R. 631 : A. I. R. 1927 Lah. 526.

—Ss. 302, 304, 323—*Absence of evidence, effect of—Blow struck with heavy weapon—disappearance of person struck—Offence.*

Accused struck his brother's widow with a heavy moosal, felled her to the ground, and then dragged her into the house, after which no trace of her could be discovered : *Held*, that in the absence of definite evidence that the woman had died and that her death was due to the blow which the accused dealt her, the accused could not be convicted of an offence either under S. 302 or under S. 304, Penal Code, and that at the most, he was guilty of an offence under S. 323, Penal Code. *Bhola v. Emperor*.

27 Cr. L. J. 275 :
92 I. C. 451.

—Ss. 302, 304, 323, 325—*Intention, absence of—Death of child caused accidentally in scuffle—Offence.*

A woman who was holding a child in her arms intervened unexpectedly in a scuffle between the accused and her husband on a dark night. The accused aimed a blow at the husband with his stick, but it accidentally struck the child and caused his death : *Held*, that the accused was guilty only of the offence of causing simple hurt, inasmuch as he could not have intended to cause or to have known that he was likely to cause either death, or grievous hurt. *Chatur Natha v. Emperor*.

21 Cr. L. J. 85 :
54 I. C. 485 : 21 Bom. L. R. 1101 :
A. I. R. 1920 Bom. 224.

—Ss. 302, 304, 325—*Alteration of conviction to one under S. 325, if valid—Wife severely beaten by husband—Body thrown down dry well—Offence.*

Accused, a full grown man, beat his child-wife, an invalid and weak girl, so recklessly with a lathi that he thought he had killed

PENAL CODE ACT (XLV OF 1860)

her; he then threw her down a dry well 88 feet deep, an act which, if she was not already dead, must inevitably have killed her. He was convicted under S. 304, Penal Code : *Held*, (1) that the accused was probably guilty of an offence under S. 302, Penal Code; (2) that in any case, there was no justification for substituting a conviction under S. 325, Penal Code, in place of one under S. 304. *Emperor v. Khubi*.

25 Cr. L. J. 703 :
81 I. C. 191 : A. I. R. 1923 All. 545.

—Ss. 302, 304, 325—*Common intention—Assault by several persons—Single blow fracturing skull—No evidence as to who struck blow.*

Four persons set upon another and beat him with lathis. The latter died as the result of a single blow on the head, which fractured his skull, but he had no other grievous hurt. There was no evidence as to which of the assailants had struck the fatal blow : *Held*, (1) that it was impossible to hold that the assailants had any common intention to cause death, nor could it be said that each of them knew that death was likely to be caused; (2) that the common intention of the assailants was to give the deceased a good thrashing, and they must have known that grievous hurt was likely to be caused; (3) that as it was not known which of the assailants had struck the fatal blow, they could only be convicted of causing grievous hurt. *Datta Ram v. Daya Ram*.

26 Cr. L. J. 381 :
84 I. C. 861 : 6 L. L. J. 317 :
1 Lah. Cas. 297 : A. I. R. 1924 Lah. 654.

—Ss. 302, 304, 325—*Culpable homicide and grievous hurt—Murder.*

Where an accused poked the deceased at the suggestion of another twice in the body with a heavy brass-shod stick by which his ribs were broken and he died subsequently : *Held*, that, had the accused, who were committed under S. 304, I. P. C., known, according to the Magistrate's belief, that they were likely to cause death by beating him, they would also have intended to cause such bodily injury as they knew to be likely, or was, in the ordinary course of nature sufficient to cause death, and should, therefore, have been charged with murder; that, as a general rule, all cases of culpable homicide were equally cases of murder unless the accused could show that his case came under one or other of the exceptions to S. 300, I. P. C.; that in this case S. 325 applied, and not S. 302 or 304, in that the accused must have known that the fracture of the deceased's ribs was a likely consequence of two blows with a heavy stick, and that as the blows were given at the suggestion of the other accused and in pursuance of their common object, he was also guilty. *Emperor v. Kanji Miha*.

1 Cr. L. J. 622.

—Ss. 302, 304, 325—*Intention to cause death, absence of—Death caused by blows—Offence.*

Where death results from blows struck in a scuffle, not as a direct result of such blows, but owing to disease having supervened, and

PENAL CODE ACT (XLV OF 1860)

it is found that when the blows were struck there was no intention of causing death nor an intention of causing such bodily injury as the assailant knew to be likely to cause death, a conviction should be recorded in the alternative under S. 304 or 325, Penal Code, a conviction under S. 302 would, in such a case, not be appropriate, as the case could not be brought within the definition of murder. *Rama Singh v. Emperor*.

21 Cr. L. J. 783 :
58 I. C. 463 : 18 A. L. J. 224 :
42 All. 302 : 2 U. P. L. R. All. 407 :
A. I. R. 1920 All. 110.

———Ss. 302, 304, 325, 328 and 329—*Administering dhatura—Nature of offences committed—Death of a person to whom dhatura is so administered—Offence not murder, but only causing grievous hurt.*

Where, for the purpose of facilitating robbery, *dhatura* was administered by two persons to certain travellers, in consequence of which one of the travellers died and others were made seriously ill, it was held that in respect of the traveller who died, the offence committed was that punishable under S. 325, Penal Code, viz., grievous hurt, and in respect of the travellers who did not die, the offence committed was that defined by S. 328 of the Code. *Emperor v. Bhagwan Din*.

8 Cr. L. J. 383 :
28 A. W. N. 243 : 30 All. 568 :
4 M. L. T. 402.

———Ss. 302, 304, 326—*Procedure—Trial by Jury—Charge to Jury—Defective charge—Consideration in deciding question of intention.*

In a trial under Ss. 302, 304 and 326, Penal Code, the charge to the Jury is defective in law where it does not sufficiently ask the Jury to consider the intention of the accused. The considerations that should guide the Jury in arriving at it are the accused's frame of mind, the nature of the weapon used and also the number and nature of the wounds. For the ascertainment of intention, the eyewitness should be examined at length as to how the accused at the time of inflicting the injury exactly acted. *Kya Nyun v. Emperor*.

17 Cr. L. J. 154 :
33 I. C. 634 : 8 L. B. R. 125 :
A. I. R. 1914 L. Bur. 216.

———Ss. 302, 304, 326—*Scope of.*

The deceased was not killed outright but survived for eleven days. The Assistant Surgeon was, moreover, doubtful whether the deceased would have died if erysipelas had not supervened. Had it been the intention to kill deceased, Jalal would naturally have struck him with the sharp edge of his *chhavi* and the other men also would have inflicted more serious injuries than they did. There was nothing to prevent them from despatching him at once: *Held*, taking all the circumstances into consideration, it has not been shown that any of the appellants intended to kill deceased or to cause injury as they knew to be likely to cause his death. There is, however, no doubt that they all

PENAL CODE ACT (XLV OF 1860)

knew that grievous hurt was likely to result from an assault of so serious a nature, as dangerous weapons were employed. *Allah Ditta v. Emperor*. A. I. R. 1923 Lah. 441.

———Ss. 302, 307—*Benefit of doubt—Murder—Evidence—Prosecution, duty of, to prove their own story—Weakness of defence, effect of—Right of private defence.*

The prosecution are bound to prove their own story independently and cannot rely upon the weakness of that put forward by the defence. The tenants of a *sahukar zemindar* went to his house in a body to make some sort of demonstration against him and perhaps to seize their cotton crop which the zemindar had taken possession of and stored in his house. Probably some of the tenants had weapons and the zemindar, apprehending that some hurt would be caused to him, fired off his gun in the direction of the crowd of villagers without any intention of killing any one or of doing more harm than was necessary for his own protection: *Held*, that what the *sahukar* did was done in the exercise of his right of private defence and that he was, therefore, entitled to the benefit of any doubt which existed. *Lachhman Das v. Emperor*.

16 Cr. L. J. 152 :
27 I. C. 216 : 14 P. W. R. 1915 :
131 P. L. R. 1915 :
A. I. R. 1915 Lah. 95.

———Ss. 302, 307—*Duty of prosecution—Murder—Motive, importance of—Gap in prosecution evidence—Duty of Court—Conviction based on speculation, impropriety of.*

In a case of murder it is not necessary that the prosecution should be able to produce the dead body, but it is essential that they should be able to prove to the satisfaction of the Court that the deceased was dead and that he was murdered by the accused. Though it is not essential to prove motive, it is obviously one of the elements to be considered in determining the guilt of a person charged with murder. Courts should not, in a case of murder, leap a gap in the prosecution evidence and arrive, by a process of speculation at a conclusion which there is no evidence to justify. *Azam Ali v. Emperor*.

31 Cr. L. J. 230 :
121 I. C. 248 : A. I. R. 1929 All. 710.

———Ss. 302, 307—*Murder due to poisoning—Attempt to commit murder—Death caused by dhatura poisoning.*

The accused on the 7th June 1909, administered *dhatura* poison to A and B, both of whom died from the effects thereof, and on the following day, administered the same poison to C and D, the former got ill and recovered but the latter died: *Held*, that the accused was guilty of the offence of murdering D, for when he administered *dhatura* poison he committed an act which even if not committed with the intention of causing death or causing bodily injury likely to the knowledge of the offender or in the ordinary course of nature sufficient to cause death, was so imminently dangerous

PENAL CODE ACT (XLV OF 1860)

that it must, in all probability, cause death or such bodily injury as is likely to cause death: *Held*, further, that the accused was guilty of an offence under S. 307, Penal Code, as regards the poison administered to *C*. *Lala v. Emperor*. 12 Cr. L. J. 125:

9 I. C. 731: 32 P. L. R. 1911:
23 P. L. R. 1911 Cr.

—Ss. 302, 307, 149—*Benefit of doubt*.

Held, on facts of the case, after discussing the prosecution evidence that there was sufficient amount of doubt in the case and the accused who were charged under Ss. 302 and 307 read with S. 149, Penal Code, were entitled to the benefit of doubt. *Ahman v. Emperor*. 40 Cr. L. J. 435:

180 I. C. 507: 40 P. L. R. 697:
11 R. L. 697: A. I. R. 1938 Lah. 787.

—Ss. 302, 325—*Benefit of doubt*.

Where, in the course of the hearing, one or more of the accused got carried away and struck blows on the head which proved fatal and it is impossible to make out from the record which of the accused was responsible for the head injuries, the accused should be given the benefit of doubt, and should be convicted under S. 325, Penal Code only. *Dial Singh v. Emperor*. 27 Cr. L. J. 547:

93 I. C. 1043: A. I. R. 1926 Lah. 419.

—Ss. 302, 325—*Intention, absence of—Murder—Hanging up unconscious body believing it to be dead—Death due to hanging—Offence—Grievous hurt*.

The accused assaulted his wife, who became unconscious and was thought to be dead. Then in order to create an appearance that she had committed suicide, he took up her unconscious body and hung it up by a rope, thinking it to be a dead body, but the medical evidence showed that most probably she had died of hanging: *Held*, that there could be no intention to kill the woman when he thought that she was already dead and that, therefore, the offence committed was not of murder under S. 302 but only an offence under S. 325, Penal Code. *Emperor v. Dalu Sardar*. 15 Cr. L. J. 709:

26 I. C. 157: 18 C. W. N. 1279:
A. I. R. 1915 Cal. 221.

—Ss. 302 and 325—*Murder and grievous hurt—When murder changed to grievous hurt—Cattle Trespass (Act I of 1871), S. 10—Driving cattle to pond though grazing on another's land not tantamount to grave and sudden provocation*.

Where some shepherds of a village, who were grazing their goats in the limits of another village, and who had a fight with some villagers of that village while the villagers were trying to drive the goats to their village pond, killed one and grievously hurt two of the villagers with sticks, *held* that, the plea that under S. 10, Cattle Trespass Act, the villagers were only entitled to drive to the pond, cattle found on their own fields, was a highly technical one, which would, no doubt, have weight, were the

PENAL CODE ACT (XLV OF 1860)

question of the accused's liability to pay a pond fine being considered; but that the mere fact that another person instead of the real owner was driving off the cattle, unquestionably trespassing, was no excuse for striking him a violent blow on the head; that the accused could have followed them to the pond and there stated their case; and that, as the shepherds wilfully brought their goats and damaged the village crops, the villagers' action could not be fairly pleaded as grave and sudden provocation: *Held* also, that, as there was admittedly no intention to cause death, the accused causing the death was also guilty of grievous hurt. *Emperor v. Haja Naran*. 3 Cr. L. J. 181.

—Ss. 302, 325—*Murder or grievous hurt—Sudden quarrel—Blow on head with dang—Death of victim—Offence*.

The accused who was chagrined because his melons were not purchased by the deceased, lost his self-control and picking up an iron-shod *dang* inflicted a blow on the uncovered head of the latter which resulted in a fatal injury: *Held*, having regard to the circumstances of the case, that the accused was not guilty of an offence under S. 302, Penal Code, but only of grievous hurt under S. 325. *Kaloo Murad v. Emperor*. 31 Cr. L. J. 532:

123 I. C. 538: A. I. R. 1929 Lah. 863.

—Ss. 302, 325, 109, 147—*Abetment—Intention of two accused only to give beating to deceased—Third accused committing murder—Offence*.

Where the intention of the two accused was to give the deceased a beating with *lathis*, they abetted the offence under S. 325, Penal Code, read with S. 109 and not under S. 302 read with S. 149 and though the act of murder committed by the third accused was done with their aid, it could not be said that it was the probable consequence of the abetment on their part. *Ram Damodar v. Emperor*. 40 Cr. L. J. 38:

178 I. C. 348: 1938 O. W. N. 1103:
11 R. O. 106: 1938 O. L. R. 483:
A. I. R. 1939 Oudh 33.

—Ss. 302, 326—*Acquittal—Right over property—Accused having right over land trespassed upon by complainants—Provocation by complainants—Held, accused were entitled to acquittal*.

Where both sides were prepared for battle and both sides were equally responsible for fighting, but the party of the accused had a right to turn the complainants out of the land which had been in their possession for a long time, and the complainants were the provoking party, were in the wrong and were in force and armed and it needed force and arms to turn them out, and in the course of the exercise of their right, the accused unfortunately killed a person themselves receiving serious injuries: *Held*, that no criminal liability could be put upon the party of the accused at all, and in these matters, it was

PENAL CODE ACT (XLV OF 1860)

impossible to judge exactly the right amount of force to be used. *Sardara v. Emperor*.

38 Cr. L. J. 807 :
169 I. C. 826 : 38 P. L. R. 131 :
10 R. L. 41.

——— Ss. 302, 326—*Common intention, insufficient proof as to—Common intention of accused merely to attack person with dahi with knowledge that grievous hurt would result—Accused can be convicted under S. 326 and not under S. 302.*

Where the common intention of the two accused was to effect an attack on some one with dahi, and they had knowledge that the probable result of that attack at least would be to cause grievous hurt with a deadly weapon but there was no sufficient proof to show that there was a common intention of the two accused to cause death or injury sufficient in the ordinary course of nature to cause death : *Held*, that the accused could be convicted only under S. 326 and not under S. 302. *Nga Than v. Emperor*.

40 Cr. L. J. 871 :
184 I. C. 78 : 12 R. Rang. 123 :
A. I. R. 1939 Rang. 263.

——— Ss. 302, 326—*Murder or grievous hurt—Accused not proved to have injuries which were sufficient in the ordinary course of nature to cause death—Held, accused was guilty only of causing grievous hurt.*

Where there was no evidence that the accused caused the injuries which were sufficient in the ordinary course of nature to cause death, the accused cannot be held to be guilty of murder, but only of causing grievous hurt. *Nga Sein v. Emperor*.

37 Cr. L. J. 1022 (b) :
164 I. C. 967 : 9 R. Rang. 151 :
A. I. R. 1936 Rang. 444.

——— Ss. 302, 326—*Murder or grievous hurt—Accused stabbing deceased with knife on forearm during altercation between them—Death resulting due to haemorrhage—Accused held guilty under S. 326 only and not under S. 302.*

The deceased was stabbed with a knife on the left forearm by the accused in the course of an altercation between them. The radial artery was pierced and the deceased died of haemorrhage soon after. The accused was convicted of murder : *Held*, that the forearm is not a vital part and the offence was not murder. It was not also culpable homicide not amounting to murder, and the accused was only guilty of voluntarily causing grievous hurt with a deadly weapon as the hurt caused was grievous and he must have known that by stabbing as he did, he was likely to cause grievous hurt. He could, therefore, be convicted only under S. 326, Penal Code, and not under S. 302. *In re : Kottengodan Alaxi*.

40 Cr. L. J. 308 (a) :
179 I. C. 982 : 1938 M. W. N. 1274 :
1939, 1 M. L. J. 123 : 11 R. M. 638 :
A. I. R. 1939 Mad. 269.

——— Ss. 302, 326, 300, III. (c)—*Murder, what amounts to—Victim's leg severed close below knee—Man dying from loss of blood—Offence committed.*

PENAL CODE ACT (XLV OF 1860)

If a man's leg is severed close below the knee, the man must die from loss of blood in a very short time. It is not possible for a person who inflicts an injury like this to say that he did not intend to cut the arteries or to cause the man to bleed to death. An ordinary person is not presumed to know the precise location of the arteries in the human lives. If, therefore, a stab with a knife or dagger aimed at an arm or a leg, severs an artery and the injured man dies as a result, it may be quite reasonable to argue that the offence is not one of culpable homicide and that the assailant can only be presumed to have intended to cause hurt, or grievous hurt with a dangerous weapon. The case is quite different when a weapon like the sword is used in order to chop off or to hack at a limb. The person who uses the sword or *aruval* chopping at an arm or a leg, and by so doing severs the arteries of the arm or the leg, must know that he is inflicting an injury which, in the ordinary course of nature, is sufficient to cause death. The offence is clearly one of murder. *The Public Prosecutor v. Ramaswami Nadar*.

41 Cr. L. J. 900 :
190 I. C. 360 : 52 L. W. 224 :
1940 M. W. N. 479 :
1940, 2 M. L. J. 92 : 13 R. M. 401 :
A. I. R. 1940 Mad. 745.

——— Ss. 302, 326, 328—*Miscellaneous—Dhatura administered with intention to facilitate commission of robbery—Death caused by dhatura—Offence.*

Where *dhatura* is administered to a person with fatal results with intent to facilitate the commission of robbery, no hard and fast rule can be laid down as to the section of the Penal Code, under which the person administering *dhatura* should be convicted, the circumstances of each particular case must be taken into consideration. *Sadhu v. Emperor*.

20 Cr. L. J. 510 :
51 I. C. 670 : 19 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 420.

——— Ss. 302, 359—*Evidence as to murder, absence of, effect of—Kidnapping with intent to steal—Murder—Evidence of kidnapped boy having been with the accused and of theft—Discovery of remains of boy—Absence of direct proof of murder—Conviction for murder, illegal.*

The following facts were proved against the accused who was charged with kidnapping and murder under Ss. 369 and 302, Penal Code: the complainant's son who was alleged to have been kidnapped by the accused was seen in the arms of the accused just before the murder of the boy, on the very day when he was so seen or shortly afterwards, the accused was seen disposing of the jewelry which the boy was wearing, remains of the boy were seen in a bush, but there was no direct evidence as to how he came by his death : *Held*, on these facts, that the accused was guilty of an offence under S. 369, Penal Code, but could not be convicted under S. 302, Penal Code. *In re : Vuppalaru Virasawmy*.

13 Cr. L. J. 249 :
14 I. C. 601.

PENAL CODE ACT (XLV OF 1860)

———Ss. 302, 369—*Sentence—Murdered child found in well indicated by accused who disclaimed all knowledge—Fact of stripping child of her ornaments established—Youth of accused.*

In a case of murder, the facts clearly established were that the accused was last seen with the child alleged to have been murdered, and that he stripped her of most of her ornaments and sold them and that her body was next found in a well, and the accused disclaimed all knowledge of the matter, though he himself indicated the well: *Held*, that the accused was guilty of a foul murder which, in spite of his youth, called for the extreme penalty. *Wadhawa Singh v. Emperor.*

16 Cr. L. J. 167 :
27 I. C. 551 : 16 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 237.

———Ss. 302, 379, 411—*Circumstantial evidence, if ground for conviction.*

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Circumstances of suspicion without more conclusive evidence are not sufficient to justify conviction even though the party offers no explanation of them. *Muhammad Ali v. Emperor.*

29 Cr. L. J. 996 :
112 I. C. 212 : 10 L. L. J. 525 :
A. I. R. 1929 Lah. 61.

———Ss. 302, 392—*Murder and robbery—Evidence—Recent possession of stolen goods—Presumption.*

In a case in which murder and robbery form part of one transaction, the recent and unexplained possession of the stolen property by the accused is not only presumptive evidence against him on the charge of robbery but is also evidence against him on the charge of murder. *Ramji v. Emperor.*

20 Cr. L. J. 753 :
53 I. C. 481 : A. I. R. 1918 Nag. 67.

———Ss. 302, 392—*Separate sentence—Conviction under Ss. 302 and 392—Separate sentences should be passed.*

When a person is convicted of murder and also of robbing the ornaments of the murdered, and a conviction under S. 392 is recorded, separate sentences should be imposed on the accused. *Jamunia v. Emperor.*

37 Cr. L. J. 1047 :
164 I. C. 964 : I. L. R. 1936 Nag. 78 :
9 R. N. 48 : A. I. R. 1936 Nag. 200.

———Ss. 302, 392, 397—*Intention of murder, when presumed—Murder with robbery—Common intention—Possession of stolen property by one of the accused—Whether sufficient to attribute to him common intention respecting guilt of accused—Held on facts that the accused was guilty of robbery.*

Where it is shown that only one person is present at the scene of the theft and it is clear that the crime has been committed, it may well be that the logical conclusion to be drawn from that is that the possessor

PENAL CODE ACT (XLV OF 1860)

of the stolen property is the person who committed the crime; but, in a case in which there are several persons involved and the question of common intention arises, great care must be taken not to assume that a person merely found in possession of stolen property should have attributed to him, for this reason alone, a common intention respecting the guilt of murder: *Held*, after considering the facts and the circumstances of the case, that the accused was guilty of robbery. *Nga Thein Pe v. The King.*

41 Cr. L. J. 44 :
184 I. C. 545 : 12 R. Rang. 155 :
A. I. R. 1939 Rang. 361.

———Ss. 302, 460—*Murder while committing burglary—Punishment.*

S. 460, Penal Code, is intended to provide for the punishment of persons who are jointly concerned in committing house-trespass or house-breaking quite irrespective of whether they cause or attempt to cause death or grievous hurt. It was never intended that a person who commits murder whilst committing a burglary, should be punished merely for burglary and not for murder. *Chatur v. Emperor.*

12 Cr. L. J. 395 :
11 I. C. 579 : 8 A. L. J. 574.

———S. 303.

See also Penal Code, 1860, Ss. 34, 325.

———S. 303.

S. 303 has no application to the case of persons, (other than the actual murderer) who are liable to enhanced punishment for the act of one of their associates under the special provisions of S. 396. *Punjab Singh Ujagar Singh v. Emperor.*

35 Cr. L. J. 322 :
147 I. C. 2 : 35 P. L. R. 51 :
15 Lah. 84 : 6 R. L. 339 :
A. I. R. 1933 Lah. 977.

———S. 303—*Under transportation for life, meaning of—Remission of such sentence conditionally—After release, accused breaking conditions and committing murder—Sentence under S. 303.*

A sentence of transportation for life means a sentence of transportation for the whole of the remaining period of the convicted person's natural life. Accordingly, if the sentence of transportation for life passed on a person is conditionally remitted by the Government under S. 403, Cr. P. C., and the prisoner is released, in spite of the fact that the prisoner is not actually in prison or in a penal settlement, he must be deemed to be still "under sentence of transportation for life." Consequently where such a person after his release on remission, breaks the conditions on which remission was granted and commits an offence of murder, his case falls under S. 303 and such person must be sentenced to death. *Po Kun v. The King.*

40 Cr. L. J. 490 :
181 I. C. 144 : 1939 Rang. 44 :
11 R. Rang. 454 : A. I. R. 1939 Rang. 124.

PENAL CODE ACT (XLV OF 1860)

- S. 304.
- Acquittal.
- Benefit of doubt.
- Burden of proof.
- Common intention.
- Culpable homicide.
- Death caused by severe beating with *lathis*
- Death, not natural consequence.
- Duty of Court.
- Grave and sudden provocation.
- Injury resulting in death.
- Intention.
- Knowledge.
- Miscellaneous.
- Offence under.
- Private defence.
- Provocation.
- Rash and negligent driving.
- Scope of.
- Sentence.
- Several accused.
- Sudden provocation.
- Sudden quarrel.
- Sudden quarrel and provocation.

—S. 304.

See also (i) Cr. P. C., 1898, Ss. 230, 230, 307, 423

(ii) Penal Code, 1860, Ss. 34, 80, 90, 99, 100, 103, 143, 149, 201, 300, 300 Exception I, 300 Exception 4, 302, 323, 325, 352.

(iii) Criminal trial.

(iv) Railways Act, 1890, S. 101.

—S. 304—Acquittal—Opium found in stomach of deceased—Mention in first report of deceased taking opium—Proof of culpable homicide.

Where the accused were convicted under S. 304, Part 2, Penal Code, for causing the death of the deceased by violence, and the medical evidence showed that the cause of death was either concussion of brain due to head injuries or possibly opium poisoning, and the body bore no signs of injuries except four slight superficial lacerations but no fracture of any bone, while on the other hand opium was found in the stomach and the first report did make mention of the fact that the deceased had admitted having taken opium: *Held*, that the prosecution had failed to prove that the death was caused by any act of the accused and that they were, therefore, entitled to an acquittal. *Jahangir v. Emperor*.

17 Cr. L. J. 147 :

33 I. C. 627 : 16 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 287.

—S. 304—Benefit of doubt—First report—Culpable homicide not amounting to murder—Grave discrepancies between first report and subsequent evidence.

Grave discrepancies between the statement of the deceased contained in the first report and the evidence of his witnesses as to the persons attacking him and giving him fatal injuries, throw a great doubt on the whole

PENAL CODE ACT (XLV OF 1860)

case, the benefit of which must be given to the accused. *Rajwali v. Emperor*.

15 Cr. L. J. 530 :

24 I. C. 842 : 172 P. L. R. 1914 :

23 P. W. R. 1914 Cr. :

A. I. R. 1914 Lah. 179.

—S. 304—Burden of proof—Culpable homicide not amounting to murder—Snake-bite—Intention.

Accused, who professed to be able by tattooing to render persons tattooed by him immune from the effect of snake-bite, tattooed a number of villagers and then allowed a poisonous snake, which he was himself handling, to bite one of them. The man who was bitten died at once: *Held*, that the burden of proving that the accused was justified in believing, and did really believe, that his tattooing gave immunity was on him and that having failed to discharge the burden, he was guilty of culpable homicide not amounting to murder. *Nga Ba Tu v. Emperor*.

23 Cr. L. J. 59 :

64 I. C. 843 : 11 L. B. R. 56 :

A. I. R. 1921 L. Bur. 26.

—S. 304—Common intention—Intention to cause injury likely to cause death.

If two or more persons are found to have had a common intention of causing such bodily injury as is likely to cause death and bodily injury is caused resulting in death, all of them are guilty of the offence of culpable homicide not amounting to murder. It is immaterial which of those persons caused the particular injury which directly led to the death of the injured man. *Kedar v. Emperor*.

26 Cr. L. J. 76 :

84 I. C. 636 : A. I. R. 1925 Oudh 284.

—S. 304—Common intention—Sudden fight—Injuries resulting in death—Presumption.

Three persons armed with axes suddenly attacked a fourth, and in the course of the fight, injuries were inflicted on the head and shoulder of the latter which resulted in the death: *Held*, that although the fight was sudden, yet the nature of the weapons used, and the manner in which they were used, showed that the accused were moved by a common intention, and that, though that intention may not have been to cause death, they must be deemed to have known that they were likely to cause death. *Mahomed Hassan v. Emperor*.

25 Cr. L. J. 228 :

76 I. C. 692 : A. I. R. 1924 Lah. 336.

—S. 304—Culpable homicide amounting to murder—Culpable homicide—Murder causing injury likely to cause death—Intention and wish distinguished.

A person who inflicts injury on the person of another, which ends fatally and which the former should have known was likely to cause death, is guilty of culpable homicide amounting to murder though he had no wish to cause death or any motive to do so. The law will presume that the person inflicting the injury intended to cause death and it lies on the

PENAL CODE ACT (XLV OF 1860)

offender to show that such was not his intention. *Batcha Sahib v. Emperor*.

14 Cr. L. J. 115 :
18 I. C. 675 : 1913 M. W. N. 556.

—S. 304—*Culpable homicide not amounting to murder—Accused hitting deceased with lathi—Fracture of skull—Death—Offence—Use of lathis—Result.*

Where the accused hit the deceased with a lathi first on the arm when he attempted to ward a blow off his head and then when his arm was disabled, gave him two blows on the head on which the deceased's skull was fractured and he died as a result of the injuries: *Held*, that there was no reason for supposing that the accused intended to cause death or to cause such injuries as would be sufficient in the ordinary course of nature to cause death or to do an act so imminently dangerous that it must, in all probability, cause death and that the offence was one of culpable homicide not amounting to murder. The use of lathis is certainly dangerous but it is not so dangerous that one would suppose that anybody would in the ordinary course think that death is a probable cause of the use of a lathi. Lathis are frequently used and result in nothing more than injuries which are simple hurts or at the most, grievous hurts. *Perana v. Emperor*.

37 Cr. L. J. 1020 :
164 I. C. 662 : 1936 A. L. J. 333 :
9 R. A. 197.

—S. 304—*Culpable homicide not amounting to murder—Grave and sudden provocation—Accused seeing wife in compromising position with another and immediately killing her—Offence.*

If a person sees his wife in the arms of another and in the anger of the moment kills either his wife or her paramour, he is not guilty of murder. The provocation would be both grave and sudden and would, reduce the crime to culpable homicide not amounting to murder under S. 304, I. P. C. But a man who thinks over what he has seen for some hours might still act under grave provocation, but such could not be described as sudden. [Conviction under S. 324 was set aside and the accused was convicted under S. 304 and sentenced to five years' rigorous imprisonment.] *Emperor v. Jate Uran*.

41 Cr. L. J. 472 :
187 I. C. 586 : 6 B. R. 503 :
12 R. P. 641 : A. I. R. 1940 Pat. 541.

—S. 304—*Culpable homicide not amounting to murder—Grave and sudden provocation—Offence—Sentence.*

Accused, a Bania, discovered his daughter-in-law in his house with a Mohammedan *faqir*. In a frenzy of rage he seized an axe and hacked the girl to death; he was convicted of an offence under S. 304, Penal Code, the Sessions Judge and Assessors being of opinion that accused's act was the result of grave and sudden provocation sufficient to provoke a person in his position of life; the High Court, in revision, called on the accused to show why he should not be convicted under

PENAL CODE ACT (XLV OF 1860)

S. 302 of the Code: *Held*, that the provocation received by the accused was sufficient to remove his act from the category of murder, but that he was liable to a term of imprisonment sufficiently severe to create a deterrent from the repetition of such cases. The High Court enhanced the sentence to one of rigorous imprisonment for five years. *Emperor v. Hira Lal*.

22 Cr. L. J. 341 :
61 I. C. 165 : 3 U. P. L. R. All. 41.

—S. 304—*Culpable homicide not amounting to murder—Husband finding wife and paramour together—Escape of paramour—Wife preventing husband from following him—Husband striking wife and causing death—Offence, nature of.*

The accused, on returning to his house late one night, found his wife sleeping with another man in the same cot. When the accused tried to seize the paramour the latter struck with a knife and escaped after dropping the knife. The accused took up the knife and tried to follow the paramour but his wife caught hold of him and prevented him from doing so and the accused struck his wife and the latter died: *Held*, that the accused acted on grave and sudden provocation and was not guilty of murder but only of culpable homicide not amounting to murder under S. 304, Part I, Penal Code. *Narainjan Singh v. Emperor*.

31 Cr. L. J. 735 :
124 I. C. 683 : 11 L. L. J. 485 :
A. I. R. 1930 Lah. 172.

—S. 304—*Culpable homicide not amounting to murder—Murder—Provocation, nature of, deciding factor.*

In determining whether an act amounts to murder or to culpable homicide not amounting to murder, the deciding factor is the nature of the provocation received which resulted in the act. If the provocation was both grave and sudden, the act would fall within the category of culpable homicide not amounting to murder, but where the element of suddenness is wanting, as where the doer of the act had time to think and to arm himself with a lethal weapon, the act, although the provocation was grave, would amount to murder. *Gosain v. Emperor*.

21 Cr. L. J. 607 :
57 I. C. 175 : 18 A. L. J. 851 :
2 U. P. L. R. All. 281 :
A. I. R. 1920 All. 199.

—S. 304—*Culpable homicide not amounting to murder—Murder—Wife throwing dirty water in husband's face—Grave and sudden provocation.*

A husband and wife were not on good terms, and on one occasion, when the husband asked for *pan*, the wife threw dirty rice-water in his face. The husband being enraged took up a stone and struck her on the head and the wife died: *Held*, that the act of the wife was a grave and sudden provocation and the husband was guilty only of culpable homicide not amounting to murder. *Krishna Chandra Pati v. Emperor*.

30 Cr. L. J. 720 :
117 I. C. 164 : I. R. 1929 Pat. 372 :
A. I. R. 1929 Pat. 201.

PENAL CODE ACT (XLV OF 1860)

———S. 304—*Culpable homicide not amounting to murder—Sudden quarrel without premeditation—Death by single blow.*

A and B were fighting and C, a friend of A, came up. B, believing that C was coming to support A, gave him a blow with a *kasi* (instrument used for scraping grass) which happened to be in his hand, and C died of the injuries sustained from this blow: *Held*, that, under the circumstances, the offence committed by B was punishable only under S. 304, and not under S. 302, Penal Code. *Bikram Singh v. Emperor.* 30 Cr. L. J. 410 : 115 I. C. 144 : 1929 A. L. J. 508 : I. R. 1929 All. 368 : A. I. R. 1929 All. 535.

———S. 304—*Culpable homicide not amounting to murder.*

Where the accused suddenly struck a blow on the head of another, with a stick weighing 62½ *tolas* and measuring 28 inches in length and the skull of the victim was fractured though his brain was not injured and he died after a few days on account of septic meningitis: *Held*, that the accused was not guilty of murder, but was guilty of culpable homicide not amounting to murder. *Baba Naya v. Emperor.* 29 Cr. L. J. 487 : 109 I. C. 215 : 5 Rang. 817 : A. I. R. 1928 Rang. 64.

———S. 304—*Culpable homicide or grievous hurt—Death after fight—No evidence to connect death with injuries received—Offence, whether culpable homicide.*

In a free fight, one of the persons engaged in the fight was severely beaten and died two days after the beating. The medical evidence showed that death was caused by *peritonitis* resulting from a rupture in the ilium but there was nothing to connect the rupture with any one of the injuries of which marks were found on the body of the deceased: *Held*, that on the evidence the accused were not guilty of culpable homicide not amounting to murder but only of grievous hurt. *Iqbal Husain v. Emperor.* 31 Cr. L. J. 835 : 125 I. C. 395 : 7 O. W. N. 449 : A. I. R. 1930 Oudh 252.

———S. 304—*Culpable homicide or grievous hurt—Death not natural consequence.*

Deceased taking cattle of accused to impound them asked by accused to release them, and on refusal, belaboured with *lathis*—Deceased dying after few days—No injury on vital parts—Accused found to be suffering from enlarged heart—Accused held guilty under S. 325 and not under S. 304. *Bharat Singh v. Emperor.* 34 Cr. L. J. 99 : 140 I. C. 706 : 9 O. W. N. 655 : I. R. 1933 Oudh 20 : A. I. R. 1932 Oudh 279.

———S. 304—*Culpable homicide or murder.*

If the accused under sudden provocation caused an injury that endangered life and the deceased died as the result of that injury, the offence committed is certainly culpable homicide. In very few cases of murder can

PENAL CODE ACT (XLV OF 1860)

it be said that the injury caused necessarily resulted in death, but if it is caused with the necessary intention or knowledge and death results from the injury caused, then the offence committed is murder or culpable homicide as the case may be. *Public Prosecutor v. Panchaksharam.* 39 Cr. L. J. 871 : 177 I. C. 432 : 1938 M. W. N. 605 : 48 L. W. 142 : 11 R. M. 323 : 1938, 2 M. L. J. 225 : A. I. R. 1938 Mad. 723.

———S. 304—*Death caused by severe beating with lathis—Conviction under S. 304 (1), legality of.*

A conviction can be recorded under S. 304 (1) Penal Code, only where one of the exceptions to S. 300 of the Code has been proved. Where death was caused by extensive beating with *lathis* but the injuries inflicted upon the deceased were all simple except one which fractured a finger bone, death being due to shock: *Held*, that it would not be safe to hold that the assailants of the deceased intended to cause death or such bodily injury as was sufficient in the ordinary course of nature to cause death. *Bakhshish Singh v. Emperor.* 26 Cr. L. J. 890 : 86 I. C. 826 : A. I. R. 1925 Lah. 549.

———S. 304—*Death not natural consequence.*

Accused hitting one blow on deceased—No enmity—Quarrel over grazing cattle—Death after three weeks due to bad handling of wound—Deceased himself not considering wound grave: *Held*, conviction under S. 304, bad. *Sobha v. Emperor.* 36 Cr. L. J. 1262 : 157 I. C. 667 : 1935 O. L. R. 504 : 1935 O. W. N. 940 : 8 R. O. 43 : A. I. R. 1935 Oudh 446.

———S. 304—*Duty of Court—Murder—Grave and sudden provocation—Criteria—Paramour of wife boasting publicly of intention of taking her to live with him—Whether amounts to grave and sudden provocation.*

On the question of grave and sudden provocation, the Court has to determine what amounts in any particular case to grave and sudden provocation, and although the circumstances have to be viewed carefully so as not to extend provocation beyond the limits which the safety of the public requires, at the same time grave and sudden provocation can be created by words. No words are more grave than a public taunting by a man whom one has suspected before of being the paramour of one's wife and boasts of the fact and expresses his intention to take her to live with him in the house of her sister to whom he is already married. *Nga Mya Maung v. Emperor.* 38 Cr. L. J. 144 (a) : 166 I. C. 192 : 9 R. Rang. 242 : A. I. R. 1936 Rang. 472.

———S. 304—*Grave and sudden provocation.*

Accused on meeting wife in love-making with paramour, killing the paramour—*Held*,

PENAL CODE ACT (XLV OF 1860)

there was grave and sudden provocation.
Abdul Hamid v. Emperor. 34 Cr. L. J. 804 :
 144 I. C. 160 : I. R. 1933 Pesh. 34 :
 A. I. R. 1933 Pesh. 38.

———S. 304—Injury resulting in death
 —Offence—Test of liability—Intention and
 knowledge of consequences, not mere result of
 act—Verdict—Interference.

Where a man inflicts injuries on another which result in the death of the latter, the nature of the offence committed by the former cannot be determined by any amount of reasoning from the mere fact that the injuries did in fact result in death. What one has to see is, first, what degree of injury did the man intend and, secondly, what did he know as to the consequences of such injury. A husband got into an extreme stage of rage against his wife on a trivial matter and beat her with a *lathi* and hit her with a water pot. Many injuries were caused to the wife and she died. The husband was tried and the Jury found him guilty only under the second clause of S. 304, Penal Code: *Held*, that the Jury were quite entitled to find that the accused did not know that the amount of injury which he would do when he struck the woman on the head by a water pot would be such as would be likely to cause death nor did he intend such an injury as, in the ordinary course of nature would cause death, and the verdict of the Jury could not be set aside as unreasonable. *Emperor v. Damullaya Molla.* 32 Cr. L. J. 187 :
 128 I. C. 808 : 34 C. W. N. 1127 :
 I. R. 1931 Cal. 104 :
 A. I. R. 1931 Cal. 261.

———S. 304—Intention.

Accused giving only one blow on non-vital part of body—Intention to kill cannot be presumed—Conviction should be under S. 304, first part. *Nga Tin Maung v. Emperor.*

37 Cr. L. J. 473 :
 161 I. C. 515 : 8 R. Rang. 482 :
 A. I. R. 1936 Rang. 112.

———S. 304—Intention.

Accused having no intention to murder—Offence held to fall under S. 304-II. *Walia v. Emperor.*

33 Cr. L. J. 445 :
 137 I. C. 239 : 33 P. L. R. 474 :
 I. R. 1932 Lah. 305 :
 A. I. R. 1932 Lah. 372.

———S. 304—Knowledge.

Knowledge is essentially subjective, not objective, and if a man really believes that a certain result will not follow, he cannot be held to know that it is likely to follow. *Nga Ba Tu v. Emperor.*

23 Cr. L. J. 59 :
 64 I. C. 843 : 11 L. B. R. 56 :
 A. I. R. 1921 L. Bur. 26.

———S. 304—Knowledge.

Where three persons attack a fourth with *lathis*, the blows being directed at the head of that fourth, they must be fixed

PENAL CODE ACT (XLV OF 1860)

with the knowledge that they were likely to cause death. *Harnama v. Emperor.*

22 Cr. L. J. 276 :
 60 I. C. 676 : 3 U. P. L. R. Lah. 34.

———S. 304—Miscellaneous—Three injuries on head—Probable assailants.

When a man receives three injuries on the head, it is most improbable that he was attacked by more than two persons. The tradition of this country that there would be one accused person for every injury is unsound. *Mohan v. Emperor.*

28 Cr. L. J. 634 :
 163 I. C. 58 : 1 Luck. Cas. 197 :
 A. I. R. 1927 Oudh 555.

———S. 304—Miscellaneous.

When injuries are inflicted with the intention of causing hurt, Cl. (2), S. 304, has no application at all. *Nga Ni U. v. Emperor.*

37 Cr. L. J. 186 :
 159 I. C. 925 : 8 R. Rang. 293 :
 A. I. R. 1935 Rang. 391.

———S. 304—Offence under.

Affray—Death—Absence of evidence to show that persons armed with sharp-edged weapons intended to cause death—Offence committed falls under S. 304-II. *Nadar Singh v. Emperor.*

35 Cr. L. J. 1376 :
 151 I. C. 449 : 7 R. L. 135 :
 A. I. R. 1934 Lah. 341.

———S. 304—Offence under — Fatal blow struck in course of fight—Uncertainty as to who struck the blow—Offence.

Where two parties armed with *athis* indulge in a fight, and one of the contesting parties receives injuries from the effects of which he dies, but it is uncertain which of the several persons composing the opposite side struck the fatal blow, these persons are guilty of an offence under S. 304, Penal Code. *Emperor v. Jhamman.*

21 Cr. L. J. 862 :
 58 I. C. 912 : A. I. R. 1920 All. 276.

———S. 304—Offence under second part of—Beating woman to death believing her to be possessed by an evil spirit—Offence.

Accused, believing the deceased to be possessed by an evil spirit, beat her to death in the hope of curing her. The deceased protested that she was not possessed and did not consent to be beaten: *Held*, that the accused were guilty of an offence under the second part of S. 304, Penal Code. *Nga Po Tha v. Emperor.*

19 Cr. L. J. 375 :
 44 I. C. 679 : 3 U. B. R. (1917) 54 :
 A. I. R. 1918 U. Bur. 24.

———S. 304—Offence under.

S. 304 must be interpreted as providing punishment for the offence of culpable homicide in all cases where the accused cannot be convicted of murder. *Mohammad Gul Rohilla v. Emperor.*

33 Cr. L. J. 849 :
 140 I. C. 49 : 28 N. L. R. 233 :
 I. R. 1932 Nag. 118 :
 A. I. R. 1932 Nag. 121.

PENAL CODE ACT (XLV OF 1860)

———S. 304—Offence under.

Seven persons making a deliberate attack on one man and causing his death—Intention of causing such bodily injuries as were likely to cause death or knowledge that they were likely by such acts to cause his death, clear—Conviction under S. 325 should be set aside and accused convicted under S. 304. *Emperor v. Sat Narain*.

36 Cr. L. J. 573 :
154 I. C. 808 : 1935 O. W. N. 343 :
7 R. O. 500 : A. I. R. 1935 Oudh 381.

———S. 304—Offence under.

Sudden fight—Unpremeditated assault without intention to cause death—Offence falls under S. 304, Part II and not S. 302. *Parmeshri Das v. Emperor*.

35 Cr. L. J. 1319 :
151 I. C. 469 : 7 R. L. 141 :
A. I. R. 1934 Lah. 332.

———S. 304—Offence under.

The mere fact that there is no specific evidence that the accused had come prepared to cause death, is no ground for not convicting him under S. 304. *Mahadeo Singh v. Emperor*.

35 Cr. L. J. 1302 :
151 I. C. 364 : 3 A. W. R. 835 :
7 R. A. 154 : A. I. R. 1934 All. 739.

———S. 304—Offence under, what amounts to—*Drunken and armed parties - Fatal blow by accused in sudden quarrel—Accused himself injured—Offence, nature of.*

Where both the prosecution and the accused parties were drunk and armed with knives, and in the course of a sudden quarrel, in the heat of passion engendered by the quarrel, one of the accused inflicted a blow on one of the prosecution party which ultimately proved fatal, and it appeared that the accused who inflicted the fatal blow had himself received injuries and could not be said to have taken undue advantage of the accused : *Held*, that the more appropriate section under which the said accused should be convicted was S. 304, Penal Code, and not S. 302. *In re : Sennimalai Goundan*.

27 Cr. L. J. 1192 :
97 I. C. 952.

———S. 304—Offence under—*When constituted—Rape on young girl—Death due to shock—Death, whether natural consequence of rape.*

The accused, a youth of 18, committed rape on a girl whose body was well-developed but who was probably under 12 years of age. The girl suffered an extensive rupture of the vagina but there was no other sign of any violence of any kind. The girl died soon after, and according to the medical evidence, death was due to shock caused by rupture of her vagina : *Held*, that under the circumstances, the accused was not guilty of an offence under S. 304, Penal Code. *Shambhu Khatri v. Emperor*.

26 Cr. L. J. 91 :
83 I. C. 651 : 3 Pat. 410 :
A. I. R. 1924 Pat. 553.

———S. 304—Private defence.

Accused himself being the aggressor—Beating ending in death of one of the assailants

PENAL CODE ACT (XLV OF 1860)

—Accused is not entitled to right of private defence. *Jokhu Ram v. Emperor*.

35 Cr. L. J. 801 :
148 I. C. 804 : 11 O. W. N. 425 :
6 R. O. 445 : A. I. R. 1934 Oudh 207.

———S. 304—Private defence.

Attachment of crops—Resistance—Injury to zamindar—Attack by zamindar's party on assailant : *Held*, that zamindar's party acted in the right of private defence but was guilty as they had exceeded that right. It is desirable to punish the person responsible for initiation of violence heavily. *Chhotay v. Emperor*.

32 Cr. L. J. 470 :
130 I. C. 5 : I. R. 1931 All. 229 :
A. I. R. 1930 All. 596.

———S. 304—Private defence.

Both accused and deceased armed at the beginning of dual—Deceased throwing accused down but becoming disarmed—Accused striking deceased with knife—Death from shock—Right of private defence, held exceeded. *Wazir Muhammad v. Emperor*.

35 Cr. L. J. 639 :
148 I. C. 243 (2) : 6 R. L. 535 :
A. I. R. 1933 Lah. 1048.

———S. 304—Provocation.

Accused's sister who had left husband living under care of accused—Sister falling under evil and immoral habits—Sister leaving for clandestine purpose—Accused questioning her on arrival—Insolent reply—Accused striking by hatehet—Death : *Held*, there was grave and sudden provocation—Case fell within purview of S. 304, Part I. *Inayat v. Emperor*.

35 Cr. L. J. 74 :
146 I. C. 357 : 34 P. L. R. 935 :
6 R. L. 215 : A. I. R. 1933 Lah. 869 (2).

———S. 304—Provocation and effect.

Where a man sees a woman in the arms of another, and loses control over himself, the circumstance that she was his mistress and not his wife does not make any real difference for the purpose of S. 304. *Kata Patharaju v. Emperor*.

33 Cr. L. J. 273 :
136 I. C. 314 (1) : 1931 M. W. N. 1137 :
35 L. W. 141 : I. R. 1932 Mad. 232 (1) :
A. I. R. 1932 Mad. 25 (1).

———S. 304—Rash and negligent driving, what is not—*Boy striking against back wheel of lorry—Lorry stopped within short distance—Boy found crushed—Driver held not guilty of rash and negligent act.*

A boy of 6 years struck against the back wheel of a lorry which was loaded with fruit and which was being driven by the petitioner. The boy was caught in the wheel and was dragged along. The petitioner stopped the lorry at a distance of 21 feet. The boy was found crushed and died on the spot : *Held*, that no rash and negligent act could be ascribed to the petitioner. It was not the case of the lorry striking against the boy but was

PENAL CODE ACT (XLV OF 1860)

the case of the boy striking against the lorry.
Seva Singh Rattan Singh v. Emperor.

40 Cr. L. J. 854 :
184 I. C. 157 : 12 R. Pesh. 25 :
A. I. R. 1939 Pesh. 33.

———S. 304—Scope of.

(i) The difference between the two parts of S. 304, Penal Code, is that under the first part the crime of murder is first established and the accused is then given the benefit of one of the Exceptions in S. 300, while under the second part, the crime of murder is never established at all. (ii). The general principle of law is that the accused may benefit by the prosecution evidence, and there may be cases in which the recognition of the Exceptions in S. 300, Penal Code, may precede the attempt to prove other facts. *Mir Alam v. Emperor.*

23 Cr. L. J. 726 :
69 I. C. 454.

———S. 304—Scope of—Reformatory Schools Act (VIII of 1897)—Offender under S. 304, Penal Code, whether can be dealt with under that Act.

As laid down in Punjab Government Notification No. 37 of 20th January 1906, a convict under S. 304, Penal Code, is not liable to be dealt with under the Reformatory Schools Act. *Emperor v. Nur Mohammad.*

19 Cr. L. J. 917 (a) :
47 I. C. 433 : 17 P. R. 1918 Cr. :
25 P. W. R. 1918 Cr. : 91 P. L. R. 1918 :
A. I. R. 1918 Lah. 27.

———S. 304—Sentence—Blow struck without premeditation—Sentence of 7 years is excessive.

In a scuffle, deceased received one injury on the chin and two on the head, one of which resulted in an extensive fracture of the skull. All that can be said to be proved was that G inflicted one of the injuries on deceased's head and that M inflicted the one on the jaw : *Held*, G had been rightly convicted of an offence under S. 304, but as he is not shown to have struck more than one blow and as it was struck without any premeditation on a sudden quarrel, the sentence of seven years' imprisonment which has been passed on him is excessive. *Gandu v. Emperor.*

5 L. L. J. 414 : A. I. R. 1923 Lah. 170.

———S. 304—Sentence—Deceased and not accused the aggressor—Severe sentence, properly of.

A severe sentence should not be passed where the aggressor was the deceased and not the accused. *Fajoo v. Emperor.* 28 Cr. L. J. 24 :
99 I. C. 56 : A. I. R. 1927 Lah. 733 (a).

———S. 304—Sentence—Deterrent—Negligent driving—Loss of human life—Consideration in passing sentence.

Driving motor cars has become an essential part of human activities, and it is impossible to avoid a certain number of accidents. It is no part of the duty of Courts to punish with savage sentences every motorist who has the

PENAL CODE ACT (XLV OF 1860)

misfortune to have an accident, which results in a loss of life, even though the accident be due to an error of judgment on the part of the driver. The circumstances of each case must be considered in imposing the sentence. *Emperor v. Khan Mahomed Shermahomed.*

38 Cr. L. J. 660 :
168 I. C. 870 : 38 Bom. L. R. 1111 :
9 R. B. 411 : A. I. R. 1937 Bom. 96.

———S. 304—Sentence—Murder—Single blow—Sudden quarrel.

In a quarrel between the accused's wife and his brother's wife, the latter abused the accused's daughters, whereupon the accused hit her a single violent blow with a stick which he picked up there and then. The woman died of her injury the following day. There was no feeling of enmity between the accused and the deceased : *Held*, that the quarrel being unpremeditated and the blow having been struck in the heat of passion, a severe sentence was not called for, and that a sentence of three years' rigorous imprisonment would meet the ends of justice. *Karam Ilahi v. Emperor.*

29 Cr. L. J. 33 :
106 I. C. 449.

———S. 304—Sentence—Sentence under first or second part of S. 304, when to be passed.

Whether culpable homicide not amounting to murder is punishable under Part 1 or whether under Part 2 of S. 304 depends entirely upon whether the act by which the death was caused was done with one of the two intentions, or whether it was done with the knowledge, mentioned in S. 299. Hence unless that is first ascertained, it is not possible to pass a sentence under the second part of S. 304 rather than under the first. *Nga Chil Tin v. The King.*

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

———S. 304—Sentence.

Sister caught in the act of sexual intercourse with a stranger—Accused giving her blows and causing death—Sentence of five years is too severe. *Allah Ditta v. Emperor.*

35 Cr. L. J. 1445 (1) :
151 I. C. 898 : 7 R. L. 224 (1) :
A. I. R. 1934 Lah. 428 (2).

———S. 304—Sentence—Two parties fighting—Appellants receiving injuries—Prosecution not telling the whole story—Too severe sentence not justified.

When it was found that two opposite parties were fighting out their differences and there were no independent witnesses, and one party was held by the lower Court to be exercising the right of self-defence : *Held*, that it should be taken into consideration that the accused who formed the other party have themselves received more or less serious injuries, that one of their party has been killed, that the complete story has not been told by the prosecution and that, therefore, there is a possibility (which nevertheless amounts to nothing more) that they may have been acting in self-defence, and therefore too severe sentence

PENAL CODE ACT (XLV OF 1860)

is not justified. *Mehr Ali and Khan Mohammad v. Emperor.* A. I. R. 1923 Lah. 313.

———S. 304—Several accused.

Accused acting without premeditation and on grave and sudden provocation—Accused beating complainant's party—Actual person causing fatal injury not known—All are liable for an offence under S. 304. *Bhagwan Das v. Emperor.* 36 Cr. L. J. 773 : 155 I. C. 560 : 1935 A. W. N. 210 : 1935 A. L. J. 385 : 7 R. A. 944 : A. I. R. 1935 All. 717.

———S. 304—Several accused.

Accused giving several blows knowing result of their action : *Held*, were guilty under S. 304. Conviction for grievous hurt is not sufficient. *Mana Gendal v. Emperor.* 32 Cr. L. J. 289 : 129 I. C. 351 : 32 Bom. L. R. 1143 : I. R. 1931 Bom. 159 : A. I. R. 1930 Bom. 483.

———S. 304—Several accused.

Joint assault but fatal injury inflicted by one—Common intention to kill—All are guilty of murder. *In the matter of : Lakhan Sawra.* (F. B.) 33 Cr. L. J. 663 : 139 I. C. 81 : I. R. 1932 Cal. 570 : A. I. R. 1932 Cal. 815.

———S. 304—Several accused.

Where four persons strike the accused together and it is not known whose *lathi* caused the fatal injury, still all of them can be held guilty under S. 304. *Mahadeo Singh v. Emperor.* 35 Cr. L. J. 1302 : 151 I. C. 364 : 3 A. W. R. 835 : 7 R. A. 154 : A. I. R. 1934 All. 739.

———S. 304—Sudden provocation—Offence is one under S. 304.

On the night of the crime in question, the accused, together with Mr. Vir Bhan, his first cousin, Mst. Tulsi Bai, the wife of Vir Bhan, Lachman Das, son of Vir Bhan and the murdered man, were sleeping together on separate *charpoy*s in a court-yard. The accused woke up in the course of the night to see Mst. Tulsi Bai and Jassu Ram lying together on the same *charpoy*. He thereupon reproached Jassu Ram for his conduct who retorted with an indecent gesture. The accused enraged struck Jassu Ram a blow on the neck with a hatchet which was lying near at hand and killed him. Mst. Tulsi Bai suggested to the accused to put the blame on some unknown person. The accused, however, instead of falling in with this suggestion decided to admit the crime, and he made his statement before the Committing Magistrate within two days of the murder and before he was legally represented : *Held*, that the theory of premeditation cannot be accepted : *Held*, further, that the murder was the result of sudden and grave provocation. *Chandan alias Chandu Ram v. Emperor.*

A. I. R. 1923 Lah. 312.

———S. 304—Sudden quarrel.

Altercation in relation to tree to which accused had right—Blow in the course of sudden quarrel and in the heat of moment though

PENAL CODE ACT (XLV OF 1860)

in excess of right of private defence—Sentence, reduced. *Ziada v. Emperor.* 35 Cr. L. J. 461 : 147 I. C. 681 : 35 P. L. R. 195 : 6 R. L. 428 (2) : A. I. R. 1933 Lah. 1052,

———S. 304—Sudden quarrel.

Assailants running with winnowing instruments they had in their hands and taking part in fight Death of a person during fight—Offence is culpable homicide not amounting to murder. *Abbas Khan v. Emperor.*

34 Cr. L. J. 535 : 142 I. C. 125 : 32 P. L. R. 513 : I. R. 1933 Lah. 310 (2) : A. I. R. 1932 Lah. 3.

———S. 304—Sudden quarrel and provocation.

Accused, Jail Superintendent, on being attacked with a shoe by a prisoner thrusting wooden substance in his rectum resulting in prisoner's death—Accused, held guilty under S. 304-II and not S. 325—Sentence of one year's rigorous, held not inadequate. *Bhola Nath v. Emperor.* 33 Cr. L. J. 365 : 136 I. C. 729 (2) : 33 P. L. R. 49 : I. R. 1932 Lah. 265 : A. I. R. 1932 Lah. 199.

———S. 304—Sudden quarrel and provocation.

Accused killing wife in the heat of passion after his patience had been strained to the utmost by her immoral conduct—Sentence of 10 years reduced to 5 years. *Hira Singh v. Emperor.* 34 Cr. L. J. 1159 (1) : 145 I. C. 926 : 34 P. L. R. 889 : 6 R. L. 147 (2) : A. I. R. 1933 Lah. 126 (2).

———S. 304—Sudden quarrel and provocation.

Accused seeing deceased having sexual intercourse with accused's wife, killing deceased—Accused having acted under grave and sudden provocation, sentence of transportation for life should be reduced. *Muhammad Zaman v. Emperor.* 34 Cr. L. J. 1161 (2) :

145 I. C. 1009 : 34 P. L. R. 899 : 6 R. L. 155 (1) : A. I. R. 1933 Lah. 165.

———S. 304—Sudden quarrel and provocation.

Accused strangling deceased by his turban for having hit his dog—No enmity found—Attack found to be sudden and unpremeditated—Accused held guilty under S. 304, Part II and not under S. 302. *Nanak v. Emperor.*

32 Cr. L. J. 1205 : 134 I. C. 583 : I. R. 1931 Lah. 967 : A. I. R. 1931 Lah. 189.

———S. 304—Sudden quarrel and provocation.

Sudden altercation, crime unpremeditated—Skewer for breaking ice picked up and plunged into stomach of victim in the heat of passion : *Held*, that offence was culpable homicide not amounting to murder and fell under the first part of S. 304. *Bholu v. Emperor.*

36 Cr. L. J. 190 : 152 I. C. 860 : 7 R. L. 339 : A. I. R. 1935 Lah. 149.

PENAL CODE ACT (XLV OF 1860)

————S. 304—*Sudden quarrel and provocation.*

Death caused by fracture of skull—Provocation to accused—Assault not deliberate—Sentence awarded was 7 years. *Sai Mohammad v. Emperor.*

35 Cr. L. J. 1163 (1) :
150 I. C. 656 : 7 R. L. 4 :
A. I. R. 1934 Lah. 345.

————S. 304—*Sudden quarrel and provocation.*

Deceased in excitement brandishing lathi and determined to use violence—Accused snatching lathi and striking deceased—Death—Conviction should be altered from S. 302 to S. 304, Part I. *Indar Singh v. Emperor.*

34 Cr. L. J. 1160 :
145 I. C. 921 : 34 P. L. R. 886 :
6 R. L. 149 : A. I. R. 1933 Lah. 144.

————S. 304—*Sudden quarrel and provocation.*

Exchange of abuses and sudden fight—Accused stabbing deceased : *Held*, on facts that Exception 4 to S. 300 applied and offence came under S. 304, first part. *Hussain v. Emperor.*

35 Cr. L. J. 1165 :
150 I. C. 640 : 7 R. L. 1 :
A. I. R. 1934 Lah. 818.

————S. 304—*Sudden quarrel and provocation.*

Single blow on head with lathi : *Held*, offence was culpable homicide not amounting to murder. *Nawab v. Emperor.*

33 Cr. L. J. 446 :
137 I. C. 267 : 33 P. L. R. 546 :
I. R. 1932 Lah. 317.

————S. 304.

The first part of S. 304, Penal Code, is intended to include only those cases in which the act of the accused would be culpable homicide not amounting to murder but for the fact that it was committed in circumstances which render one or other of the exceptions to S. 300 applicable. *Masti v. Emperor.*

12 Cr. L. J. 274 (b) :
10 I. C. 852 : 9 P. W. R. 1911 Cr. :
3 P. R. 1911 Cr. : 87 P. L. R. 1911.

————S. 304-A—*Burden of proof.*

A person driving a motor car is under a duty to control the car and he is *prima facie* guilty of negligence if the car leaves the road. It is for the person driving the car to explain the circumstances under which the car came to leave the road. *In re : Ratnam Mudaliar.*

35 Cr. L. J. 691 :
148 I. C. 573 : 1934 M. W. N. 102 :
66 M. L. J. 318 : 39 L. W. 344 :
6 R. M. 498 : A. I. R. 1934 Mad. 209.

————S. 304-A—*Contributory negligence, if defence—Charge under S. 304-A.*

Contributory negligence on the part of the person killed is no defence by itself to a charge under S. 304-A, Penal Code. *Kanjuma Khoja v. Emperor.*

39 Cr. L. J. 566 :
175 I. C. 116 : 10 R. S. 288 :
32 S. L. R. 663 : A. I. R. 1938 Sind 100.

PENAL CODE ACT (XLV OF 1860)

————S. 304-A—*Conviction, if sustained—Death by negligence—Boat, overcrowded, sinking of—Sinking due to strong wind and rough water and resulting in loss of life—Unseaworthy condition of boat not proved—Lessees of ferry not responsible—Accident.*

Where owing to strong wind and rough water, a ferry-boat overturns or sinks resulting in loss of life, the lessees of the ferry cannot be convicted of an offence under S. 304-A, Penal Code, unless it is shown that the boat, although overcrowded, was in an unseaworthy condition at the time of the occurrence. *Raghu v. Emperor.*

16 Cr. L. J. 72 :
26 I. C. 664 : 1 O. L. J. 711 :
A. I. R. 1914 Oudh 412.

————S. 304-A—*Criminal negligence, what is.*

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury, but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross or culpable neglect of failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to the individual in particular which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. *Smith v. Emperor.*

27 Cr. L. J. 153 :
91 I. C. 889 : 30 C. W. N. 66 :
53 Cal. 333 : A. I. R. 1926 Cal. 300.

————S. 304-A—*Culpable rashness, what amounts to.*

Culpable rashness is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening, the imputability arises from acting despite the consciousness. Culpable negligence is action without consciousness that the illegal and mischievous act will follow, but in circumstances which show that the actor had not exercised the action incumbent upon him, and that if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. Each case must be judged with reference to the precaution, which in respect to it, the ordinary experience of man has found to be sufficient, though the use of special or extraordinary precautions might have prevented the particular accident which happened. *Smith v. Emperor.*

27 Cr. L. J. 153 :
91 I. C. 889 : 30 C. W. N. 66 :
53 Cal. 333 : A. I. R. 1926 Cal. 300.

————S. 304-A—*Error of judgment—Lorry loaded with wooden sleepers being driven through gateway not very fast—One projecting sleeper striking stone pillar—Pillar falling and killing person standing behind it—Lorry driven by same*

PENAL CODE ACT (XLV OF 1860)

driver safely through same gateway previously—Held, it could not be said that death was not caused directly by act of the driver—But under the circumstances of the case, driver was guilty of error of judgment and could not be convicted under S. 304-A.

The appellant, a lorry driver, was driving a lorry loaded with wooden sleepers through the gateway of the compound where they had been stored and from where he was removing them when one of the sleepers projecting over the side of the lorry struck one of the stone pillars of the gateway and knocked it down and the pillar fell upon a barber who was standing behind it, and inflicted injuries upon him wherefrom he died on the night of the same day. On many occasions previously the driver had driven the loaded lorry through that gate without any accident. The speed was not very fast: *Held*, that it could not be said that the death of the barber was not caused directly by the act of the accused. The fact that it was not the lorry itself but part of its load which struck the pillar was a matter of no consequence. The lorry and the loaded sleepers must be looked on as one vehicle under the control of the driver; nor the fact that it was not the sleeper itself which struck the deceased but a stone in a pillar which the sleeper struck made the act of the accused merely the indirect and remote cause of the deceased's death. It might well be a fact that must be taken into consideration when the question of his rashness or negligence was concerned, but it was not in itself a complete defence. But under the circumstances of the case the driver was only guilty of an error of judgment and could not be convicted under S. 304-A, Penal Code. *Kanjijuma Khoja v. Emperor.*

39 Cr. L. J. 566 :
175 I. C. 116 : 10 R. S. 288 :
32 S. L. R. 663 : A. I. R. 1938 Sind 100.

—S. 304-A—Gross and criminal negligence—Poison, administration of, by medical man in mistake for quinine.

Accused was in charge of a dispensary which, it was found, was very carelessly and badly managed, poisonous medicines being mixed up with non-poisonous medicines and the poison cupboard being kept unlocked. He had to prepare a large quantity of quinine mixture and had to use a certain amount of quinine hydrochloride. He removed a bottle from the non-poisonous medicines cupboard, and, without looking at the wrapper on the outside of which was printed the word "poison," tore open the wrapper and without reading the label on the bottle on which was printed "strychnine hydrochloride," mixed the contents of the bottle into a mixture and administered the mixture to several persons, all but one of whom died within a very short time. He was convicted under S. 304-A, Penal Code. In revision it was contended that the act done by him, though negligent, was not so grossly negligent as to fall within the criminal law: *Held*, that the act of the accused amounted to gross and criminal negligence and that he had been rightly convicted

PENAL CODE ACT (XLV OF 1860)

under S. 304-A, Penal Code. *De'Souza v. Emperor.*

21 Cr. L. J. 367 :
55 I. C. 735 : 18 A. L. J. 160 :
42 All. 272 : A. I. R. 1920 All. 32.

—S. 304-A—Mens rea.

Mere carelessness is not sufficient for conviction under S. 304, Penal Code. S. 304-A, Penal Code, like other sections of the Penal Code requires a *mens rea* or guilty mind. The rashness or negligence must be such as fairly to be described criminal. The phrase "criminal negligence" as used in ordinary conversation conveys something of the meaning. *Kunjijuma Khoja v. Emperor.*

39 Cr. L. J. 566 :
175 I. C. 116 : 10 R. S. 288 :
32 S. L. R. 663 : A. I. R. 1938 Sind 100.

—S. 304-A—Negligence.

A driver of a motor vehicle who is himself negligent cannot plead in his defence the negligence of a pedestrian whom he knocked unconscious and killed. *Mohammad Bux v. Emperor.*

36 Cr. L. J. 1368 :
158 I. C. 330 : 31 N. L. R. 26 :
8 R. N. 74 : A. I. R. 1935 Nag. 200.

—S. 304-A—Negligence—Motor vehicle—Rash driving—Bus passing stationary tram car—Deviation to right—Failure to blow horn—Acceleration of speed—Duties of driver.

Where the accused, the driver of a motor bus, while passing a stationary tram car deviated to his right to pass the car, failed to blow the horn when he was about to pass, and accelerated his speed before he had actually cleared the car, and a boy who had alighted from the tram car was knocked down by the bus and killed: *Held*, that the accused was guilty of negligence and liable to be convicted under S. 304-A, Penal Code. Special caution must be taken by all motor vehicles while passing a stationary tram car. The driver, if he does have to go close to a stationary tram car should drive at such a pace as will allow him to stop his vehicle almost at once should some passenger suddenly alight. *Bhagwandas Bakshi v. Emperor.*

29 Cr. L. J. 897 :
111 I. C. 657 : 30 Bom. L. R. 655 :
A. I. R. 1928 Bom. 208.

—S. 304-A—Offence under—Administering poison believing it to be a charm—Death caused—Rashly and negligently.

The accused received a powder from an enemy of one Lal Singh and mixed it with the food of his household believing that thereby she would become rich and Lal Singh poor. She took no precaution to ascertain whether the powder was a noxious thing: *Held*, that her conduct was wanting in that prudence and circumspection which every human being is supposed to exercise; and that by her rash and thoughtless act she made herself responsible for the deaths that ensued. *Jamna v. Emperor.*

9 Cr. L. J. 522 :
2 I. C. 214 : 31 All. 290 :
6 A. L. J. 203.

PENAL CODE ACT (XLV OF 1860)

—S. 304-A—*Offence under, if sustained*
—*Car driven slowly at night over road under repairs—Death caused of men sleeping on road.*

Accused was driving in an old and noisy motor car, at night, along a road which was under repairs, at a slow pace. The car ran over two coolies who happened to be sleeping on the road and caused their death: *Held*, that it could not be said that the accused had been guilty of culpable rashness or negligence and that consequently he was not guilty of an offence under S. 304-A, Penal Code. *Smith v. Emperor.* 27 Cr. L. J. 153 : 91 I. C. 889 : 30 C. W. N. 66 : 53 Cal. 333 : A. I. R. 1926 Cal. 300.

—S. 304-A—*Offence under, nature of.*

Death should be direct result of rash and negligent act of accused, and act should be proximate and efficient cause without intervention of another's negligence. *Sutnarain Pandey v. Emperor.* 34 Cr. L. J. 1013 : 145 I. C. 612 : 1933 A. L. J. 205 : 55 All. 263 : 6 R. A. 134 : A. I. R. 1933 All. 232.

—S. 304-A—*Offence under.*

Where in unloading a gun known to be loaded, it went off killing a boy, accused is guilty of offence under S. 304-A. *Molan Ram v. Emperor.* 32 Cr. L. J. 463 (a) : 129 I. C. 762 (2) : I. R. 1931 Lah. 234. A. I. R. 1930 Lah. 462.

—S. 304-A—*'Rash act', meaning of.*

The term 'rash act' within the meaning of S. 304-A connotes the want of proper care and caution. It means an overhasty act. *Emperor v. Nga San Win.* 35 Cr. L. J. 248 : 147 I. C. 60 : 6 R. Rang. 140 : A. I. R. 1933 Rang. 326.

—S. 304-A—*Rash and negligent act—Husband, right of, to absolute enjoyment of wife's person Causing death by sexual intercourse with child wife.*

Under no system of law prevalent in India has a husband an absolute right to enjoy the person of his wife without regard to the question of her personal safety. Accused had sexual intercourse with his child wife above the age of 12 years but who had not yet attained puberty, and thereby caused her death: *Held*, that he was guilty of an offence of causing death by a rash or negligent act, punishable under S. 304-A, Penal Code. *Shahu v. Emperor.* 18 Cr. L. J. 1003 : 42 I. C. 731 : 11 S. L. R. 77 : A. I. R. 1917 Sind 42.

—S. 304-A—*Rash and negligent act—Murder—Administering drug without knowing its nature—Death of person to whom drug administered—Nature of offence.*

The accused in this case, at the instigation of her paramour, obtained some powder, the character of which she was ignorant of, and mixed it with pumpkin curry which she knew would be eaten by her husband, her mother-in-law and her husband's brother with

PENAL CODE ACT (XLV OF 1860)

whom she appeared to have been on unfriendly terms. She and her child only ate plain rice. Her husband and mother-in-law partook of the curry and died: *Held*, that she was guilty of a rash and negligent act within the meaning of S. 304-A, Penal Code, and that if she had known that the substance that she was administering was a poisonous substance, that would have made a specific offence, and in that case, S. 304-A would not apply. *Pika Beva v. Emperor.* 13 Cr. L. J. 195 : 14 I. C. 195 : 15 C. L. J. 512 : 16 C. W. N. 1055 : 39 Cal. 855.

—S. 304-A—*Rash and negligent act—Station-master giving "line clear" with knowledge that another train is standing in the way of the incoming train.*

An Assistant Station Master gave a "line clear" to an incoming passenger train on a foggy night with the knowledge that a goods train was standing at a particular point where the passenger train might collide with it, but hoping to remove the goods train to a siding before the arrival of the passenger train. The goods train was not removed in time and a collision occurred which was attended with loss of life: *Held*, that the Assistant Station Master was guilty of a rash and negligent act in giving the "line clear" and was, therefore, punishable under S. 304-A, Penal Code and S. 101, Railways Act. *Tapli Prasad v. Emperor.* 18 Cr. L. J. 815 : 41 I. C. 335 : 15 A. L. J. 590 : A. I. R. 1918 All. 429.

—S. 304-A—*Rash and negligent act.*

Though overloading a lorry may be an offence under the Motor Vehicles Act, it is not a rash and negligent act within the meaning of S. 304-A. *Jaimal Singh v. Emperor.* 33 Cr. L. J. 436 : 137 I. C. 262 : 33 P. L. R. 492 : I. R. 1932 Lah. 319 : A. I. R. 1932 Lah. 366.

—S. 304-A—*Rash and negligent act, what is.*

Mere velocity of the vehicle is not the only criterion of rash and negligent driving. It may consist in taking, while driving, risks which by the exercise of a little diligence could have been avoided. *Muhammad Bux v. Emperor.* 36 Cr. L. J. 1368 : 158 I. C. 330 : 31 N. L. R. 26 : 8 R. N. 74 Sup. : A. I. R. 1935 Nag. 200.

—S. 304-A—*Scope of—Injuries inflicted intentionally—Section not applicable.*

S. 304-A, Penal Code, deals with the causing of death by a rash or negligent act. It does not apply to a case where injuries are inflicted neither rashly nor negligently, but intentionally and designedly. *Emperor v. Istlingapa.* 13 Cr. L. J. 798 : 17 I. C. 532 : 14 Bom. L. R. 887.

—S. 304-A—*Sentence, measure of—Approximate and ultimate cause of death, distinction between.*

It is very dangerous to attempt to distinguish cases under S. 304-A, Penal Code, between the

PENAL CODE ACT (XLV OF 1860)

approximate and ultimate cause of death due to a rash and negligent act. The mere fact that a human life is lost due to negligent driving of motor car, does not justify the Court in passing a deterrent sentence, if the lost life could not have been reasonably anticipated by the accused. In considering the question of enhancement of sentence, one has to consider whether the rash and negligent act of the accused which has occasioned the death, shows callousness on his part as regards the risk to which he was exposing other persons. The severity of the sentence must depend to a great extent on the degree of callousness which is present in the conduct of the accused. *Emperor v. Khan Mahomed Sher Mahomed*.

38 Cr. L. J. 660 :
168 I. C. 870 : 9 R. B. 411 :
38 Bom. L. R. 1111 :
A. I. R. 1937 Bom. 96.

———S. 304-A—*Unpremeditated blow causing death, effect of—Reduction of sentence—Unpremeditated blow.*

Where the accused took up a wooden pestle and gave a blow with it to the deceased killing him and the circumstances indicated that the blow was the unpremeditated outcome of a sudden quarrel, and that though a reasonable man must have known that it was likely to cause death, the probability of a fatal result was not present to the consciousness of the accused at the moment: *Held*, that the offence amounted to culpable homicide not amounting to murder under the later half of S. 304, Penal Code, and the sentence of 7 years' rigorous imprisonment was reduced to that of 3 years. *King-Emperor v. Behram*.

9 Cr. L. J. 245 :
1 S. L. R. 1.

———S. 304-A, 114—*Charge under, legality of—Circumstances held did not warrant charge under Ss. 304, 114.*

The mere fact that just before the accident the accused asked his driver to blow the horn and overtake the car which was going ahead, does not warrant a charge under S. 304-A read with S. 114, Penal Code. *In re : V. Seetharama Chettiar*.

40 Cr. L. J. 850 :
183 I. C. 740 (1) : 49 L. W. 554 :
1939 M. W. N. 416 : 12 R. M. 411 :
A. I. R. 1939 Mad. 571.

———Ss. 304-A, 279, 338—*Rash or negligent act, what amounts to—Act directly causing death—Necessity of, for conviction.*

The rash or negligent act referred to in S. 304-A, Penal Code, means the act which is the immediate cause of death and not any act or omission which can at best be said to be a remote cause of death. The words "not amounting to culpable homicide" clearly show that what was intended was an act which had directly caused the death of any person. Ss. 279 and 338 are co-relative with S. 304-A, which section while as general as S. 338, is

PENAL CODE ACT (XLV OF 1860)

restricted to cases where death has been caused. *Emperor v. Akbar Ali*.

37 Cr. L. J. 975 :
164 I. C. 333 : 1936 O. W. N. 720 :
1936 O. L. R. 484 : 9 R. O. 89 :
A. I. R. 1936 Oudh 400.

———Ss. 304-A, 337, 338, 465, 471—*Neglect of duty—Forgery committed by accused to screen himself from criminal liability and to continue in employment—Joinder of charges.*

It was the duty of the accused to make a periodical inspection of certain boilers in order to see that the boilers were in a fit condition to be worked. One of the boilers exploded and caused loss of life and injury to a person, the accident being due to the fact that the crown stays of the boiler were badly corroded, some of them having disappeared altogether. If the accused had carried out his duty of inspecting the boiler from time to time, all possibility of the accident would have been avoided. During a departmental inquiry into the cause of the accident, the accused produced a Dak Despatch Book in order to prove that he had submitted periodical reports of his inspection of the boiler to his superior officer. He also relied on certain entries made by him in a private book to show that he had reported on the condition of the crown stays. The entries in the Dak Despatch Book and the private book produced by the accused were suspected to be forged and the accused was put on his trial on three different charges : (1) under Ss. 304-A, 337 and 338 for neglect of duty resulting in the bursting of the boiler and causing loss of life and injury to person, (2) under Ss. 465, 471 or in the alternative under S. 193, Penal Code, for having forged entries in his private book with the object of inducing the officer who was holding an inquiry to form an erroneous opinion, and (3), under S. 477-A of the Penal Code, for falsifying Dak Despatch Book. He was convicted under the first and second heads but was acquitted on the third: *Held*, (1) that the neglect of the accused resulting in bursting of the boiler and the subsequent forgeries with the object of screening himself from criminal liability and in order that he might be retained in his employment, were part of the same transaction within the meaning of S. 235, Cr. P. C., and that there was consequently no misjoinder of charges; (2) that the bursting of the boiler being due to the neglect of duty of the accused, and that the accused having forged the entries in the private book with the object of being retained in employment, his conviction on the first and second charges was justified. *Woodward v. Emperor*.

27 Cr. L. J. 257 :
92 I. C. 433 : 18 S. L. R. 199 :
A. I. R. 1925 Sind 233.

———S. 304, Part I—*Benefit of doubt—Case on border line between murder and culpable homicide not amounting to murder—Doubt as to intention—Accused should be given benefit of this doubt.*

Where the injury results in death and the case is on the border line between an intention to cause injury merely likely to cause death

PENAL CODE ACT (XLV OF 1860)

and an intention to cause injury such as is sufficient in the ordinary course of nature to cause death and it is not free from doubt that the accused had the latter of these two intentions in attacking the deceased, he must be given the benefit of this doubt and he must be held to have intended merely to cause injury likely to cause death. The offence committed by him is, therefore, culpable homicide not amounting to murder. *Emperor v. Nga Kyank Scin.* 39 Cr. L. J. 114 : 172 I. C. 179 : 10 R. Rang. 230 : A. I. R. 1937 Rang. 443.

———S. 304, Part I—*Conviction under—Accused injuring deceased's leg above ankle with dah—Bones and arteries cut—Deceased dying—Offence held one under S. 301, Part I.*

Where the intention of the accused was to cut the deceased on the leg, and the cut inflicted was quite low down near the ankle, a man who directed a blow in this direction as a general result would be a man who did not intend to cause injury sufficient in the ordinary course of nature to cause death, because most cuts on the legs are not injuries sufficient in the ordinary course of nature to cause death. Though the blow was delivered with great force, and cut the bone and arteries, and even residents in the jungle must be held to know that a violent blow of this nature with a formidable weapon was likely to cause death wherever the blow may fall, no intention higher than this could be imputed against the accused. His conviction, therefore, under S. 302, Penal Code, must be altered to one under S. 304, Part I. *Abor Ahmed v. The King.* 39 Cr. L. J. 244 : 173 I. C. 87 : 1937 Rang. 393 : 10 R. Rang. 305 : A. I. R. 1938 Rang. 17.

———S. 304, Part I—*Culpable homicide—Magistrate empowered under S. 30, Cr. P. C., if can try case.*

A Magistrate empowered under S. 30, Cr. P. C., is not legally competent to try either the offence of murder or the offence of culpable homicide not amounting to murder punishable under the first part of S. 304, Penal Code. *Emperor v. Shamira.* 27 Cr. L. J. 846 : 95 I. C. 766 : A. I. R. 1926 Lah. 576.

———S. 304, Part I—*Offence under.*

Old man going about drunk causing nuisance to *harar* sellers—Exchange of words with accused—Accused picking up fire-wood and striking on head of the old man—Causing of death—Offence held, fell under S. 304, Part I. *Nga Shwe Dun v. Emperor.*

34 Cr. L. J. 1182 : 146 I. C. 191 : 6 R. Rang. 76 : A. I. R. 1933 Rang. 270.

———S. 304, Part I—*Sentence.*

A sentence of transportation for life for an offence under S. 304, Part I, is too severe in a case where the accused had a right of self-defence and is punished only for having exceeded it. *Mustafa v. Emperor.*

33 Cr. L. J. 587 : 138 I. C. 418 : 33 P. L. R. 282 : I. R. 1932 Lah. 490 : A. I. R. 1932 Lah. 344.

PENAL CODE ACT (XLV OF 1860)

———S. 304, Parts I and II—*Conviction under second part—Sudden blow on head with dang on provocation resulting in death.*

The accused, whose sister had disappeared, went to a *panchayat* which was being held in the village with the object of laying his grievances before them. The person who was suspected of having abetted her disappearance happened to be present there and the accused, after asking him about the whereabouts of his sister, gave him two blows on the head with a *dang* that he carried, and as a result of the injuries, the victim died. The accused was convicted under the first part of S. 304, Penal Code: *Held*, that the circumstances of the case established only an offence under the second part of S. 304 and the conviction under the first part of the section could not be maintained. *Sunder Singh v. Emperor.* 31 Cr. L. J. 43 : 120 I. C. 182 : 11 L. L. J. 52 : A. I. R. 1929 Lah. 180.

———S. 304, Parts I and II—*Culpable homicide.*

Where on a sudden quarrel the accused on the spur of the moment and without premeditation struck a blow with a *chhavi* on the head of the complainant which resulted in the latter's death; *Held*, that since there was motive for causing death and the accused did not intend to cause death or to cause such bodily injury as was likely to cause death, he could not be convicted of the offence under Part I of S. 304, Penal Code, but that since he knew that a blow on the head with a *chhavi* was likely to cause death, his offence fell within the 2nd part of S. 304, Penal Code. *Kunda Singh v. Emperor.* 15 Cr. L. J. 178 : 22 I. C. 754 : 3 P. L. R. 1914 : 4 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 151.

———S. 304, Parts I and II—*Scope of.*

The first part of S. 304, Penal Code, applies where there is guilty intention and the second part applies where there is no such intention but there is guilty knowledge. *Ifatulla v. Emperor.* 32 Cr. L. J. 598 :

130 I. C. 884 : 35 C. W. N. 456 : 58 Cal. 1138 : I. R. 1931 Cal. 404 : A. I. R. 1931 Cal. 345.

———S. 304, Part II—*Accused going to deceased's place and picking up quarrel—Free fight—Deceased struck on head with stick dying—Offence, held was committed under S. 304, Part II.*

Where the accused went to the place of the deceased in order to pick up a quarrel, and in a free fight which took place between them, the accused struck the deceased on the head with a stick causing thereby his death: *Held*, that the accused had no right of private defence. *Ibrahim v. Emperor.*

39 Cr. L. J. 401 : 174 I. C. 137 : 10 R. Pesh. 58 : A. I. R. 1938 Pesh. 10.

———S. 304, Part II—*Applicability.*

The second part of S. 304, Penal Code,

PENAL CODE ACT (XLV OF 1860)

refers only to cases in which the offender has no intention of injuring any one in particular. *Nga Tun v. Emperor*.

17 Cr. L. J. 335 :

35 I. C. 511 : A. I. R. 1916 L. Bur. 63.

———S. 304, Part II—*Extenuating circumstances*—*Held, on facts that accused could be convicted under S. 301, Part II, but there being extenuating circumstances, sentence of five years was reduced to two and half years.*

The deceased and the accused were neighbours. One day the accused's father began to dig a water channel close to the wall of the deceased's house. The deceased begged him to dig it a little distance away so as to avert any danger of his wall collapsing. This request led to an altercation and the father of the accused and the deceased grappled with each other. While they were doing so, the accused came up with an iron rod with which the water-course was being dug and seizing it with both hands struck a blow on the deceased's head. The deceased fell down and died: *Held, that the accused must be credited with the knowledge that this heavy iron rod was likely to cause death. He could, therefore, be rightly convicted under Part II of S. 304 Penal Code. However, in the circumstances of the case, the sentence of five years' rigorous imprisonment was unnecessarily severe. There was no antecedent enmity between the parties. The quarrel arose very suddenly. The choice of weapon was fortuitous and was not one which indicates any real intention to kill or to cause serious injury and this young man saw his father grappling with another man and to that extent there was some provocation to him to commit the act he did. These were extenuating circumstances, and taking them all into consideration, the sentence of five years' rigorous imprisonment should be reduced to two and a half years.* *Sadhu v. Emperor*.

39 Cr. L. J. 927 :

177 I. C. 642 : 40 P. L. R. 935 : 11 R. L. 350 :

A. I. R. 1938 Lah. 618.

———S. 304, Part II—*Knowledge* — *Death caused by kicking on abdomen—Knowledge, presumption of.*

Presumably everybody knows that the abdomen is a most delicate and vulnerable part of the human body, and if a man with that knowledge kicks the abdomen with such violence as to cause fracture of two ribs and rupture of the spleen which was normal, he should be presumed to have done so with the knowledge that by so kicking he was likely to cause death. *Mansel Pleydell v. Emperor*. 27 Cr. L. J. 977 :

96 I. C. 641 : A. I. R. 1926 Lah. 313.

———S. 304, Part II—*Knowledge* — *Lethal blow—Knowledge of likelihood of causing death—Presumption.*

When a person chooses to lay about with a *lath*, it being a *lethal* weapon, with all the force at his command, it must be

PENAL CODE ACT (XLV OF 1860)

presumed that he knew he was likely to cause death. *Ghulam Muhammad v. Emperor*.

27 Cr. L. J. 569 :

94 I. C. 137 : A. I. R. 1926 Lah. 426.

———S. 304, Part II—*'Knowledge'*.

Only one blow with a hatchet was struck suddenly in circumstances which were in doubt. There was probably no intention in the mind of the accused either to kill or to cause a fatal injury: *Held, that the act was sudden, and it was more proper under the circumstances to impute to him 'knowledge' rather than 'intention'. The offence, therefore, would fall more probably under S. 304, Part 2, Penal Code, than under S. 302 or S. 304, Part I.* *Ghulam Hyder Imam Baksh v. Emperor*. 39 Cr. L. J. 460 :

174 I. C. 497 : 31 S. L. R. 480 : 10 R. S. 254 :

A. I. R. 1938 Sind 63.

———S. 304, Part II—*Offence under.*

Accused suspecting fidelity of wife, beating her in merciless manner and determined nature—Large number of injuries—No bones broken—Hands and feet only used—Wife dying—Offence held, fell under S. 304, Part II. *Nur Mohammad Roshen Din v. Emperor*.

35 Cr. L. J. 65 :

146 I. C. 326 : 34 P. L. R. 933 :

6 R. L. 210 : A. I. R. 1933 Lah. 883.

———S. 304, Part II—*Offence under—Act done with knowledge that death would result—Superstitious belief, whether justification for act.*

Accused, the parents of a child, offered the child to the crocodiles in a tank in the belief that, though the child would be taken away, it would be returned unharmed, and thereafter would lead a charmed life, and attain to a good old age: *Held, that as the accused were possessed by a superstitious belief, there was no intention of causing death to the child, but inasmuch as what they did, they did with the knowledge that their act would result in the death of the child, they were guilty of the offence punishable under the last clause of S. 304, Penal Code.* *Emperor v. Bharat Bipari*.

22 Cr. L. J. 526 :

62 I. C. 414 : 33 C. L. J. 179 :

25 C. W. N. 676 : A. I. R. 1921 Cal. 501.

———S. 304, Part II—*Offence under—Attack on old man with lathi—Offence.*

Accused attacked a weak old man violently with a *lathi* causing five fractures on different parts of his body as the result of which he died: *Held, that the accused must have known that the injuries caused by him were likely to result in death and he was, therefore, guilty of an offence under S. 304, Part II, Penal Code.* *Rajindar Singh v. Emperor*.

25 Cr. L. J. 409 :

77 I. C. 489 : A. I. R. 1923 Lah. 516.

———S. 304, Part II—*Offence under—Common intention to cause only grievous hurt—Only one serious blow on head and other injuries of slight nature—Accused held guilty only under second part of S. 304 and not under first part.*

The common intention of the assailants was

PENAL CODE ACT (XLV OF 1860)

only to cause grievous hurt; there was only one serious blow on the head and the other blows on the head and the other parts of the body were of a comparatively slight nature: *Held*, it cannot be held that the assailants intended to cause the death of their victim or to cause such bodily injury as was likely to cause death. The case, therefore, fell within the purview of the second part of S. 304 and not under the first part. *Ala Singh v. Emperor*.

A. I. R. 1935 Lah. 80.

-----S. 304, Part II—Offence under—Death caused by beating.

Accused four in number, gave a severe beating to the deceased with blunt and sharp-edged weapons, as the result of which, he died. The injuries caused to the deceased were numerous, but they were nearly all bruises and abrasions, mostly on the legs and arms and none of them individually amounted to more than simple hurts: *Held*, that the accused were not guilty of murder but they must be deemed to have known that by giving the deceased such a beating as they did, they were likely to cause his death and that, therefore, they were guilty of an offence under S. 304, Part II, Penal Code. *Bel v. Emperor*.

27 Cr. L. J. 29:

91 I. C. 61: 2 Lah. Cas. 111:

7 L. L. J. 524: A. I. R. 1925 Lah. 621.

-----S. 304, Part II—Offence under—Injuries on non-vital parts—Death caused by septic poisoning.

Accused attacked the deceased and inflicted four injuries on him, none of which was on a vital part, and death resulted because of septic poisoning: *Held*, that the act of the accused fell within the definition contained in the second part of S. 304, Penal Code. *Nga Po Chet v. Emperor*.

25 Cr. L. J. 489:

77 I. C. 889: 2 Bur. L. J. 239:

A. I. R. 1924 Rang. 212.

-----S. 304, Part II—Offence under.

No intention to cause death or bodily injury likely to cause death—Death—Offence committed under S. 304, Part II. *Chhotey Lal v. Emperor*.

35 Cr. L. J. 58:

146 I. C. 452: 10 O. W. N. 482:

6 R. O. 122: A. I. R. 1933 Oudh 269.

-----S. 304, Part II—Offence under—Sudden fight—Knife stab causing death—Dangerous weapon.

A dispute having arisen between the accused and another person about drawing water from a tap, they abused each other and the accused drew out his knife and stabbed the latter with it. The knife pierced the chest and cut the heart causing death. The knife had a blade of three or four inches, and the Counsel for the accused contended that it was not a dangerous weapon: *Held*, (1) that a knife which actually caused the fatal injury was undoubtedly a dangerous weapon; (2) that the accused did not intend to cause death or to cause such injury as was likely to cause death; (3) that, however, he must have known that he was likely to cause death and was, therefore, guilty of an offence under S. 304, Part II, Penal Code. *Khan Mir v. Emperor*.

25 Cr. L. J. 1289:

82 I. C. 361: A. I. R. 1925 Lah. 148.

PENAL CODE ACT (XLV OF 1860)

-----S. 304, Part II—Offence under.

Where there was a quarrel between the accused and his father and the former suddenly getting enraged struck the latter in the heat of passion and caused three or four injuries: *Held*, that the conviction might be altered to one under S. 304, Part II, Penal Code. *Wali v. Emperor*.

34 Cr. L. J. 1173:

146 I. C. 172: 34 P. L. R. 330:

6 R. L. 180: A. I. R. 1933 Lah. 664.

-----S. 304, Part II—Sentence—Death caused by single blow—Offence.

Deceased was sitting with certain enemies of the accused watching an entertainment. The accused struck him a blow on the head with a *lathi* which caused his death: *Held*, (1) that the accused was guilty of an offence under S. 304, Part II of the Penal Code; (2) that the appropriate sentence under the circumstances of the case was one of five years' rigorous imprisonment and that a fine was uncalled for. *Lal Singh v. Emperor*.

25 Cr. L. J. 655:

81 I. C. 143: 5 L. L. J. 180:

A. I. R. 1925 Lah. 111.

-----Ss. 304, Part II, 325—Benefit of doubt—Culpable homicide, and grievous hurt—Evidence of identification.

Where 6 men attacked with sticks an owner of a field, who had an illegal intimacy with a woman closely related to them, and they also attacked his two companions, while the three were asleep in his field at midnight in moonlight and though the assailants were seen and recognized by one of the companions who had seized one of the assailants and only released him when struck on the head, after addressing him by name and entreating him not to beat, and though they were also seen and recognized by another person awakened by the noise of the blows, the former and the latter gave names of only four and five, respectively to the Chief Constable, and where the Police Patel, to whom they also gave the names, did not mention them in his first report nor in the second one made about the death of the owner, who died in a speechless condition in the morning, and the Police Patel also prevaricated in the Court as to whether any and what names were mentioned, while the other companion said he had not recognized the assailants: *Held*, that as only one assailant was fairly recognized, only that assailant was guilty of culpable homicide or of grievous hurt; and that the evidence against the rest being hardly sufficient safely to justify a conviction, they should be given the benefit of doubt and acquitted. *Emperor v. Kana Gowa*.

10 Cr. L. J. 344.

-----Ss. 304, Part II, 325—Culpable homicide or grievous hurt—Dang blow on head causing death—Skull not fractured—Offence.

In most instances a man who strikes a person on the head with a heavy weapon such as *dang*, must know that such a blow is likely to cause death. But this cannot be said about the case where the blow is not a very violent one and the injured person is able to walk about for a couple of days before he

PENAL CODE ACT (XLV OF 1860)

succumbs to the injury. In such a case, the offence committed is one under S. 325, Penal Code. *Mehr Shah v. Emperor*.

29 Cr. L. J. 24 :
106 I. C. 440.

———Ss. 304, Part II, 325—*Culpable homicide or grievous hurt—Held on facts that offence fell under S. 325.*

The deceased struck the accused a blow with a hockey stick on the thigh and then the accused struck only one blow with a stick on the head of the deceased. Up to that point the accused merely appeared to have wished to give an ordinary beating with stick to the deceased and an ordinary beating was all that seemed to have required by the motive suggested for the attack: *Held*, that it could not be assumed in the circumstances of the case that the accused intentionally struck a blow which he knew was likely to cause death. The offence did not, therefore, fall under S. 304, Part II, but one under S. 325. *Radha Kishen v. Emperor*. 40 Cr. L. J. 261 :

179 I. C. 880 : 11 R. L. 642 :
[A. I. R. 1938 Lah. 714.

———Ss. 304, Part II, 326—*Intention to cause death, absence of, effect of—Death caused by one lathi blow on head—Offence.*

A blow on the head with a lathi inflicted with medium violence is not, under ordinary circumstances, an act likely to cause death, and where death is caused by such blow, in the absence of intention to cause death, it is safer and sounder to convict the accused under S. 326 rather than S. 304, Part II, Penal Code. *Khewna v. Emperor*.

30 Cr. L. J. 378 :
115 I. C. 66 : I. R. 1929 Lah. 322 :
A. I. R. 1929 Lah. 37.

———Ss. 304, 99, 300, Excep. 2, 302, 362—*Culpable homicide not amounting to murder—Abduction of debtor by peon of creditor—Debtor stabbing peon—Offence—Right of private defence—Excess of right—Culpable homicide not amounting to murder.*

The accused owed some money to a money-lender. The latter sent two peons armed with lathis and kirpans to collect the dues. They met the accused and insisted on his accompanying them to their master, and on his refusal to do so, dragged him along. On the way the accused stabbed one of the peons in the abdomen and the peon died on the next day: *Held*, that the seizure of the accused by the peons and their dragging him fell within the provisions of S. 302, Penal Code, and constituted abduction and the accused was consequently not guilty of murder but was guilty under S. 304, of culpable homicide not amounting to murder. *Daroga Lohar v. Emperor*.

32 Cr. L. J. 84 :
127 I. C. 837 : 11 P. L. T. 381 :
I. R. 1930 Pat. 741 :
A. I. R. 1930 Pat. 347.

———Ss. 304, 149—*Duty of Court—Sentence—Adequacy—Ultimate consequences to be considered.*

PENAL CODE ACT (XLV OF 1860)

In considering the adequacy of a sentence, a Court should take into account the ultimate consequences of the acts committed by the accused and not merely their immediate results. *Bhusan Chandra Hazra v. Kanai Lal Addya*.

28 Cr. L. J. 6 :
99 I. C. 38 : 44 C. L. J. 208 :
A. I. R. 1927 Cal. 73.

———Ss. 304, 300, Excep. II, 302—*Offence under—Fatal wound inflicted during fight—Offence—Murder—Culpable homicide not amounting to murder.*

A savage enmity had been growing up for some time between the two accused and the deceased and his brother who were their next door neighbours. On a certain evening, acts of aggression had been committed on both sides and after challenges to come out and fight had passed from one house to the other, an encounter took place in front of the two houses, in the course of which, injuries were inflicted and suffered on both sides. At some stage of this encounter, one of the accused ran into the ante-room of his own house and was followed there by the deceased who was armed with a lathi. A sharp struggle then occurred just inside the entrance door and in the course of that struggle, the former, with his spear, inflicted upon the deceased a wound of which the deceased expired almost immediately: *Held*, that the act of the accused was not completely covered by the provisions of law relating to the right of private defence, but that it fell within the second Exception to S. 300, Penal Code, and that he was, therefore, guilty of an offence under S. 304 of the Code. *Har Sarup v. Emperor*.

26 Cr. L. J. 1320 :
89 I. C. 264 : A. I. R. 1925 All. 753.

———Ss. 304, 302—*Culpable homicide—Fracturing skull with stone—Abuse and quarrel—Sudden impulse.*

Where the accused during the progress of a quarrel between his wife and sister-in-law, on taking the part of his wife, was abused by his sister-in-law, and picking up a heavy lump of limestone struck her on the head with it, as a result of which her skull was fractured and she died: *Held*, that the accused acted on the impulse of the moment and had no intention of killing the deceased and was guilty of an offence under S. 304, Penal Code, and not of one under S. 302. *Ganesh v. Emperor*.

25 Cr. L. J. 800 :
81 I. C. 320 : A. I. R. 1925 All. 4.

———Ss. 304, 304-A—*Offence under Part II—Person possessed of spirit beaten to death—Beating inflicted for casting out spirit—Offence.*

One Musammat Naro had a shrine in her house and people visited that house and played at being "possessed" by spirits. One Musammat Paro came there and began swaying about in front of the shrine. Haku accused asked her who she was and she replied that she was a *churail* from the Mathiana pond. The customary remedy applied for "possessed" persons was to beat them. The accused inflicted

PENAL CODE ACT (XLV OF 1860)

ed severe blows on her, and as a result of all this, *Musammal Paro*, a young woman of strong, stout and well-nourished body died of shock: *Held*, that the offence committed was one under S. 304, Part II and not one under S. 304-A, Penal Code. *Haku v. Emperor*.

30 Cr. L. J. 239 :
114 I. C. 438 : I. R. 1929 Lah. 278 :
10 Lah. 555 : 30 P. L. R. 611 :
A. I. R. 1928 Lah. 917.

———Ss. 304, 323—*Benefit of doubt—Hurt—Culpable homicide—Proof—Police putting pressure on witnesses.*

The accused was convicted of an offence under S. 304, Penal Code, for having stabbed a person with a knife. The occurrence took place between 8 and 9 p. m. in a lane in the City of Lahore. It was dark except for a street lamp in the neighbourhood. It appeared that there were at least five men struggling with the deceased and it was difficult to be sure that the witnesses could in fact see who stabbed the deceased. It was found 'that great pressure had been brought by the Police to bear on the witnesses to make them give evidence as desired.' The Chief Court set aside the conviction under S. 304, I. P. C., and altered it to one under S. 323, Penal Code. *Shib Das v. Emperor*.

7 Cr. L. J. 321 :
9 P. L. R. 211 : 3 P. W. R. 3 Cr.

———Ss. 304, 323—*Culpable homicide and hurt—Cattle trespass—Beating given to owners of cattle.*

The party of the accused, into whose field cattle belonging to the party of the complainant's had trespassed, beat some of the owners of the cattle with the intention of chastising them. There was no intention to cause death or grievous hurt but one of the owners of the cattle was hit by one of the accused on the temple and died as a result of the injury: *Held*, (1) that the particular accused who hit the deceased on the temple with a *lathi* must be taken to have intended to cause such hurt as would, in the ordinary course of nature, cause death and that he was consequently guilty of an offence under S. 304, Penal Code; (2) that the other accused could not be held liable for the blow which had caused the death of the deceased and that they were, therefore, only guilty of an offence under S. 323, Penal Code. *Har Prasad Singh v. Emperor*.

26 Cr. L. J. 1160 :
88 I. C. 520 : 2 O. W. N. 465 :
A. I. R. 1925 Oudh 482.

———Ss. 304, 323—*Culpable homicide or hurt—Constant ill-treatment—Severe beating—Death due to shock—Offence.*

Where the accused who subjected her daughter-in-law to a continuous ill-treatment, gave her a severe beating on the day previous to her death, and the medical evidence showed that the death was due to "shock from several blows on an un nourished girl suffering from chronic lung disease": *Held*, (1) that the accused did not intend or contemplate the death of the deceased as a result of the beating that was inflicted on her and was not, therefore, guilty of an offence under S. 304, Penal Code; (2) that under the circumstances of the

PENAL CODE ACT (XLV OF 1860)

case, the accused was guilty of an offence under S. 323, Penal Code. *Emperor v. Chanda*.

26 Cr. L. J. 470 :
85 I. C. 150 : A. I. R. 1925 All. 126.

———Ss. 304, 325—*Culpable homicide—Joint attack by several persons—Offence.*

Where several persons jointly attack another with *lathis* fracturing his skull and inflicting a number of other injuries which result in his death, they are all equally guilty of culpable homicide even though it may be possible to prove which of them inflicted the fatal blow. *Ghulam Hussain v. Emperor*.

24 Cr. L. J. 673 :
73 I. C. 769 : A. I. R. 1924 All. 78.

———Ss. 304, 325—*Culpable homicide or grievous hurt—Attack by two men—Death caused by blow on head—Offence.*

The accused, two in number, gave a beating to the deceased with *jatras*. One of the blows struck the deceased on the head, fractured his skull and killed him, but it was not possible to say which of the accused had caused the fatal injury: *Held*, that neither of the accused could be convicted of the offence of culpable homicide under S. 304, Penal Code, but that both of them were guilty of an offence under S. 325 of the Code. *Dalip Singh v. Emperor*.

26 Cr. L. J. 757 :
86 I. C. 341 : 7 L. L. J. 44 :
A. I. R. 1925 Lah. 318.

———Ss. 304, 325—*Culpable homicide and grievous hurt—Attack with chhavis and sticks—Death caused by chhavi blow—Offence.*

The accused, three in number, two of whom were armed with *chhavis* and the remaining one with a stick, on a slight provocation, attacked the deceased and caused injuries to him. One of the accused who was armed with a *chhavi* used the blade of the *chhavi* in attacking the deceased, and the other accused who had a *chhavi* in his hand used the blunt end of the stick and refrained from using the blade. The deceased died as a result of the *chhavi* blow: *Held*, (1) that the accused who used the blade of the *chhavi* was guilty of an offence under S. 304 (ii), Penal Code; (2) that the remaining two accused must be presumed to have intended at least to cause grievous hurt and were, therefore, guilty of an offence under S. 325, Penal Code. *Indar Singh v. Emperor*.

26 Cr. L. J. 598 :
85 I. C. 822 : A. I. R. 1923 Lah. 326.

———Ss. 304, 325—*Culpable homicide or grievous hurt—Attack with dangs—Death caused by single blow.*

Accused, three in number, attacked the deceased with *dangs* causing two grievous hurts and one simple hurt. One of the grievous hurts amounted to the fracture of the skull of the deceased and resulted in his death. There was no evidence as to which of the accused gave the blow upon the head of the deceased [which caused his death]: *Held*, that none of the accused could be convicted of an offence under S. 304, Part II, Penal Code,

PENAL CODE ACT (XLV OF 1860)

but that all of them were guilty of an offence under S. 325 of the Code. *Jhandu v. Emperor*.

26 Cr. L. J. 653 :

85 I. C. 941 : 6 L. L. J. 268 :

1 Lah. Cas. 414 : A. I. R. 1924 Lah. 555.

—Ss. 304, 325—*Culpable homicide or grievous hurt—Blows struck by several accused—Conviction.*

Where death is caused by blows struck to the deceased by several accused persons and it cannot be made certain which blow was struck by any individual accused, the conviction should be under S. 325 and not under S. 304, Part II, Penal Code. *Jahana v. Emperor*.

17 Cr. L. J. 451 :

36 I. C. 131 : 109 P. L. R. 1916 Cr. :

45 P. W. R. 1916 Cr. :

A. I. R. 1916 Lah. 251.

—Ss. 304, 325—*Culpable homicide or grievous hurt—Exchange of words between parties—Accused attacking with intention of beating—Medical evidence connecting death with injuries wanting—Offence.*

There was an exchange of words between the accused and the deceased. The accused seven in number attacked the deceased with the intention of giving him a beating. The deceased received two incised trivial wounds and three contused wounds sufficient to stun him. There was no medical evidence on the record that the death was due to the injuries: *Held*, that the accused could not be convicted for an offence under S. 304, but were guilty under S. 325, Penal Code, only. *Sohan Singh v. Emperor*.

30 Cr. L. J. 917 :

118 I. C. 433 : I. R. 1929 Lah. 769 :

A. I. R. 1929 Lah. 178.

—Ss. 304, 325—*Culpable homicide or grievous hurt—Infliction of injuries—Absence of knowledge that injuries were likely to cause death—No intention to cause death or injury likely to cause death—Death only an indirect consequence of the injuries—Conviction, whether to be under S. 304 or 325, Penal Code.*

The accused who were several in number, assaulted another and though they had the latter entirely at their mercy, inflicted only a severe beating breaking the bones of his arms and hands. There was no evidence to prove that the accused had any intention to kill, but blood poisoning took place owing to toxic absorption from the blood and the victim died two months after the beating: *Held*, that the accused could not, under the circumstances, be convicted under S. 304, Penal Code, but were guilty only of an offence under S. 325 of the Code. *Bhure Khan v. Emperor*.

28 Cr. L. J. 401 :

101 I. C. 177 : 4 O. W. N. 337 :

2 Luck. 433 : A. I. R. 1928 Oudh 36.

—Ss. 304, 325—*Culpable homicide or grievous hurt—Intention to cause grievous hurt—Death—Offence.*

Where in a fight, several accused attacked the deceased with *lathis* and killed him and it was proved that the common intention of

PENAL CODE ACT (XLV OF 1860)

the accused was not to cause death or such injury as was likely to cause death but only to cause grievous hurt, and the evidence left a doubt as to which of the accused struck the fatal blow: *Held*, that the accused were guilty of an offence under S. 325, Penal Code, and not under S. 304 of the Code. *Chandan Singh v. Emperor*.

19 Cr. L. J. 150 :

43 I. C. 438 : 16 A. L. J. 11 :

40 All. 103 : A. I. R. 1918 All. 209.

—Ss. 304, 325—*Culpable homicide or grievous hurt—Unpremeditated attack—Provocation—Offence, nature of.*

Where two persons on receiving provocation delivered an unpremeditated attack on the deceased but it was not known who struck the fatal blow: *Held*, that both were guilty of an offence under S. 325, Penal Code. *Ramzan v. Emperor*.

21 Cr. L. J. 3 (a) :

54 I. C. 51 : 2 P. W. R. 1920 Cr. :

9 U. P. L. R. Lah. 22 : 5 P. L. R. 1920 :

A. I. R. 1920 Lah. 91.

—Ss. 304, 325—*Grievous hurt or culpable homicide—Assault by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt.*

Three persons attacked a fourth with *lathis*, and one of the assailants struck a blow which fractured the skull of the person attacked and caused his death, but the evidence left it in doubt as to which of the three assailants struck that blow: *Held*, that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder. *Emperor v. Bhola Singh*.

5 Cr. L. J. 130 :

I. L. R. 29 All. 282 : 27 A. W. N. 51 :

4 A. L. J. 207.

—Ss. 304, 325, 326—*Culpable homicide or simple hurt—Death caused owing to enlarged spleen.*

Where a person dies as the result of simple injuries owing to the facts that his spleen is diseased and it is not shown that the accused had knowledge of this fact, he can only be convicted of causing simple hurt. *Bhajan Das v. Emperor*.

24 Cr. L. J. 421 :

72 I. C. 533 : A. I. R. 1924 Lah. 218.

—Ss. 304, 326—*Culpable homicide or grievous hurt—Wound caused by accused not cause of death—No intention of causing death—Conviction should not be under S. 304.*

Where the wound caused by the accused on the arm of the deceased was not an act done with the intention of causing death nor with the intention of causing such bodily injury as was likely to cause death, and death was not the natural result of the act, the *post mortem* examination having revealed that death was due to gangrene: *Held*, that conviction under S. 304, Penal Code, could not be upheld but must be altered to one under S. 326. *Harnam Singh v. Emperor*.

37 Cr. L. J. 1079 :

165 I. C. 146 : 38 P. L. R. 203 :

9 R. L. 218 : A. I. R. 1936 Lah. 833.

PENAL CODE ACT (XLV OF 1860)

—S. 304, 436—Offences under, if established—Fire to building—Conviction under S. 436—Proof, nature of—“Ordinarily used,” meaning of—Attack on village Chamars—Child deserted by Chamars in chaupal—Accused setting fire to chaupal—Death of child.

Certain villagers were convicted under Ss. 304 and 430, Penal Code, for having made an attack on the chamars of the village, resulting in the destruction by fire of their *chaupal*, and the death of a child therein. It appeared that on being attacked, the chamars fled from the spot and left the child inside the *chaupal*. There was no evidence that the *chaupal* was ordinarily used as a human dwelling or for one of the other purposes specified in S. 430. Nor did the accused know that the child was inside when they set fire to it: *Held*, that under the circumstances, no offence under S. 304 or S. 430, Penal Code, had been established. *Khanjan v. Emperor*.

25 Cr. L. J. 1190 :
82 I. C. 54 : A. I. R. 1924 All. 781.

—S. 304, Cl. 1—Offence under—Grave and sudden provocation—Deceased striking accused's child for no cause—Accused losing self-control and striking with dah—Death as a result of gangrene—*Held*, offence falls under S. 304, Cl. (1).

The deceased who was accused's brother-in-law struck his child aged only one year merely because it resented its toy being taken away. On this the accused lost self-control and struck the deceased with a *dah*. The deceased died as the result of gangrene setting in one of the wounds caused: *Held*, that the act of the deceased was such as would rouse much resentment in the mind of any father as to amount to grave and sudden provocation and the offence was that of culpable homicide not amounting to murder punishable under the first clause of S. 304. *Nga Paw v. Emperor*.

38 Cr. L. J. 103 :
165 I. C. 911 : 9 R. Rang. 229 :
A. I. R. 1936 Rang. 526.

—Ss. 304 (1), 302—Sudden and grave provocation—*Held* on facts that offence fell under S. 304 (1) and not under S. 302.

At about 10 o'clock at night the accused saw a man going out of the *chaubara* where his wife was at the time. He pursued him but the latter ran away. He enquired from his wife who he was and she instead of replying to the question, abused him, whereupon he picked the *chhura* which was lying close by and killed her: *Held*, that the accused acted under grave and sudden provocation and his offence was not murder but fell under S. 304, Part I, Penal Code, *Abdul Khanan Walamir v. Emperor*.

40 Cr. L. J. 868 :
184 I. C. 186 : 12 R. L. 177 :
42 P. L. R. 42 : A. I. R. 1939 Lah. 436.

—S. 304 (2)—Scope of—Striking blow on the head on slight provocation—Death caused—Conviction under S. 304 (2) is proper.

Being enraged at the deceased's report to the headman that the accused had stolen gram from his threshing ground, the accused attacked the deceased and dealt him several

PENAL CODE ACT (XLV OF 1860)

blows on the body and he died on account of the only blow received on the head: *Held*, the accused who dealt that blow was guilty under S. 304 (2) and under S. 325. *Jawahara v. Emperor*. A. I. R. 1923 Cal. 416.

—S. 306—Abetment—Suicide—Sati.

A Hindu died leaving a widow who announced her intention of becoming a *sati*. The accused, some of whom were relations of her husband, dissuaded her and sent a *chaukidar* to the Police *Thana* eight miles away to inform the Police. Before the Police could arrive, the accused carried the corpse to the burning *ghat*, and built the pyre under the orders of the widow. They gave some *ghi* to the widow which she poured over the pyre and over herself. The pyre was then burnt and consumed both the corpse and the widow, but there was nothing to show who lighted the fire: *Held*, that the accused were guilty of abetting suicide. *Ramdial v. Emperor*.

14 Cr. L. J. 634 :
21 I. C. 682 : 36 All. 26 : 11 A. L. J. 997.

—S. 306—Abetment.

Widow burning herself on husband's funeral pyre—Accused desiring her to become *sati* and arranging for cremation of body in village—Abetment of suicide is committed. *Kinder Singh v. Emperor*. 34 Cr. L. J. 1069 :
145 I. C. 880 : 1933 A. L. J. 7 :
6 R. A. 181 : A. I. R. 1933 All. 160.

—S. 307.

See also (i) Evidence Act, 1872, S. 105.
(ii) Penal Code, 1860, Ss. 114,
140, 201, 300, Cl. (1), 302.

—S. 307—Attempt to murder—Inference of intention from surrounding circumstances.

Where the accused armed with a *chhavi* and a pistol set upon another when he was asleep and pursued him when he ran away and one of them fired four pistol shots at him while the other caused an injury with a *chhavi* which necessitated the amputation of his arm and it was only because the noise attracted the neighbours that the culprits were unable to cause greater injury and it was providential that three out of the four pistol shots missed the victim: *Held*, that upon the facts the intention of the accused was to cause the death of the victim and the accused were guilty under S. 307, Penal Code. *Gopi Chand v. Emperor*.

31 Cr. L. J. 1071 :
126 I. C. 573 : 11 Lah. 460 :
A. I. R. 1930 Lah. 491.

—S. 307—Attempt to murder—Intention—Wounding in neck with knife.

The wounding of a person with a knife in the neck only $\frac{1}{4}$ th of an inch from the carotid artery, is an act so imminently dangerous that it must, in all probability, cause death. *Alexander Ruffe v. Emperor*.

13 Cr. L. J. 197 :
14 I. C. 197 : 24 P. W. R. 1912 Cr. :
6 P. R. 1912 Cr.

PENAL CODE ACT (XLV OF 1860)

————S. 307 — *Attempt to murder—Poison administered—Small quantity of poison—Offence.*

Accused sent some sweetmeats containing arsenic to A with the intention of causing her death, B and C also shared the sweetmeats with A and although all three of them became ill, none of them died; *Held*, (1) that the accused was guilty of an attempt to murder not only A but also B and C; (2) that the mere fact that the amount of arsenic was not sufficient to cause the death of A made no difference. *Ladha Singh v. Emperor.*

22 Cr. L. J. 194 :
60 I. C. 50 : 3 U. P. L. R. Lah. 12 :
A. I. R. 1921 Lah. 108.

————S. 307—*Attempt to murder, what constitutes.*

The act which is punishable under S. 307 of the Penal Code, must be an act which is itself capable of causing death. A person can be convicted under S. 307, Penal Code, only if he has done the last proximate act necessary to constitute the completed offence of murder and the completion of the offence is only prevented by some cause independent of his volition. *Nga Waik v. Emperor.*

24 Cr. L. J. 850 :
74 I. C. 1042 : 1 Rang. 209 :
2 Bur. L. J. 76 : A. I. R. 1923 Rang. 251.

————S. 307—*Benefit of doubt—Attempt to murder, what constitutes.*

The house of the accused who was suspected of having committed murder was surrounded by the Police and the outer door of the house was locked by them from the outside. Immediately after the door was closed, a shot was fired through a hole in the door. The accused was charged and convicted for an offence under S. 307, Penal Code, for having fired this shot while the Police were trying to secure him; *Held*, that the conviction under S. 307, Penal Code, was illegal inasmuch as the shot might have been fired simply to frighten the Police or by some of the other inmates of the house and the accused was entitled to the benefit of the doubt. *Muhammad Khan v. Emperor.*

29 Cr. L. J. 518 :
109 I. C. 342 : 9 L. L. J. 331 :
A. I. R. 1927 Lah. 853.

————S. 307—*Benefit of doubt—Infliction of many incised wounds on head—Inference—Murderous intent.*

A culprit who inflicts 10 incised wounds on the body of a person, most of which are aimed at his head, must be credited with murderous intent. Where several persons profess to be eye-witnesses and standing at a short distance from the scene of the crime fail to explain satisfactorily why none of them did not come to the rescue of the injured man, the probability is that they did not see the assault. In such a case, the evidence of the complainant should be accepted with reservations and the benefit of the doubt should

PENAL CODE ACT (XLV OF 1860)

be given to those against whom it is not sufficiently corroborated. *Gayan Singh v. Emperor.*

16 Cr. L. J. 462 :
29 I. C. 94 : 13 P. W. R. 1915 Cr. :
132 P. L. R. 1915 : A. I. R. 1915 Lah. 462.

————S. 307—*Burden of proof.*

Accused firing off a fire-arm while Police Officer attempts to arrest him—Defence of absence of intention to shoot Police Officer—Burden of proof is on the accused. *Yashpal v. Emperor.*

35 Cr. L. J. 573 :
147 I. C. 1193 : 6 R. A. 629 :
55 All. 681 : A. I. R. 1933 All. 627.

————S. 307—*Conviction under, propriety of.*

Held, after considering evidence, that accused could not be convicted under S. 304 but conviction under S. 307 would be proper. *Emperor v. Sheo Narain Singh.*

37 Cr. L. J. 12 :
158 I. C. 945 : 1935 O. W. N. 1177 :
1935 O. L. R. 630 : 8 R. O. 148 :
A. I. R. 1936 Oudh 44.

————S. 307—*Conviction under, when justified.*

To justify a conviction under S. 307, it is not essential, that actual injury capable of causing death should have been inflicted. *Rameshwar v. Emperor.*

36 Cr. L. J. 534 :
154 I. C. 697 : 1935 O. W. N. 311 :
7 R. O. 488 : A. I. R. 1935 Oudh 281.

————S. 307 — *Evidence — Doubt — Blood-stains on clothes—One person accused at Thana and another at the spot.*

Where in a case under S. 307, Penal Code, A and B were named at the Thana as the assailants, but when the Police went to the spot, the name of C was substituted for that of B and the only eye-witness said that he saw their backs as they ran; *Held*, that the accused could not be convicted on such evidence; the mere fact of there being blood-stains on the clothes would not suffice the evidence of the trackers being by no means infallible. *Shera v. Emperor.*

14 Cr. L. J. 196 :
19 I. C. 196 : 14 P. W. R. 1913 Cr. :
67 P. L. R. 1913.

————S. 307—*Ingredients of offence under—Intention, importance of—Nature of hurt committed, whether guiding consideration.*

The important point to be considered in a case under S. 307, Penal Code, is the intention or knowledge of the accused and also the circumstances under which the offence was committed; the nature of the hurt committed is not necessarily a guiding consideration as to the applicability of the section to the act of the accused, and even if the act is not attended by any result so far as the person assaulted is concerned, still there may be cases in which the culprit would be liable under the said section. *Mutalli v. Emperor.*

31 Cr. L. J. 782 :
125 I. C. 183 : A. I. R. 1930 Lah. 253.

PENAL CODE ACT (XLV OF 1860)

—S. 307—Intention or knowledge—Conviction under.

In order to support a conviction under S. 307, Penal Code, it is necessary to prove that the accused did the act with such intention or knowledge that if he had caused death by that act, he would have been guilty of murder. *Pir Mohammad v. Emperor*.

25 Cr. L. J. 308 :
76 I. C. 1028 : A. I. R. 1923 Lah. 415.

—S. 307—Intention to cause murder—Presumption.

The accused in the course of a quarrel with her sister-in-law and in a fit of anger flung her child three years old, into a pond, 4 feet deep on the edge of which her house was situated and at the same time gave expression to a wish that the death of the child should rest as a curse on the woman with whom she was quarrelling : *Held*, that the circumstances gave rise to a presumption that the intention of the accused was to cause death of the child, and that she was, therefore, guilty of an offence under S. 307, although the child was picked up by a stander-by without loss of time. *Emperor v. Nanni Bahu*.

11 Cr. L. J. 48 :
5 I. C. 138.

—S. 307—Offence under—Discharging loaded gun from short distance—Causing injuries which might have proved fatal.

A person intentionally discharging a loaded gun at another from a short distance inflicting injuries which might have proved fatal, is guilty of an offence under S. 307, Penal Code, and not merely of causing grievous hurt. *Public Prosecutor v. Kolangareti Imbichikuttam*.

16 Cr. L. J. 542 :
29 I. C. 670 : A. I. R. 1916 Mad. 629.

—S. 307—Offence under, nature of.

The act contemplated by S. 307, Penal Code, is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events. A blow with a hatchet is not an act ordinarily capable of causing death in the natural or ordinary course of events. Whether a blow with a hatchet is or is not capable of causing such a result, must depend on the particular nature of the blow inflicted. *Marni Vithoba Prabhu v. Emperor*.

14 Cr. L. J. 641 :
21 I. C. 881 : 15 Bom. L. R. 991.

—S. 307—Offence under, what amounts to.

An accused person who shoots at A and wounds B by mistake, would be guilty under S. 307. *Amir Saadat Shah v. Emperor*.

37 Cr. L. J. 25 :
158 I. C. 648 : 8 R. Pesh. 65 :
A. I. R. 1935 Pesh. 74.

—S. 307—Offence under, what amounts to.

Where the accused does an act with such a guilty intention and knowledge and in such circumstances that but for some intervening fact the act would have amounted to murder in the natural course of events, he is guilty of

PENAL CODE ACT (XLV OF 1860)

an offence under S. 307. *Lasudco Balwant Gogte v. Emperor*.

33 Cr. L. J. 613 :
138 I. C. 503 : 56 Bom. 434 :
34 Bom. L. R. 571 : I. R. 1932 Bom. 388 :
A. I. R. 1932 Bom. 279.

—S. 307—Presumption.

Where a pistol was used by the accused with a reckless disregard to consequences against a Police Constable who was chasing him and the bullet remained lodged inside : *Held*, that the presumption of the accused's intention to cause death must be drawn and that he was guilty both under S. 307 and S. 10 (f), Arms Act. *Dhanwantri Durga Das v. Emperor*.

35 Cr. L. J. 171 :
146 I. C. 843 : 34 P. L. R. 672 :
14 Lah. 820 : 6 R. L. 278 :
A. I. R. 1933 Lah. 852.

—S. 307—Scope of—Attempt to murder—Nature of injury caused—Means of ascertaining intention of accused.

It is not essential to justify a conviction under S. 307, Penal Code, that bodily injury capable of causing death should actually have been inflicted. Although the nature of the injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. *Kyaw We v. Emperor*.

9 Cr. L. J. 11 :
4 L. B. R. 311.

—S. 307—Scope of—Causing of injury, if necessary—Intention, proof of—Intention proved—Nature of act is immaterial.

S. 307, Penal Code, may apply even if no hurt is caused. The causing of hurt is merely an aggravating circumstance and it cannot, therefore, be reasonably argued that unless an injury sufficient in the ordinary course of nature to cause death is inflicted on the victim, the intention contemplated by S. 307, cannot be presumed. Under this section, the intention precedes the act and is to be proved independently of the act, and not merely gathered from the consequences that ensue. All that is necessary to be established is the intention with which the act is done, and if once that intention is established, the nature of the act will be immaterial. *Ghulam Qadir v. Emperor*.

38 Cr. L. J. 1052 :
171 I. C. 284 : I. L. R. 1937 Lah. 111 :
10 R. L. 180 : A. I. R. 1937 Lah. 619.

—S. 307—Scope of.

In order to bring an offence under S. 307, the act must be done with the intention or knowledge and under such circumstances that, if death had occurred, the accused would be guilty of murder. *Sharif v. Emperor*.

34 Cr. L. J. 1051 :
145 I. C. 702 : 6 R. L. 123 :
A. I. R. 1933 Lah. 315.

PENAL CODE ACT (XLV OF 1860)

———S. 307—*Scope of—Injury capable of causing death whether should have been actually inflicted—Liability of accused, limitation.*

For the application of S. 307, I. P. C., it is not necessary that the injury capable of causing death should have been actually inflicted. Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder is liable to punishment under S. 307, I. P. C. If the injury is actually inflicted, the nature of such injury may be of considerable assistance in arriving at the finding whether the accused had the intention of causing the death of the victim. The liability of an accused must be limited to the act which he in fact did and should not be extended so as to embrace the consequences of another act which he might have done but did not. *Wazira v. Emperor.*

41 Cr. L. J. 362 :
186 I. C. 764 : 1940 A. L. J. 110 :
12 R. A. 458 : A. I. R. 1940 All. 113.

———S. 307—*Scope of.*

Persons pursued by Police turning round and firing—Bullets not found and nobody hit—Offence committed falls under S. 307. *Sudhindra Kumar Roy v. Emperor.*

34 Cr. L. J. 611 :
143 I. C. 593 : 37 C. W. N. 312 :
60 Cal. 643 : I. R. 1933 Cal. 450 :
A. I. R. 1933 Cal. 354.

———S. 307—*Scope of.*

The act punishable under S. 307, Penal Code, is an act which is itself capable of causing death. The section only applies when the accused has done an act, which if carried to its utmost possible limits without any interference from without, would have caused death. *Jiwandas v. Emperor.*

1 Cr. L. J. 1078 :
30 P. R. Cr. of 1904.

———S. 307—*Sentence.*

In awarding punishment under S. 307, Penal Code, the fact that the accused had contracted the morphia habit and was a very fickle-minded person, may be taken into consideration, although there is no indication of a plainly marked mental aberration. *Alexander Ruffe v. Emperor.*

13 Cr. L. J. 197 :
14 I. C. 197 : 24 P. W. R. 1912 Cr. :
6 P. R. 1912 Cr.

———S. 307—‘Under such circumstances’—*Scope of.*

The expression “under such circumstances” refers to facts which would introduce a defence to a charge of murder. *Vasudeo Balwant Gogte v. Emperor.*

33 Cr. L. J. 613 :
138 I. C. 503 : 56 Bom. 434 :
34 Bom. L. R. 571 : I. R. 1932 Bom. 388 :
A. I. R. 1932 Bom. 279.

———Ss. 307, 324—*Alteration of conviction—Accused drunk and inflicting slight injuries on provocation—Offence.*

Where the accused was drunk when he

PENAL CODE ACT (XLV OF 1860)

inflicted injuries and had both given and received provocation, the injuries were of a trivial nature and he himself had received beating: *Held*, that the conviction under S. 307 should be altered to one under S. 324, Penal Code. *Khuda Bakhsh v. Emperor.*

38 Cr. L. J. 24 :
165 I. C. 909 : 17 Lah. 284 :
38 P. L. R. 630 : 9 R. L. 321 :
A. I. R. 1936 Lah. 914.

———Ss. 307, 324—*Attempt to commit murder—Prima facie case—Commitment, necessity for.*

Where the act of the accused amounted *prima facie* to an attempt to commit murder and the Deputy Magistrate tried it himself: *Held*, that the accused ought to have been committed to the Sessions. *In re : Arumugam.*

11 Cr. L. J. 196 :
4 I. C. 1134 : 5 M. L. T. 257.

———Ss. 307, 326—*Sentence—Accused aiming gun and threatening to shoot a person—Grievous hurt to such person—Conviction under Ss. 307 and 326—Propriety of.*

Where a person aimed his gun at another and tried to shoot him, but in so doing, his gun went off and the person aimed at was grievously wounded and the accused was convicted both of attempted murder and grievous hurt: *Held*, that conviction was not improper as there was nothing incongruous between S. 307 and S. 326, but punishment should be one. *Manghan Khan v. Emperor.*

38 Cr. L. J. 487 :
167 I. C. 943 : 30 S. L. R. 238 :
9 R. S. 213 : A. I. R. 1937 Sind 61.

———Ss. 307, 328, 337, 109—*Offences under—Administering injurious drug or potion rashly in ignorance of its nature or effect—Offence—Attempt to murder—Abolition.*

The 1st accused got a potion from the 2nd accused, her lover, and administered it to her husband to make him less quarrelsome towards her. The 2nd and 3rd accused prepared the potion, knowing that it contained *dhatura*: *Held*, that the act of the 1st accused amounted to an offence under S. 337, Penal Code, and the acts of the 2nd and 3rd accused under Ss. 307 and 109 and 328 and 109, respectively. *Bhagava Giriappa v. Emperor.*

18 Cr. L. J. 443 :
38 I. C. 1003 : 19 Bom. L. R. 54 :
A. I. R. 1916 Bom. 98.

———Ss. 308, 325—*Intention, absence of—Sudden attack suspecting innocent person to be thief—Infliction of severe injuries—No evidence of intention to kill—Conviction for attempt to commit culpable homicide—Legality of conviction—More grievous hurt.*

An old sweeper went out towards the latter part of the night to ease himself and while he was passing a place where the cowdung cakes belonging to the accused's master were kept, the accused, suspecting him to be a thief rushed against him with a *dang* and forthwith struck violent blow on the sweeper's head and arms, and inflicted very severe injuries on him. The Magistrate convicted him of an offence under S. 308, Penal Code: *Held*, that

PENAL CODE ACT (XLV OF 1860)

the accused could not, under the circumstances, be convicted of an offence under S. 308, Penal Code, but only of an offence under S. 325, inasmuch as there was no evidence whatever to show that the accused had any intention of killing the sweeper or knew that he was likely to kill him. *Natha Singh v. Emperor*.

28 Cr. L. J. 619 :

102 I. C. 907 : A. I. R. 1927 Lah. 801.

————S. 309—Attempt to commit suicide.

Severe sentences should not be passed in cases of attempt to commit suicide, where the accused suffers from a bodily affection which is likely to cause him acute mental depression. *Emperor v. Appulsawmy*.

1 Cr. L. J. 477 :

2 L. B. R. 209.

————S. 309—Attempt to commit suicide, what amounts to—Jumping into well to avoid Police.

A person, who jumps into a well in order to avoid and escape from the Police and subsequently comes out of the well himself, and there is no evidence that he jumped into the well to commit suicide, cannot be convicted of an offence under S. 309, Penal Code. *Emperor v. Dwarka Poonja*.

13 Cr. L. J. 240 :

14 I. C. 598 : 14 Bom. L. R. 146.

————S. 309—Sentence.

It is not necessary to inflict a sentence of imprisonment upon a person who, on account of family discord, destitution, loss of a dear relation, or other cause of a like nature, overcomes the instinct of self-preservation and decides to take his life. *Musammal Barkat v. Emperor*.

36 Cr. L. J. 682 :

155 I. C. 283 : 35 P. L. R. 439 :

15 Lah. 872 : 7 R. L. 678 :

A. I. R. 1934 Lah. 514.

————Ss. 309, 312, 511—Attempt to commit suicide—Attempt by woman in advanced state of pregnancy to commit suicide—Child born dead—Offence.

Where a woman driven almost frantic by pains of prolonged labour attempted to take her own life, and in so doing, her infant was born dead: *Held*, that she was guilty of attempting to commit suicide, but that she could not be convicted of attempting to voluntarily cause miscarriage. *Emperor v. Mula*.

20 Cr. L. J. 395 (b) :

50 I. C. 1003 : 17 A. L. J. 478j :

A. I. R. 1919 All. 376.

————S. 317—Abandonment of child—Having the care of such child, meaning of—Person entrusted with custody of child for abandonment, whether 'has care' of child—Offence.

Any person receiving an infant from its mother, on the distinct understanding that the mother never desired or wished to have the child back again, must in law be regarded as a person having the care of that child until he or she has transferred it to the care and custody of some other person or institution. The shortness or temporary nature of the custody is immaterial and any exposure

PENAL CODE ACT (XLV OF 1860)

or abandonment by the person receiving the child is an offence under S. 317, Penal Code. The mother is also guilty of an offence under Ss. 317 and 109, Penal Code, if she hands over the child so that it might be abandoned. *Emperor v. Blanche Constant Cripps*.

18 Cr. L. J. 98 :

37 I. C. 306 : 18 Bom. L. R. 934 :

41 Bom. 152 : A. I. R. 1916 Bom. 135.

————S. 317—Scope of—Abandonment of child—Facts necessary for conviction—Prosecution, duty of—Section, whether applicable to mere neglect or temporary abandonment.

In order to secure a conviction under S. 317, Penal Code, it is incumbent on the prosecution to prove, beyond all reasonable doubt, that the accused had exposed or left a child under the age of twelve years in some place with the intention of wholly abandoning it. That section will not apply to a case of mere neglect or temporary abandonment. If in any particular case there is reasonable doubt as to the intention with which the child was left, the accused is entitled to the benefit of the doubt. *Gitabai v. Emperor*.

21 Cr. L. J. 253 :

55 I. C. 205 : A. I. R. 1920 Nag. 181.

————S. 317—Throwing illegitimate child in bush—Mother giving birth to illegitimate child—Concealing fact—Never showing any solicitude for child—Guilty of offence.

Where a woman, immediately after giving birth to an illegitimate child and throwing it into a thorn bush, walked nearly a mile and a half, gave a false account of her condition to her companions, dispensed with an assistance even after she reached home, denied having given birth to a child when questioned by the Headman next morning and never asked after the child's welfare at any time or showed any solicitude on the subject: *Held*, that the woman was guilty of the offence under S. 317, Penal Code. *Emperor v. Mi Mein Gale*.

15 Cr. L. J. 525 :

24 I. C. 837 : 2 U. B. R. 1914, 5 :

A. I. R. 1914 U. Bur. 22.

————S. 318—Object of.

S. 318 is designed to punish a person for intentionally concealing the birth of the child though she will not escape the consequences of her act if she merely discloses the fact of the birth to some confidant. *Sailabala Dasi v. Emperor*.

36 Cr. L. J. 1460 :

158 I. C. 961 : 39 C. W. N. 990 :

62 C. L. J. 260 : 62 Cal. 1127 :

8 R. C. 216 : A. I. R. 1935 Cal. 489.

————S. 318—Offence under, what constitutes.

The accused being pregnant with an illegitimate child, went to the village jungle for purposes of nature and there, in the presence of another woman, gave birth to a child which died almost immediately. The dead body was left on the spot where the birth took place and was there discovered two or three days afterwards: *Held*, that the mere leaving of

PENAL CODE ACT (XLV OF 1860)

the body where the birth took place did not constitute an offence under S. 318, Penal Code. *Mst. Saraswati v. Emperor.* 2 Cr. L. J. 667 : 1 N. L. R. 89.

-----S. 318—Scope of.

Birth in hospital and known to nurses and others—Case of concealment of birth, held not made out. *Sailabala Dasi v. Emperor.*

36 Cr. L. J. 1460 :
158 I. C. 761 : 39 C. W. N. 990 :
62 C. L. J. 260 : 62 Cal. 1127 :
8 R. C. 216 : A. I. R. 1935 Cal. 489.

-----S. 318—Scope of.

In order to convict a woman of attempting to conceal the birth of her child, the dead body must be found and identified as that of the child of which she is alleged to have been delivered. *Sailabala Dasi v. Emperor.*

36 Cr. L. J. 1460 :
158 I. C. 761 : 39 C. W. N. 990 :
62 C. L. J. 260 : 62 Cal. 1127 :
8 R. C. 216 : A. I. R. 1935 Cal. 489.

-----S. 318 — Scope of—Public place—Leaving the dead body of a child.

Where a person leaves the dead body of a child in a public place near a number of houses, there is "no secret disposition of the body" within the meaning of S. 318, Penal Code. *Abbas Bi v. Emperor.*

12 Cr. L. J. 562 :
12 I. C. 650 : 1911, 2 M. W. N. 379.

-----S. 318—Scope of.

The offence punished by S. 318, Penal Code, cannot be committed unless the child has reached such a stage of maturity at the time of birth that it might have been a living child. *Emperor v. Mi Pyo Nyo.*

3 Cr. L. J. 432 :
U. B. R. Cr. 1905.

-----S. 318—Scope of.

The placing of the dead body of a child on a *batora* (dung heap) quite close to a public road does not amount to a secret disposing of it within the meaning of S. 318, Penal Code. *Emperor v. Bakhtawari.*

14 Cr. L. J. 525 :
20 I. C. 1005 : 26 P. W. R. 1913 Cr. :
328 P. L. R. 1913.

-----S. 319—Knowledge — Dhatura, administration of as love philtre.

When *dhatura* is given to a young girl as a love-philtre with the intention of persuading her to fall in love with the accused and there is no intention to cause hurt to anybody, the act of the accused does not constitute an offence under S. 328, Penal Code, but the accused must be deemed to have had knowledge that the administering of the drug was likely to cause hurt within

PENAL CODE ACT (XLV OF 1860)

the meaning of S. 319 of the Penal Code. *Anis Beg v. Emperor.* 26 Cr. L. J. 413 : 84 I. C. 1053 : 21 A. L. J. 844 : 46 All. 77 : A. I. R. 1924 All. 215.

-----S. 320—Duty of Magistrate—Cases of hurt or grievous hurt.

In cases of hurt, it is the duty of the Magistrate to come to a finding of his own as to whether the hurt was grievous or simple, and for this purpose, to examine the medical officer to ascertain whether the injuries are of any of the kinds specified in S. 320, Penal Code. It is not the business of the Medical Officer to classify a hurt as grievous or simple, but to describe facts, from which the Magistrate will decide whether the hurt is grievous or not. *Po Maung v. Emperor.* 4 Cr. L. J. 202 : 3 L. B. R. 196.

-----Ss. 320, 325—Grievous hurt—Sufferer dying before expiration of twenty days.

The designation in S. 320, Penal Code, of a hurt as grievous which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits, applies only when such effect actually lasts for a period of twenty days, and not when the sufferer dies before that period has expired. *Mahindra Singh v. Emperor.*

26 Cr. L. J. 294 :
84 I. C. 438 : A. I. R. 1925 Lah. 297.

-----S. 321.

See also Penal Code, 1860, S. 323.

-----S. 322.

See also Penal Code, 1860, S. 323.

-----S. 322—Knowledge.

A person who forcibly thrusts a *lathi* into the rectum of another must at least know that he is likely thereby to cause grievous hurt to the victim as the rectum is a very tender part of the human body, even if it be supposed for a moment that he did not thereby intend to cause grievous hurt. *Sital v. Emperor.*

36 Cr. L. J. 1151 :
157 I. C. 370 : 1935 O. L. R. 467 :
1935 O. W. N. 902 : 8 R. O. 18 :
A. I. R. 1935 Oudh 468.

-----Ss. 322, 325—Duty of Magistrate—Voluntarily causing grievous hurt.

A Magistrate or Court dealing with a charge of voluntarily causing grievous hurt must consider and decide not only whether grievous hurt has been caused, but if it has been caused, whether the accused intended or knew himself to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted under S. 325. *Nga Tune v. Emperor.*

16 Cr. L. J. 431 :
28 I. C. 1007 : U. B. R. 1914, II 35 :
A. I. R. 1914 U. Bur. 26.

PENAL CODE ACT (XLV OF 1860)

———Ss. 322, 325—*Intention—Grievous hurt—Nature of injury and circumstances of case—Drunkenness—Question of intent or motive.*

An intent to cause grievous hurt may be inferred from the circumstances of the case and the nature of the injury caused. When a man hits another over the head with a stick hard enough to fracture his skull and endanger his life, he must, in the circumstances, have either intended to cause grievous hurt or known that he was likely to cause it. Drunkenness may be taken into consideration when dealing with the intention or motive to commit an offence in a state of drunkenness. *Nga Po Gyaw v. Emperor.*

13 Cr. L. J. 471 ;
15 I. C. 311 : U. B. R. 1911, I 105.

———S. 323.

See also (i) Calcutta Police Act, 1866, S. 46.

(ii) Cr. P. C., 1898, Ss. 35, 222, 235, 236, 250, 260.

(iii) Penal Code, 1860, Ss. 31, 90, 143, 147, 149, 201, 302, 304, 325, 332

———S. 323—*Acquittal, propriety of—Hurt—Finding that there was altercation and squabble—Offence.*

On an appeal from a conviction under S. 323, Penal Code, the District Magistrate found that there was probably an altercation and squabble between the parties and that only a technical offence had been committed: *Held*, that on this finding the accused should have been acquitted. *Mansa Ram v. Emperor.*

20 Cr. L. J. 303 (a) :
50 I. C. 351 : 6 P. W. R. 1919 Cr. :
A. I. R. 1919 Lah. 128.

———S. 323—*Burden of proof.*

The accused, who were found by the High Court in a previous suit to be in possession of two out of six plots of land claimed by the complainants as theirs, were charged by the complainants for having removed paddy from a particular plot of land belonging to them. The accused pleaded a *bona fide* claim of right. The Magistrate convicted the accused to prove that the onus was on the accused to prove that the paddy alleged to have been taken away was from a plot possessed by them: *Held*, that the burden was on the prosecution to prove that the particular plot concerned was not one of the two plots which were found to be in the accused's possession, and that in the absence of such evidence, the accused could not be convicted. *Bhan Prasad Chaudhury v. Barhamdeo Chaudhury.*

28 Cr. L. J. 760 :
103 I. C. 840 : A. I. R. 1927 Pat. 385.

———S. 323—*Conviction.*

In all ordinary cases of conviction under S. 323, Penal Code, there is a conviction for an offence involving a breach of the peace within S. 106, Cr. P. C., although the desirability of taking security must depend upon how far the circumstances indicate that such

PENAL CODE ACT (XLV OF 1860)

a breach of the peace is likely to recur. *Mewa Lal v. Emperor.*

30 Cr. L. J. 686 :
116 I. C. 789 : I. R. 1929 All. 613 :
1929 A. L. J. 340 : 51 All. 540 :
A. I. R. 1929 All. 349.

———S. 323—*Conviction, legality of—Hurt—Complainant's story disbelieved.*

Complainant charged the accused under S. 323, Penal Code, with specific acts of assault. The Magistrate disbelieved the complainant's story but nevertheless convicted the accused under S. 323 upon the evidence of a constable, who deposed that when he arrived at the scene, he saw the complainant and the accused fighting in the street: *Held*, that the conviction was bad. *Janakidas v. Raghunath Lal.*

19 Cr. L. J. 719 :
46 I. C. 303 : A. I. R. 1918 Pat. 484.

———S. 323—*Conviction, legality of—Prosecution evidence disbelieved—Conviction based on injuries on persons of accused—Whether can be upheld.*

Where in a prosecution under S. 323, Penal Code, the Judge disbelieved the entire prosecution evidence and convicted the accused simply because they bore a number of injuries on their persons: *Held*, that the conviction could not be upheld simply because they bore injuries on their persons. If the Judge wanted to maintain the convictions of the accused, it was incumbent upon him to base the convictions on some evidence apart from the presence of injuries on the persons of the accused. *Hakam Khan v. Emperor.*

38 Cr. L. J. 797 (a) :
169 I. C. 453 : 39 P. L. R. 7 :
10 R. L. 17 (2).

———S. 323—*Conviction under, maintainability of—Criminal trespass—Assault.*

The two petitioners went with a Naib-Nazir of the Civil Court and some peons to execute a decree for ejectment which they had obtained against their sister's husband. On their arrival, the delivery of possession was opposed by the complainant in the case on the ground that the house belonged to her and that she was not a party to the decree. The complainant's husband was not present and the petitioner dragged the complainant out of the house. They were convicted under Ss. 448 and 323, Penal Code: *Held*, (1) that the conviction under S. 448, Penal Code, was illegal inasmuch as the petitioners had entered the house not for the purpose of intimidating, insulting or annoying any person or to commit any offence but to execute a Civil Court decree which they had obtained against one of the occupants of the house; (2) but the petitioners were clearly guilty of an offence under S. 323, Penal Code, inasmuch as the complainant was not a party to the decree, and therefore, the petitioners were not entitled to forcibly remove her. *Abdul Sattar v. Moli Bibi.*

31 Cr. L. J. 1223 :
127 I. C. 551 : 34 C. W. N. 583 :
A. I. R. 1930 Cal. 720.

———S. 323—*Conviction under—Procedure.*

Where the same complainant files a complaint under S. 107, Cr. P. C., and a separate one

PENAL CODE ACT (XLV OF 1860)

against the same persons under S. 323, Penal Code, the former alone should not be transferred to the Court of the Bench Magistrate. *Rameshwar Datt Singh v. Bharath Singh*.

35 Cr. L. J. 417 (2) :
147 I. C. 516 : 11 O. W. N. 75 :
6 R. O. 273 : A. I. R. 1934 Oudh 85.

—S. 323—Conviction under, when justified—Hurt endangering life Right of self-defence and exceeding that right—Knowledge and intention requisite in grievous hurt.

Where a dispute led to a fight with sticks in which both the accused and the deceased were injured but the deceased sustained a rupture of spleen from which he died and where in evidence the prosecution witnesses said the deceased was lying on the ground and the accused was striking him when they came up, while the accused and his servant said that the deceased struck him the first blow: *Held* that the accused's statement agreed with the probabilities of the case; that his knowledge and intention were not proved to have been such as to bring the offence in S. 299, that he exceeded his right of private defence in striking him after he had fallen; and that he was guilty under S. 323, I. P. C. *Emperor v. Vasta Uka*.

1 Cr. L. J. 593.

—S. 323—Husband and wife—Husband, if has general and unqualified right to beat his wife for impudence.

A husband has no general or unqualified right of punishing his wife by beating her for impudence or impertinence. No such general or unqualified right is now-a-days recognised by law, and wife-beating is not *eo nomine* one of the Exceptions in the Chapter of "General Exceptions" in the Penal Code. Although a Judge may be entitled to have his own views on the subject in a private capacity, yet he is not justified in laying down the law in this manner from his seat on the Bench, and declaring in general and unqualified terms that a husband has such a right. *In re: Subbia Goundan*.

37 Cr. L. J. 1153 :
165 I. C. 330 : 44 L. W. 348 :
1936 M. W. N. 895 : 9 R. M. 237 :
A. I. R. 1936 Mad. 788.

—S. 323—Offence under—Public servant, not acting as such, assault on.

A *Tahsildar* was requested to procure some camels for military purpose, he deputed some of his peons to procure the camels, and while they were persuading the owners to take their camels to the *Tahsil*, the accused who was unconnected with the camel owners, assaulted one of the peons. He was tried and convicted under S. 358, Penal Code: *Held*, that the peon was not acting in the discharge of his duty as a public servant, and that the conviction could not be sustained, but as some injury was inflicted by the accused, he was liable to conviction under S. 323, Penal Code. *Gokal Chand v. Emperor*.

22 Cr. L. J. 65 :
59 I. C. 321 : A. I. R. 1920 All. 301.

PENAL CODE ACT (XLV OF 1860)

—S. 323—Offence under, what amounts to.

Naib-Tahsildar going to accused's village and demanding revenue—Beating of *Naib-Tahsildar* by accused's sons—Court considering it not improbable that accused was roughly treated by *Naib-Tahsildar*—S. 332 does not apply—Offence comes under S. 323. *Nuru v. Emperor*.
34 Cr. L. J. 460 :
142 I. C. 897 : 33 P. L. R. 1065 :
I. R. 1933 Lah. 292 :
A. I. R. 1933 Lah. 162.

—S. 323—Offence under, what amounts to.

When deceased had come to make a report about a murder, the accused, who was a Sub-Inspector, thinking that the deceased was concealing some facts, got angry and slapped and knocked him down. The deceased then went to the Police Station and when his report was copied down, came back without any assistance but complaining of great pain. The accused took him to his house. Where it was alleged he was killed and his body, with the aid of others was thrown in a jungle. There was absolutely no evidence at all that the Sub-Inspector at any time used any weapon which could have caused the fracture of the skull. The doctor's evidence showed that the *chaukidar* was a man of about 60 years of age and it might be probable that the fracture of the skull was caused by throwing the body into the ravine after death: *Held*, that in the absence of any direct medical evidence on the point, it was not impossible that death may have been caused by some internal injury inflicted by the Sub-Inspector when he first attacked the deceased. The accused was, therefore, only guilty under S. 323, Penal Code, and not under S. 304, or S. 325: *Held*, however, that an assault upon an old man of 60 made in such a way that death resulted, even if that result was in some way unexpected, was an attack of a very brutal nature calling for the severest sentence for the offence that it was possible to inflict. *Zahid Beg v. Emperor*.

39 Cr. L. J. 364 :
173 I. C. 838 : 1937 A. L. J. 1253 :
10 R. A. 508 : 1937 A. W. R. 1099 :
A. I. R. 1938 All. 91.

—S. 323—Prosecution under—Death of complainant—Right of prosecution, survival of.

A prosecution under S. 323, Penal Code, is a personal action and the right to carry on a prosecution under that section does not survive to the legal representatives of a deceased complainant. *Rama Nand v. Emperor*.

18 Cr. L. J. 688 :
40 I. C. 1008 : 96 P. W. R. 1917 Cr. :
31 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 403.

—S. 323—Prosecution under—Death of person hurt whether causes abatement of prosecution.

A criminal prosecution under S. 323, Penal Code, does not abate by reason of the death

PENAL CODE ACT (XLV OF 1860)

of the person hurt. *Muhammad Ibrahim v. Shaik Dawood.* 23 Cr. L. J. 117 :

65 I. C. 549 : 40 M. L. J. 351 :

13 L. W. 379 : 1921 M. W. N. 227 :

44 Mad. 417 : 30 M. L. T. 349 :

A. I. R. 1921 Mad. 278.

—S 323—Prosecution under, if abates on death — Probate and Administration Act (I of 1881), S. 89—Prosecution for causing hurt — Death of injured person—Prosecution, whether abates.

A criminal prosecution under S. 323, Penal Code, does not abate by reason of death of the person injured. The provisions of S. 89, Probate and Administration Act, are inapplicable to criminal proceedings. *Musa v. Emperor.* 25 Cr. L. J. 1007 :

81 I. C. 719 : 22 A. L. J. 520 :

A. I. R. 1924 All. 666.

—S. 323—Simple hurt—Enlarged spleen, and its rupture by a blow.

Where accused struck the deceased on the left side with a heavy stick, by which his spleen which was very greatly enlarged—weighing 17 oz. instead of 5 or 7—was ruptured and he died, held that the offence was simple hurt. *Emperor v. Jiwa Mala.*

1 Cr. L. J. 298.

—S. 323 Simple hurt, what amounts to.

Where it was found that the object of the assault was not to obtain the restoration of stolen property but that the assault was committed in a fit of anger quite independent of the intention to extract a confession or cause a restoration of stolen property: Held, that the assault did not come under S. 330 but amounted to simple hurt under S. 323, Penal Code. *Satya Deva Swami v. Emperor.*

19 Cr. L. J. 749 :

46 I. C. 525 : 5 P. L. W. 109 :

A. I. R. 1918 Pat. 643.

—Ss. 323, 304, 325 — Simple hurt—Sudden fight between two parties—Death caused by one blow—Absence of conclusive proof.

Where in a sudden fight between certain persons blows of ordinary sticks and of fists were exchanged, and a severe blow was given which fractured the skull bone of one of the persons engaged in the fight and ultimately resulted in his death, but it was not proved conclusively as to who caused the fatal blow nor was there any indication that originally the accused or any member of his party intended or knew it to be likely that any such serious injury would be caused: Held, that the accused could not be convicted of an offence either under S. 304 or 325, but was only responsible for simple hurt, under S. 323, Penal Code. *Dhani Ram v. Emperor.*

14 Cr. L. J. 104 :

18 I. C. 664 : 1 P. W. R. 1913 :

162 P. L. R. 1913.

—Ss. 323, 304, 394, 114, — Hurt—Abettor present when offence committed—Identification.

Where evidence of identification and corro-

PENAL CODE ACT (XLV OF 1860)

boration proved that the accused were in the attacking party, and that they had a common object which might have been simply to beat, and where the beating was sufficient to rupture the deceased's spleen, but there was nothing to show that they thought they were likely to cause his death: Held, that under S. 114, Penal Code, the accused were liable for the blows given to the deceased, but that they were guilty under S. 323 and not under S. 304. *Emperor v. Gata Jeram.* 1 Cr. L. J. 220.

—Ss. 323, 325—Alteration of Conviction, legality of—Prejudice to accused.

The petitioners and one K were convicted by the Trial Court under S. 325, Penal Code, for having broken the knee-cap of the complainant. The Appellate Court found that, so far as the injury to the knee-cap was concerned, that had been caused by the accused K and it came to the conclusion that the petitioners had been guilty of the offence under S. 323, I. P. C., inasmuch as they had inflicted other injuries on the complainant: Held, that the alteration of the conviction of the petitioners from S. 325 to S. 323 by the Appellate Court was unauthorised, inasmuch as they had not been given any opportunity of answering the charge in the first instance of inflicting injuries other than the injury to the knee-cap. *Patal Ghose v. Emperor.*

24 Cr. L. J. 312 :

72 I. C. 72 : A. I. R. 1924 Cal. 532.

—Ss. 323, 325—Benefit of doubt—Accused not intending or knowing it to be likely that he would cause grievous hurt.

The accused, having found that a young man had approached his kept mistress for the purpose of having sexual intercourse with her, thought that he would be justified in teaching him a lesson by giving him a good thrashing. In presence of the villagers he gave him a good beating by kicks and blows, which resulted in his death. The deceased was of a weak constitution and had an enlarged spleen. The accused was thereupon charged with an offence under S. 304. The Jury found him guilty under S. 323. The Sessions Judge disagreed with the Jury and being of opinion that the accused was guilty under S. 325, referred the matter to the High Court under S. 307, Cr. P. C.: Held, that in the circumstances of the case, it was doubtful whether the accused had either intended or knew it to be likely that he would cause grievous hurt, and as the case seemed to be on the border line between Ss. 323 and 325, the accused might be given the benefit of the doubt and should be convicted of an offence under S. 323, Penal Code. *Emperor v. Saberali Sarkar.* 21 Cr. L. J. 666 :

57 I. C. 826 : A. I. R. 1920 Cal. 401.

—Ss. 323, 325—Jurisdiction—Attempt to commit murder—Conviction for voluntarily causing hurt without specific charge—Legality of.

The offence of hurt is included in the

PENAL CODE ACT (XLV OF 1860)

offence of the attempt to commit murder. The Court has jurisdiction to convict the accused of voluntarily causing hurt without a specific charge in that behalf. *Gangabisan v. Emperor*. 38 Cr. L. J. 442 :

167 I. C. 748 : 19 N. L. J. 18 :
9 R. N. 206.

———Ss. 323, 325—*Knowledge—Knowledge to cause grievous hurt essential—Imprisonment, obligatory under S. 325.*

Where a number of accused intended to beat the complainant but grievous hurt was inflicted: *Held*, (1) that it must be proved before any one could be convicted of causing grievous hurt that the common object was the intention to cause grievous hurt or the knowledge that any one of them might likely cause grievous hurt in the course of the beating which they intended to give to the complainant; (2) that the imposition of the punishment of imprisonment on a conviction for causing grievous hurt is obligatory. *In re : Soogoor Basauna Gowd*.

15 Cr. L. J. 192 :
22 I. C. 768 : A. I. R. 1914 Mad. 269.

———Ss. 323, 325—*Sentence, extent of, how to be determined.*

The extent of the proper sentence does not depend entirely or even mainly on the section under which it has to be passed. That had to be decided on the circumstances of the offence. An offence punishable under S. 323, may require and get a much heavier sentence than one punishable under S. 325, Penal Code. *Emperor v. Akosh Kunbi*.

27 Cr. L. J. 1229 :
97 I. C. 1053 : A. I. R. 1927 Nag. 49.

———Ss. 323, 326—*Separate sentence, legality of.*

Separate sentences cannot be passed in law under Ss. 323 and 326, Penal Code, in the case of an assault upon a single person. *Davi Sahai v. Emperor*.

28 Cr. L. J. 662 :
103 I. C. 198 : 1 Luck. Cas. 199 :
A. I. R. 1927 Oudh 313.

———Ss. 323, 332—*Hurt—Excise Inspector searching house—Irrregularities—Hurt caused to Inspector.*

An Excise Inspector, in searching the house of the applicant on the suspicion that he might find there cocaine, committed a number of irregularities in conducting this search. He brought with him only one search witness and directed a constable to scale the outer wall of the house. The accused caused hurt to the Inspector and the constables: *Held*, that the Inspector and the constables were not acting in the discharge of their duties as public servants and that, therefore, the accused were not guilty under S. 332, but only under S. 323, Penal Code. *Mukhtar Ahmad v. Emperor*.

16 Cr. L. J. 495 :
29 I. C. 335 : 13 A. L. J. 439 :
37 All. 353 : A. I. R. 1915 All. 208.

PENAL CODE ACT (XLV OF 1860)

———Ss. 323, 334—*Provocation, if good plea—Blow, striking of, under provocation—Offence.*

It is not correct to say that a person who strikes a blow under provocation commits no offence. *Ghasila v. Emperor*.

27 Cr. L. J. 574 :
94 I. C. 142.

———Ss. 323, 336, 39—*Hurt, voluntary causing of—Stone-throwing—Rash or negligent act causing hurt—Intention—Offence.*

Each case of stone-throwing should be considered on its merits, especially with reference to the knowledge and intention of the accused. S. 386, Penal Code, should not be applied where the facts constitute a graver offence. The accused, who had a quarrel with his debtor over non-discharge of a loan, pelted brick-bats at his house knowing that there were occupants in it, and hurt one of them, who was under medical treatment for 10 days: *Held*, that the accused should be convicted under S. 323, Penal Code, and not under S. 386, as the hurt caused was the natural and probable consequence of his act. *Emperor v. Maung Po Nyan*.

17 Cr. L. J. 465 (a) :
36 I. C. 145 : A. I. R. 1916 L. Bur. 398.

———Ss. 323, 354—*Act in good faith—No offence.*

Where under an order of a Civil Court a peon was deputed to hand over possession of a house to the decree-holder and on his going there to deliver possession, he was told by the daughter-in-law of the judgment-debtor that the latter was not there and she and her husband refused to vacate the house and they were forcibly removed from the house by the applicants: *Held*, that she was wrong in refusing to vacate the house and being bound by the decree, under O. XXI, R. 35, C. P. C., she could, if necessary, be forcibly removed from the house if she refused to vacate: *Held*, also that as for the *dhoti* of the woman getting loose in her struggle, that was no deliberate act on the part of the applicants but that was a direct result of her own violence during the struggle and there was no attempt to violate her modesty. Consequently, the applicants were wrongly convicted of the offences of causing simple hurt and of assaulting a woman with the intention of outraging her modesty. *Baij Nath v. Emperor*.

37 Cr. L. J. 892 :
164 I. C. 99 : 1936 O. W. N. 601 :
1936 O. L. R. 428 : 9 R. O. 38 :
A. I. R. 1936 Oudh 379.

———Ss. 323, 379—*Defence of bona fide claim of right, nature of.*

Where in a prosecution under Ss. 323 and 379, Penal Code, the accused set up the plea of a *bona fide* claim of right, the question whether the right which the accused allege would stand the test in a Court of a Civil Law, is a matter which does not arise at all; what is essential to consider being whether they had established their plea as to their *bona fide* claim of right. *Bhan Prasad Ohaudhury v. Barhamdeo Chaudhury*.

28 Cr. L. J. 760 :
103 I. C. 840 : A. I. R. 1927 Fa. 385.

PENAL CODE ACT (XLV OF 1860)

—Ss. 323, 382—*Scope of—Theft after preparation for causing hurt—Hurt.*

In order to sustain a conviction under S. 382, Penal Code, actual theft must have been committed. Complainant was sleeping on a bed in front of an enclosure containing his cattle and was awakened to find the accused persons round his bed, who threw him to the ground and beat him: *Held*, that the accused were guilty of an offence under S. 323 but not of one under S. 382, Penal Code. *Lal Singh v. Emperor.* 25 Cr. L. J. 386 :

77 I. C. 434 : A. I. R. 1923 Lah. 512.

—Ss. 323, 452—*Separate sentences—Conviction, both under Ss. 323 and 452 for offences committed on same occasion—Separate sentence for each offence, if legal.*

An offence under S. 323, Penal Code, is not necessarily included in one punishable under S. 452. Where, therefore, an accused is convicted for offences both under Ss. 323 and 452, committed on one and the same occasion, separate sentences can be passed for each offence. *Tan Aung Ba v. The King.* 39 Cr. L. J. 487 :

174 I. C. 952 : 10 R. Rang. 454 :
A. I. R. 1938 Rang. 114.

—S. 324.

See also (i) Cr. P. C., 1898, S. 489.

(ii) Penal Code, 1860, Ss. 34, 71, 390.

—S. 324—*Conviction, legality of—Evidence of attack and persons attacking doubtful—Conviction even for hurt is not justified.*

Where the fact of the evidence itself being of a doubtful character, was the determining reason which led the Sessions Judge to reduce the offence to one of hurt under S. 324, I. P. C., there is really no justification for this conviction in view of the unsatisfactory evidence relating to the attack on the deceased and in particular to the persons who took part in it, *In re : Mohideen Richai Rawther.*

41 Cr. L. J. 337 :
186 I. C. 525 : 1939 M. W. N. 879 :
50 L. W. 557 : 12 Mad. 671 :
A. I. R. 1940 Mad. 43.

—S. 324—*'Fracture,' meaning of.*

The primary meaning of the word "fracture" is "breaking," though it is not necessary in the case of a fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack, but if it is a crack, it must be a crack which extends from the outer surface of the skull to the inner surface. *Maung Po Yi v. Ma E Tin.*

38 Cr. L. J. 960 :
170 I. C. 753 : 10 R. Rang. 104 :
A. I. R. 1937 Rang. 253.

—Ss. 324, 307—*Simple hurt—Blow with hatchet—Causing simple hurt.*

The accused struck his wife on her neck with an axe resulting in an incised wound which amounted in law to simple hurt only. He was convicted under S. 307, Penal Code, by the Sessions Judge: *Held*, that, upon the facts of the case, the accused should have

PENAL CODE ACT (XLV OF 1860)

been convicted under S. 324, Penal Code. *Martuti Vithoba Probhu v. Emperor.*

14 Cr. L. J. 641 ;
21 I. C. 881 : 15 Bom. L. R. 991.

—S. 324—*Weapon, nature of—Blow with bamboo stick—Offence, if under S. 324.*

To bring an offence under S. 324, Penal Code, the instrument must be one, not which is "liable," but which is "likely" to cause death, the instrument used, must be one of which one can predicate that the probable result of its use will be, by virtue of its very nature, death. It must be inherent in the nature of the instrument used that death is likely to ensue. Where the injury results from a blow with a bamboo stick, the conviction should be altered to one under S. 323. *Nga Po Nyan v. Emperor.* 38 Cr. L. J. 299 :

166 I. C. 840 : 9 R. Rang. 279 :
A. I. R. 1937 Rang. 8.

—S. 325.

See also (i) Cr. P. C. 1898, Ss. 35, 238 (1), 307, 345, 345 (2).

(ii) Penal Code, 1860, Ss. 34, 76, 90, 143, 147, 148, 149, 201, 302, 304, 323.

—S. 325—*Causing grievous hurt.*

Accused taking away boy for a 'magic worship'—Causing wound on back of neck—Subsequently apologizing and bandaging the wound—Accused *held*, though intended to kill, since he changed his mind, conviction should be altered to less serious offence of causing grievous hurt. *Mullu v. Emperor.*

37 Cr. L. J. 305 :
160 I. C. 525 : 1935 A. W. R. 812 :
8 R. A. 634 : A. I. R. 1935 All. 614.

—S. 325—*Causing grievous hurt.*

Where the accused struck the deceased with a *lathi* on the head and with a single blow caused a fracture of the skull which resulted in death: *Held*, that the accused was guilty at least of an offence under S. 325, Penal Code. *Khidir Bux v. Emperor.*

20 Cr. L. J. 139 :
49 I. C. 171 : 3 P. L. J. 636 :
A. I. R. 1919 Pat. 404.

—S. 325—*Conviction under—Accused causing grievous and simple hurts to same person on same occasion—He can be convicted and sentenced only under S. 325.*

Where an accused has caused grievous and simple hurts to one and the same person on the same occasion, he can be convicted and sentenced only under S. 325, I. P. C., and not also under S. 323, separately. *Permeswar v. Emperor.*

41 Cr. L. J. 775 :
189 I. C. 648 : 1940 O. W. N. 659 :
1940 O. L. R. 491 : 13 R. O. 101 :
A. I. R. 1940 Oudh 419.

—S. 325—*Conviction under, when avails—Liability of members of defending party—Grievous hurt—Death caused by pneumonia six weeks after hurt—Offence.*

Accused gave two blows to the deceased on

PENAL CODE ACT (XLV OF 1860)

his head which partially fractured his skull. The deceased was sent to a hospital and left it some days afterwards, when he was progressing well. A month and a half after the occurrence, he died of pneumonia but it was not shown that the pneumonia was the direct result of the injury to the head: *Held*, that under the circumstances, accused could not be convicted under S. 304, Penal Code, and that the offence fell under S. 325 of the Code. Accused, more than five in number, caused grievous hurt to some of the complainant's party, while attempting to defend their property against the attack of the complainant's party. It was found that the accused had exceeded the right of private defence of property, but it could not be ascertained which of them had caused the grievous hurt: *Held*, that all of them were guilty under S. 325, read with S. 149 of the Penal Code. *Umrao v. Emperor*. 25 Cr. L. J. 693 : 81 I. C. 181 : A. I. R. 1924 All. 441.

—S. 325—Common object—Grievous hurt—Culpable homicide not amounting to murder—More than one person aggressing.

Where six persons, one of whom had an iron-shod *lathi*, came determined to take possession of a *taur* while the deceased was determined to resist them, and the person having the iron-shod *lathi* inflicted the fatal injury on the head of the deceased and thus fractured his skull and killed him: *Held*, that the members of the party were undoubtedly the aggressors and they certainly knew that grievous hurt was likely to be inflicted and came prepared in furtherance of their common object to inflict it. Further, the man who inflicted the fatal injury when he aimed the blow he did, at the deceased's head, knew that there was a likelihood of his death, seeing that he had brought with him such a *lathi*. *Hoshnak Singh v. Emperor*. 9 L. L. J. 529 : 29 P. L. R. 265 : A. I. R. 1927 Lah. 881.

—S. 325—Intention to cause grievous hurt—Blow aimed at woman causing death of child.

Accused attempted to enter a house in order to heat the owner of the house. The latter's wife, who was carrying her infant in her arms, tried to bar accused's passage by shutting the door. The accused forced open the door and aimed a *lathi* blow at the woman which struck the child and killed it. It was found that it was too dark for the accused to have perceived that the woman was carrying a child: *Held*, (1) that the accused could only be convicted of the offence of striking the woman; (2) that inasmuch as the accused used a *lathi* and struck the blow with some force, he must be held to have intended to cause grievous hurt. *Dyal Singh v. Emperor*. 24 Cr. L. J. 4 : 71 I. C. 52 : 5 L. L. J. 228 : A. I. R. 1924 Lah. 47.

—S. 325—Offence under—Attack with sticks—Death caused by beating—Offence—Murder—Culpable homicide—Grievous hurt.

PENAL CODE ACT (XLV OF 1860)

The party of the accused, eighteen in number, armed with *sotas* and *dangs* attacked the party of the deceased, four in number, and inflicted certain injuries on the deceased as the result of which he died. The deceased, sustained injuries on the head, though the skull was not fractured and two of his ribs were fractured. Death was caused by shock due to numerous injuries on the body. One of the companions of the deceased sustained simple hurt and the remaining two only trivial injuries: *Held*, (1) that it could not be said that the common intention of the accused was to cause the death of the deceased, but it must be held that the common intention of the accused was to cause grievous hurt, or that the accused knew that at least grievous hurt was likely to be caused; (2) that the accused were, therefore, guilty of offence under S. 325, Penal Code read with S. 149. *Dadu v. Emperor*. 25 Cr. L. J. 691 : 81 I. C. 179 : A. I. R. 1923 Lah. 43.

—S. 325—Offence under—Death caused by lathi blows in fight.

A trivial quarrel between the party of the accused and the party of the complainant led to a fight in which both sides used *lathis* and one of the men of the complainant's party died as a result of the numerous *lathi* blows received by him: *Held*, that the accused were guilty of offences under S. 325, Penal Code. *Kedar v. Emperor*. 26 Cr. L. J. 76 : 84 I. C. 636 : A. I. R. 1925 Oudh 284.

—S. 325—Offence under.

Where intention was only to cause grievous hurt, but on sudden impulse, accused strikes with *dang* lying near by, offence is only under S. 325 and not under S. 302. *Gama v. Emperor*. 35 Cr. L. J. 1348 : 151 I. C. 390 : 36 P. L. R. 313 : 7 R. L. 122 : A. I. R. 1934 Lah. 335.

—S. 325—Scope of.

In order to frame a charge for grievous hurt under S. 325 there must be evidence to show also that the injured person was in severe bodily pain for 20 days or was unable to carry on his ordinary avocations. *Khair Din v. Emperor*. 32 Cr. L. J. 1254 : 134 I. C. 829 : I. R. 1931 Lah. 1021 : A. I. R. 1931 Lah. 280.

—S. 325—Scope of.

Where it is impossible to decide which of the two accused struck the fatal blow, the offence committed by them falls under S. 325, Penal Code, and not under S. 304. *Waryam Singh v. Emperor*. 24 Cr. L. J. 451 : 72 I. C. 611 : A. I. R. 1922 Lah. 394.

—S. 325—Sentence—Accused hitting deceased with lathi—Deceased not armed—No fighting proved—Sentence of three years held not excessive.

A sentence of rigorous imprisonment for a period of three years is not excessive for a man who has caused the death of another by hitting him with a *lathi*, and is held guilty

PENAL CODE ACT (XLV OF 1860)

under S. 325, Penal Code, especially when the deceased was not armed and that there was nothing in the nature of a fight. *Ajog Narain v. Emperor*. 38 Cr. L. J. 193 :

166 I. C. 369 : 9 R. A. 402 :
1936 A. L. J. 1310 : A. I. R. 1937 All. 14.

—S. 325—Sentence—Offence under—Revision—Fine paid—Interference, if proper.

For an offence under S. 325, a sentence of fine only is not sufficient. But when such is the sentence and fine has been paid, the High Court will not interfere and pass sentence of imprisonment, especially when more than five months have elapsed since the case was settled. *Emperor v. Ghani Shah*. 38 Cr. L. J. 180 (a) :

166 I. C. 343 : 38 P. L. R. 229 :
9 R. L. 360 : A. I. R. 1937 Lah. 131.

—S. 325—Sentence.

Sentence of fine only for offence under S. 325—Sentence irregular but High Court will not interfere under S. 439, Cr. P. C. *Ramchander Rai v. Ram Belas Tewari*. 34 Cr. L. J. 407 :

142 I. C. 624 : 14 P. L. T. 71 :
I. R. 1933 Pat. 161 (1) :
A. I. R. 1933 Pat. 179 (1).

—S. 325—Severe sentence.

Since the torture had resulted in the death of some of the convicts, the accused was sentenced to seven years' rigorous imprisonment, the most severe sentence possible under S. 325, I. P. C. *Chaman Lal v. Emperor*. 41 Cr. L. J. 639 :

188 I. C. 440 : I. L. R. 1940 Lah. 521 :
13 R. L. 41 : A. I. R. 1940 Lah. 210.

—S. 325—Throwing stones causing death—Intention—Sentence.

Where in a fight which is sudden and unpremeditated, the accused throws a stone at the deceased and causes death, he is guilty under S. 325. But as he did not throw the stone deliberately, the sentence of seven years was reduced to four years. *Shan v. Emperor*. 35 Cr. L. J. 1456 :

151 I. C. 968 : 35 P. L. R. 301 :
7 R. L. 231 : A. I. R. 1934 Lah. 111.

—S. 325.

Held, on facts that if the accused go armed with sticks with the intention of beating, the question whether or not they are guilty of causing grievous hurt under S. 325 read with S. 34, Penal Code, is one deserving serious consideration. *Ganda Datta v. Emperor*. 37 Cr. L. J. 715 (b) :

162 I. C. 925 : 8 R. N. 292 :
I. L. R. 1936 Nag. 54 : A. I. R. 1936 Nag. 87.

—Ss. 325, 34—Offence under.

Held on facts that there was no unlawful assembly of five or more persons—Accused held intended to give only sound beating to deceased and that offence fell under S. 325 read with S. 34. *Bhagwati v. King-Emperor*. 40 Cr. L. J. 754 :

183 I. C. 265 : 1939 O. W. N. 662 :
1939 O. L. R. 486 : 12 R. O. 20 :
A. I. R. 1939 Oudh 254.

PENAL CODE ACT (XLV OF 1860)

—Ss. 325, 109—Conviction under—Offence committed murder, intention being only to give beating—Persons not actually committing murder held guilty under S. 325 read with S. 109.

Where the intention of the accused was to give the deceased a beating with *lathis*, but one of them actually commits murder, others in reality abet an offence under S. 325, Penal Code, and are guilty under S. 325 read with S. 109 and though the act of murder committed by one of them was done with the aid of others, it cannot be said that it was a probable consequence of the abetment on their part. *Raja Ram v. Emperor*. 40 Cr. L. J. 14 :

178 I. C. 162 : 11 R. O. 96 :
1938 O. L. R. 469 : 1938 O. W. N. 1057 :
14 Luck. 328 : A. I. R. 1938 Oudh 256.

—Ss. 325, 302—Grievous hurt or murder—Intention and knowledge—Common object—Provocation—Subordinate offenders liable to less punishment.

Three shepherds, on being pursued by the owner of a haystack on which they had been feeding their sheep, made a stand, and as the owner rushed at one of them intending probably to take him to the Police, the others rescued him, while that shepherd, angry at the owner's rough treatment, struck him with his stick. There being no evidence of further beating except the hearing of his voice asking for mercy, and his body having been found some days later devoured by jackals, it could not be ascertained whether he died by that blow or by other blows, if any, dealt by them, but that shepherd's stick was iron-shod and found split while those of the others were not iron-shod and found intact. They were all charged with murder: *Held*, that the offence was really one of grievous hurt, the shepherd having lost his temper, and in the course of the struggle, gave him a blow which probably fractured his skull; that, as the three accused were all fighting, the principal offender's act was done in furtherance of their common object; and that, therefore, they were all guilty, but that the other two, having taken a subordinate part, should be punished less. *Emperor v. Dhana Pancha*. 2 Cr. L. J. 196.

—Ss. 325, 304—Culpable homicide and grievous hurt—Sudden quarrel—Common stick not dangerous weapon.

Where for some cause or other a violent quarrel took place between two parties, in the course of which one's skull was fractured and the other was hurt by sticks, *held*, that the accused were not guilty of culpable homicide but of grievous hurt in the case of the deceased, there being no intention to cause death or any knowledge of the likelihood of death ensuing, and of simple hurt and not of hurt by dangerous weapons in the case of the other, common sticks being not dangerous weapons; but that the ringleader should be punished more severely than the rest. *Emperor v. Kala Kana*. 1 Cr. L. J. 627.

PENAL CODE ACT (XLV OF 1860)

—Ss. 325, 304, Part II—*Alternative conviction, if maintainable.*

A conviction cannot be made under Ss. 325 and 304, Part II in the alternative. If the evidence shows that an offence under S. 304, Part II, has been committed, it is unnecessary to mention S. 325; if the evidence does not show an offence under S. 304, Part II, this section should not be mentioned. *Sadhu Singh v. Emperor*, 34 Cr. L. J. 1210 :

146 I. C. 221 (1) : 6 R. L. 187 (2) :
A. I. R. 1933 Lah. 865.

—Ss. 325, 307—*Grievous hurt—Attempt to murder—Grievous hurt.*

The persons armed with *lathis* made a sudden attack upon a third, beat him to the ground, broke his thigh and ulna bone, struck at nine places and continued to strike after he had fallen on the ground. Only one injury was caused on the head: *Held*, that the accused was guilty of an offence under S. 325, Penal Code, and not of an offence under S. 307 of the Code. *Emperor v. Sher Singh*, 28 Cr. L. J. 266 :

100 I. C. 234 : 8 Lah. 521 :
28 P. L. R. 551 : A. I. R. 1927 Lah. 217.

—Ss. 325, 323—*Conviction under S. 325, legality of—Which of two accused caused grievous hurt, not clear—They cannot be convicted under S. 325 but only under S. 323.*

Where it is not possible to say as to which of the two accused caused the grievous hurt, neither of them can be convicted under S. 325, I. P. C., but both can be convicted only under S. 323. *In re : T. Palaniswami Goundan*, 41 Cr. L. J. 923 :

190 I. C. 490 : 51 L. W. 590 :
1940 M. W. N. 538 : 13 R. M. 412 :
A. I. R. 1940 Mad. 586.

—S. 326.

See also (i) Criminal trial.

(ii) Penal Code, 1860, Ss. 4, 34,
71, 80, 96, 97, 147, 148,
300, 302, 304, 307, 320.

—S. 326—*Causing grievous hurt—Right of private defence exceeded.*

Where the accused were justified in defending one S from the insult and assault of the complainants but used *ekhavis* and caused grievous hurts: *Held*, that they exceeded the right of self-defence which they had by law. *Giyan Singh v. Emperor*, 15 Cr. L. J. 540 :

24 I. C. 948 : 182 P. L. R. 1914 :
19 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 178.

—S. 326—*Conviction, propriety of.*

Deceased and his son attacking accused—Accused attacking them ferociously—Absence of knowledge on accused's part that wounds inflicted would cause death—Conviction under S. 326 is proper. *Teja Singh v. Emperor*, 35 Cr. L. J. 90 :

146 I. C. 420 : 34 P. L. R. 961 :
6 R. L. 224 : A. I. R. 1933 Lah. 733.

—S. 326—*Conviction under, legality of—Fight with sharp weapons—Serious injuries—*

PENAL CODE ACT (XLV OF 1860)

Absence of eye-witnesses—Attempt to murder—Grievous hurt.

Two persons fought with each other with sharp weapons and were so severely wounded that their dying depositions had to be taken. They recovered, however, and each was charged with an offence under S. 307, Penal Code. There were no eye-witnesses to the fight, and each of the accused was convicted on the evidence of his opponent, the corroborative evidence of the wounds and the admission of each of the accused that he was wounded in the fight: *Held*, (1) that if either of the accused had died in consequence of his wounds, it would not have been permissible to convict the other of murder on the facts as established, because he would have been entitled to plead that the case came within Exception 4 to S. 300, Penal Code; (2) that, therefore, neither of the accused could legally be convicted of an attempt to murder under S. 307, Penal Code. *Nga Po Thaik v. Emperor*, 26 Cr. L. J. 409 :

84 I. C. 1049 : 2 Rang. 558 :
A. I. R. 1925 Rang. 133.

—S. 326—*Conviction under, maintainability of—Essentials for conviction under S. 326—Accused held could be convicted only under S. 323.*

An accused cannot be convicted under S. 326, Penal Code, unless the weapon used by him was deadly and the hurt intended or known to be likely to be caused was grievous. Where the injury constituting grievous hurt caused by a stick is a simple fracture of the radius of the arm and there is no evidence as to the size or nature of the stick used, it cannot be said for certain that hurt intended or known to be likely to be caused was grievous. The conviction under S. 326, Penal Code, in such a case is, therefore, unsustainable and the accused can be convicted only under S. 323. *In re : Nataraja Goundan*, 40 Cr. L. J. 827 (a) :

183 I. C. 602 (1) : 49 L. W. 553 :
1939 M. W. N. 414 :
1939, 1 M. L. J. 886 : 12 R. M. 331 (1) :
A. I. R. 1939 Mad. 507.

—S. 326—*Offence under.*

Common intention—Acts done in furtherance of common intention—Trespassing into house for abduction—Causing grievous hurt to pursuers while escaping—Offence is under S. 326. *Photo v. Emperor*, 35 Cr. L. J. 357 :

147 I. C. 264 : 27 S. L. R. 269 :
6 R. S. 140 : A. I. R. 1933 Sind 407.

—S. 326—*Offence under.*

Devil dancers attempting to cure woman by brandishing her with consent of husband—Death of woman from injuries—Husband burying her due to panic and not for shielding devil dancers—Offence of dancers held, to be under S. 326—Sentence on husband under S. 201, held, could be reduced. *Pan Singh v. Emperor*, 36 Cr. L. J. 346 :

153 I. C. 425 : 7 R. A. 501 :
1935 A. W. R. 57 :
A. I. R. 1935 All. 282.

PENAL CODE ACT (XLV OF 1860)

—S. 326—*Offence under—Drunkenness—Intention of person drunk—Inference of intention—Deceased shot—Death after two months—Offence.*

Though drunkenness is no excuse for an offence, no further intention can be ascribed to an accused person on the ground that he was drunk than would be ordinarily ascribed to a person who was sober. Intention, ordinarily speaking, is deduced from the injury actually caused. The accused fired a gun at point blank range at the upper portion of the thigh of his victim causing a serious injury. The deceased was not killed outright but dysentery and festering of wound supervened and he died after a couple of months: *Held*, that the offence committed was one under S. 326, Penal Code. *Zora Singh v. Emperor.*

31 Cr. L. J. 44 :
120 I. C. 183 : 11 L. L. J. 44 :
A. I. R. 1929 Lah. 433.

—S. 326—*Scope of—Grievous hurt—Essence of offence—Jury—Verdict of "guilty but not voluntarily," meaning of—S. 338, conviction under—Causing grievous hurt by rash and negligent act.*

To constitute an offence under S. 326, Penal Code, the act must have been done "voluntarily"—that is of the very essence of the offence. Where an accused person was charged with committing offences under Ss. 304 and 326, Penal Code, and tried before a Jury, and the latter found him not guilty under S. 304, but returned a verdict of "guilty but not voluntarily" under S. 326 and the Judge without asking the Jury to explain the verdict discharged them and then convicted and sentenced the accused under S. 338, Penal Code: *Held*, that the verdict on the charge under S. 326 was in effect a verdict of "not guilty" and the accused was entitled to an acquittal. *Emperor v. Khudiram Das.*

7 Cr. L. J. 362 :
12 C. W. N. 530.

—S. 326—*Sentence—Accused cutting wife's nose without serious provocation—Sentence of nine months held inadequate and enhanced to two years.*

An act of nose cutting is one which imports deliberate design of a particularly brutal and cruel character. The accused cut off the nose of his wife. There was neither a ground for suspicion of the wife's misconduct nor was there any evidence to suggest that there was anything amounting to serious provocation. The accused was sentenced to nine months' rigorous imprisonment: *Held*, that the sentence was inadequate and should be enhanced. (It was enhanced to one of two years.) *Ismail Umar v. Emperor.*

39 Cr. L. J. 928 :
177 I. C. 647 : 11 R. B. 111 :
40 Bom. L. R. 832 :
A. I. R. 1938 Bom. 430.

—S. 326—*Sentence—Nose cutting.*

Where the accused cut off his wife's nose and was convicted under S. 326, Penal Code, and sentenced to rigorous imprisonment

PENAL CODE ACT (XLV OF 1860)

for four years, but on appeal, the Sessions Judge while maintaining the conviction reduced the sentence to imprisonment for two years: *Held*, enhancing the sentence to the full period of four years, that nose-cutting was an offence for which leniency was, ordinarily speaking, quite out of place.

Sikandar v. Emperor. 16 Cr. L. J. 782 :

31 I. C. 382 : 20 P. R. 1915 Cr. :

39 P. W. R. 1915 Cr. :

A. I. R. 1915 Lah. 395.

—S. 326—*Sentence, reduction of—Fact that quarrel during which deceased gets fatal wound is sudden and arises in heat of passion is a mitigating circumstance in favour of the accused.*

The fact that the quarrel which ends in the deceased getting a fatal hurt, was a sudden one, arising in the heat of passion, is a mitigating circumstance in favour of the accused and his sentence should be reduced. *Bhartu v. Emperor.*

30 P. L. R. 582 : A. I. R. 1930 Lah. 311.

—Ss. 326, 109—*Grievous hurt—Motive—Abettor present when offence committed—Hurt person as only one witness.*

A complainant (whose complaint was lodged without delay) alleged that he had been thrown down by both the accused and his nose cut off by accused 1 with a razor. He also assigned a probable motive. There was no other eye-witness, but the accused were seen hurrying away from the scene of the offence. The defence pleaded that the razor had not been found and that their clothes were not blood-stained: *Held*, that, if the complainant was lying on the ground, it was difficult to see how his blood could have flowed on to their dress; that the razor had no doubt, been thrown away before they reached home; and that, as there was, on the other hand, direct evidence of the complainant, supported by a witness, who had seen them hurrying away after the offence, and a motive, the offence was proved, but that the abettor deserved less punishment. *Emperor v. Keshavji Gordhan.*

2 Cr. L. J. 587.

—Ss. 326, 149—*Common object—Common object of number of accused to cause hurt to person—One accused causing grievous hurt with dangerous weapon in prosecution of common object—Liability of others for such act.*

Where the common object of a number of accused was not merely to beat but also to cause hurt, and if in the prosecution of that common object to cause hurt to a certain person, one of them happens to cause grievous hurt, and that too, with a dangerous weapon, the others would certainly be liable for the grievous hurt so caused by reason of S. 149, I. P. C. *In re. Manikyan Kondayya.* 41 Cr. L. J. 898 :

190 I. C. 313 : 1940 M. W. N. 242 :

51 L. W. 484 : 1940, 1 M. L. J. 775 :

13 R. M. 403 : A. I. R. 1940 Mad. 298.

PENAL CODE ACT (XLV OF 1860)

—Ss. 326, 307—*Causing grievous hurt with dangerous weapon—Offence held one under S. 326 and not under S. 307—Fact that if sepsis and gangrene had intervened, it would have endangered life did not bring offence under S. 307.*

Only one stab was given, and there was nothing to show that the injury inflicted was likely, in the ordinary course of nature, to cause death. The medical evidence was only to the effect that if sepsis and gangrene had intervened, it would have endangered life, but this could be said of most injuries caused with sharp weapons: *Held*, that the offence committed by the accused was one of causing grievous hurt by a dangerous weapon and not attempt to murder. *In re : Guruswami Tevan.* 40 Cr. L. J. 922 :

184 I. C. 336 : 1939 M. W. N. 513 :

12 R. M. 435 : A. I. R. 1939 Mad. 780.

—Ss. 326, 320—*Grievous hurt, "dangerous to life"—Wound on neck, whether dangerous—Sentence—Accused young—Blow struck on impulse.*

A wound on the neck inflicted with a sharp-edged weapon must be considered to be "dangerous to life" within the meaning of Cl. 8 of S. 320, Penal Code, and, therefore, 'grievous.' Where the accused was a young-man of 20 and the injury was inflicted on a sudden impulse as a result of a quarrel: *Held*, that a severe sentence of seven years' imprisonment was not called for. *Muhammad Rafi v. Emperor.* 31 Cr. L. J. 77 :

120 I. C. 431 : 11 L. L. J. 519 :

31 P. L. R. 289 : A. I. R. 1930 Lah. 305.

—Ss. 326, 457, 458—*Offences under—House-breaking followed by stabbing—Offences, separate.*

The accused broke into the house of one T. S. at night with intent to commit theft, armed with deadly weapons. On an alarm being raised, they left the house and in the courtyard stabbed one R. S., who tried to seize them, injuring him so that he died later on: *Held*, that as the stabbing was done after the house-breaking was complete, S. 460, Penal Code, did not apply, but that the accused were guilty of offences under Ss. 457, 458 and 326, Penal Code. *Sed Rasul v. Emperor.*

18 Cr. L. J. 350 :

38 I. C. 734 : 27 P. R. 1916 Cr.

A. I. R. 1917 Lah. 349.

—Ss. 326, 511—*Offences under, to cause grievous hurt—Preparation.*

Where the accused pursued the complainant with an axe on his shoulders, and on approaching the complainant actually raised the axe above his shoulder and was rushing at the complainant with the axe so raised and ready for striking when he was seized and disarmed by other persons: *Held*, that the act of the accused was done in the course of an attempt to cause grievous hurt towards the commission of such offence and the accused committed an offence punishable under Ss. 326, 511, Penal Code. *Jiwandas v. Emperor.*

1 Cr. L. J. 1078 :

30 P. R. Cr. of 1904.

PENAL CODE ACT (XLV OF 1860)

—S. 328.

See also (i) Cr. P. C., 1898, S. 179.

(ii) Penal Code, 1860, S. 302.

—S. 328—*Attempt to commit offence under—Attempt to administer poison—Quantity of poison not known—No evidence to prove probable effects of poison—Intention to cause hurt.*

Where the accused was proved to put some powder in the food, which was found by the Chemical Examiner to contain poison, but there was no statement or evidence of the quantity of poison found in the food, or of the probable effects on any one who might have eaten it: *Held*, that the accused could not be held, under the circumstances, to have intended to cause anything more than hurt and could only be convicted of attempt to commit an offence punishable under S. 328, Penal Code. *Mi Pu v. Emperor.*

10 Cr. L. J. 363 :

3 I. C. 721 : 5 L. B. R. 79.

—S. 328—*Duty of prosecution—Poisoning—Circumstantial evidence.*

In a case of poisoning, where the only evidence against the accused is circumstantial, it is the duty of the prosecution to eliminate all reasonable possibility that the poison was administered otherwise than by the appellant. *Ram Gopal v. Emperor.*

25 Cr. L. J. 517 :

77 I. C. 981 : A. I. R. 1923 Lah. 687.

—S. 328—*Offence under, nature of—Offence—Mere administration of drug is not enough—Intent must be proved.*

In order to convict a person of an offence under S. 318, Penal Code, mere administration of the drug will not do. There must also be evidence to show that such administration was with the intent specified in the section and to cause injury to the person to whom it was administered. *Muruga Goundan v. Emperor.*

15 Cr. L. J. 599 :

25 I. C. 351 : A. I. R. 1915 Mad. 56.

—S. 329.

See also Penal Code, 1860, S. 302.

—S. 330.

See also (i) Criminal trial.

(ii) Penal Code, 1860, Ss. 114, 380.

—S. 330—*Conviction, legality of—Direct evidence disbelieved, effect of—Conviction, legality of.*

It is a dangerous precedent to convict a man on evidence of people who are found to be untruthful without any corroboration. *Hare Krishna v. Emperor.* 16 Cr. L. J. 411 :

28 I. C. 795 : 19 C. W. N. 330 :

42 Cal. 784 : A. I. R. 1916 Cal. 98.

—S. 330—*Extortion of confession by causing hurt—Sentence to be deterrent.*

The law clearly draws a very great distinction between simple hurt caused in the ordinary

PENAL CODE ACT (XLV OF 1860)

way and simple hurt caused for the purpose of extorting a confession or making an accused person recover any property. The conduct of causing hurt under S. 330, Penal Code, by a responsible Police Officer engaged in the investigation of a crime is one of the most serious offences known to the law. The result of third degree methods or of actual torture or beating must be that innocent persons might well be convicted, confessions being forced from them which are false. In almost every case in which a confession is recorded in Criminal Courts, it is alleged by the defence that the Police have resorted to methods such as these. It is seldom, however, that an offence of this nature is or can be proved. It clearly is the duty of the Courts when a case of this kind is proved to pass sentences which may have a deterrent effect. *Lal Muhammad v. Emperor*.

37 Cr. L. J. 811 :
163 I. C. 145 : 38 P. L. R. 689 :
8 R. L. 1025 (2) ; A. I. R. 1936 Lah. 471.

———S. 330—Offence under, *what amounts to—Torture applied to suspects to extort information at the orders of Police Officers, when suspects are in their custody.*

A Policeman who stands by acquiescing in an assault on a prisoner committed by another Policeman for the purpose of extorting confession or information leading to the detection of the crime, is guilty of the offence punishable under S. 330 I. P. C. The maxim "Respondent Superior" has no application in such a case. Law does not tolerate the achievement of a lawful purpose by unlawful means, *i. e.*, those which it positively prohibits. The defence of good faith is expressly excluded by S. 79, I. P. C., in regard to a mistake on a point of law. That the Police, in the strenuous task of investigation do, in exceptional cases, succumb to the momentary temptation of employing coercive methods, may well be set down to innate human frailty but it must not be overlooked that it is to restrain such impulses that S. 330, I. P. C., came to be enacted. That section is manifestly directed against Police Officers who, while engaged in the detection of crimes, are prone to subordinate their detective skill to the alluring but treacherous means of torturing the suspects to extract clues to guide their course of investigation. *Dina Nath v. Emperor*.

41 Cr. L. J. 757 :
189 I. C. 591 : I. L. R. 1940 Nag. 232 :
1940 N. L. J. 667 : 13 R. N. 58 :
A. I. R. 1940 Nag. 186.

———S. 330—Scope of—*Assault with object of obtaining confession or restoration of stolen property.*

S. 330, Penal Code, contemplates that there must be immediate connection between the assault and the restoration of the property, *i. e.*, the intention of the person causing the assault must be proved to be to obtain from the person assaulted a confession or restoration of stolen property and there must be no reasonable ground for explaining

PENAL CODE ACT (XLV OF 1860)

the assault otherwise than upon that foundation. *Satya Deva Swami v. Emperor*.

19 Cr. L. J. 749 :
46 I. C. 525 : 5 P. L. W. 109 :
A. I. R. 1918 Pat. 643.

———S. 331—Offence under — *Voluntarily causing grievous hurt to extort confession.*

Where the deceased, who was suspected of having taken part in a theft and was in Police custody, was beaten by the accused Police Officers and the beating resulted in his death: *Held*, that the accused were guilty of an offence under S. 331, Penal Code. *Emperor v. Mian Bakhsh*.

18 Cr. L. J. 710 :
40 I. C. 710 : 12 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 342.

———S. 331—Scope of—*Causing grievous hurt to extort confession—Promise to restore abducted woman—"Demand," meaning of.*

The accused compelled the complainant by causing grievous hurt to him to execute an agreement to restore a woman whom he was alleged to have abducted: *Held*, that the accused could not be said to have committed an offence under S. 331, Penal Code, inasmuch as the extortion of the promise for the restoration of the woman did not amount to the extortion of a confession or information which might lead to the detection of an offence within the meaning of the section. The "demand" referred to in S. 331, Penal Code, must be with respect to property. *Maula Bakhsh v. Emperor*.

24 Cr. L. J. 576 :
73 I. C. 272 : 5 L. L. J. 375 :
A. I. R. 1924 Lah. 167.

———S. 332.

See also (i) Calcutta Police Act, 1860, S. 46.

(ii) Cr. P. C., 1898, S. 108.

(iii) Income Tax Act, 1922, S. 86.

(iv) Penal Code, 1860, S. 99, 147, 225 (b).

———S. 332—Acting in discharge of duty — *Police refusing occupant of house to be present at search—Resistance—Offence.*

Where the Police refuse to allow the occupant to enter the house which is being searched and be present at the time of the search, the Police cannot be said to be acting in the discharge of their duty, and if the occupant causes hurt to a Police Officer in attempting to enter into his house on physical resistance being offered by the latter, the occupant is not guilty of an offence under S. 332, Penal Code, or under any other section of the Code. *Bhikugir v. Emperor*.

34 Cr. L. J. 439 :
142 I. C. 790 : 1932 A. L. J. 530 :
I. R. 1933 All. 147 :
A. I. R. 1932 All. 449.

———S. 332—Applicability.

That S. 332, Penal Code, had no application to the case inasmuch as the cattle were the private property of the canal officials, who

PENAL CODE ACT (XLV OF 1860)

in attempting their rescue, were acting as private individuals. *Hardit Singh v. Emperor*.

12 Cr. L. J. 236 :

10 I. C. 278 : 161 P. L. R. 1911.

———S. 332—Assault in attempt to arrest—Offence—Police Officer—Powers of constable to arrest—Assault in the attempt to arrest.

A constable, investigating a charge of burglary, punishable under S. 457, Penal Code, is empowered to arrest, without an order from a Magistrate or a warrant, persons against whom a reasonable suspicion of having been concerned in the burglary exists. Consequently, a person assaulting the constable in his attempt to arrest suspected persons, is guilty of an offence under S. 332, Penal Code. *Emperor v. Yusuf*. 11 Cr. L. J. 423 :

6 I. C. 956 : 48 P. R. 1910 Cr.

———S. 332—Assault on constable—Discharge of duty.

Where a constable, whose duty was only to watch the accused, was assaulted in the discharge of that duty, the accused knowing at the time that such was the constable's duty : *Held*, that an offence was committed under S. 332, Penal Code. *In re : Mahomed Yakoob*.

11 Cr. L. J. 221 (b) :

6 I. C. 12 : 7 M. L. T. 386.

———S. 332—Assault on constable not acting in discharge of his duties, whether offence.

A constable, purporting to act under an order of the District Magistrate which had ceased to have force, asked the accused to give up their *lathis*. The accused refused to do this and assaulted the constable : *Held*, that the accused could not be convicted under S. 332, Penal Code, inasmuch as the constable was not acting in the discharge of the duty as a public servant. *Madho v. Emperor*.

19 Cr. L. J. 5.

42 I. C. 917 : 15 A. L. J. 813 :

40 All. 28 : A. I. R. 1918 All. 238.

———S. 332—Conviction, illegality of—Conviction for offence under S. 332 by Second Class Magistrate—Alteration of conviction into one for offence under S. 323, legality of.

A conviction by a Second Class Magistrate of an accused person for an offence under S. 332, Penal Code, which is triable only by a First Class Magistrate, is illegal and without jurisdiction. In such a case, when the facts make out an offence under S. 332, Penal Code, it cannot be altered into one for an offence under S. 323. *In re : Arokianadhan*.

29 Cr. L. J. 798 :

111 I. C. 126 : 1928 M. W. N. 465.

———S. 332—Conviction under, legality of—Causing hurt to deter public servant from his duty—Assault with intent to dishonour—Assault on police witness while giving evidence.

An accused person while under trial, struck a Sub-Inspector of Police who was in the witness-box giving evidence against him : *Held*, that the offence of which the accused was guilty in this respect was rather that provided for by S. 355, Penal

PENAL CODE ACT (XLV OF 1860)

Code, than that punishable under S. 332 of the Code. *Emperor v. Altaf Mian*.

6 Cr. L. J. 22 :

27 A. W. N. 186.

———S. 332—Discharge of duty—Meaning of—Discharge of duty, meaning of.

The words "in the discharge of his duty as such public servant" in S. 332, Penal Code, mean in the discharge of a duty imposed by a law on such public servant in the particular case. *Madho v. Emperor*.

19 Cr. L. J. 5 :

42 I. C. 917 : 15 A. L. J. 813 :

40 All. 28 : A. I. R. 1918 All. 238.

———S. 332—Grave and sudden provocation.

Special pass obtained for liquor—Illiterate constable seizing it suspecting absence of certificate—Assault—Provocation held grave and sudden. Sentence reduced. *Nathoo Vijairam Gaoli v. Emperor*.

36 Cr. L. J. 317 :

153 I. C. 211 (2) : 17 N. L. J. 78 :

7 R. N. 126 : A. I. R. 1934 Nag. 247.

———S. 332—Miscellaneous—Police Act (V of 1861), S. 34—Playing cards in street—Offence—Prohibition by constable—Discharge of duty.

Playing cards in the street is no offence under S. 34, Police Act, and therefore, a constable prohibiting people from doing so cannot be said to be acting in discharge of his duty. *Mul Chund v. Emperor*. 27 Cr. L. J. 377 (a) :

92 I. C. 889 : 27 P. L. R. 74 :

A. I. R. 1926 Lah. 250.

———S. 332—Offence under.

Constable assaulted at *Ramlilla* performance—Constable not there in pursuance of duty but only as a spectator—Offence is one under S. 323 and not under S. 332. *Meghraj v. Emperor*.

37 Cr. L. J. 375 :

161 I. C. 12 : 18 N. L. J. 188 :

8 R. N. 205.

———S. 332—Requirements of.

In order to establish a charge under S. 332, Penal Code, it must be established that the Public Officer was acting in the discharge of his duty as a public servant. *Ranjha Mal v. Emperor*.

28 Cr. L. J. 993 :

105 I. C. 817 : 9 L. J. 424 :

29 P. L. R. 284 : A. I. R. 1927 Lah. 706.

———S. 332—Resistance to police making illegal search.

Accused offering resistance to Police making illegal search under S. 165, Cr. P. C., is not guilty of an offence under S. 332, Penal Code. *Emperor v. Brikhbhan Singh*. 16 Cr. L. J. 819 :

31 I. C. 995 : 13 A. L. J. 979 :

38 All. 14 : A. I. R. 1915 All. 430.

———S. 332—Scope of—Non-specification of the particular duty.

To constitute an offence under S. 332, Penal Code, it is not necessary that the duty in which the public servant is employed should be a particular duty imposed expressly by the

PENAL CODE ACT (XLV OF 1860)

law on the particular occasion. *In re: Mahomed Yakoub.*

11 Cr. L. J. 221 (b) :
6 I. C. 12 : 7 M. L. T. 386.

—Ss. 332, 323—*Minor offences—Accused chasing Police Constable—Attack not concerned with actual rescue of arrested person—Offence committed.*

Where the accused chased the Police Constable and beat him very severely, but this attack was not concerned with the actual rescue of the arrested person, they were guilty of the minor offence punishable under S. 323, I. P. C., and not of the offence under S. 332. *Raja Ram v. Emperor.*

41 Cr. L. J. 744 :
189 I. C. 480 : 44 C. W. N. 502 :
13 R. C. 106 : A. I. R. 1940 Cal. 321.

—Ss. 332, 333—*Arresting Police Officers as dacoits.*

Where the accused believed certain Police Officers to be dacoits, who had, in the attempt to escape arrest, used a revolver and thus committed a non-bailable and cognizable offence: *Held*, that they were entitled to arrest the men and keep them in confinement so long as it was necessary for making them over to the custody of Police Officers. *Kishen Lal v. Emperor.*

26 Cr. L. J. 501 :
85 I. C. 245 : 22 A. L. J. 501 :
A. I. R. 1924 All. 645.

—Ss. 332, 333—*Offences under—Intention, importance of.*

Both Ss. 332 and 333, Penal Code, require as an ingredient of the offence the presence of an intention on the part of the accused person, namely, to prevent or deter a public servant from discharging his duty. Where, therefore, the accused persons are unaware of the fact that the persons whom they have confined are public servants, they are not guilty of an offence. *Kishen Lal v. Emperor.*

26 Cr. L. J. 501 :
85 I. C. 245 : 22 A. L. J. 501 :
A. I. R. 1924 All. 645.

—S. 333.

See also (i) Bombay District Police Act, 1890, S. 11.

(ii) Cr. P. C., 1898, S. 165.

(iii) Penal Code, 1860, S. 99.

—S. 333—*Assault on Police—Police Officer aiding another officer outside his jurisdiction—Assault on—Offence.*

A person assaulting a Police Officer engaged in discharge of his duty, is guilty under S. 333, even if such Police Officer may be outside the area of his jurisdiction, aiding another officer. *Khaitro v. Emperor.*

26 Cr. L. J. 1071 :
88 I. C. 15 : 18 S. L. R. 221 :
A. I. R. 1925 Sind 280.

—S. 333—*Injury to constable in self-defence—Constable firing upon rioters in fight.*

A constable, pursuing a number of rioters in order to arrest them after the riot was over, fired upon them, whereupon, some of them turned round and caused him serious injury in order to snatch away his gun. These were

PENAL CODE ACT (XLV OF 1860)

charged with an offence under S. 333, Penal Code: *Held*, that, as the constable exceeded his lawful rights in firing upon the men, the accused exercised only their right of self-defence in snatching away the gun from him and were not guilty of the offence with which they were charged. *Khanun v. Emperor.*

24 Cr. L. J. 201 :
71 I. C. 665 : A. I. R. 1922 Lah. 75.

—S. 333—*Resistance to Police conducting unauthorized search—No offence.*

A person, who resists a Police Officer conducting an unauthorised search outside the limits of his station, is not guilty of an offence under S. 333, Penal Code. *Krishna Ayyar v. Emperor.*

20 Cr. L. J. 145 (b) :
49 I. C. 337 : 24 M. L. T. 96 :
1918 M. W. N. 526 : 8 L. W. 225 :
A. I. R. 1919 Mad. 353.

—S. 334—*Provocation—Crying of counter-slogans held likely to cause provocation, though not grave and sudden.*

The crying of a counter-slogan, that is to say, in praise of the leader of one's own party and not in dispraise of the leader of the other party, in reply to the slogans cried by that party, is likely to cause provocation to its members though not grave and sudden. *Ashraf, Israr-ud-Din v. Emperor.*

40 Cr. L. J. 831 :
182 I. C. 643 : 12 R. Pesh. 8 :
A. I. R. 1939 Pesh. 20.

—Ss. 334, 323—*Grave and sudden provocation—Dangerous weapon—Lathi—Walking cane-stick four feet long and one inch thick, whether dangerous weapon.*

Use of the abusive word 'bugger' in regard to the petitioner who belonged to *bhadralog* class itself, constituted grave and sudden provocation; that the blows that were struck by the petitioner so long as the two were facing each other, were clearly within the exercise of the petitioner's right of private defence against the act of the complainant in raising his fist at the petitioner and taking a step forward with the threat of striking him, which was clearly an assault; that in dealing the blows, which were given when the complainant was running away, the petitioner exceeded his right; that an ordinary walking cane four feet long and one inch thick, was not a dangerous weapon and that the punishment ought to have been a light one; that the petitioner made an untrue statement to his master, the complainant; that the petitioner did not understand the meaning of the offensive word used by the complainant; that the provocation in the present case was neither grave nor sudden; and that provocation could, in every case, be taken into consideration in the matter of sentence. *Banku Behari Dutta v. Emperor.*

14 Cr. L. J. 442 :
10 I. C. 602.

—S. 335—*Deliberate design, what imports—Nose-cutting—Grave and sudden provocation.*

When the particular act, such as nose-cutting, of which the accused is found guilty, is one

PENAL CODE ACT (XLV OF 1860)

which imports deliberate design, the plea of grave and sudden provocation or the excuse it implies, will not have, by any means, the same effect as in the case of a man who in sudden and provoked anger strikes a blow, however serious that blow may be. *Emperor v. Bhagwan Chhogan*.

16 Cr. L. J. 168 :
27 I. C. 552 : 17 Bom. L. R. 68 :
A. I. R. 1915 Bom. 120.

———S. 335 — Plea of self-defence, if available—Sudden provocation.

Where there is a free fight between the accused and the deceased, the accused must accept responsibility for the act done by him and he cannot claim a right of self-defence. *Public Prosecutor v. Panchaksharm*. 39 Cr. L. J. 871 :
177 I. C. 432 : 1938 M. W. N. 605 :
48 L. W. 142 : 1938, 2 M. L. J. 225 :
11 R. M. 323 : A. I. R. 1938 Mad. 723.

———S. 336.

See also Penal Code, 1860, S. 153.

———S. 336—Conviction under, if justified—Stone throwing at back of unoccupied house—Endangering human life or personal safety of others—Mischief.

The accused threw large pieces of brick at the back of the complainant's house. There was no one in the house at the time, the complainant being on the ground in front of the house.

The accused were convicted of an offence punishable under S. 336, Penal Code : *Held*, that there being no evidence in the case that human life or the personal safety of others was endangered by the accused's act, the conviction under S. 336 was not justified. The only defined offence which was applicable to the case was mischief under S. 426. Roof and walls of dwelling-houses are not put up to be pelted with brickbats, and owners have a right to be protected from even dents and marks being made in and on them without their consent. *Ma Nyein Gale v. Nga Sein*.

10 Cr. L. J. 552 :
4 I. C. 293 : 5 L. B. R. 100.

———S. 336—Conviction under, legality of—Temple—Place of public resort.

On the occasion of a festival, a temple becomes a place of public resort, and it is the bounden duty of the person in charge to take all reasonable precautions. Therefore, if he omits to enclose a well in the courtyard standing by the path, which the pilgrims must necessarily take in order to reach the shrine, omits not only to indicate at night its position by lights, but also removes the light placed near the well at the instance of the officers on duty, and consequently a man falls into the well, his conviction under S. 336, Penal Code, will be upheld. *Narsing Charan Mahapatra v. Emperor*.

16 Cr. L. J. 131 :
27 I. C. 195 : 18 C. W. N. 1176 :
A. I. R. 1915 Cal. 295.

———S. 336—Firing gun in air, if offence—Firing gun in air—Rash and negligent act—Attempt to murder or cause grievous hurt.

When riots are taking place in different parts of a town, a man possessing a gun may very

PENAL CODE ACT (XLV OF 1860)

well fire shots just to indicate to would-be mischief-makers that there are arms of defence in the house and that anybody who might be mischievously inclined, might take care of his safety. Such an act would not amount to an offence under S. 336, Penal Code. Merely firing a shot is not punishable as an offence in itself. *Babu Ram v. Emperor*.

26 Cr. L. J. 987 :
87 I. C. 523 : 23 A. L. J. 356 :
47 All. 606 : A. I. R. 1925 All. 396.

———S. 336—Ingredients of offence under—Accused's house stoned by people in neighbourhood—Accused firing shots to frighten them—Held, conviction under S. 336 was wrong.

The accused's house was being stoned and he fired his gun in all directions merely to frighten off and prevent persons who were throwing stones and to prevent their continuing to do so. He was convicted under S. 336, Penal Code : *Held*, that the conviction must be set aside for three reasons : (i) that the firing of the gun was not a rash and negligent act but a deliberate act, and, therefore, S. 336, Penal Code, had no application ; (ii) there was no proof that human life was actually endangered ; and (iii) that *prima facie* no offence was committed because the gun was fired merely to warn the people who were throwing stones and not with the object of hitting them. *Maung Ba Kyi v. Emperor*. 38 Cr. L. J. 897 :
170 I. C. 278 : 10 R. Rang. 74 :
A. I. R. 1937 Rang. 273.

———S. 336—Scope of—Rash or negligent act endangering human life—Driving motor car without spectacles—Offence.

It is a rash or negligent act for a person to drive a motor car without wearing spectacles if his eyesight is really defective. But an omission to wear spectacles at the time of driving the car in every case where a driver may properly use spectacles, would not necessarily render the driver liable under S. 336, Penal Code. It must depend upon the nature of the defect in the eyesight and the necessity for using spectacles in each case. *Abas Mirza v. Emperor*.

19 Cr. L. J. 605 :
45 I. C. 509 : 20 Bom. L. R. 376 :
42 Bom. 396 : A. I. R. 1918 Bom. 230.

———S. 336—Scope of.

S. 336, Penal Code, contemplates a lawful act, but it punishes the same act which is otherwise lawful only if it is done in a rash or negligent manner. A person who deliberately throws brickbats at passers-by and wants to shoot them, and for that purpose, aims a gun and fires shots, is guilty of an attempt at murder or of an attempt to cause grievous hurt with a dangerous weapon of shooting and not merely of an offence under S. 336, Penal Code. *Babu Ram v. Emperor*.

26 Cr. L. J. 987 :
87 I. C. 523 : 23 A. L. J. 356 :
47 All. 606 : A. I. R. 1925 All. 396.

———S. 336—Speedy trial, necessity of—Accident through rash driving.

Cases relating to motor car accidents must be tried without delay. It is improper to try

PENAL CODE ACT (XLV OF 1860)

such a case mouths after the incident when the accused and his witnesses might be entirely unable to reconstruct their recollection as to what had happened. *Sirajuddin Kazi v. Sergeant H. Jenner.* 31 Cr. L. J. 614 : 124 I. C. 70 : A. I. R. 1929 Cal. 776.

———S. 336—What constitutes offence.

The *pujari* of a temple left the temple at night in charge of third person, and while away from the temple, deliberately threw bricks at the temple hoping that the Hindus would believe that the bricks came from the Mussalmans and that thereby the Hindus would be enraged against the Mussalmans and there would be a riot amongst them. He was convicted of an offence under S. 336, Penal Code : *Held*, (1) that the accused could not be convicted of an offence under S. 336, Penal Code, inasmuch as his act was neither rash nor negligent but a deliberate one. *Gaya Prosad v. Emperor.* 29 Cr. L. J. 1088 : 112 I. C. 592 : 1929 A. L. J. 175 : A. I. R. 1928 All. 745.

———S. 337.

See also Penal Code, 1860, Ss. 80, 107.

———S. 337—Applicability of—Causing hurt by act endangering life or personal safety of others—Rashness—Negligence—Intent.

S. 337, Penal Code, applies only to acts done without any criminal intent. Personal injury intentionally caused is neither a rash nor a negligent act. *Emperor v. Nga Shwe Lu.*

1 Cr. L. J. 557 : 6 U. B. R. 1904 : 1st Qr. P. C. 6.

———S. 337—Conviction under, effect of.

Where the driver is convicted under S. 387 as he actually caused hurt to some of the occupants of the bus, it is not necessary that he should be convicted under S. 279 also even if that section is applicable. *Ejaz Ahmed v. Emperor.* 36 Cr. L. J. 1352 : 158 I. C. 305 : 1935 O. W. N. 1026 : 1935 O. L. R. 573 : 8 R. O. 86 : A. I. R. 1936 Oudh 148.

———S. 337—Conviction under—Hakim performing operation on eyelids—Ordinary precautions not taken—Acting rashly and negligently—Hurt—Offence.

The accused, a *hakim*, performed an operation on the outer side of the upper lid of the right eye of the complainant. The instruments used were a pair of scissors and a needle, which would be ordinarily used by a tailor and not by an eye-surgeon. The wound was sutured with an ordinary thread : *Held*, that as there was not the permanent privation of the sight of either eye in consequence of the negligent and rash operation, the accused was guilty of an offence under S. 337, Penal Code, and not under S. 338, Penal Code. *Gulam Hyder Punjabi v. Emperor.* 16 Cr. L. J. 437 : 29 I. C. 69 : 39 Bom. 523 : 17 Bom. L. R. 384 : A. I. R. 1915 Bom. 101.

———S. 337—Conviction under—Shooting blindly with shot gun in dark in direction of

PENAL CODE ACT (XLV OF 1860)

sound heard—Offence, if one under S. 337 or S. 307.

If a man fires blindly in the dark with a shot gun in the direction from which he has heard sounds coming from a distance away, it cannot be held that his act must, in all probability, cause death or such bodily injury as was likely to cause death. Such a person cannot possibly be convicted under S. 307, Penal Code, but he should be convicted under S. 337 thereof. *Mohammad Cassim v. The King.*

39 Cr. L. J. 692 : 176 I. C. 150 : 11 R. Rang. 31 (2) : A. I. R. 1938 Rang. 220.

———S. 337—Offence under, what amounts to.

The administering of an injurious drug or potion to a person to induce love in ignorance of its nature or effect and without care and caution and inquiry as to its properties, which causes serious illness to such person, amounts to an offence under S. 337, Penal Code, and not under S. 307. *Bhagya Giriappa v. Emperor.* 18 Cr. L. J. 443 : 38 I. C. 1003 : 19 Bom. L. R. 54 : A. I. R. 1916 Bom. 98.

———Ss. 337 and 286—Evidence of negligence—Definition—Causing hurt by means of a gun.

The causing of hurt by negligence in the use of a gun would fall within the purview of S. 337 rather than of S. 286, Penal Code. But where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields and that a single pellet from his gun struck a man who was sitting in a field, it was *held*, that this was not sufficient evidence of rashness or negligence to support a conviction under S. 337 of the Code. *Emperor v. Abdus Sattar.* 3 Cr. L. J. 363 : 26 A. W. N. 91 : 3 A. L. J. 332 : I. L. R. 28 All. 464.

———S. 338.

See also (i) Penal Code, 1860, Ss. 279, 428.

(ii) Railways Act, 1890, S. 107.

———S. 338—Act done in good faith—Unsuccessful operation for cataract resulting in loss of sight.

One Suraj Bali operated upon a patient for cataract, with the result that the patient lost the sight of her left eye. It was found, however, that the operation was performed with the consent of the patient, and in good faith and for her benefit, and that it was performed in accordance with the recognized Indian method of treatment for cataract. *Held*, that Suraj Bali had not, on the facts found, committed any offence punishable under the Penal Code. *Emperor v. Suraj Bali.*

7 Cr. L. J. 306 : 28 A. W. N. 91 : 5 A. L. J. 155.

———S. 338—Contributory negligence, effect of—Rash driving of motor car—Motor driving—Driver's duty—Sentence.

In a prosecution for rash and negligent

PENAL CODE ACT (XLV OF 1860)

driving, though contributory negligence is no defence entitling the accused to an acquittal, it is yet a factor which should be taken into consideration in determining the sentence. A person driving a car should always keep it in a state of control sufficient to enable him to avoid running into any passenger who may fail to step off the road, however annoying the dilatoriness of the foot passenger may be to him. *Kanshi v. Emperor*.

28 Cr. L. J. 351 :
100 I. C. 831 : 28 P. L. R. 99 :
A. I. R. 1927 Lah. 165.

—S. 338—Conviction, illegality of—*Rash driving—Motor lorry injuring boy while crossing road—Driver's liability.*

The accused was driving a motor lorry when a little boy apparently in crossing the road, came in contact with the lorry and his left foot was fractured. It was found that the speed was moderate and that the accused was driving on the right side of the road: *Held*, that the accused could not, under the circumstances, be convicted of an offence under S. 338, Penal Code. *Pulin Behari Nandi v. Emperor*.

30 Cr. L. J. 402 :
115 I. C. 96 : 32 C. W. N. 612 :
I. R. 1929 Cal. 320.

—S. 338—Culpable negligence—*Causing grievous hurt by an act which endangers life—Discharging a gun in place where persons were expected to pass.*

Accused, who owned a paddy field in a jungly tract, discharged a gun in the direction of a foot-path, close to his field, through which complainant was passing. The complainant was wounded in his leg and had to be treated in the hospital and his leg amputated. The accused knew that the foot-path was generally used by the public: *Held*, that the accused was guilty of culpable negligence and was rightly convicted under S. 338, Penal Code. *Chandu v. Emperor*.

13 Cr. L. J. 703 :
16 I. C. 511.

—S. 338—Negligence, what amounts to.

From the mere fact that a motorist strikes a person walking on the road, the presumption cannot be drawn that the accident was caused by the motorist's carelessness. Such a presumption is ill-founded as a great many such occurrences are due to accidents. If the car was being driven at an excessive speed, that in itself would be evidence to show that there was negligence. But where the car was being driven at about 20-25 miles an hour, such a speed cannot be said to argue *ipso facto* that there was negligence. *Nga Ohn Saing v. The King*.

40 Cr. L. J. 701 :
182 I. C. 509 : 12 R. Rang. 16 :
A. I. R. 1939 Rang. 209.

—S. 338—Sentence.

Accident due mainly to rashness of accused in driving while drunk—Sentence of

PENAL CODE ACT (XLV OF 1860)

three months with fine of Rs. 150 was reduced to fine of Rs. 100 or in default, three months' rigorous imprisonment. *Chaudhri v. Emperor*.

35 Cr. L. J. 296 :
147 I. C. 122 : 10 O. W. N. 1211 :
6 R. O. 232 (1) : A. I. R. 1933 Oudh 568.

—S. 339—Conviction under, when justified.

To justify a conviction under S. 339, Penal Code, a Court should find that the complainant had a right to proceed along the path and that he was obstructed by the accused from walking over it. *In re : Rama Reddi*.

16 Cr. L. J. 701 :
30 I. C. 749 : 2 L. W. 1035 :
A. I. R. 1916 Mad. 696.

—S. 339—Obstruction in good faith—*Exception—Belief of the accused of his having lawful right to obstruct—Accused is not guilty.*

The defence that the accused is entitled to the exception to S. 339, Penal Code, must be clearly raised. Where the obstruction put up by the accused was put up in good faith because the accused believed himself to have a lawful right to obstruct the complainant from going along the passage: *Held*, that the accused was not guilty of wrongful restraint. *Kali Das Raha v. Deodbari Mistri*.

41 C. L. J. 633 :
30 C. W. N. 192 : A. I. R. 1925 Cal. 1214.

—S. 339—'Obstruction', what is not—*Wrongful restraint—Causing pariahs to stand near a temple—No obstruction under S. 339.*

Causing pariahs to stand in public street in the vicinity of a temple, with the object of preventing the complainant from conducting a religious procession from fear of pollution, does not amount to an obstruction within the meaning of S. 339, Penal Code. *In re : Venkata Subba Reddy*.

11 Cr. L. J. 263 :
5 I. C. 851 : 1 M. W. N. 72.

—S. 339—Offence under, nature of.

Where the complainant, his wife and daughter occupied a house, and during their temporary absence, the accused put a lock on the outer door and thereby obstructed them from getting into the house: *Held*, that the accused was guilty of wrongful restraint. Physical presence of the obstructed is not necessary as an ingredient of the offence of wrongful confinement or of wrongful restraint. To constitute the offence, the obstructor must intend or know or have reason to believe it to be likely that the means adopted would cause the obstruction of the complainant. *Arumuga Nadar v. Emperor*.

11 Cr. L. J. 708 :
8 I. C. 757 : 1 M. W. N. 727.

—S. 339—Scope of—*Licences of boatmen taken away by accused—Boatmen in consequence, not permitted to go beyond a certain stage in the channel by the authorities—Whether accused guilty of wrongful restraint—Intention of Legislature.*

Where the accused took away the licences

PENAL CODE ACT (XLV OF 1860)

from boatmen with the result that the boatmen were not permitted by the authorities to ply their boats beyond a certain stage in the channel: *Held*, that it did not amount to the offence of wrongful restraint under S. 339, Penal Code. S. 339, Penal Code, contemplates obstructions attributable directly to the person charged. The legislature did not intend to include, within the scope of the section an act which, in its remote and indirect consequence, might obstruct the free movement of a person. *In re : Venketaramiah*.

11 Cr. L. J. 192 (a) :
4 I. C. 1117 : 5 M. L. T. 207.

———S. 339—*Scope of—Wrongful restraint—Obstruction to passage of cart—No obstruction to person passing.*

S. 339, Penal Code, requires that the obstruction should be so complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed. The wrong defined by the section is a wrong against the person and is not completed where the person is at liberty to go in any direction he pleases. Therefore, a person cannot be said to be wrongfully restrained, when, though himself unobstructed, he is hindered from driving a bullock-cart through a passage. *Emperor v. Rama Lala*.

14 Cr. L. J. 177 :
19 I. C. 177 : 15 Bom. L. R. 103.

———S. 339—*Scope of—Wrongful restraint, what constitutes.*

The physical presence of the person obstructed at the moment of obstruction is not necessary for the commission of an offence under S. 339, Penal Code. S. 339, Penal Code, covers the case of obstruction to a person who reasonably wants to go in any direction, even vertically upwards if he has a right to do so. But the section does not cover cases where there is no ordinary or special reason for a person to proceed in the direction which is obstructed. *Chhagan Vithal v. Emperor*.

28 Cr. L. J. 1023 :
105 I. C. 111 : 29 Bom. L. R. 494 :
A. I. R. 1927 Bom. 369.

———S. 339—*'Voluntary obstruction,' if wrongful restraint.*

The voluntary obstruction of a vehicle cannot be held to amount to wrongful restraint within the meaning of S. 339. *Durga Pada Chatterjee v. Nilmani Ghose*.

36 Cr. L. J. 740 (1) :
155 I. C. 444 (a) : 39 C. W. N. 143 :
60 C. L. J. 472 : 7 R. C. 586 :
A. I. R. 1935 Cal. 252.

———S. 339—*Wrongful restraint—Landlord and tenant—Tenant holding over, position of—Landlord preventing tenant from entering premises.*

A tenant holding over has a position recognised by the law, and has a right to retain possession of the premises he occupies even against the landlord himself until dispossessed in due course of law. Therefore, where a landlord blocked up the entrance to a tenant's rooms who was holding over and thus prevent-

PENAL CODE ACT (XLV OF 1860)

ed him from entering the rooms: *Held*, that the landlord was guilty of wrongful restraint. *Ghulam Mahomed v. Emperor*.

20 Cr. L. J. 417 :
51 I. C. 193 : 21 Bom. L. R. 261 :
43 Bom. 531 : A. I. R. 1919 Bom. 97.

———S. 339—*'Wrongful restraint,' what amounts to.*

All that S. 339, Penal Code, protects is the obstruction of any person. The section does not cover a case where a person is himself left free to proceed in a direction to which he has a right to proceed, but without any impediment that he may have with him. The circumstances of each case must, however, be considered and if the obstruction to a person's taking a thing with him amounts to obstructing the person himself from going in a manner he has a right to go, there is "wrongful restraint" within the meaning of S. 339, Penal Code. *Lahanu Manaji v. Emperor*.

27 Cr. L. J. 139 :
91 I. C. 811 : 27 Bom. L. R. 1419 :
A. I. R. 1926 Bom. 118.

———S. 339—*Wrongful restraint, what amounts to—Restraining horse on which person riding.*

Restraining a horse on which a person is riding as to prevent him from proceeding at the moment of restraint, is wrongful restraint within the meaning of S. 339, Penal Code. *In re : Peria Ponnuswami Goundan*.

28 Cr. L. J. 320 :
100 I. C. 544 : A. I. R. 1927 Mad. 506.

———Ss. 339, 341—*Exception—Wrongful restraint.*

The complainants charged the accused with the offence of wrongful restraint inasmuch as they had restrained the complainants from passing through certain fields on their way to their well. The fields belonged to the father of some of the accused, the other accused cultivating one of them, as tenants: *Held*, that the case was more properly one for the Civil Court to adjudicate upon, and that the accused could not be convicted of an offence under S. 341, Penal Code, because, (1) complainants' right of way was not sufficiently established, and (2) it was not shown that the accused acted otherwise than *bona fide* in obstructing them. *Natha Singh v. Emperor*.

11 Cr. L. J. 495 :
7 I. C. 493 : 22 P. R. 1910 Cr.

———Ss. 339, 341—*Wrongful restraint.*

The accused stopped a cart in which the complainant was travelling, on the ground that the cartman had engaged himself for carrying Government Forest produce, and were charged with wrongful restraint under S. 341, Penal Code: *Held*, that the stopping of the cart did not amount to wrongful restraint since the person going in the cart was not prevented from going in any direction he pleased and since he voluntarily stayed with the cart. *In re : Narana Iyengar*.

10 Cr. L. J. 266 :
12 M. C. C. R. 208.

PENAL CODE ACT (XLV OF 1860)

—S. 341.

Sec also (i) Cr. P. C., 1898, Ss. 133, 345.

(ii) Penal Code, 1860, Ss. 143, 283, 448.

—S. 341—Conviction under, *legality of—Restraining tenant from using passage as urinal.*

Where a landlord restrained his tenant from using a certain passage as urinal and was charged under S. 341, Penal Code: *Held*, that the landlord could not be convicted under S. 341 in the absence of a finding that the tenant had a right to use the passage as a urinal. *Ghuraram Kahar v. Emperor.*

31 Cr. L. J. 1226 :
127 I. C. 554 : 34 C. W. N. 582 :
A. I. R. 1930 Cal. 760.

—S. 341—Conviction under, *maintainability of.*

The petitioner who was employed as a passport issuing officer near Coonoor, under the Plague Regulations, was applied to for a passport by one A. For some reason or other the petitioner kept him waiting and there was unreasonable delay in the issue of a passport to A. The Sessions Judge was of opinion that this unreasonable delay amounted to wrongful restraint of A, and convicted the petitioner under S. 341. Penal Code: *Held*, that assuming that a notification issued under the Statutory Plague Regulations made it illegal on the part of A to enter Coonoor without obtaining a passport from the petitioner, and that the petitioner wrongfully refused to issue one, as the petitioner did not object to A proceeding without a passport, he did not commit the offence of wrongful restraint as defined in S. 339, Penal Code. *In re: Chokalinga.*

5 Cr. L. J. 357 :
2 M. L. T. 159.

—S. 341—Obstruction in good faith—*Obstruction under bona fide colour of title, etc.*

The voluntary obstruction of any person from entering upon the land under *bona fide* colour of title and possession is not such an obstruction as can be made the subject of a criminal prosecution under S. 341, Penal Code. *Sheo Nath v. Emperor.*

15 Cr. L. J. 532 :
14 I. C. 844 : 5 P. W. R. 1914 Cr. :
34 P. L. R. 1914 : A. I. R. 1914 Lah. 292.

—S. 341—Obstruction in good faith—*Persons assisting Police must not interfere with rights of other people—Held, that in the circumstances persons assisting Police in finding out a kidnapped girl were not guilty under S. 341.*

Persons assisting the Police must be careful not to interfere with the rights of other people. Where, however, Police are searching for a girl who is alleged to have been kidnapped and the persons assisting the Police come across a covered bullock cart and stop the cart and accuse the owner of it, of having kidnapped the girl, and upon his denial, insist upon sending for the Police and when the Police arrive the girl is not found in the cart on a search being made, it cannot be said that

PENAL CODE ACT (XLV OF 1860)

such persons intended any harm to the owner of the cart; their action is a *bona fide* attempt to prevent what they genuinely believed to be the taking away of the girl whom the Police were looking for. They are not, therefore, guilty of an offence under S. 341, Penal Code. *Lalbhari Singh v. Emperor.*

40 Cr. L. J. 720 :
182 I. C. 979 : 20 P. L. T. 467 :
5 B. R. 863 : 12 R. P. 94 (1) :
A. I. R. 1939 Pat. 256.

—S. 341—Offence under.

Accused prevented the complainant from using a *mot* to which he had yoked his bullocks on the slope of a well which existed for that purpose: *Held*, that the accused having obstructed the complainant from proceeding with his bullocks in a direction in which he had a right to proceed with his bullocks, were guilty of an offence under S. 341, Penal Code. *Lahanu Manaji v. Emperor.*

27 Cr. L. J. 139 :
91 I. C. 811 : 27 Bom. L. R. 1419 :
A. I. R. 1926 Bom. 118.

—S. 341—Offence under—*Emigration—Agent refusing to permit intending emigrant to leave emigration depot—Offence.*

Prosecution Witness No. 1 was presented as an emigrant at Messrs. Binny & Co.'s Emigration Depot, and he was treated as such, receiving meals and an advance of money. When he desired to leave the depot, the accused, a watchman in the employ of Messrs. Binny & Co., prevented him from leaving: *Held*, that the accused was guilty of wrongful restraint under S. 341, Penal Code. *Public Prosecutor v. Sheikh Ahmad.*

12 Cr. L. J. 212 :
10 I. C. 107 : 21 M. L. J. 439 :
1911, 2 M. W. N. 369.

—S. 341—Public street—*Equal rights of members of all communities—Member of one community obstructing member of another community—Offence.*

When a street is a public street vested in a Municipality, all members of the public have equal rights in it. Every member of the public has got a right to use a public street in any lawful manner and one section of a community has no right to interdict any section of the community from the lawful use of the public streets. *Sundareswara Srouthigal v. Emperor.*

28 Cr. L. J. 545 :
102 I. C. 481 : 1927 M. W. N. 279 :
25 L. W. 667 : 52 M. L. J. 602 :
38 M. L. T. 307 : 50 Mad. 673 :
A. I. R. 1927 Mad. 938.

—S. 341—Restraint, *when, amounts to offence.*

A restraint, to amount to an offence under S. 341, I. P. C., must be directed to a person and not to anything else. *Kumbola Guravadu v. Yeragatipalli Kristna.*

16 Cr. L. J. 176 :
27 I. C. 860 : 1915 M. W. N. 203 :
2 L. W. 185 : A. I. R. 1915 Mad. 1055.

PENAL CODE ACT (XLV OF 1860)

———S. 341—Right of private individual, offence, to restrain commission of offence.

Any private individual has the right to place a restraint upon a person who not only threatens to commit a breach of the peace, but is a danger to other inhabitants. *In re : Ramasami Iyar.* 22 Cr. L. J. 412 (b) : 61 I. C. 652 : 14 L. W. 189 : 44 Mad. 913 : A. I. R. 1921 Mad. 458.

———S. 341—Wrongful restraint, if committed—Joint owner locking up shop—Civil dispute—Procedure.

One of two joint owners of a shop leased it to the complainant without the consent of the other joint owner, whereupon the latter put her lock on the shop. The complainant accused her of wrongful restraint : *Held*, that the accused had committed no offence. Even if the action of the accused could be construed as coming within any of the penal provisions of the Penal Code, yet the matter in dispute was so plainly a civil dispute that a Magistrate would not only be justified, but would be acting in a very desirable way, if he dismissed the complaint as being an abuse of the process of a Criminal Court. *Bai Samrath v. Emperor.*

19 Cr. L. J. 351 (a) : 44 I. C. 463 : 20 Bom. L. R. 106 : A. I. R. 1918 Bom. 256.

———Ss. 341, 339—Scope of—Wrongful restraint—A person building upon his own land—Temporary orders in an urgent case.

S. 339, Penal Code, relates to the voluntary obstruction by a person and not obviously at least to obstructions which are not voluntarily continued by the persons accused of the obstruction throughout the time obstruction lasts. *Emperor v. Abdul Salar.*

5 Cr. L. J. 97 : 9 Bom. L. R. 30.

———Ss. 341, 447—Wrongful restraint and insult in Court compound—Criminal trespass, conviction for, whether justified—Intent, necessary.

Accused was convicted of an offence under Ss. 341, 447 and 504, Penal Code, for having wrongfully restrained and abused a person in a Court compound in order to prevent him from bidding at an auction : *Held*, (1) that the convictions under Ss. 341 and 504 were justified ; (2) that having regard to the facts :—(a) that the Court compound was open to the public ; (b) that there was no suggestion that the accused entered the compound with the intention of intimidating, insulting or annoying the Magistrate ; the conviction under S. 447 of the Code was not justified. *In re : Avadayappa Mudaliar.*

24 Cr. L. J. 824 : 74 I. C. 856 : 18 L. W. 181 : 1923 M. W. N. 451 : A. I. R. 1924 Mad. 40.

———S. 342.

See also (i) Cr. P. C., 1898, Ss. 100, 285, 280, 345, 428 (1) (b).

(ii) Penal Code, 1860, Ss. 71, 79, 95, 109, 147.

PENAL CODE ACT (XLV OF 1860)

———S. 342—Offence under—Abduction and confinement in broad daylight.

Offence under S. 305, Penal Code, consists of kidnapping or abducting any person with intent to cause that person to be secretly and wrongfully confined. Where the accused took away a woman from the house to their *haveli* where she was confined in broad daylight : *Held*, that the offence committed was one under S. 342, and not under S. 305, Penal Code. *Indar Singh v. Emperor.*

29 Cr. L. J. 597 : 109 I. C. 677.

———S. 342—Offence under.

Civil Court peon arresting judgment-debtor under valid warrant in discharge of duty—Subsequent release of judgment-debtor by Court on ground of his being exempted from arrest under S. 135 (2), C. P. C. Peon is not guilty under S. 342. *Kadamali v. Emperor.*

36 Cr. L. J. 1252 : 157 I. C. 1004 : 39 C. W. N. 318 : A. I. R. 1935 Cal. 551.

———S. 342—Scope of.

Police Officer taking person to Sub-Inspector for examination and compelling him to wait in Police Station—No offence—Wrongful confinement is not constituted. *Abdul Karim v. Emperor.*

32 Cr. L. J. 635 : 131 I. C. 74 : 7 O. W. N. 957 : I. R. 1931 Oudh 186 : A. I. R. 1930 Oudh 505.

———S. 342—Wrongful confinement—Confinement by Nazir of judgment-debtor—Nazir's right and liabilities.

A warrant was issued on the 15th April 1905, addressed to the *Nazir*, directing him to arrest the judgment-debtor and to bring him before the Court with all convenient speed. The warrant was made returnable on or before the 14th June, 1905. The *Nazir* entrusted the warrant to the *Amin* and the *Amin* arrested the judgment-debtor at 9 a. m. on the 22nd of April, during the Easter holidays. The Court opened after the holidays, only on the 25th April. The *Nazir* was found to have taken the judgment-debtor to the decree-holder's house and confined him there from 9 a. m. to 7-30 p. m. on the 22nd and again from 10 p. m. to 6 a. m. on the following morning, when he was taken before the *Nazir* : *Held*, (1) that the *Nazir* was not guilty of any offence under S. 342 of the P. C. (2) that the legal duty of the *Nazir* was to produce the judgment-debtor at the next sitting of the Court, and in the meantime, he was responsible for his safe custody. *Emperor v. Samuel.*

5 Cr. L. J. 102 : 16 M. L. J. 530 : 2 M. L. T. 28 : I. L. R. 30 Mad. 179.

———S. 342—Wrongful confinement—Railways Act (IX of 1890), Ss. 113, 122—Trespass on Railway premises.

A person cannot be arrested without a warrant by Railway Authorities merely because he is a trespasser or has travelled

PENAL CODE ACT (XLV OF 1860)

without a ticket. In order to justify such an arrest in the case of trespass, it will have to be shown that there was reason to believe that the person to be arrested would abscond, or that his name and address were unknown, and he refused to give his name and address or that there was reason to believe that the name or address given by him was incorrect. The compelling of a person to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of him who exercises that exterior will. *S. A. Hamid v. Sudhir Mohan Ghose*.

31 Cr. L. J. 855 :
125 I. C. 593 : 33 C. W. N. 751 :
57 Cal. 102 : A. I. R. 1929 Cal. 730.

—S. 342—*Wrongful confinement, what amounts to—C. P. O., S. 135—Execution of decree—Arrest of judgment-debtor—Protection while returning from Court—Liability of Court Officer to punishment.*

A decree-holder is guilty of an offence under S. 342, Penal Code, if he causes arrest of the judgment-debtor while he is returning from Court under circumstances mentioned in S. 135 of the C. P. C. and the Court officer who arrests or makes over the warrant of arrest to his subordinate for compliance, is also guilty of the offence. The fact that the judgment-debtor when returning from Court stopped in the way to get a petition written for him by a petition-writer, does not deprive him of the protection afforded to him by law. *Ram Lal v. Emperor*.

17 Cr. L. J. 525 :
36 I. C. 493 : 121 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 318.

—Ss. 342, 365—*Wrongful confinement—Whereabouts of person confined not concealed—Offence.*

The intent to cause the person abducted to be secretly and wrongfully confined is an essential element of an offence under S. 365, Penal Code. Accused wrongfully confined their sister, but her whereabouts were not concealed from her other relatives and persons interested in her : *Held*, that the accused were not guilty of an offence under S. 365 of the Code. *Akbar Ali v. Emperor*.

27 Cr. L. J. 229 :
92 I. C. 213 : 7 L. L. J. 520 :
A. I. R. 1925 Lah. 614.

—Ss. 342 and 504—*Trial as summary cases, illegality of.*

Offences under Ss. 342 and 504, Penal Code, are not triable as summary cases and the acquittal for such offences by a Magistrate under S. 245, Cr. P. C., is illegal and must be set aside. *Subapathi Mundali v. Kupasami Mundali*.

2 Cr. L. J. 382 :
15 M. L. J. 225.

—S. 343—*Wrongful confinement—Prostitute kept in brothel house—Offence.*

Accused No. 1 brought the complainant, his mistress, to Bombay and after living with

PENAL CODE ACT (XLV OF 1860)

her for a few days in a brothel house, left her in charge of accused No. 2, the brothel-keeper, who kept guard over the complainant and allowed her to go out only on rare occasions under proper control. Accused No. 1 was aware of the conditions under which the complainant would have to live in the house : *Held*, that both the accused were guilty of the offence of wrongful confinement. *Bandu Ebrahim v. Emperor*.

19 Cr. L. J. 258 :
44 I. C. 114 : 20 Bom. L. R. 79 :
42 Bom. 181 : A. I. R. 1917 Bom. 2.

—S. 344.

See also Penal Code, 1860, S. 78.

—S. 346.

See also Penal Code, 1860, S. 366.

—S. 347.

See also Cr. P. C., 1898, S. 517.

—S. 347—*Abetment—Wrongful confinement.*

A Head Constable in charge of an outpost having agreed with one Krupa Sahu—arrested on a certain charge—to drop proceedings against him on his paying Rs. 30, sent him in charge of two *chowkidars* to procure the money. On his failure to raise the promised sum, he was ducked in a pond and beaten by the *chowkidars* : *Held*, that it would be impossible to hold the Head Constable guilty of abetting the specific acts of the *chowkidars* in the absence of proof that he gave definite orders to that end. *Emperor v. Lachhman Singh*.

1 Cr. L. J. 797 :
I. L. R. 31 Cal. 710.

—S. 348—*Scope of.*

“To satisfy a claim or demand” is not limited to claim or demand to property—Claim to restitution of conjugal rights is included. *Haji Khan v. Emperor*.

37 Cr. L. J. 344 :
160 I. C. 668 : 8 R. Pesh. 123 :
A. I. R. 1936 Pesh. 19.

—S. 349.

See also Cr. P. C., 1898, S. 522.

—S. 349—*Criminal force, use of—Cr. P. O., S. 522—Order of restoration, power of Court to pass.*

The finding of a Magistrate in an order of conviction under S. 349, Penal Code, that the accused broke open the lock of the complainant's house and threw out all the property of the complainant therefrom and put a lock of his own on the house thereafter, is sufficient to show that the element of criminal force within the definition contained in S. 349 was present, and to justify an order of restoration of possession under S. 522, Cr. P. C. An order for restoration of possession under S. 522, Cr. P. C., may be passed by a Court of Revision within one month of the date of the dismissal of a criminal revision petition. *Usmanmiya v. Amirmiya*.

28 Cr. L. J. 191 :
99 I. C. 863 : A. I. R. 1927 Nag. 131.

PENAL CODE ACT (XLV OF 1860)

—S. 349—*Criminal force, use of—Raising lathi to strike.*

Where the accused raised their *lathi* to strike a particular person with the result that he had to flee to save himself: *Held*, that they were guilty of using criminal force as defined in S. 349, Penal Code. *Jai Ram v. Emperor.*

15 Cr. L. J. 231 :
22 I. C. 183 : 12 A. L. J. 154 :
A. I. R. 1914 All. 175.

—S. 349—'Force', scope of.

"Force" as defined in S. 349 contemplates the presence of the person using the force and of the person to whom the force is used. *Behari Lal v. Emperor.*

36 Cr. L. J. 59 :
152 I. C. 162 : 36 P. L. R. 91 :
15 Lah. 786 : 7 R. L. 255 :
A. I. R. 1934 Lah. 454.

—Ss. 349, 350—*Criminal force, use of—Criminal force, offence attended by—Cr. P. C., S. 522.*

Where a person is obliged to run away by reason of some others rushing at him with sticks and *lathis*, and using threats towards him, the act of the latter amounts to a resort to criminal force as defined in Ss. 349 and 350, Penal Code, and if by such act the person attacked is deprived of property, an order under S. 522, Cr. P. C., restoring the property to him is justified. *Ashiq Husain Khan v. Emperor.*

24 Cr. L. J. 857 :
74 I. C. 1049 : 45 All. 25 :
A. I. R. 1923 All. 333.

—S. 350.

See also Cr. P. C., 1898, S. 522.

—S. 351—*Assault, ingredient of.*

According to the definition of assault under S. 351, Penal Code, the apprehension of the use of force must be from the person making the gesture or preparation, and if that apprehension arises not from that person but from somebody else, it does not amount, to assault on the part of that person. As under S. 47, Penal Code, the word 'animal' does not include a human being, it follows that according to S. 349, force cannot be said to be used by one person to another by causing change in the position of another human being. *Muneshwar Bux Singh v. King-Emperor.*

40 Cr. L. J. 221 :
179 I. C. 498 : 1939 O. W. N. 63 :
1939 O. L. R. 52 : 11 R. O. 181 :
14 Luck. 409 : A. I. R. 1939 Oudh 81.

—S. 351—*Assault, what constitutes—Throwing missiles at human beings.*

To throw a bottle into a house, among the inmates, with the intention of hurting or frightening them, constitutes the offence of assault and not an offence under S. 336. *Emperor v. Po Tau.*

4 Cr. L. J. 201 :
3 L. B. R. 194.

—S. 351—*Conviction, propriety of—Assault—Surrounding—Constable in a threatening manner—Assault by one not constructively offence of all.*

PENAL CODE ACT (XLV OF 1860)

Where one of the accused hit a constable and the others surrounded the constable in a threatening manner: *Held*, that this finding was not sufficient to convict the others of assault. *Munisami v. Emperor.*

11 Cr. L. J. 483 :
7 I. C. 416 : 8 M. L. T. 118.

—S. 352.

See also (i) Madras City Police Act, 1888, S. 75.

(ii) Penal Code, 1860, Ss. 71, 140, 426.

—S. 352, 307—*Assault—Presenting unloaded gun and pulling trigger.*

Accused levelled a gun at the complainant and pulled the trigger, but the gun being unloaded, there was no report or discharge: *Held*, that the accused could not be convicted of an offence under S. 307 inasmuch as his act could not *per se* possibly cause death and that he was only guilty of an assault under S. 352 of the Code. *Nga Waik v. Emperor.*

24 Cr. L. J. 850 :
74 I. C. 1042 : I. R. 209 : 2 Bur. L. J. 76 :
A. I. R. 1923 Rang. 251.

—S. 352—*Charge.*

The fact that the offence under S. 352, Penal Code, is punishable with less than six months' imprisonment and ordinarily triable as a summons case, will not avail to support the proposition that no charge is required to be framed in respect of the offence under S. 352, Penal Code, if an accused is tried for it along with other offences under the provisions of S. 235, Cr. P. C. *Mallu Gope v. Emperor.*

30 Cr. L. J. 891 :
118 I. C. 323 : I. R. 1929 Pat. 515 :
10 P. L. T. 875 : A. I. R. 1929 Pat. 712.

—S. 352—*Conviction.*

Accused were holding certain celebrations at night on the occasion of a recognised festival, and the noise happening to disturb R, the latter took away one of their drums, and threatened them. The accused, thereupon, assaulted R and broke one of his arms: *Held*, that the accused were guilty of an offence under S. 352, Penal Code, but not of riot, inasmuch as they were engaged in a lawful occupation at the time when they were provoked to assault R, nor of causing grievous hurt as there was no intention of causing such hurt. *Ram Parshad v. Emperor.*

18 Cr. L. J. 543 :
39 I. C. 687 : A. I. R. 1917 All. 30.

—S. 352—*Obstruction to illegal search, if assault.*

A Sub-Inspector of Police with a constable raided the house of a person upon receiving information that the latter was in possession of illicit liquor. The Sub-Inspector was not armed with a search warrant nor had he recorded his reason for believing that the house contained illicit liquor. The owner of the house pushed the constable away and was convicted under S. 352, Penal Code: *Held*, the Sub-Inspector and the constable working under

PENAL CODE ACT (XLV OF 1860)

him were technically guilty of house trespass ; and the accused was not guilty under S. 352, Penal Code. *Faqira v. Emperor*.

30 Cr. L. J. 1145 :
120 I. C. 113 : I. R. 1930 All. 1.
A. I. R. 1929 All. 903.

—S. 352—Obstruction to illegal search—
Search of house by Police Officer outside his
Circle—Assault to prevent search, whether offence.

Inasmuch as a Sub-Inspector of the Police has no right to enter or attempt to search a house, which is situate outside his Circle, if he does so, no offence is committed if the inmates assault him in order to prevent him from entering the house. *Pitam Lal v. Emperor*.

24 Cr. L. J. 276 :
71 I. C. 996 : A. I. R. 1923 All. 433.

—S. 352—Offence under.

Warrant of Civil Court—Judgment-debtor absent from his house—*Pardanashin* wife of judgment-debtor in the house—Judgment-creditor pushing open door regardless of warning—Physical and mental pain caused to lady—Offence under S. 352 is committed. *Kaluram Nenuram v. Emperor*.

34 Cr. L. J. 963 :
145 I. C. 259 : 6 R. S. 30 :
A. I. R. 1934 Sind 52.

—S. 352—Criminal force—Warrant technically defective—Offence.

The use of criminal force towards a Police Constable, acting honestly within the scope of his authority, to prevent the execution of a warrant containing a technical defect, but of which neither he, nor the person using such force, had knowledge, is an offence punishable under S. 352, Penal Code. *Gokal v. Emperor*.

24 Cr. L. J. 151 :
71 I. C. 503 : 20 A. L. J. 921 :
45 All. 142 : A. I. R. 1923 All. 87.

—Ss. 352, 379, 447—Conviction, illegality of—Conviction by Magistrate under Ss. 447, 352—Conviction under S. 379 by Appellate Court.

Where a Sub-Magistrate convicted the accused under Ss. 447 and 352, Penal Code, and the Appellate Court altered the conviction into one under S. 379, Penal Code, to which there was no reference in the judgment of the Sub-Magistrate : *Held*, that the conviction was illegal and should be set aside. The charge of theft is a distinct and separate charge and should be separately made. *In re : Bommarreddi*.

11 Cr. L. J. 340 (a) :
5 I. C. 974 : 7 M. L. T. 202.

—Ss. 352, 447—Offences under, if committed—Purchase of land from ostensible owner—Possession under bona fide claim of right—Obstruction—Assault—Offences.

Where a person who had an ostensible title to a piece of land, sold it to another and the latter under a *bona fide* claim of right took possession of the land and ploughed it and in maintaining possession against a rival claimant assaulted the obstructor : *Held*, that there being no certainty that the obstructor was the owner of the land, and the accused having acted under a *bona fide* claim of right,

PENAL CODE ACT (XLV OF 1860)

no offence either of trespass or assault was committed by him. *Abdul Ali Saheb v. Amiruddin*.

27 Cr. L. J. 88 :
91 I. C. 392 : 23 L. W. 426 :
A. I. R. 1926 Mad. 349.

—S. 353.

See also (i) C. P. Land Revenue Act, 1917, S. 219.

(ii) Cr. P. C., 1898, Ss. 54, 165.

(iii) Forest Act, 1878, S. 78.

(iv) Opium Act, 1878, S. 4.

(v) Penal Code, 1860, Ss. 21, 71, 95, 96, 99, 142, 225-B, 323.

(vi) United Provinces Land Revenue Act, 1901, S. 147.

—S. 353—Assault—Assault on Police Officer conducting search—Offence—Cr. P. C., Ss. 94, 165—Search of house of person suspected of theft, legality of.

Accused's brother was suspected of having committed a theft of some property from his master. The complainant, an Inspector of Police, went to search his quarters, whereupon the accused assaulted the complainant : *Held*, that the accused's brother being a mere suspect at the time of the attempted search, the search was not illegal and was justified under Ss. 94 and 165, Cr. P. C., and that the accused was, therefore, guilty of an offence under S. 353, Penal Code. *Bhim Singh v. Emperor*.

20 Cr. L. J. 174 :
49 I. C. 494 : 17 A. L. J. 115 :
A. I. R. 1919 All. 207.

—S. 353—Assault, if committed—Cr. P. C., S. 160—Police Constable acting without written order, whether acting in discharge of duty—Assault—Offence.

The accused, on being asked by a Police constable to accompany him to the Sub-Inspector without a written order from the latter under S. 160, Cr. P. C., assaulted the constable : *Held*, that the constable was not acting as a public servant engaged in the discharge of his duty, and that, therefore, the accused was not guilty of an offence under S. 353, Penal Code. *Tukaram v. Emperor*.

20 Cr. L. J. 48 :
48 I. C. 688 : A. I. R. 1918 Nag. 137.

—S. 353—Assault on constable on duty at judicial lock-up—Person in custody, whether prisoner.

A person who communicates or attempts to communicate with a prisoner commits an offence under S. 42, Prisons Act. A constable who is employed to guard a lock-up is authorised to prevent the commission of such an offence, and an assault on such a constable by a person who attempts to communicate with a prisoner in the lock-up, therefore, falls under S. 353 of the Penal Code. *Emperor v. Khanun*.

25 Cr. L. J. 93 :
76 I. C. 29 : 4 Lah. 448 :
A. I. R. 1924 Lah. 257.

PENAL CODE ACT (XLV OF 1860)

———S. 353—*Assault on public servant seeking to distrain—Distrain warrant not addressed by personal name of officer—Seizure by servant of distraining officer at his direction—Legality of distrain—Objections to legality of distrain, when to be taken.*

A warrant of distress addressed to a person as "Warrant Officer, Third Division" and not by personal name is not illegal on that account inasmuch as the description is sufficient to disclose identity. Where a distraining officer does not seize the article with his own hands but directs his peon to take it, the procedure is not irregular. An objection that an article is exempted from distrain as coming under the exception in S. 60, C. P. C., must be raised at an early stage in the case and cannot be raised for the first time in revision. *In re : Rappa Balusawmy Ayyar.* 29 Cr. L. J. 1062 : 112 I. C. 566 : A. I. R. 1929 Mad. 188.

———S. 353—*Assault, what amounts to.*

Court intending to exercise powers under O. 521, r. 22 (2), C. P. C., issuing simultaneously notice under O. 521, r. 22, notice to show cause against arrest, and warrant of arrest—Warrant of arrest is not illegal and resistance amounts to an offence under S. 353. *Rajani Kanta Saha v. Emperor.*

32 Cr. L. J. 886 :
132 I. C. 244 : 35 C. W. N. 228 :
58 Cal. 940 : I. R. 1931 Cal. 564 :
A. I. R. 1931 Cal. 443.

———S. 353—*Conviction, legality of—Using criminal force to deter a public servant from discharge of his duty—Assault.*

The petitioner was a registered suspicious character whose movements were watched by the Police. A Police Constable, who was ordered to check his presence, entered upon his premises about midnight, and knocked at his door to see if he was in. Upon this the petitioner came out, abused and pushed the constable, whose turban fell to the ground. Afterwards the petitioner brought a stick from inside and lifted it up as if he was going to heat the Constable with it. Upon these facts the petitioner was convicted and sentenced under S. 353, Penal Code: *Held*, (reversing the conviction and sentence) that the offence under S. 353, Penal Code, had not been committed. *Dorasamy Pillay v. Emperor.*

1 Cr. L. J. 274 :
I. L. R. 27 Mad. 52.

———S. 353—*Conviction, maintainability of—Distrain of property unauthorised—Assault on public servant.*

Where a warrant authorised the distrain of the property of a person for unpaid water-tax, and the Village Munsif attempted to execute the warrant against the defaulter's lessee and was assaulted by the latter: *Held*, that a conviction of the lessee for assaulting a public servant in the discharge of his duty could not stand. *Mallampatti v. Sub-Inspector, Police, Prattipad.*

26 Cr. L. J. 223 (a) :
83 I. C. 1007 : 47 M. L. J. 447 :
20 L. W. 669 : A. I. R. 1924 Mad. 895.

PENAL CODE ACT (XLV OF 1860)

———S. 353—*Conviction, maintainability of—House search by Police Officer within limits of another Police Station.*

A Police Officer conducted a search in the house of the accused, who did not reside within the limits of his jurisdiction, accompanied by a Constable of the Police Station which had jurisdiction, but the constable had no order, either written or verbal, from his own Sub-Inspector. While engaged in the search, they were assaulted by the accused who was convicted under S. 353, Penal Code: *Held*, that as the provisions of S. 166, Cr. P. C., were not complied with, conviction under S. 353, Penal Code, could not be maintained. *Madho Sonar v. Emperor.*

16 Cr. L. J. 589 :
30 I. C. 141 : 13 A. L. J. 691 :
A. I. R. 1915 All. 442.

———S. 353—*Evidence—Assaulting process-server when executing a warrant—Production of warrant in evidence—Evidence Act, 1872, S. 91.*

The accused were convicted of assaulting a process-server while executing a warrant issued by a Civil Court. The warrant was not produced before the Magistrate, and the Magistrate did not require its production: *Held*, that the contents of the warrant were an essential part of the case for the prosecution and that those contents can only be proved in the manner prescribed in S. 91, Evidence Act. *Shwe Ko v. Emperor.*

3 Cr. L. J. 361 :
3 L. B. R. 128.

———S. 353—*Obstruction to defective warrant.*

If in an execution warrant sought to be executed, the date on or before which it is to be executed and the date on or before which it is to be returned to the Court is not specified, the warrant is bad, and a person resisting its execution by the *Amin* commits no offence under S. 353. *Kishori Lal v. Emperor.*

36 Cr. L. J. 295 :
153 I. C. 157 : 7 R. A. 450 (2) :
A. I. R. 1934 All. 1016.

———S. 353—*Obstruction to vaccinator, if offence—Criminal force—Vaccinator attempting to vaccinate child—Vaccination not compulsory in the place—"In the execution of his duty"—Deterring vaccinator from vaccinating.*

A vaccinator who vaccinates a child against the will of its parents in a place where vaccination has not been made compulsory, is not discharging any duty under the law when attempting to vaccinate the child. Therefore, a person, who prevents him from so doing, cannot be said to have committed any offence under S. 353, Penal Code. *In re : Bozagellaya.*

11 Cr. L. J. 200 :
4 I. C. 1166 : 19 M. L. J. 238.

———S. 353—*Offence under—Arrest by constable without warrant on information of cognizable offence—Obstruction.*

A warrant of arrest was issued against A on a charge of cognizable offence. The Sub-Inspector of the Thana, in which A resided,

PENAL CODE ACT (XLV OF 1860)

ordered his subordinate constable to be on the look out for A and to arrest him wherever found. A constable with a *chaukidar* came across A and proceeded to arrest him informing him at the same time that a warrant had been issued against him but no warrant was produced. B, a third person, interfered and prevented A's arrest; *Held*, that B was guilty of an offence under S. 353. *Gopal Singh v. Emperor*. 15 Cr. L. J. 179 :

22 I. C. 755 : 11 A. L. J. 957 :
36 All. 6 ; A. I. R. 1914 All. 205.

—S. 353—Offence under—Obstructing a public servant in the discharge of his duty—Search of accused's house by Head Constable under orders from the Sub-Inspector—Assault by accused on the Head Constable—Cr. P. C., S. 165 (3).

Where at the search of accused's house by a Head Constable under orders of the Sub-Inspector, the accused assaulted the constable and prevented his entering the house : *Held*, that accused was guilty of an offence under S. 353, Penal Code, as the Head Constable, in conducting the search was obeying the orders of his superior officer, and that S. 165 (3), Cr. P. C., did not apply to the case. *In re : Parasurama Asari*. 11 Cr. L. J. 727 :
18 I. C. 881 : 9 M. L. T. 168.

—S. 353—Offence under.

Public Gambling Act, S. 13—Police constable informed by some constables that gambling was going on, can apprehend gamblers without warrant—Accused preventing him from proceeding in that direction by use of criminal force—Offence under S. 353 is committed. *Ramdeo v. Emperor*. 36 Cr. L. J. 558 :

154 I. C. 740 : 1935 A. W. R. 469 :
7 R. A. 789 : A. I. R. 1935 All. 516.

—S. 353—Offence under Public servant carrying out order of Court made under repealed Act—Assault—Offence.

Where a Court has jurisdiction to order delivery of possession of certain property, the mere fact that it purports to do so under the authority of a repealed Act will not take away its jurisdiction, nor deprive the process-server of the protection which the law gives to a public servant acting under the orders of a Court of competent jurisdiction. A process-server who was not wearing his official badge was, while carrying out the orders of a Court of competent jurisdiction, assaulted by the accused. He had announced that he was carrying out Government orders : *Held*, that the accused were guilty of an offence under S. 353, Penal Code. *Lava v. Emperor*.

18 Cr. L. J. 689 (b) :
40 I. C. 689 : 13 N. L. R. 87 :
A. I. R. 1917 Nag. 231.

—S. 353—Offence under—Public servant executing orders of his superiors—Orders right or wrong—Assault.

An assault made on a public servant acting in obedience to the orders of his superiors is punishable under S. 353, Penal Code, the question whether those orders were right or

PENAL CODE ACT (XLV OF 1860)

wrong being immaterial in the case. A *Tahsil chaprasi* was sent by the *Tahsildar* to seize camels for transport. The camel-men assaulted the *chaprasi* while he was in the act of seizing their camel : *Held*, that the camel-men were guilty of an offence under S. 353, Penal Code. *Emperor v. Amir Khan*. 14 Cr. L. J. 141 :

18 I. C. 893 : 183 P. L. R. 1913 :
19 P. W. R. 1913 Cr.

—S. 353—Offence under—Sub-Inspector attacked while executing it—Offence under S. 353, if committed.

When a warrant under S. 88, Cr. P. C., is issued, it is presumed that a proclamation under S. 87 has already been issued, the presumption of law being that the acts of a Court must be presumed to have been duly performed. Even if it were presumed that a proclamation had not been issued under S. 87, Cr. P. C., it would not justify the conclusion that the Sub-Inspector and the constables were not in execution of their duty as public servants when they went to execute the warrant which was not illegal and if he is attacked while executing the warrant, the person attacking can be convicted under S. 353, Penal Code. *Shib Charan v. Emperor*. 39 Cr. L. J. 570 :

174 I. C. 861 : 1938 A. L. J. 137 :
10 R. A. 634 : I. L. R. 1938 All. 386 :
1938 A. W. R. 124 : A. I. R. 1938 All. 220.

—S. 353—Offence under—Using criminal force towards public servant—Bailiff assisting another Bailiff in execution of warrant, assault on.

A warrant of attachment was endorsed to a Bailiff for execution and another Bailiff was directed to act with the former in the execution of the warrant. The accused whose property was to be attached under the warrant, assaulted the latter Bailiff and prevented him from attaching his property : *Held*, that the second Bailiff was acting in good faith as a public servant and the accused was, therefore, guilty of an offence under S. 353, Penal Code. *Abdul Ghani v. Emperor*. 25 Cr. L. J. 122 :

76 I. C. 186 : A. I. R. 1924 Lah. 632.

—S. 353—Offence under, what amounts to—Distrain to Revenue Inspector, resistance to—Warrant to Village Headman and not to Revenue Inspector—Offence.

Resistance to the authority of a Revenue Inspector distraining property for arrears of revenue, amounts to an offence under S. 353, Penal Code, though the warrant of distraint is addressed to the Village Headman and not to Revenue Inspector, where the latter is supervising the work of the headman and has been specially enjoined by the *Tahsildar* to attend to the work of distraint. *In re : Kandaswami Goundan*. 25 Cr. L. J. 290 :

76 I. C. 962 : 46 M. L. J. 45 :
1924 M. W. N. 50 : A. I. R. 1924 Mad. 539.

—S. 353—Proper discharge of duty—Execution of warrant after expiry of time fixed by Nazir—Obstruction to Amin—Offence.

An *Amin* who executes a warrant before the expiry of the time fixed by the *Munsif* for its

PENAL CODE ACT (XLV OF 1860)

return but after the time given by the *Nazir*, acts in the proper discharge of his duty within the meaning of S. 353, Penal Code, since he derives his authority to execute the warrant in virtue of his office from the Court and the fact that the *Nazir* directs an earlier return, as a matter of office routine, does not affect the *Amin's* authority. *In re : Garapati Kotayya*.

25 Cr. L. J. 64 :
75 I. C. 768 : 32 M. L. T. 248 :
1923 M. W. N. 444 : 45 M. L. J. 74 :
A. I. R. 1923 Mad. 687.

————S. 353—Protection under—Duty of Police Officers.

It is of great importance that Police Officers in the discharge of their duty should receive the protection of such Sections as 353 and 382, Penal Code, but in order to entitle them to protection of those sections, Police Officers must comply scrupulously with the provisions of the law, particularly when they undertake an act such as searching the house against the will of the accused. *Madho Sonar v. Emperor*.

16 Cr. L. J. 589 :
30 I. C. 141 : 13 A. L. J. 691 :
A. I. R. 1915 All. 442.

————S. 353—Public servant, what is.

Where an officer exercises his official duties in a grossly illegal and outrageous manner, he cannot be deemed to be a public servant in the execution of his duty, so as to bring an assault against such officer within the purview of S. 353. *Nagwe Yon v. Emperor*.

32 Cr. L. J. 939 :
132 I. C. 711 : I. R. 1931 Rang. 199.
A. I. R. 1931 Rang. 169.

————S. 353—Resistance to execution of expired warrant—C. P. Land Revenue Act (II of 1917), S. 131—Attachment by Revenue Court—C. P. C., O. XXI, r. 24, applicability of, to Revenue Courts.

Order XXI, r. 24, C. P. C., applies to attachments and sales of movable property under Chap. X of C. P. Land Revenue Act. Therefore, an offence under S. 353, Penal Code, is not committed, if a Revenue peon is assaulted while executing an expired warrant of attachment. *Nand Lal v. Emperor*.

25 Cr. L. J. 223 :
76 I. C. 655 : 19 N. L. R. 183 :
A. I. R. 1924 Nag. 68.

————S. 353—Resistance to execution of illegal warrant—Income Tax Act, S. 46—Jurisdiction of Income-tax Collector to issue distress warrant.

A Collector, acting under S. 46, Income Tax Act, has no authority to issue a distress warrant to a Police Officer, and a Police Officer executing such a warrant cannot be said to be acting in the execution of his duty as a Police Officer within the meaning of S. 353, Penal Code. *Jairam Sahu v. Emperor*.

24 Cr. L. J. 490 :
72 I. C. 954 : 4 P. L. T. 171 :
1 P. L. R. 68 Cr. : 1923 Pat. 111 :
A. I. R. 1923 Pat. 338.

PENAL CODE ACT (XLV OF 1860)

————S. 353—Scope of.

Act of public servant not strictly justifiable under law—Assault committed on such servant does not fall under S. 353 but falls under S. 352—Irregularity of such servant does not save assault under S. 99. *Emperor v. Bohpo*.

34 Cr. L. J. 1147 :
146 I. C. 43 : 27 S. L. R. 209 :
6 R. S. 53 : A. I. R. 1933 Sind 174.

————S. 353—Scope of—Assault on public servant while not acting as such—Offence.

The expression “in consequence of” as used in S. 353, Penal Code, includes the motives which actuate an assault as well as the cause of such assault. A person who assaults a public servant, while the latter is not acting as such, the assault being the result of disappointment experienced by the offender in having failed to induce the public servant to pass a particular order in his favour, is guilty of an offence under S. 353, Penal Code. *Mehr Din v. Emperor*.

28 Cr. L. J. 199 :
99 I. C. 935 : A. I. R. 1927 Lah. 162.

————S. 353—Scope of.

Sanitation and *chawkidari* tax—No writ of demand issued—Tax collector assaulted—No offence is committed under S. 353 but accused were punishable for assault. *Mohammad Ibrahim v. Emperor*.

32 Cr. L. J. 853 :
132 I. C. 214 : I. R. 1931 Lah. 550 :
A. I. R. 1931 Lah. 524.

————S. 353—Scope of—Search under S. 74, Bihar and Orissa Excise Act (II of 1915.)

The recording of reason before search is provided for both under the Cr. P. C. and under the Bihar and Orissa Excise Act, and is intended to protect the liberty of citizens and avoid useless and unjustified searches. Where no reasons are recorded as required by S. 74, Bihar and Orissa Excise Act, and the Excise Sub-Inspector searching the house is assaulted by the accused, the accused cannot be convicted under S. 353, Penal Code, since the Sub-Inspector cannot be said to be acting in exercise of his powers. Search under S. 74, can be made during day or night. *Chander Prasad v. Emperor*.

38 Cr. L. J. 982 :
170 I. C. 784 : 18 P. L. T. 398 :
3 B. R. 786 : 10 R. P. 156 (1) :
A. I. R. 1937 Pat. 501.

————S. 353—Scope of.

The words “duty as such public servant,” in S. 353, Penal Code, mean duty imposed by law on such public servant and do not include acts done in good faith under colour of his office by such public servant. The law imposes no duty on any Revenue Official to seize animals belonging to private individuals for purposes of camp transport and gives them no power to forcibly seize such animals. Executive Officers are not entitled to require owners of such transport to supply it, nor are the owners declining to supply such transport guilty of an offence by the mere fact of refusal. And if in protecting his property against an illegal seizure the owner assaults the official making

PENAL CODE ACT (XLV OF 1860)

such seizure, he is protected by law provided he does not exceed the limits laid down in Chap. IV, Penal Code. *Asa v. Emperor*.

14 Cr. L. J. 512 :
20 I. C. 992 : 38 P. W. R. 1913 Cr. :
325 P. L. R. 1913.

—S. 353—Sentence—Resistance to process server—Deterrent sentence, when necessary.

Even though a deterrent sentence is necessary for the offence of resisting a process-server, even while the accused is not sure that the attachment is illegal, a deterrent sentence is not called for, if the action is taken by the accused in the most open manner and he has made an endorsement on the warrant that he resisted the process-server. *Bapuji v. Emperor*.

29 Cr. L. J. 896 :
111 I. C. 576 : A. I. R. 1928 Nag. 135.

—S. 353—Threatening attitude—Assault.

Medical Officer and Sanitary Inspector ordering accused to remove ice kept for sale as unfit for use—Accused adopting threatening attitude towards them—Assault, held committed within Penal Code—S. 314, U. P. Municipal Act, had no application—Executive Officer having with Chairman's sanction delegated power under S. 244 (1), U. P. Municipal Act to Medical Officer—Legal powers held not exceeded by Medical Officer ordering removal of ice. *Kallu v. Dr. H. S. Dube*.

36 Cr. L. J. 1386 :
158 I. C. 481 : 1935 O. W. N. 1124 :
1935 O. L. R. 591 : 8 R. O. 104 :
A. I. R. 1936 Oudh 20.

—S. 353—Trivial offence—U. P. Municipalities Act (II of 1916), S. 155.

A person introduced a parcel into a Municipality without payment of octroi duty and obstructed and assaulted the persons when they demanded examination of the parcel. He was prosecuted under S. 155 of the U. P. Municipalities Act, for evasion of octroi duty and acquitted. He was also prosecuted by the Police under Ss. 186 and 353, Penal Code, but charge was framed under Ss. 186 alone and he was convicted under S. 186, but the conviction was set aside on appeal on the ground that no sanction under S. 195 had been obtained. A third prosecution was started against him for having obstructed the peons: *Held*, (1) that the previous acquittal under S. 155, U. P. Municipalities Act, did not operate as a bar to the third prosecution as the two offences were entirely distinct; (2) that there was no acquittal under S. 353, Penal Code, but only a discharge; (3) that the acquittal under S. 186, Penal Code, on the ground that sanction had not been obtained was no bar to the third prosecution. *Abdul Rashid v. Sahu Harish Chandra*.

30 Cr. L. J. 1153 :
120 I. C. 121 : I. R. 1929 All. 9 :
1930 A. L. J. 218 : A. I. R. 1929 All. 940.

—Ss. 353, 224—Conviction under, if maintainable.

While a certain fair was going on, the accused with his followers armed with *lathis*

PENAL CODE ACT (XLV OF 1860)

had completely blocked up one of the lanes of the *mela* and there was danger of breach of peace. On information being received, a Magistrate together with a Sub-Inspector of Police went to the place. The accused being asked to remove his men by the Magistrate retorted "who are you to threaten me"? Each time the accused replied, he beckoned to his men and they advanced a little, brandishing their *lathis*. The Magistrate apprehending an immediate breach of the peace, directed the Sub-Inspector to arrest the accused whereupon the Sub-Inspector immediately laid his hand upon the accused's shoulder and also seized him by the wrist but the accused wrenched himself free and being surrounded by his followers, escaped from the *mela*. The accused was convicted under Ss. 353 and 224, Penal Code: *Held*, that the accused was not guilty of any offence under S. 353, Penal Code: *Held*, further that an offence under S. 224, Penal Code, too, had not been committed because in the first place, the mere fact that the Sub-Inspector of Police caught hold of his wrist did not amount to the accused being "charged" with any offence. In the second place, the only offence which was said to have been committed by the accused in the presence of the Magistrate was one under S. 353, Penal Code, and as no offence under that section was committed by him, the Magistrate could not be said to have had power to arrest the accused or cause him to be arrested. *Muneshawar Bux Singh v. King-Emperor*.

40 Cr. L. J. 221 :
179 I. C. 498 : 1939 O. W. N. 63 :
1939 O. L. R. 52 : 11 R. O. 181 :
14 Luck. 409 : A. I. R. 1939 Oudh 81.

—Ss. 353, 358—Scope of—Madras Local Boards Act (V of 1884), S. 82, Cl. (2)—Illegal distraint of doors of house—Assault while distraining—Offence.

The act of a bill collector in distraining the doors of a house under S. 82, Cl. (2), Madras Local Boards Act (V of 1884) is illegal, and if while so distraining, he is assaulted, an offence under S. 358, and not under S. 353, Penal Code, is committed. *Chinnaswami Pillai v. Chairman of the Arkonam Union*.

15 Cr. L. J. 637 :
25 I. C. 837 : 16 M. L. T. 429 :
A. I. R. 1915 Mad. 501.

—S. 354.

See also (i) Cr. P. C., 1898, Ss. 436, 437.
(ii) Penal Code, 1860, Ss. 323, 342, 376.

—S. 354—Evidence of intention, necessity of—Outraging modesty.

The accused caught hold of a woman by her arm and began dragging her. The woman raised a hue and cry and some neighbours came and released her and secured the accused. There was no evidence as to what the intention of the accused was: *Held*, that the accused could not be convicted under S. 366 of the Penal Code, but was

PENAL CODE ACT (XLV OF 1860)

guilty of an offence under S. 354 of the Code. *Fakir v. Emperor*. 29 Cr. L. J. 479 : 109 I. C. 127 : 29 P. L. R. 444 : 10 L. L. J. 325.

————S. 354—Indecent assault—Outraging modesty.

An offence of indecent assault on a woman cannot be complete unless there is intention or knowledge that the woman's modesty will be outraged. *Fatima v. Captain McCormick*. 14 Cr. L. J. 149 : 19 I. C. 149 : 6 Bur. L. T. 21.

————S. 354—Offence under—Assault upon a girl—Rape—Attempt.

The accused took off a girl's clothes, threw her on to the ground and then sat down beside her. He said nothing to her nor did he do anything more to her: *Held*, that the accused committed an offence under S. 354, Penal Code, and was not guilty of an attempt to commit rape. *Nuna v. Emperor*. 13 Cr. L. J. 469 : 15 I. C. 309 : 16 P. W. R. 1912 Cr. : 116 P. L. R. 1912.

————S. 354—Offence under.

The fact that A is in love with B and is jealous of C, does not authorise him to pull B's hair and hand. An assault of this kind made in the presence of several persons is calculated to outrage the woman's modesty and is punishable under S. 354, Penal Code. An erroneous interpretation of law to the effect that a man claiming to be the lover of a woman is entitled to pull her by the hair and hand is alone sufficient to justify interference with an order of acquittal. *Mi Hla So v. Nga Than*. 13 Cr. L. J. 53 : 13 I. C. 389 : 4 Bur. L. T. 268.

————S. 354—Offence under—When constituted—Girl six years old—Assault with intent to outrage modesty—Woman.

The accused took a girl six years old to his room; he made her lie down and he lay on her. The girl screamed and ran away. *Held*, (1) that the girl, though young was a "woman" for the purpose of S. 354, Penal Code; (2) that the facts amounted to an offence under S. 354, and that the accused should be convicted of that offence. *Emperor v. Tatia Mahadev*. 13 Cr. L. J. 858 : 17 I. C. 794 : 14 Bom. L. R. 961.

————S. 354—Offence when constituted.

In order to constitute an offence under S. 354, Penal Code, it is necessary that the assault or use of criminal force to the woman must be with intent to outrage or with the knowledge that it was likely to outrage her modesty. *Government of Assam v. Kantila Chutia*. 28 Cr. L. J. 697 : 103 I. C. 553 : 31 C. W. N. 583 : A. I. R. 1927 Cal. 505.

————S. 354—Scope of—Outraging modesty—Intention to outrage modesty, necessity of—Overture to woman lacking in modesty—Offence.

An offence under S. 354, Penal Code, is

PENAL CODE ACT (XLV OF 1860)

committed only where a person assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. The accused cannot be convicted of this offence where the woman had either no modesty to mention or it was not such as would be outraged by the acts attributed to him. *Champa Pasin v. Emperor*. 29 Cr. L. J. 325 : 108 I. C. 81 : A. I. R. 1928 Pat. 326.

————Ss. 354, 342—Separate sentences—Legality of.

Separate sentences cannot be imposed for offences under Ss. 354 and 342, Penal Code, and for abetment of rape where the acts constituting the former offences form part of the same transaction as constituted the abetment of rape alleged against the same accused. *Champa Pasin v. Emperor*. 29 Cr. L. J. 325 : 108 I. C. 81 : A. I. R. 1928 Pat. 326.

————Ss. 354, 376, 511—Assault and rape—Hymen, rupture of, whether necessary to constitute rape.

A female child aged 5½ years was discovered seated on the naked thighs of the accused who was a lad of eighteen years. The accused had taken of his own trousers and that of the girl. On medical examination of the girl it was found that with the exception of fresh redness at the entrance to the vagina, the girl bore no other mark of injury and her hymen was intact. There were no marks of blood or semen on her person and she did not complain of having felt any pain as the result of the accused's assault upon her: *Held*, that under the circumstances the accused was guilty of an attempt to commit rape and not merely of an indecent assault. *Mehraj Din v. Emperor*. 28 Cr. L. J. 244 : 100 I. C. 116 : A. I. R. 1927 Lah. 222.

————S. 355.

See also Penal Code, 1860, S. 332.

————S. 355—Grave and sudden provocation—Assault with intent to dishonour.

In order to bring a case under S. 355, Penal Code, it is for the prosecution to establish that the accused did not receive grave and sudden provocation from the person assaulted. Pollution caused by the stream water splashed by a low caste woman on the body of an orthodox Brahmin while he was performing his *sundhyawandan* and reciting prayers and interruption thus caused in the continuity of the prayers are sufficient to cause grave and sudden provocation so as to justify use of force such as catching her hand, in order to express his resentment at her conduct and there can be no inference from the action that there was an intention on the part of the Brahmin to dishonour the woman. *Sheodin Hari Prasad v. Jawani*. 27 Cr. L. J. 1003 : 96 I. C. 859 : 9 N. L. J. 157 : A. I. R. 1927 Nag. 47.

————S. 359.

See also Penal Code, 1860, S. 79.

PENAL CODE ACT (XLV OF 1860)

—S. 360.

See also Penal Code, 1860, S. 496.

—S. 360—*Offence under, what amounts to—Kidnapping from British India—Consent of person kidnapped—Offence.*

A person who kidnaps a girl over twelve years of age from British India with her consent, is not guilty of an offence under S. 360, Penal Code. *Haribhai Dada v. Emperor.*

19 Cr. L. J. 602 :

45 I. C. 506 : 20 Bom. L. R. 372 :

42 Bom. 391 : A. I. R. 1918 Bom. 205.

—S. 361.

See also Penal Code, 1860, S. 76.

—S. 361—*Conviction under, legality of—Lawful guardian—Paternal uncles, selling up adverse title, kidnapping by.*

Where an orphan minor Hindu girl, who was entrusted to the care of her maternal uncles and had obtained mutation in her favour of certain property which was claimed by her paternal uncles, after having lived for 18 months with the maternal uncles, was forcibly carried away by her paternal uncles and was caused to be married : *Held*, that the paternal uncles were rightly convicted under S. 361, Penal Code : *Held*, further, that the order of the Deputy Magistrate making over the girl to the maternal uncles on certain conditions and entrusting the girl to a trustee until those conditions were fulfilled, was *ultra vires*, and it was open to them to take such legal steps for the minor's custody as they thought fit. *Baij Nath v. Emperor.*

15 Cr. L. J. 640 :

25 I. C. 840 : 1 O. L. J. 416 :

A. I. R. 1914 Oudh 329.

—S. 361—*Entrustment, proof of.*

The entrustment required by the explanation to S. 361, Penal Code, may be proved not only by oral evidence but also by surrounding circumstances and the conduct of the parties concerned. *Samarendra Kumar Chakravarty v. Emperor.*

38 Cr. L. J. 673 :

169 I. C. 48 : 15 Pat. 817 :

9 R. P. 526 : 3 B. R. 514 :

18 P. L. T. 535 : A. I. R. 1937 Pat. 263.

—S. 361—*Essentials—Kidnapping, essence of—Minor's consent immaterial—Consent given on misrepresentation of fact, effect of—Misrepresentation as to intention.*

The essence of the offence of kidnapping is the taking of the minor out of the keeping of the guardian *without the guardian's consent*. If the other elements of the offence are present, [the mere fact that the minor is a consenting party is quite immaterial. A consent given on a misrepresentation of fact is one given under a misconception of fact within the meaning of S. 90, Penal Code. *Emperor v. Soma.*

18 Cr. L. J. 18 :

36 I. C. 850 : 17 P. R. 1916 Cr. :

A. I. R. 1916 Lah. 414.

—S. 361—*Karta of joint Hindu family, position of.*

The position of a *karta* in a Hindu family

PENAL CODE ACT (XLV OF 1860)

is a unique one and even though one need not go so far as to say that a person would necessarily be the lawful guardian of a minor within the meaning of S. 361, Penal Code, by the mere fact of his being a *karta*, it is safe to say that very slight evidence of the consent of the natural guardian would be required to hold that the *karta* of the family was in fact the guardian of a minor who is being brought up under his care. *Samarendra Kumar Chakravarty v. Emperor.*

38 Cr. L. J. 673 :

169 I. C. 48 : 15 Pat. 817 :

9 R. P. 526 : 3 B. R. 514 :

18 P. L. T. 535 : A. I. R. 1937 Pat. 263.

—S. 361—*'Lawful guardian'—Kidnapping—Purchaser of a minor girl from her husband is a lawful guardian.*

The husband of a minor girl, under 16 years of age, sold her to one S; while she was living with S she was persuaded by the petitioner to leave his house : *Held*, that for the purposes of S. 361, Penal Code, S was the lawful guardian of the minor girl and that the petitioner was consequently guilty of kidnapping her from lawful guardianship. The term "lawful guardian" does not include a person who has himself gained possession of the minor by an offence under S. 361, Penal Code. But it does include not only the parents or relations, in whose house the minor lives and is brought up, but any other person with whom the minor resides by the consent, express or implied, of those who have the higher legal right. *Fatti v. Emperor.*

12 Cr. L. J. 24 :

10 I. C. 97 : 7 P. R. 1911 Cr. :

31 P. W. R. 1911 Cr. : 154 P. L. R. 1911.

—S. 361—*'Lawful guardian'—Person below 18 years, whether can be 'lawful guardian.'*

There is no rule of law that a person below 18 years of age cannot be a 'lawful guardian' of a minor for the purposes of S. 361, Penal Code. *Mehr Hussain Shah v. Emperor.*

31 Cr. L. J. 530 :

123 I. C. 532 : 31 P. L. R. 554 :

A. I. R. 1929 Lah. 835.

—S. 361—*Lawful guardian, who is—Person in temporary charge, whether lawful guardian.*

For the purposes of the First Explanation to S. 361, Penal Code, a person in temporary charge of a minor cannot be regarded as the lawful guardian, as against the guardian at civil law. *Sital Prasad v. Emperor.*

21 Cr. L. J. 50 :

54 I. C. 402 : 2 U. P. L. R. All. 76 :

42 All. 146 : 18 A. L. J. 64 :

A. I. R. 1919 All. 36.

—S. 361—*Lawful guardianship—Dual guardianship, conception of—Declaration of trust, necessity of.*

The conception of a dual guardianship is by itself not repugnant to law and it is not difficult to conceive of cases where there may be more than one guardian. The guardian-

PENAL CODE ACT (XLV OF 1860)

ship of the father does not cease while a minor is in the possession of another person who had been lawfully entrusted with the care and custody of such minor by the father. Again there is nothing in law to prevent the father or the mother of a minor, who may be his or her lawful guardian for the time being, from entrusting lawfully the care and custody of such minor to more than one person at a time. A person should be regarded in the eye of the law as having been lawfully entrusted with the care and custody of a minor, if he has acquired control over the minor lawfully, and in such circumstances, as would imply trust even though he may not have been formally entrusted with the care and custody of the minor by a third person. *Samarendra Kumar Chakravarty v. Emperor*.

38 Cr. L. J. 673 :

169 I. C. 48 : 15 Pat. 817 :

9 R. P. 526 : 3 B. R. 514 :

18 P. L. T. 535 : A. I. R. 1937 Pat. 263.

—S. 361—Lawfully entrusted, meaning of.

It must be clearly shown to bring a case within the purview of the expression "lawfully entrusted" the explanation to S. 361 that not only the mother of the girl requested the alleged guardian to take the girl under his protection but that the trust was accepted. *Mohan Singh v. Emperor*.

31 Cr. L. J. 949 :

126 I. C. 55 : A. I. R. 1930 Sind 164.

—S. 361—Minor brother, if guardian—Complaint for kidnapping of sister.

A minor brother cannot be the guardian of his sister, and consequently, cannot lodge a complaint for kidnapping under S. 361, Penal Code. *Karusa v. Mamraj*.

23 Cr. L. J. 479 :

67 I. C. 831 : 3 L. L. J. 588 :

A. I. R. 1921 Lah. 316 (1).

—S. 361—Offence under.

A girl of 14 years, who was married at the age of 3 and had lost her husband before attaining puberty, was living with her mother and putative father. All the time she was living with her parents. According to the custom, a married girl could not leave her parents' house before attaining puberty and the husband was not entitled to her custody until she attained maturity. The father-in-law of the girl never cared to exercise his right and was not willing to undertake the responsibility of a guardian. The girl was kidnapped by the accused while thus living with her parents: *Held*, that the parents never lost their guardianship as the girl did not attain puberty and even if they had lost it by her marriage, that was revived in consequence of the failure of the father-in-law to take up the responsibility of a guardian. At all events the father-in-law must be deemed to have "entrusted" the guardianship to the parents as was clear from his course

PENAL CODE ACT (XLV OF 1860)

of conduct. The accused was, therefore, guilty under S. 361. *Nathu Singh v. Emperor*.

41 Cr. L. J. 356 :

186 I. C. 660 : 1940 N. L. J. 203 :

12 R. N. 256 : A. I. R. 1941 Nag. 66.

—S. 361—Offence under, what constitutes—Kidnapping from lawful guardianship—Girl driven out of house—Custody of father.

A minor girl was driven from her parental roof and was found some days afterwards in the company of the accused: *Held*, that the offence of kidnapping was not committed. To constitute that offence, the girl must have been taken by the accused from the keeping of her father: in this case, she was not under her father's keeping, as he had driven her away from the house. *Pandayaram Sas-trulu v. Emperor*.

13 Cr. L. J. 598 :

16 I. C. 166 : 1912 M. W. N. 538.

—S. 361—Pledge of girl by natural guardian—Pledge by pledgee—Pledgee and sub-pledgee, whether guilty of kidnapping.

A pledged his girl with B to secure a loan. A did not pay the loan and B pledged her with C to secure a loan raised by him from C. A, without demanding the custody of the girl from B or C, instituted a complaint against B and C under S. 361, Penal Code: *Held*, that B and C were not guilty of kidnapping under S. 361, Penal Code. Though the pledging of a girl to secure a loan is not a legal contract and cannot be enforced in law, the pledgee does not by retaining the girl commit the offence of kidnapping under S. 361, Penal Code, inasmuch as the said section has no application where the guardian has consented to the taking away or keeping of the girl. *Gildar Kaiyer v. Emperor*.

30 Cr. L. J. 980 :

119 I. C. 72 : 10 P. L. T. 326 :

I. R. 1929 Pat. 568 : A. I. R. 1929 Pat. 316.

—S. 361—Scope of—Abduction—Offence, ingredients of—Lawful guardianship—"Person lawfully entrusted with the care or custody of a minor."

The intention of the Legislature was, by virtue of the explanation appended to S. 361, Penal Code, to extend the application of the term lawful guardian so as to include and embrace within the accepted meaning of this legal term "a person lawfully entrusted with the care or custody of a minor." S. 361 and the explanation appended thereto are express and exhaustive in their terms, and in order to constitute the offence of kidnapping or abduction, there must be in fact duly, properly and legally proved a taking or enticing away of a minor from the custody of the following persons; (a) the natural guardian: (b) the legal guardian, if the natural guardian be dead or (c) a person lawfully entrusted with the care and custody of a minor. What the law contemplates by the explanation to S. 361 is a declaration of trust, by one competent to make such a declaration, conveying, handing over and confiding a minor to the care and custody of another in whom a confidence and

PENAL CODE ACT (XLV OF 1860)

trust is imposed, and it is necessary for the person accepting the trust to do so either by express assent or by necessary implication arising from tacit acquiescence in the performance of the trust. *Kesar v. Emperor*. (F. B.).

20 Cr. L. J. 161 :
49 I. C. 481 : 1919 Pat. 33 :
4 P. L. J. 74 : A. I. R. 1919 Pat. 27.

———S. 361—*Scope of—Removal by Christian mother of children from father's house, whether amounts to kidnapping.*

There is no law under which among Christians a father has a preferential right to the custody of his children to the mother, and therefore, the removal of her children by the mother from the house occupied by their father does not amount to an offence under S. 361, Penal Code. *Mrs. Peter v. Emperor*.

28 Cr. L. J. 513 :
102 I. C. 209 : A. I. R. 1927 Lah. 496.

———S. 361—*'Taking', scope of.*

The word "taking" in S. 361, Penal Code, is nothing but physical taking. *Jagan Nath v. Emperor*.

15 Cr. L. J. 630 :
25 I. C. 638 : 1 O. L. J. 330 :
A. I. R. 1914 Oudh 126.

———S. 361—*Transfer of guardianship by temporary guardian, if amounts to offence.*

If after having obtained custody of a minor in a lawful manner with the consent of its guardian, the minor is married or disposed of in such a manner as to make it impossible for the lawful guardian to get back the custody of the minor, an offence under S. 361, Penal Code, would be committed and the temporary guardian doing any such act would be liable under the section but so long as nothing is done which would render the restoration or exercise of the custody of the child by the lawful guardian impossible, the mere fact of transferring the guardianship by the temporary guardian would not constitute an offence. *Jildar Kaiyer v. Emperor*.

30 Cr. L. J. 980 :
119 I. C. 72 : 10 P. L. T. 326 :
I. R. 1929 Pat. 568 : A. I. R. 1929 Pat. 316.

———S. 361—*Transfer of guardianship.*

Where a girl is made over by its natural guardian to another, the latter becomes temporarily the lawful guardian of the girl with all the rights and liabilities of a natural guardian including the right to transfer his guardianship. *Jildar Kaiyer v. Emperor*.

30 Cr. L. J. 980 :
119 I. C. 72 : 10 P. L. T. 326 :
I. R. 1929 Pat. 568 : A. I. R. 1929 Pat. 316.

———S. 361, Exception—*Scope of—Question of authority to remove girl from control of lawful guardian, if arises.*

The exception to S. 361 simply is that the section does not extend to the act of any person who in good faith believes himself or herself to be entitled to the lawful custody of the child. There is no question whatever of any authority to remove the girl

PENAL CODE ACT (XLV OF 1860)

from the control of her lawful guardian. *Kat-yoyani Dasi v. Emperor*. 39 Cr. L. J. 751 :
176 I. C. 456 : 11 R. C. 139 :
A. I. R. 1938 Cal. 475.

———S. 361, Exception—*Duty of Judge—Kidnapping married minor girl—'Lawful guardianship'—Father 'entrusted with care or custody of the minor'.*

In a case of kidnapping from lawful guardianship under S. 363, Penal Code, the Judge dealt with the question of guardianship, in his charge to the Jury, as follows :—"Now, the lawful guardian of a married woman is, no doubt, her husband. But there is the evidence before you that she came with the consent of the husband into the house of her father, if you believe such evidence. Therefore, the father of the girl was her *de facto* lawful guardian for the time that the girl was residing in her father's house." Held, that in matters of this kind, a Judge should adhere to the words of the particular section of the Penal Code with which he has to deal, and not substitute phraseology of his own, and what should have been left to the Jury was whether or not the father had been lawfully entrusted with the care or custody of the girl, instead of the form adopted by the Judge. *Emperor v. Nakul Kabiraj*.

11 Cr. L. J. 9 :
4 I. C. 543 : 13 C. W. N. 754.

———S. 361, Explanation—*Interpretation of—"Lawfully entrusted" and "lawful guardian," meanings of—Entrustment, if can be presumed from course of conduct.*

The reasonable and proper construction of the Explanation to S. 361, I. P. C., should be to regard the expression "lawfully entrusted" as signifying that the care and custody of a minor should have arisen in some lawful manner so as to show as if the person having the custody of the minor had been entrusted with the care and custody of the minor. The entrustment may be by a legal guardian, it may be written, oral, express or implied. In the absence of a legal guardian the entrustment may be presumed from the course of conduct of the person actually taking upon himself the duties of the care or custody of a minor. Guardianship connotes maintenance, protection and control of a minor. The word used in the explanation is "lawful" and that must be distinguished from the term "legal". A guardian may be lawful without being a legal guardian. The expression "lawful guardian" must be liberally construed. *Nathu Singh v. Emperor*. 41 Cr. L. J. 356 :
186 I. C. 660 : 1940 N. L. J. 203 :
12 R. N. 256 : A. I. R. 1941 Nag. 66.

———Ss. 361, Expl. 366—*Kidnapping and marrying minor without her consent—Guardianship, lawful, kidnapping from—Kidnapping minor while under temporary custody of servant or friend—Consent of custodian, whether material—"Include," meaning of.*

The fact, that a mother allows her minor girl to be in the custody of a servant or friend for a limited purpose and for a limited time, does not determine the mother's rights as

PENAL CODE ACT (XLV OF 1860)

guardian or her legal possession for the purposes of the criminal law, and if an accused kidnaps her from the possession of such servant or friend and marries her without the consent of her mother, he is guilty of an offence under S. 366, Penal Code. The consent of the servant or friend is immaterial. The word "include" in the Explanation to S. 361, Penal Code, is not intended to limit the protection which the section gives to parents and minors but rather to extend that protection by including in the term "lawful guardian" any person lawfully entrusted with the care and custody of the minor. *Baz v. Emperor*.

23 Cr. L. J. 588 :
68 I. C. 620 : 3 Lah. 213 :
A. I. R. 1922 Lah. 380.

———Ss. 361, Expl. 366—*Kidnapping—Passing out of keeping of natural guardian—Offence, whether committed—Confinement, what constitutes.*

Where a little girl, who has no intention of starting life independently, leaves her house for the purpose of seeking refuge with another relation, she cannot be considered to have passed out of the keeping of her natural guardians within the meaning of the explanation to S. 361, Penal Code, until she has, by some overt act, passed into the keeping of some one else. Therefore, a person who induces her to accompany him shortly after she leaves her house, is guilty of an offence under S. 366, Penal Code. Where a child of 12 is removed a very great distance from her home and has been deprived of all independent judgment or will power by threats and inducements, she is confined because she is not conscious of the desire to escape. *Mulo v. Emperor*.

16 Cr. L. J. 117 :
27 I. C. 181 : 8 S. L. R. 182 :
A. I. R. 1914 Sind 112.

———Ss. 361, 34—*Age of girl, determination of—Ossification, whether indispensable test.*

Although it may be recognized that ossification is an important test for determining the age, yet having regard to the practical difficulties which would attend the application of this test, it cannot be said that ossification is an indispensable test for determining the age of a girl. *Samarendra Kumar Chakravarti v. Emperor*.

38 Cr. L. J. 673 :
169 I. C. 48 : 15 Pat. 817 :
9 R. P. 526 : 3 B. R. 514 :
18 P. L. T. 535 : A. I. R. 1937 Pat. 263.

———Ss. 361, 362, 363—*Essentials of offence under—Kidnapping from lawful guardianship—Kidnapping from lawful guardianship not a continuing offence.*

In order to make out an offence under S. 363, Penal Code, as defined in S. 361, where the minor is a girl, the prosecution has to establish the following facts : (1) a taking or enticing away of the girl; (2) that the girl's age was less than 16; (3) that she was in the keeping of a lawful guardian; and (4) that the lawful guardian did not consent to her removal. An offence under this section is not a continuing offence. It is complete as soon as the minor is enticed or taken out of the

PENAL CODE ACT (XLV OF 1860)

keeping of his or her lawful guardian. *Habibullah v. Emperor*. 14 Cr. L. J. 93 :
18 I. C. 653 : 15 O. C. 351.

———Ss. 361, 362, 366—*Scope of—Minor girl leaving her husband's house of her free will—Abduction or kidnapping.*

A girl under sixteen years of age left the guardianship of her husband and her father-in-law out of her own free will. On the way she met the accused and stayed with him for a few days quite voluntarily, without any force or fraud having been practised upon her: *Held*, that the accused was neither guilty of abduction nor of kidnapping. *Emperor v. Ramchander*.

15 Cr. L. J. 265 :
23 I. C. 473 : 12 A. L. J. 336 :
A. I. R. 1914 All. 376.

———Ss. 361, 363—*Consent of guardian—Kidnapping—Motive—Punishment.*

To constitute an offence under S. 363, it is sufficient to show that the minor was taken away without the consent of her lawful guardian. The consent of the guardian given subsequent to the commission of the offence would not cure it. Motive has nothing to say to the offence of kidnapping, though it may, of course, have much to say to the punishment. Even if the accused thought that the lawful guardian, had he known of the taking away of the ward, would have no objection to his taking him, yet, if in fact there was no consent to the going, the offence would be committed. Where the temporary guardian is proved to have been in collusion with the other party, and the taking away accomplished in consequence of such collusion, there can be no consent of the lawful guardian. *Ganesh v. Emperor*.

10 Cr. L. J. 295 :
3 I. C. 480 : 6 A. L. J. 682.

———Ss. 361, 363—*Conviction, if proper—Father deceitfully enticing his own child from custody of his mother—Conviction under S. 363, held not proper.*

If a person who in good faith believes himself to be entitled to the lawful custody of a child, cannot commit an offence under S. 361, Penal Code, *a fortiori* a person who is in fact the father of the child, and therefore in law, entitled to the lawful custody of the child, cannot come within the scope of S. 361, Penal Code. In this case it can be said that he did not merely in good faith believe himself to be entitled to the lawful custody of his child, but that he was beyond the possibility of any challenge entitled to the lawful custody of the child, and that therefore his act in taking the child from the keeping of his mother by deceitful means, and who was deserted by him and in whose keeping the child was since its birth, could not amount to an offence of kidnapping from lawful guardianship. He does not commit any offence under S. 361 and therefore he cannot be convicted under S. 363, Penal Code. *In re : Kan-negati Chowdhryya*.

39 Cr. L. J. 993 :
178 I. C. 67 : 47 L. W. 568 :
1938, 1 M. L. J. 670 : 1938 M. W. N. 385 :
11 R. M. 400 : I. L. R. 1938 Mad. 805 :
A. I. R. 1938 Mad. 656.

PENAL CODE ACT (XLV OF 1860)

—Ss. 361, 363—*Kidnapping, what amounts to.*

In a divorce case instituted by the husband, the District Court made an *ex parte* decree that the marriage be dissolved, that the wife do deliver up to the husband the son born of the marriage and that the decree be forwarded under S. 17 of Act IV of 1869 to the High Court for confirmation. Subsequent to the decree, the husband obtained the custody of the boy without the assistance of the Court. Sometime thereafter but before the decree *nisi* was confirmed by the High Court the wife removed the child from the husband's house and she was charged under S. 363, Penal Code, with kidnapping the child from the lawful guardianship of the husband: *Held*, (1) that the decree meant that the order as to the custody of the boy was not to be of effect until confirmed by the High Court, that the order was not an *ad interim* order; (2) that the District Court could not have intended to make such an order absolute without notice to the wife; (3) that the decree not having been confirmed yet by the High Court, the parties were still husband and wife; (3) that, therefore, the wife committed no offence when she removed the boy from the husband's custody. *Anne Elizabeth Borthwick v. Mr. Herbert Charles Borthwick*. 15 Cr. L. J. 72: 22 I. C. 424: 18 C. W. N. 484: 41 Cal. 714: A. I. R. 1914 Cal. 609.

—Ss. 361, 363—*Lawful guardian—Kidnapping—Lawful guardianship—Lawful guardianship of Hindu minor widow—Deceased husband's mother, whether lawful guardian—Hindu Law.*

The husband's relations, if any exist within the degree of a *sapinda*, are the guardians of a minor widow in preference to her father and his relations. Where a minor Hindu widow takes up her residence with her deceased husband's mother with the consent, express or implied, of her husband's brother, the husband's mother is the lawful guardian of the girl for the purpose of S. 361, Penal Code. *Emperor v. Tek Chand*. 16 Cr. L. J. 780: 31 I. C. 380: 27 P. R. 1915 Cr.: A. I. R. 1915 Lah. 390.

—Ss. 361 and 363—*Lawful guardian—Kidnapping of son's wife—Hindu Law.*

B was convicted of kidnapping his own son's wife under Ss. 361 and 363, Penal Code, and sentenced to a fine of Rs. 50. On revision the Chief Court set aside the conviction, holding that under Hindu Law a major husband is the lawful guardian of his wife under 16 years of age, and that as no complaint in the present case was brought by the husband against B, the charge against him was not sustainable. Also pointed out that *Guna* and *Chappi* ceremonies in this case are no part of the marriage—they are concerned with communication. *Behari Maharaj v. Emperor*. 4 Cr. L. J. 361: 1 P. W. R. 14.

—Ss. 361 and 363—*Offence, if committed Lawful guardian of a married Muhammadan*

PENAL CODE ACT (XLV OF 1860)

girl before puberty—Mother's right preferential to husband's.

Where a Muhammadan girl of eleven or twelve was taken from the guardianship of her mother-in-law—the lawfully authorised agent of the girl's husband—at the instance of and at the instigation of her mother: *Held*, that the offence of kidnapping was not committed. Under Muhammadan Law, the mother is entitled to the custody of her daughter in preference to the husband, until the girl attains the age of puberty. *Korban v. Emperor*. 2 Cr. L. J. 328: I. L. R. 32 Cal. 444.

—Ss. 361, 363—*Offence under.*

Where a female minor, by preconcerted arrangement with the accused, left the house of her parents of her own accord, intending not to return, and met the accused at a place appointed and eloped with him willingly: *Held*, that the accused was an active participator in the minor's leaving her parents' house, and therefore was rightly convicted of kidnapping from lawful guardianship. *Nga Te Hla v. Emperor*. 7 Cr. L. J. 210: U. B. R. Cr. 1907—09 Penal Code 11.

—Ss. 361, 366—*Completion of offence—Kidnapping, whether continuing offence—Abetment.*

The offence of kidnapping is complete the moment a minor is actually taken out of the keeping of the lawful guardian, and does not continue as long as the minor is kept out of such keeping. There can be no abetment of 'taking' by conduct, which commences only after the minor has been completely taken out of the keeping of the guardian and the guardian's keeping of the minor is completely at an end. *Abdur Rahman v. Emperor*. 17 Cr. L. J. 498: 36 I. C. 466: 14 A. L. J. 765: A. I. R. 1916 All. 210.

—Ss. 361, 366—*'Unsound mind'—Unconscious person, whether can be said to be of unsound mind within meaning of S. 361.*

It may be that S. 361, Penal Code, ought to include persons who have been made unconscious, but an unconscious person cannot be said to be of unsound mind within the meaning of S. 361. Where an accused is charged under S. 366, Penal Code, for having kidnapped a girl of twenty years of age, while she was unconscious as a result of poisoning, the girl cannot be regarded as being of unsound mind so as to bring the offence under S. 366. *Din Mohammad v. Emperor*. 40 Cr. L. J. 706: 182 I. C. 919: 41 P. L. R. 526: 12 R. L. 79: I. L. R. 1939 Lah. 517: A. I. R. 1939 Lah. 224.

—Ss. 361, 366, 107, 109—*Continuing offence—Kidnapping from lawful guardianship—Kidnapping not continuing offence—Abetment.*

One Mussammat Chunia went to the house of the mother of a minor married girl, 11 years of age, and made false representations to her, telling her that she was the family

PENAL CODE ACT (XLV OF 1860)

priestess of the husband of the girl, that the husband was seriously ill and that she had been sent to fetch the girl to her husband's house. She took the girl to a neighbouring village where one Tika, with whom she had a preconcert in the matter, was awaiting their arrival. The two immediately took the girl away from that village and from place to place making various attempts to dispose of her in marriage against her consent: *Held*, that the act of taking is completed as soon as the minor is actually taken out of the custody of his or her guardian. That Tika could not be convicted of abetment on the hypothesis that the offence of kidnapping was a continuing one. But as in this case there was evidence on the record that kidnapping was the result of the previous concert between him and *Mussammal Chunia*, his conviction for abetting kidnapping should stand. *Emperor v. Tika*. 1 Cr. L. J. 561 : I. L. R. 26 All. 197.

———S. 362.

See also (i) Cr. P. C., 1898, Ss. 437, 503.
(ii) Penal Code, 1860, S. 99.

———S. 362—Deceiving a woman, what is.

Where a man by a promise of marriage induces a woman to leave her house but does not marry her or get her married, he is guilty of deceiving her within the meaning of S. 362, Penal Code. *Mahabub v. Emperor*. 6 Cr. L. J. 9 : 4 A. L. J. 482 : 27 A. W. N. 199.

———Ss. 362, 366—Abduction—Abducting with intent to cause defilement.

A person who compels a girl to go with him with intent to have sexual intercourse with her, commits an offence punishable under Ss. 366 and 362, Penal Code. *Emperor v. Kali Udayan*. 12 Cr. L. J. 241 : 10 I. C. 290 : 9 M. L. T. 406.

———Ss. 362, 366—Scope of—Abduction when becomes offence—Abetment, when can take place.

B, aged 25, left her husband's house of her own free will and to all intents and purposes, took up the life of a prostitute. Later on, she lived with the accused to whom she had been handed over by *N* on payment of Rs. 300. The accused was proceeded against under Ss. 366-109, Penal Code: *Held*, that inasmuch as *B* had left her husband's house of her own free will and no force or inducement had been used to seduce her, no offence of any kind had been proved against the accused. *Ghulam Yusuf v. Emperor*. 24 Cr. L. J. 921 : 75 I. C. 297.

———Ss. 362, 356, 511—Attempt to abduct—Abduction, what amounts to—Woman lifted up from bed and dropped on to roof.

Accused came on to the roof of a house and awakening a woman who was sleeping, asked her to accompany them. She refused and they lifted her up in order to carry her

PENAL CODE ACT (XLV OF 1860)

away, whereupon she raised an alarm, and the accused dropped her on the roof and made good their escape: *Held*, that having regard to the definition of abduction contained in S. 362, Penal Code, the accused were not guilty of the offence of abduction, inasmuch as the woman was not compelled to go from the place where she was, but was merely lifted up and was dropped down again, but that the action of the accused amounted to an attempt to abduct and that they were therefore, guilty of an offence under Ss. 366-511, Penal Code. *Alla v. Emperor*.

26 Cr. L. J. 943 :
86 I. C. 1007 : 26 P. L. R. 119 :
A. I. R. 1925 Lah. 512.

———Ss. 362 and 395.

R. J., a young woman, was abducted and taken to *D. K.* from where she, after a few days made her escape, and was proceeding to a Police Station; on her way she met accused who represented himself to be a Police Constable and offered to take her to the Police Station, but instead of doing this he took her to his house where he confined her and negotiated with her relatives who agreed to pay him for her release: *Held*, that the action of the accused in falsely representing himself to be a Police constable and the inducement held out by him that he would take the woman to the Police Station amounted to abduction as defined in S. 362, Penal Code: *Held*, further, that in wrongfully confining the woman while he negotiated with her relatives for the payment of a sum of money which was practically her ransom, his act fell under S. 395, Penal Code. *Bahadar Ali v. Emperor*.

24 Cr. L. J. 622 :
73 I. C. 510 : A. I. R. 1923 Lah. 158.

———S. 363.

See also (i) Cr. P. C., 1891, S. 227, 403.
(ii) Penal Code, 1860, Ss. 114, 361, 363, 366.

———S. 363—Benefit of doubt—Kidnapping—Enticing Muhammadan girl from guardianship of mother after mother's re-marriage with outsider—Offence—Loss of guardianship on re-marriage.

Where the accused was charged under S. 363, Penal Code, for having kidnapped a Muhammadan girl from the guardianship of her mother and it was found that the mother had married an outsider: *Held*, that the accused must be given the benefit of the doubt as the mother had lost her right to be the guardian of the minor. *Harbhorsha Mahommed v. Jhapuran Bibi*.

32 Cr. L. J. 90 :
128 I. C. 181 : 51 C. L. J. 476 :
I. R. 1931 Cal. 37 :
A. I. R. 1930 Cal. 665 (2).

———S. 363—Completion of offence.

Kidnapping is not a continuing offence and the act of kidnapping is complete as soon as the minor is taken out of the keeping of the lawful guardianship. But where the finding is that the accused took part in the actual

PENAL CODE ACT (XLV OF 1860)

removal of the girl immediately after she was taken out of the house of her guardian, it cannot be said that he was a mere accessory after the crime. *Nanhak Sao v. Emperor*.

27 Cr. L. J. 793 :
95 I. C. 392 : 1926 Pat. 176 :
5 Pat. 536 : 7 P. L. T. 812 ;
A. I. R. 1926 Pat. 493.

———S. 363—Completion of offence—Kidnapping, when completed—Question of fact, to be determined by circumstances of each case—'Keeping'—Interpretation.

The accused took a minor girl from her husband in a Native State and detained her for a month in a friend's house in the same city, and from there she was taken by train to another city; *Held*, (1) that the kidnapping was completed when the girl was put into the train. The question as to when an act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case. The relation between the minor and the guardian implied by the word 'keeping' is not dissolved so long as the minor can, at will, take advantage of the guardian's protection and place herself within the sphere of its operation. *Emperor v. Koochri*.

14 Cr. L. J. 439 :
20 I. C. 599 : 7 S. L. R. 17.

———S. 363 — Consent — Kidnapping—Absence of consent of guardian, essential element.

Absence of the consent of the guardian is an essential element of the offence of kidnapping. The Magistrate found that the grandmother of the children agreed, or rather was made to agree, to their being taken away for four days: *Held*, that the conviction of the appellants for kidnapping was inconsistent with this finding. As the evidence seemed to point to the accused having committed the offence of removing and exporting the children as slaves under S. 370, Penal Code, the convictions and sentence passed on all the appellants were set aside and they were committed to the Court of Session on charges of offences under that section, or of abetment of such offences. *Kauk Saing v. Emperor*.

9 Cr. L. J. 66 :
14 Bom. L. R. 335.

———S. 363 — Consent of minor—Sentence.

The consent of the minor is no defence to a charge under S. 363, Penal Code. But where the accused, a young man and the girl were neighbours and for this reason became fond of each other and when her marriage was about to take place, the accused decided to take her away and she agreed, the accused should be leniently dealt with. *Wali Mohammad v. Emperor*.

27 Cr. L. J. 1018 :
96 I. C. 874 : A. I. R. 1926 Lah. 677.

———S. 363—Continuing offence—Kidnapping—Abetment—Mother can be guilty of kidnapping her own child.

That the mere fact that after the woman's departure from her father-in-law's house the petitioner had something to do with her and that he had knowledge of her whereabouts, did

PENAL CODE ACT (XLV OF 1860)

not render the petitioner an abettor of the offence under S. 363, Penal Code, because kidnapping is not a continuing offence and there could be no abetment of it after the minor (aged two years) had been taken completely out of the keeping of the guardian. *Ganesh Das v. Emperor*.

12 Cr. L. J. 94 :
9 I. C. 551 : 56 P. L. R. 1911.

———S. 363—Conviction under—Parent—Legal keeping of—Intention to make unlawful use of the minor.

The evidence for the prosecution proved that on a certain day the minor daughter of the complainant was dressed up in her best clothes and ornaments, that in the morning the mother of the child saw her go to the house of the accused, that in the afternoon the accused and the child were seen going together, that in the evening the child could not be found though a search was made for her and the accused questioned about her, and that a few days thereafter the body of the child was found from some bushes near the accused's dwelling in a decomposed state covered up in sack, with all her ornaments on her body except one small silver necklace: *Held*, that the accused had been rightly convicted of an offence under S. 363, I. P. C., but that there was no sufficient evidence to support the conviction of murder under S. 302, I. P. C. *Imperator v. Vilaitalishah*.

8 Cr. L. J. 361 :
1 S. L. R. 104.

———S. 363—Evidence—Kidnapping.

To establish kidnapping, there must be evidence that the minor was taken out of the keeping of the lawful guardian without her consent. *Fatima v. Captain Mc Cormick*.

14 Cr. L. J. 149 :
19 I. C. 149 : 6 Bur. L. T. 21.

———S. 363—Intention—Kidnapping from lawful guardianship—Minor running away of his own accord—Liability of persons giving refuge—Minor induced by grown-up person to leave guardian—Offence.

Intention is not a necessary ingredient of the offence under S. 363, Penal Code, but it is material with regard to the sentence. Where a minor runs away from lawful guardianship, the person with whom he takes refuge is not "taking him" within the meaning of S. 363 and the law does not oblige him to return the minor to lawful guardianship. But if a grown-up person induces a minor to accompany him to a place without the consent of the minor's guardian and the guardian is thereby deprived for a period of the lawful guardianship of the minor, it is immaterial that the grown-up person had no guilty intention. *Jafar Shah v. Emperor*.

23 Cr. L. J. 716 :
69 I. C. 444.

———S. 363—'Keeping,' meaning of.

In S. 363, Penal Code, the Legislature has advisedly preferred the phrase "keeping of the lawful guardian" to the word "possession," which frequently recurs in the Code in connection with inanimate objects. The word "keeping" connotes the facts that it is compatible with independence of action and move-

PENAL CODE ACT (XLV OF 1860)

ment in the object kept. It implies neither apprehension nor detention but rather maintenance, protection and control, manifested not by continual action but as available on necessity arising. And this relation between the minor and guardian is certainly not dissolved so long as the minor can at will take advantage of it and place herself within the sphere of its operation. *Emperor v. Jetha Nathoo*.
1 Cr. L. J. 931 :
6 Bom. L. R. 785.

———S. 363—'Keeping,' meaning of.

The word "keeping" in S. 363, Penal Code, connotes the fact that it is compatible with independence of action and movement in the object kept. It implies neither apprehension nor detention, but rather maintenance, protection and control, manifested not by continual action but as available on necessity arising. *Emperor v. Manshomal*.

13 Cr. L. J. 736 :
16 I. C. 768 : 6 S. L. R. 71.

———S. 363—Kidnapping—"Keeping of lawful guardian," meaning of.

A married woman, under sixteen years of age, who leaves her husband's house of her own accord and is proceeding to the house of her maternal uncle, does not cease to be in the keeping of her lawful guardian. Therefore, a person who induces her to go with him is guilty of kidnapping her. *Karan Singh v. Emperor*.
17 Cr. L. J. 532 :
36 I. C. 580 : 14 A. L. J. 792 :
A. I. R. 1916 All. 272.

———S. 363—Kidnapping.

The protection and control of the guardian is not put an end to by the fact that the minor has temporarily left the guardian's house. In this case a minor girl, who lived with her husband, left her house in consequence of a beating and was wandering about in the fish market, where she was met by the accused who took her away: *Held*, that the accused was guilty of kidnapping the girl from lawful guardianship. *Emperor v. Manshomal*.

13 Cr. L. J. 736 :
16 I. C. 768 : 6 S. L. R. 71.

———S. 363—Kidnapping, what constitutes—Kidnapping a minor girl—Lawful guardianship—Intention of the minor to return to her parent's house.

The offence of kidnapping from lawful guardianship is committed if the accused takes away a minor girl who leaves her parent's house for her infatuation for the accused and asks him to go with her, provided that the girl had no intention of not returning to her parents. *Emperor v. Asgar Ali*.

11 Cr. L. J. 81 :
4 I. C. 901 : U. B. R. 1907—09, III,
Penal Code, p. 27.

———S. 363—Kidnapping, what constitutes—Minor leaving guardian's protection—Intention—Offence.

In order to support a conviction for kidnapping from lawful guardianship, the following are the points which require proof:—(1)

PENAL CODE ACT (XLV OF 1860)

That the person kidnapped was then a minor under sixteen years of age, if a female; (2) That such person was in the keeping of a lawful guardian; (3) That the accused took or enticed such person out of such keeping; (4) That he did so without the consent of the lawful guardian. The mere fact that the minor leaves the protection of her guardian, does not put her out of the guardian's keeping, but if she abandons her guardian with no intention of returning, she cannot be held to continue in the guardian's keeping. The decision of the question in each case depends upon the facts of the case. *R. W. Valliant v. Mrs. N. Eleazer*.
26 Cr. L. J. 977 :
87 I. C. 513 : 30 C. W. N. 215 :
A. I. R. 1926 Cal. 467.

———S. 363—Lawful guardian—Kidnapping—Complaint by de facto guardian.

A *de facto* guardian of a minor, whose guardianship is not against the wishes of the *de jure* guardian, is a lawful guardian within the meaning of S. 363, Penal Code. Therefore, a charge of kidnapping is sustainable on the complaint of the father of a minor, alleged to have been kidnapped, the father acting as the minor's *de facto* guardian and such guardianship not having been proved to be against the wishes of the husband of the minor. *Vclagupudi Appayya v. Emperor*.

12 Cr. L. J. 239 (a) :
10 I. C. 281.

———S. 363—Lawful guardian—Kidnapping—Muhammadan minor wife—Custody of husband—Removal of wife.

The husband of a Muhammadan girl who has not attained puberty, is not the lawful guardian of her person under the Muhammadan Law, and in the absence of proof that he was lawfully entrusted with the care and custody of the minor so as to make the explanation to S. 361, Penal Code, applicable, the forcible removal of such a girl from his custody is not an offence punishable under S. 363. *Darajuddin Akanda v. Emperor*.

24 Cr. L. J. 712 :
73 I. C. 936 : 37 C. L. J. 329 :
27 C. W. N. 531 : A. I. R. 1923 Cal. 672.

———S. 363—Lawful guardianship—Unmarried Muhammadan girl—Father not living—Mother, whether lawful guardian—Kidnapping, offence of, when completed, question of, whether can be raised in revision for first time.

According to Muhammadan Law, the occurrence of puberty determines minority and the mother's right to custody, but for the purpose of S. 363, Penal Code, regard must be had only to the definition of minority in S. 3, Act IX of 1875. Where the girl alleged to have been kidnapped was unmarried, and her father was not living, there could be no question of guardianship other than her mother's as lawful. The question at what stage the offence of kidnapping was completed is one of fact, and cannot be raised in the High Court for the first time. *In re : Mutuu Ibrahim*.

16 Cr. L. J. 169 :
27 I. C. 553 : 37 Mad. 567 :
A. I. R. 1915 Mad. 236.

PENAL CODE ACT (XLV OF 1860)

—S. 363—Liability.

Where, a young girl of 10 years of age was kidnapped from the lawful guardianship of her uncle by one G and taken to his *gurial* and subsequently to his threshing floor and was on the following day removed from the village by G and his two co-accused: *Held*, that the time that elapsed between her leaving her uncle's house in company with G and her removal from the village by three accused was so short and the liberty of movement which she enjoyed between these two points of time was so complete that until she left the village, she must be considered to have remained in the custody of her guardian, and therefore, the taking of the girl was not complete until after she had been removed from the village by all the three accused and that consequently they were all liable. *Gurdit Singh v. Emperor*.

17 Cr. L. J. 236 :
34 I. C. 552 : 55 P. L. R. 1916 Cr. :
25 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 230.

—S. 363—Minor voluntarily leaving home—*Kidnapping*.

If a minor girl leaves her husband's home without any persuasion, inducement or blandishment held out to her, so that she gets fairly away from home and then goes to a man, the latter cannot be deemed to have infringed the law even if he does not restore her to her lawful guardian. *Lachhi Ram v. Emperor*.

24 Cr. L. J. 564 :
73 I. C. 260 : A. I. R. 1923 Lah. 330.

—S. 363—Offence, if committed—*Father, when not liable for kidnapping his own child—Kumhar, whether bound by strict Hindu Law.*

M, a Kumhar, betrothed his minor daughter to a minor son of B. Later on B objected to the marriage when arranged and in consequence M married the girl to C, a minor. The girl returned almost immediately to the house of her father and was made over to B. On this B was convicted under S. 363, Penal Code, and M under S. 363-109, Penal Code: *Held*, that strict Hindu Law on the subject could not be applied to the parties and that neither B nor M had committed any offence. In such a case, even if it be supposed that a technical offence has been committed, only a nominal sentence is appropriate. *Ballia v. Emperor*.

15 Cr. L. J. 639 :
25 I. C. 839 : 161 P. L. R. 1914 :
24 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 32.

—S. 363—Offence under—*Kidnapping from British India—Consent of person kidnapped obtained by false representation.*

Where the accused induced certain women to leave British India for Ceylon on the misrepresentation that they were to be married to his sons, and after arriving at Ceylon, made them work as coolies on Tea Estate: *Held*, that the women must be held to have been taken without their consent and that the accused

PENAL CODE ACT (XLV OF 1860)

was guilty of an offence under S. 363, Penal Code. *In re : Periasawmi Kangani*.

11 Cr. L. J. 368 :
6 I. C. 503 : 8 M. L. T. 91 :
1910 M. W. N. 262.

—S. 363—Offence under, what constitutes—*Kidnapping from lawful guardianship—Taking with connivance of guardian.*

The accused previous to the alleged offence had seduced a girl on more than one occasion in her mother's house, and even in the mother's presence. The girl left her mother's house of her own accord, and did not go to the accused's house, but to the house of a mutual friend, where she had been before on two occasions. The accused went and had connection with the girl at the friend's house and she stayed there, and when her brother came to look for her, the girl hid and the accused denied her being there and eventually the girl returned to her mother's house: *Held*, (1) that there was no taking of the girl; (2) that the denial as to her being there made by the accused could not be construed into a prevention of the girl's returning. *Abdul Rahman v. Emperor*.

14 Cr. L. J. 109 :
18 I. C. 669 : U. B. R. 1912, 136.

—S. 363—Scope of—*Girl going to institution with guardian's consent—Subsequent change of guardian's mind—Detention of girl, whether amounts to kidnapping.*

Where a girl originally goes to an institution with the consent of her mother who is her guardian but the mother subsequently changes her mind, the detention of the girl by the institution does not constitute an offence of kidnapping. *Om Radhe v. Emperor*.

40 Cr. L. J. 698 :
182 I. C. 710 : 12 R. S. 28 :
1939 Kar. 760 : A. I. R. 1939 Sind 152.

—S. 363—Scope of—*Kidnapping not continuing offence—Keeping kidnapped girl.*

Kidnapping is not a continuing offence. A minor girl was kidnapped from lawful guardianship and was, thereafter, taken by the kidnapper to the house of the accused, who kept the girl: *Held*, that the accused was not guilty of an offence under S. 363, or under S. 363-109, Penal Code. *Emperor v. Gokaran*.

23 Cr. L. J. 58 :
64 I. C. 842 : 24 O. C. 329.

—S. 363—Scope of—*Kidnapping girl over 16 years of age—Offence—First Information Report, delay in making, effect of.*

Accused were charged under S. 363, Penal Code, with having kidnapped a minor girl from the guardianship of her parents. It appeared that although according to the prosecution the accused were seen taking the girl away at about midnight and the girl's father at once proceeded to the *Thana* where he reached before sunrise, no report was recorded till 12 noon. It appeared further that the girl was over 16 at the time when she disappeared: *Held*, (1) that as the girl was not a minor under 16 years of age, the accused were not guilty of an offence under S. 363, Penal Code; (2) that the

PENAL CODE ACT (XLV OF 1860)

extraordinary delay in making the First Information Report was very suspicious and the fact that the girl was over 16, strengthened the belief that she went off of her own accord and that consequently the accused could not be convicted under S. 303 or 306, Penal Code. *Mirza v. Emperor*. 19 Cr. L. J. 1011 : 48 I. C. 351 : A. I. R. 1918 Lah. 37.

———S. 363—'Taking away out of lawful guardian's keeping,' what is—*Accused put in charge of minor boy for teaching Quran*.

When the accused who was put in charge of a boy below the age of 14, by his father, for the purpose of teaching the Holy Quran, took away the boy to another place during the absence of the father : *Held*, that the removal of the boy amounted to taking him out of the keeping of the lawful guardian within the meaning of S. 303, Penal Code. *Muhammad Husain v. Emperor*. 26 Cr. L. J. 796 : 86 I. C. 428 : 23 A. L. J. 10 : A. I. R. 1925 All. 295.

———Ss. 363, 355—*Jurisdiction—Kidnapping committed in British territory and offence of shoe-beating committed in Nepal territory*.

K was kidnapped in British India and shoe-beaten within the territory of Nepal. The Political Officer in Nepal granted a certificate under S. 188, Cr. P. C., to the effect that a charge under S. 363, Penal Code, ought to be inquired into against the accused in British India. The Magistrate who tried the case acquitted the accused under S. 303 but convicted him of shoe-beating under S. 355 : *Held*, the Magistrate had jurisdiction to convict the accused under S. 355, I. P. C. *Krishnanath Tewari v. Emperor*.

12 Cr. L. J. 359 : 10 I. C. 959 : 8 A. L. J. 525.

———Ss. 363, 364, 365—*Separate sentences—Kidnapping in order to hold kidnapped person to ransom—Offence—Two persons kidnapped in course of same transaction—Separate offences*.

S. 304, Penal Code, provides for the case of a kidnapper whose object is that the person kidnapped may be murdered or may be so disposed of as to be put in danger of being murdered. The section is not applicable where the object of the kidnapper is to hold the kidnapped person to ransom. In such a case, the kidnapper can be convicted properly either under S. 303 or S. 305, Penal Code. Where two persons are kidnapped in the course of the same transaction, there are two distinct offences of kidnapping and it is lawful to award separate sentences for each offence although it is not necessary that the sentences should run consecutively. *Samundar v. Emperor*. 27 Cr. L. J. 64 : 91 I. C. 240 : 1 Lah. Cas. 17.

———Ss. 363, 366—*Duty of Magistrate—Kidnapping, charge of—Girl found to be over sixteen*.

Where in a case under S. 303, Penal Code, the Magistrate finds that there is *prima facie* sufficient evidence to show that the girl was enticed away as alleged, he should not dis-

PENAL CODE ACT (XLV OF 1860)

charge the accused merely because the girl is not under age, but should examine and decide the question whether the accused can be charged with an offence under S. 306 or some other cognate offence against a female of over sixteen. *Gokal v. Phuman Singh*.

26 Cr. L. J. 420 : 85 I. C. 36 : 6 L. L. J. 318 : A. I. R. 1924 Lah. 718.

———Ss. 363, 366—*Intention—Kidnapping, offence of—Material ingredient*.

S. 306, Penal Code, is only an aggravated form of the offence created by S. 363 and where the girl kidnapped from lawful guardianship is under 16 years of age, the intention of the accused in kidnapping her is the material matter and not the consent or willingness of the kidnapped girl. *Hussainbibi v. Emperor*. 27 Cr. L. J. 456 : 93 I. C. 248 : 20 S. L. R. 74 : A. I. R. 1926 Sind 151.

———Ss. 363, 368—*Kidnapping—Lawful custody, what is—Wife turned out by husband—Kidnapping from lawful guardianship, if can be committed*.

Where a minor is living with a lawful guardian, but is taken or enticed away from a street or some other place of resort, the position is that the guardian retains the care and custody of the minor, even though the latter is not actually in the house. But, where the guardian abandons the care and custody of the minor and allows her to go anywhere she likes, she cannot be considered to be in his care or custody. Where, therefore, a person takes away a minor girl who has been turned out by her husband and allowed to be free to go anywhere, there is no case of kidnapping from lawful guardianship. *Francis Hector v. Emperor*.

38 Cr. L. J. 401 : 167 I. C. 676 : 9 R. A. 567 : 1936 A. W. R. 1065 : A. I. R. 1937 All. 182.

———S. 364.

See also Penal Code, 1800, S. 302.

———S. 364—*Essentials*.

For a conviction under S. 364, Penal Code, it is necessary to show that there was a pre-conceived plan for committing the murder. *Goloke Bhari Takal v. Emperor*. 39 Cr. L. J. 161 : 173 I. C. 65 : 66 C. L. J. 225 : 42 C. W. N. 129 : 10 R. C. 441 : I. L. R. 1938, 1 Cal. 290 : A. I. R. 1938 Cal. 51.

———S. 364—*Evidence—Absence of*.

An accused was convicted under S. 304, Penal Code. There was no evidence of the commission of this offence except the statement made by the accused to the Sub-Inspector of Police. Moreover, the whole of this statement was not admissible under S. 27, Evidence Act. The sole evidence relevant under S. 304 was that of the mother of abducted person who merely said that the accused accompanied her son just before his abduction : *Held*, that there was no legal evidence for

PENAL CODE ACT (XLV OF 1860)

conviction under S. 364. *In re : Vecrana Kone.* 40 Cr. L. J. 849 :

184 I. C. 99 : 1939 M. W. N. 519 :
1939, 2 M. L. J. 487 : 50 L. W. 518 :
12 R. M. 410 : A. I. R. 1939 Mad. 593.

———S. 364—Inference of guilt—*Accused and deceased last seen together.*

In a prosecution for an offence under S. 364, Penal Code, the only evidence against the accused was that he and the deceased left the village together and were last seen together and that the one returned without the other : *Held*, that the accused could not be safely convicted of an offence under S. 364, Penal Code, upon this evidence inasmuch as it was not inconsistent with any reasonable theory other than that the accused lured him away for the purpose of being murdered or being exposed to the danger of being murdered. *Alla Rakha v. Empcror.*

28 Cr. L. J. 758 :
103 I. C. 338 : 9 L. L. J. 396 :
29 P. L. R. 227 : A. I. R. 1927 Lah. 658.

———S. 364—Scope of.

S. 364, Penal Code, provides for the punishment of a specific offence and is not intended as an indirect method of punishing persons who are suspected but not proved to have committed a murder. *Alim Jan Bibi v. Emperor.*

39 Cr. L. J. 31 :
171 I. C. 944 : 10 R. C. 323 :
I. L. R. 1937 Cal. 484 :
A. I. R. 1937 Cal. 578.

———Ss. 364, 302, 201—*Motive of crime—Kidnapping, murder and causing disappearance of evidence—Supposed religious belief of Khojas—Uncorroborated confession retracted on ground of ill-treatment, and its inadmissibility—Confession and evidence at variance with each other—Uncorroborated approver or accomplice.*

In a case of murder, the deceased boy was seen by his companion, also a boy, going into a *Khojakhana* at the call of a Khoja at about 11-30 a.m. In the evening the Police were informed of the missing boy and a crier sent through the town and search made, but the companion did not come forward to give the information. Next day the grandfather of the deceased hearing a rumour that the boy must have been murdered by the Khojas to cook rice in human blood and distribute it as dedicated food, communicated his suspicions to the Chief Constable, who sealed some houses of Khojas that evening and searched them next morning. In one Khoja's house were found a cloth smelling foul and damp and judged to be blood-stained and a bloodstained quilt, and in another's a scarf, vest and quilt considered to be blood-stained. Meanwhile the dead body was found in the river bed in a mutilated condition. The death was found to be due to suffocation, while the *Panch* inclined to the opinion that it was due to the injuries found on the body. The companion of the deceased was also present in the crowd collected at this place. He there told a boy that the deceased was taken into the *Khojakhana*, but none of them in-

PENAL CODE ACT (XLV OF 1860)

formed the Police there and then. The two Khojas were arrested, and one of them made a detailed confession 4 days later as to gagging and mutilating the deceased, implicating the other but retracted it alleging ill-treatment. A witness who was alleged to have been made to carry the dead body for disposal was summoned 8 days later and his coat was inspected by a *Panch* who observed dim stains, the dimness being due in their opinion to recent washing : *Held*, (1) that any public rumour or mere allegation as to a religious belief or the conviction of a particular sect, would never serve to establish motive in a judicial Court; that the present charge must be approached just as if not Khojas but any other caste were concerned as accused; and that the case must be considered and decided on the well-established principles of judicial evidence alone; (2) that as the ill-treatment had been alleged before the confession was retracted and as the Medical Officer, though he found no marks of injury on the accused confessing, did not examine him till 18 days later, and also stated that some accused complained of the same kind of torture, his confession could not be considered voluntary under the circumstances established; that the confession and the evidence regarding enticement being very considerably at variance on material points, the confession was not admissible; (3) that there being no proof that Khojas mutilate certain parts, it could not be considered that there were necessarily any signs of mutilation which would tend to show that they were the murderers; (4) that a conviction for a criminal offence could not be had on the deposition of the witness made to carry the dead body who was in reality an approver; (5) that blood-stains hardly visible and insignificant were useless without any chemical analysis. *Emperor v. Nanji Jelha.*

8 Cr. L. J. 90.

———S. 365.

See also Penal Code, 1860, S. 342.

———S. 365—Ingredients.

To support a conviction under S. 365, it must be clearly proved that at the time of the abduction, it was the intention of the accused to secretly and wrongfully confine the girl. *Bakar-ud-Din Mandal v. Emperor.*

15 Cr. L. J. 43 (b) :
22 I. C. 187 : 18 C. L. J. 578 :
A. I. R. 1914 Cal. 589.

———S. 365—*Intention—Intention of accused at time of abduction—How to be gathered—Husband, if can use force to compel his wife to leave her parents' home and join him.*

The intention of persons, charged under S. 365, Penal Code, at the time of abduction can be deduced only from what they subsequently did. Under the Indian Law, a woman is not a slave and there is no justification for the suggestion that a husband is entitled to use force to compel his wife to

PENAL CODE-ACT (XLV OF 1860)

leave her parents' house and join him. *Ghungru v. Emperor*. 37 Cr. L. J. 827 :

163 I. C. 301 : 1936 A. L. J. 340 :

1936 A. W. R. 441 : 9 R. A. 11 :

A. I. R. 1936 All. 360.

—S. 365—Sentence—*Abducting woman with the object of putting pressure on her friends—Subsequent release.*

Where the accused abducted a woman merely with the object of putting pressure on her friends to restore a young girl whom they had abducted and let her go as soon as the girl was restored, no harm having been done to her in the meantime : *Held*, that under the circumstances, heavy sentence of imprisonment was not necessary. *Waris v. Emperor*.

17 Cr. L. J. 472 :

36 I. C. 152 : 89 P. L. R. 1916 Cr. :

A. I. R. 1916 Lah. 269.

—Ss. 365, 376—*Separate sentences—Rape committed after abduction.*

Where rape is committed after abducting a girl, the real offence is rape and abduction is only an aggravating circumstance. In a case of this kind, separate sentences under Ss. 365, 376, Penal Code, should not be given. *Buta Singh v. Emperor*. 26 Cr. L. J. 1440 :

89 I. C. 912 : A. I. R. 1926 Lah. 114.

—S. 366.

—Abduction.

—Applicability of.

—Burden of proof as to age.

—Carrying of a woman by force, if offence.

—Charge.

—Completion of offence of kidnapping.

—Consent of girl.

—Conviction under.

—Duty of prosecution.

—Enticing, meaning of.

—Essentials.

—Evidence.

—Evidence and age.

—Illicit intercourse.

—Inference.

—Ingredients of offence under.

—Intention.

—Kidnapping.

—Knowledge.

—Object of.

—Offence under.

—Presumption as to intention.

—Procedure.

—Retrial.

—Scope of.

—'Seduced to intercourse,' meaning of.

—Seduction.

—Sentence.

—Separate charges. .

—'Taking out of keeping of lawful guardian,' significance of.

—S. 366.

See also (i) Cr. P. C., 1898, Ss. 177, 190 (1) (b) and (c), 211, 227, 297, 354, 403, 423, 436, 437.

(ii) Criminal trial.

PENAL CODE ACT (XLV OF 1860)

(iii) Evidence Act, 1872, Ss. 26, 27.

(iv) Penal Code, 1860, Ss. 71, 79, 107, 109, 147, 361, 362, 366, 498.

—S. 366—Abduction by near relatives—Sentence.

Accused who were near paternal relations of a girl over sixteen years of age, and were admittedly entitled to her custody as against her mother with whom she was living, carried her away forcibly in order to marry her to one of themselves. The mother admitted their superior right to have the custody of the girl but complained that she should have been paid compensation before she was deprived of her daughter's custody : *Held*, (1) that the accused were guilty of an offence under S. 366, Penal Code ; (2) that having regard to the relationship of the accused with the abducted girl and the view which her mother took of the incident, the offence was only a technical one and a nominal sentence would meet the ends of justice. *Sher v. Emperor*. 25 Cr. L. J. 430 :

77 I. C. 606 : 5 L. L. J. 377 :
A. I. R. 1924 Lah. 110.

—S. 366 — Abduction, essentials of, *Mere taking of girl to Immigration Recruiter's house, whether offence.*

The offence of abduction is a continuing offence, and a girl is being abducted not only when she is first taken away from any place but also when she is subsequently removed from one place to another. Chap. XIV of the Penal Code makes abduction an offence only when it is committed with certain intents. The mere taking of a girl to the house of an immigration recruiter is no offence within the meaning of S. 366, Penal Code. *Ganga Dei v. Emperor*.

15 Cr. L. J. 154 :
22 I. C. 730 : 12 A. L. J. 91 ;
A. I. R. 1914 All. 17.

—S. 366 — Abduction — Kidnapping from lawful guardianship—Offence, essentials of.

A girl, under 26 years of age, was sent by her father to take food to the bullocks, when on her way she was persuaded by the accused to accompany him. The latter cut off her hair and dressed her up in boy's clothes and lived with her for some time : *Held*, that the accused was guilty of abduction under S. 366, Penal Code, with the intent that the girl might be compelled to marry against her will or forced or seduced to illicit intercourse. *Har Kesh v. Emperor*. 19 Cr. L. J. 645 :

45 I. C. 837 : 16 A. L. J. 445 :
40 All. 507 : A. I. R. 1918 All. 134.

—S. 366—Abduction of girl with intent to marry—First offence—Application of S. 562, Cr. P. C.

A young man of 18 years wanted to marry a widowed girl of 16. He told her that her aunt was unwell and that he would escort her to her aunt's house but took her to his sister's house where she was detained for some days. She was not in any way ill-treated. The father of the girl discovered her and brought a charge

PENAL CODE ACT (XLV OF 1860)

against the young man for abduction: *Held*, that the case was a proper one for applying S. 562, Cr. P. C., and releasing the accused on probation of good conduct. *Makhram v. Emperor*. 31 Cr. L. J. 25 :

120 I. C. 257 : A. I. R. 1929 All. 930.

—S. 366—*Abduction, what constitutes—Abduction, whether continuing offence—Fresh removal, whether abduction.*

Abduction is a continuing offence and is not completed when the person abducted is removed from his or her home. Every fresh removal of such person constitutes the offence of abduction. *Sundar Singh v. Emperor*.

26 Cr. L. J. 695 :

86 I. C. 71 : 12 O. L. J. 27 :

2 O. W. N. 17 : A. I. R. 1925 Oudh 328.

—S. 366—*Abduction, what constitutes.*

In order to sustain a charge under S. 366, Penal Code, it is not necessary for the prosecution to establish that after the woman had been by force compelled to leave her house, she was by force compelled to go to various places. *Keramat Mandal v. Emperor*.

27 Cr. L. J. 263 :

92 I. C. 439 : 42 C. L. J. 524 :

A. I. R. 1926 Cal. 320.

—S. 366—*Applicability of.*

S. 366 cannot be applied to a case where the accused is carrying on an intrigue with a girl under 16 while she is in the custody of her lawful guardian, and goes away with her because obstacles are thrown in the way of that intrigue. *Emperor v. Baij Nath*.

33 Cr. L. J. 669 :

138 I. C. 609 : 1932 A. L. J. 483 :

54 All. 756 : I. R. 1932 All. 488 :

A. I. R. 1932 All. 409.

—S. 366—*Applicability of.*

S. 366, Penal Code, is not applicable where a girl at the time of the kidnapping from lawful guardianship intends to cohabit of her own free will with the kidnapper. *Emperor v. Nga Nge*.

2 Cr. L. J. 476 :

U. B. R. 1905 : I. P. C. 17 :

11 Bur. L. R. 326.

—S. 366—*Burden of proof as to age—Age of girl.*

In a prosecution for abduction, the onus of proving the girl's age is on the prosecution and no conviction can be sustained if the evidence is inconclusive. *Emperor v. Jagannath Gir*.

38 Cr. L. J. 621 :

168 I. C. 833 : 1937 A. L. J. 547 :

1937 A. W. R. 203 : 9 R. A. 676 :

A. I. R. 1937 All. 353.

—S. 366—*Carrying off woman by force, if offence.*

Carrying off a woman by force is not an offence under S. 366, Penal Code, when there is no evidence of intention to marry her against her will or to force her to illicit intercourse. *Naba v. Emperor*.

12 Cr. L. J. 393 :

11 I. C. 577 : 12 P. W. R. 1911 Cr. :

193 P. L. R. 1911.

PENAL CODE ACT (XLV OF 1860)

—S. 366—*Charge.*

If there is no mention of abduction, before the accused is convicted of the offence of kidnapping, it is necessary to prove that the person kidnapped, if a female, is under 16 years of age. *Sultan v. Emperor*.

36 Cr. L. J. 62 (2) :

151 I. C. 984 : 28 S. L. R. 285 :

7 R. S. 74 : A. I. R. 1934 Sind 119.

—S. 366—*Completion of offence of kidnapping—Absence of definite knowledge on the part of accused as to who was guardian, effect of.*

It is not necessary for a conviction under S. 366, Penal Code, that the accused should know definitely who the guardian of the minor girl was, whom he found wandering about and made use of for his own purpose. The offence of kidnapping is complete the moment a girl under 16 years of age is taken out of the custody of her lawful guardian and is not an offence continuing so long as the minor is kept out of such guardianship. *Burnha v. Emperor*. 31 Cr. L. J. 1023 :

126 I. C. 510 : 7 O. W. N. 499 :

A. I. R. 1930 Oudh 289.

—S. 366—*Consent of girl.*

The consent of the girl makes no difference to the offence under S. 366, but when she is not altogether a child though legally a minor, it has a bearing on the question of sentence. *Khem Das v. Emperor*.

27 Cr. L. J. 851 :

95 I. C. 931 : A. I. R. 1926 Lah. 547.

—S. 366—*Conviction under, illegality of—Abduction—Girl accompanying accused without compulsion—Offence.*

A married girl, 16 years of age, accompanied the accused from place to place under circumstances which did not show that she was acting under compulsion: *Held*, that the accused could not be convicted of an offence under S. 366, Penal Code, inasmuch as the conduct of the girl showed that there was no abduction. *Kartar Singh v. Emperor*.

26 Cr. L. J. 1500 :

90 I. C. 156 : 7 L. L. J. 217 :

A. I. R. 1925 Lah. 406.

—S. 366—*Conviction under, illegality of—Intention to commit illicit intercourse—Burden of proof—Intention, whether can be presumed.*

The accused in broad daylight assaulted a woman and endeavoured to take her away from her husband who was accompanying her. The lower Courts raised a presumption that the intention of the accused was to cause the woman to commit illicit intercourse and convicted them under S. 366, Penal Code: *Held*, that intention has to be proved like any other fact though it may be deduced from the conduct of the parties; that the lower Courts were not justified in raising a presumption as to the intention of the accused; and that the conviction of the

PENAL CODE ACT (XLV OF 1860)

accused under S. 366, Penal Code, was, therefore, illegal. *Hazara Singh v. Emperor*.

28 Cr. L. J. 89 :
99 I. C. 121 : 8 L. L. J. 512 :
27 P. L. R. 867.

—S. 366—Conviction under, impropriety of—Probability of girl eloping with accused.

Where it was not unlikely that the girl herself eloped with some of the accused, and on missing her, her parents got up the story to recover her and to bring her paramours into trouble : *Held*, that a conviction under S. 366 was improper. *Hardilla v. Emperor*.

6 L. L. J. 622 :
A. I. R. 1925 Lah. 274.

—S. 366—Conviction under—Kidnapping—Concealment of kidnapped person—Kidnapper, whether can be convicted under S. 368 also.

A person who has been found guilty of the offence of kidnapping and convicted under S. 366, Penal Code, cannot be convicted under S. 368 also for concealing the person kidnapped ; S. 368 refers to persons other than the kidnapper. *Bannumal v. Emperor*.

27 Cr. L. J. 1200 :
97 I. C. 960 : 3 O. W. N. 687 :
13 O. L. J. 739 : A. I. R. 1926 Oudh 560.

—S. 366—Conviction under, legality of—Kidnapping and abduction—Charge for kidnapping.

Notice of a charge of kidnapping for defilement is not a fair, proper or sufficient notice of a charge of abduction. Where an accused is charged with kidnapping only, the Judge cannot leave it to the Jury to convict the accused of the offence of abduction as distinct from kidnapping. *Isu Sheikh v. Emperor*.

28 Cr. L. J. 201 :
99 I. C. 937 : 31 C. W. N. 171 :
45 C. L. J. 584 : A. I. R. 1927 Cal. 200.

—S. 366—Conviction under—Maintainability.

Abduction by itself is not an offence, and in the absence of some evidence that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be seduced or forced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse, a conviction under S. 366, Penal Code, cannot stand. *Fakir v. Emperor*.

29 Cr. L. J. 479 :
109 I. C. 127 : 29 P. L. R. 444 :
10 L. L. J. 325.

—S. 366—Duty of prosecution—Kidnapping—Prosecution must prove girl to be below 16.

In order to prove the charge of kidnapping, it is incumbent on the prosecution to prove that the person kidnapped was under 16 years of age. *Emperor v. Qudrat*.

41 Cr. L. J. 142 :
185 I. C. 271 : 1939 A. L. J. 980 :
I. L. R. 1939 All. 871 : 12 R. A. 310 :
1939 A. W. R. 693 : A. I. R. 1939 All. 708.

PENAL CODE ACT (XLV OF 1860)

—S. 366—'Enticing', meaning of.

The expression "enticing" in the section involves that, while the person kidnapped might have left the keeping of the lawful guardian willingly, still the state of mind that brought about that willingness must have been induced or brought about in some way by the accused. *Abdul Sathar v. Emperor*.

29 Cr. L. J. 635 :
109 I. C. 907 : 54 M. L. J. 456 : 27 L. W. 683 :
A. I. R. 1928 Mad. 585.

—S. 366—Essentials—Force and deceitful inducement.

In order to sustain a conviction under S. 366, Penal Code, it must be shown that the girl was either by force compelled or by deceitful means induced to leave her lawful guardian's house. *Emperor v. Jagannath Gir*.

38 Cr. L. J. 621 :
168 I. C. 833 : 1937 A. L. J. 547 :
1937 A. W. R. 203 : 9 R. A. 676 :
A. I. R. 1937 All. 353.

—S. 366—Essentials and offence under.

To constitute an offence under S. 366, Penal Code, it is necessary that the kidnapping should have been with intent that the girl kidnapped may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse. In the absence of any element of forcing or seducing for the purpose of illicit intercourse, no offence under S. 366, Penal Code, could be regarded as possible. *Abdul Sathar v. Emperor*.

29 Cr. L. J. 635 :
109 I. C. 907 : 54 M. L. J. 456 :
27 L. W. 683 : A. I. R. 1928 Mad. 585.

—S. 366—Essentials of.

The expression 'seduced to illicit intercourse' in S. 366, is not to be intended to be restricted to an inducement to a woman to surrender her chastity for the first time but it cannot be deemed to include a case where a man takes back a woman with whom he had been living until very recently for a period of several months during which he had been indulging in illicit intercourse with her. *Jangli Mian v. Emperor*.

35 Cr. L. J. 814 :
148 I. C. 791 : 15 P. L. T. 228 : 6 R. P. 507 :
A. I. R. 1934 Pat. 170.

—S. 366—Evidence—Abduction—Woman abducted, a material witness.

The most important witness in an abduction case is generally the abducted woman herself and where she is not forthcoming and the other witnesses are not of a very reliable type, the prosecution evidence must be carefully scrutinised and weighed. *Ghulam v. Emperor*.

28 Cr. L. J. 277 :
100 I. C. 357 : 27 P. L. R. 747.

PENAL CODE ACT (XLV OF 1860)

———S. 366—*Evidence—Offence of abduction—Sentence—First Information Report, evidentiary value of.*

A severe sentence should be passed in the case of an offence under S. 366, Penal Code. A First Information Report cannot be used as primary evidence of any fact in dispute but may be treated as corroborative evidence of facts which have to be established in the case. *Imrat v. Emperor.* 31 Cr. L. J. 7 : 120 I. C. 199 : A. I. R. 1929 All. 916.

———S. 366—*Evidence and proof.*

The law presumes against vice and immorality, and on this ground, the presumption is strongly in favour of marriage; so under S. 366 it is the duty of the prosecution to prove the negative. *Sultan v. Emperor.*

36 Cr. L. J. 62 (2) : 151 I. C. 984 : 28 S. L. R. 285 : 7 R. S. 74 : A. I. R. 1934 Sind 119.

———S. 366—*Illicit intercourse—Lawful marriage between accused and kidnapped girl not possible under law—Accused held to have contemplated illicit intercourse.*

Where an accused charged under S. 366, Penal Code, suggested that his intention was to lawfully marry the girl, and it was admitted that the parties being of different castes, could not marry according to Hindu Law, and also that the girl being below 21 years of age, they could not marry under Special Marriage Act, without the consent of her lawful guardian, i. e. her father : *Held*, that the marriage not being practicable, the accused must have contemplated illicit intercourse. *Nirmal Kumar Bhowmik v. Emperor.*

39 Cr. L. J. 835 : 171 I. C. 29 : 42 C. W. N. 896 : 11 R. C. 209 : A. I. R. 1938 Cal. 551.

———S. 366—*‘Illicit intercourse,’ what is.*

The words “illicit intercourse” in S. 366, Penal Code, mean sexual intercourse between a man and a woman who are not husband and wife. It is not necessary that the woman should be a married woman. *Mahbub v. Emperor.*

6 Cr. L. J. 9 : 4 A. L. J. 482 : 27 A. W. N. 199.

———S. 366—*Inference.*

Where a married minor girl was desperately calling for the accused to come and take her away and she was soon after discovered to be with the accused or under his control : *Held*, it was legitimately open to a Court of Law to assume that the accused finally yielded to the solicitations and made it possible for her to get away. *Abdul Sathar v. Emperor.*

29 Cr. L. J. 635 : 109 I. C. 907 : 54 M. L. J. 456 : 27 L. W. 683 : A. I. R. 1928 Mad. 585.

———S. 366—*Ingredients of offence under—Abduction.*

To establish an offence under S. 366, Penal Code, it is not necessary to show that after the first act of abduction or kidnapping of the girl, there was another act of seduction

PENAL CODE ACT (XLV OF 1860)

of the girl to illicit intercourse where from the proximity of events, the Court is satisfied that the effect of the inducement which was the cause of abduction continued till the time of illicit intercourse. *Tufail v. Emperor.*

28 Cr. L. J. 413 : 101 I. C. 189 : A. I. R. 1927 Lah. 370.

———S. 366—*Ingredients of offence under—Abducting woman to compel marriage.*

In order to fall under S. 366, Penal Code, an abduction must be accompanied by the intention or knowledge specified in the section. Where a woman was abducted by a man whom she had not married but with whom she had lived willingly for a couple of months as his wife before the abduction and whom she probably intended to marry : *Held*, that an offence under S. 366, Penal Code, had not been established. *Bhajan Das v. Emperor.*

24 Cr. L. J. 421 : 72 I. C. 533 : A. I. R. 1924 Lah. 218.

———S. 366—*Intention—Abduction—Intention may be inferred from circumstances.*

Though in a case under S. 366, Penal Code, it is the duty of the prosecution to prove that the abduction took place with the intention mentioned in that section, the intention can also be inferred from the conduct of the accused and the circumstances of the case, and ordinarily it is not possible for the prosecution to establish the intention except by proving the conduct of the accused. *Haidar Shah v. Emperor.*

31 Cr. L. J. 529 : 123 I. C. 528 : 31 P. L. R. 388 : A. I. R. 1930 Lah. 52.

———S. 366—*Intention.*

Abduction is in itself no offence. It is only when the intention of either marrying the woman against her will or forcing her to subject herself to illicit intercourse is proved that abduction becomes an offence under S. 366. *Gharib Shah v. Emperor.*

35 Cr. L. J. 1273 : 151 I. C. 103 : 7 R. Pesh. 12 : A. I. R. 1934 Pesh. 69.

———S. 366—*Intention, inference of—Abduction.*

In a case under S. 366, Penal Code, intention is a matter of inference from the circumstances of the case and the subsequent conduct of the accused after the abduction has taken place. *Banta Singh v. Emperor.*

29 Cr. L. J. 643 : 110 I. C. 99.

———S. 366—*Intention—Kidnapping or abduction.*

It is a fair and justifiable presumption that when any woman is kidnapped or abducted, it is with one or other of the intents specified in S. 366, Penal Code, particularly where there was an intimacy between the abducted and the abductor. The intent with which a woman is abducted or kidnapped is more or less a matter of inference. Though there may be cases where the matter is capable of

PENAL CODE ACT (XLV OF 1860)

direct proof, yet very generally one has to infer from the circumstances of the case and the subsequent conduct of the accused as to what was the intention with which the kidnapping or abduction had been brought about. *Jawaya v. Emperor*.

31 Cr. L. J. 131 :
120 I. C. 606 : 11 L. L. J. 523 :
A. I. R. 1930 Lah. 295.

—S. 366—*Intention of accused—Offence under—Consent of woman, effect of.*

In a prosecution under S. 366, Penal Code, the fact that the girl concerned, at the time she was enticed away from her home by the accused, had the intention of having illicit intercourse with him, is no defence to the charge under that section. The intention of the accused (and not that of the girl) is the material matter in the case. *Emperor v. Safdar Reza*.

24 Cr. L. J. 379 :
72 I. C. 379 : 49 Cal. 905.
A. I. R. 1922 Cal. 508.

—S. 366—*Kidnapping—Honest belief that girl was over sixteen years—Previous illicit intercourse—Consent of girl—Offence.*

Honest belief on the part of the accused that the woman was over 16 years of age is no defence to a charge under S. 366, Penal Code. If the intention to kidnap a girl in order to seduce her to illicit intercourse is present, the fact that the accused had illicit intercourse with the girl before she was kidnapped is wholly immaterial. No question of consent arises with regard to the offence under S. 366, Penal Code. *Prem Narain v. Emperor*.

30 Cr. L. J. 218 :
113 I. C. 765 : 1929 A. L. J. 114 :
I. R. 1929 All. 189 : A. I. R. 1929 All. 82.

—S. 366—*Kidnapping, what amounts to.*

The offence of kidnapping consists in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of the guardian. If a minor is removed with the consent of the guardian and subsequently married improperly without the consent of the guardian, such improper marriage would itself not amount to kidnapping. *In re : N. Jaladu*.

15 Cr. L. J. 24 :
22 I. C. 168 : 36 Mad. 453 :
A. I. R. 1914 Mad. 49.

—S. 366—*Kidnapping and abduction—'Seduced', whether includes subsequent acts of seduction.*

Even though a girl may have by the first act of seduction surrendered her chastity, subsequent seduction for further acts of illicit intercourse is also meant to be included in the term 'seduced' in S. 366, Penal Code. If a girl is sixteen or over, she could only be abducted and not kidnapped, but if she is under sixteen, she could be kidnapped as well as abducted if the taking is by force or the taking or enticing is by deceitful means. *Profulla Kumar Bose v. Emperor*.

31 Cr. L. J. 903 :
125 I. C. 656 : 50 C. L. J. 593 :
57 Cal. 1074 : A. I. R. 1930 Cal. 209.

PENAL CODE ACT (XLV OF 1860)

—S. 366—*Knowledge—Abduction—Special intent or knowledge necessary—Whether it can be presumed in a girl of 13.*

In order to establish an offence under S. 366, Penal Code, a special intent or knowledge is necessary and such an intent or knowledge cannot be presumed in a child of immature age. Where, therefore, the accused, brother and sister, were convicted of abducting a certain girl and it appeared that the sister was only 13 years of age : *Held*, that she could not be said to have the special intent or knowledge referred to in S. 366 and was not, therefore, liable to conviction. *Mehran v. Emperor*.

17 Cr. L. J. 283 :
34 I. C. 1003 : 28 P. W. R. 1916 Cr :
53 P. L. R. 1916 Cr. : 13 P. R. 1916 Cr. :
A. I. R. 1916 Lah. 352.

—S. 366—*Knowledge.*

In a case under S. 366, if the object of the accused was to bring pressure to bear on the husband of the woman, it cannot be said that they knew it to be likely that she would be forced or seduced to illicit intercourse. *Narain v. Emperor*.

36 Cr. L. J. 826 :
155 I. C. 662 : 1935 A. W. R. 695 :
1935 A. L. J. 670 : 7 R. A. 969 :
A. I. R. 1935 All. 665.

—S. 366—*Object of—Abduction—Consent of girl, effect of.*

S. 366, Penal Code, is an aggravated form of S. 363 of the Code and consent of the girl is no defence to a charge under the former section. The underlying policy of S. 366 is (1) to uphold the lawful authority of parents or guardians over their minor wards, (2) to throw a ring of protection round the girls themselves, and (3) to penalise sexual commerce on the part of persons who corrupt or attempt to corrupt the morals of the minor girls by taking improper advantage of their youth and inexperience. *Sultan v. Emperor*.

31 Cr. L. J. 85 :
120 I. C. 433 : A. I. R. 1930 All. 19.

—S. 366—*Object of.*

The aim of the provisions of S. 366-A, Penal Code, is to prevent immorality, and the provisions are framed more with the desire of safeguarding the public interest of morality than the chastity of one particular woman. *Bhagwati Prasad v. Emperor*.

30 Cr. L. J. 985 :
119 I. C. 14 : I. R. 1929 All. 974 :
A. I. R. 1929 All. 709.

—S. 366—*Offence under—Abduction—Abducted woman passed from man to man—Liability of all concerned—Charge of rape not made during Police investigation, truth of.*

A woman in order to avoid living with her deceased husband's brother F, whom she had been forced to marry, asked another brother of his, D to take her to her own brother. D took her away. Outside the village they were joined by M and proceeded to a *taktya*, when D left her with M for the night and returned home. The following day D rejoined them and they all proceeded to a village Tibri where the woman was entrusted to B,

PENAL CODE ACT (XLV OF 1860)

who took her to another village and placed her in the charge of one N. Ultimately she escaped and being pursued, she put herself under the protection of a Policeman. *D*, *M* and *B* were convicted under S. 366, Penal Code, *M* and *B* having been sentenced to heavier punishment as the woman stated in cross-examination that they had intercourse with her: *Held*, (1) that the under circumstances of the case, the conviction of all three accused under S. 366, was quite justified, (2) but that inasmuch as the woman did not make any statement about rape during Police investigation, it could not be believed and *M* and *B* were not liable to a heavier punishment than *D*. *Bela Singh v. Emperor*.

17 Cr. L. J. 284 :

34 I. C. 1004 : 54 P. L. R. 1916 Cr. :

A. I. R. 1916 Lah. 361.

———S. 366—Offence under—De facto guardian, whether can be guilty of abduction—Sale of Brahmin widow by her mother-in-law to Jat for marriage—Liability of mother-in-law.

A Brahmin child widow was living under de facto guardianship of her mother-in-law. Sant Ram, a *jat*, wanted to marry her and Durga arranged a bargain between the mother-in-law and Sant Ram for the sale of the girl to the latter for a certain sum of money. Durga and Sant Ram gave some pieces of paper to the mother-in-law telling her that they were currency notes. The mother-in-law told the girl that she must go to her sister's house and that she had asked two men to take her there. The girl accompanied the mother-in-law till she was handed over to Durga and Sant Ram. She was kept in Sant Ram's house confined against her will for a fortnight when the Police rescued her. The mother-in-law, Durga and Sant Ram were charged for abduction: *Held*, (1) that the act of the mother-in-law fell within S. 366, Penal Code, though she was the de facto guardian of the girl, and she was not protected by S. 79, Penal Code, as she had no authority under the Hindu Law or under the Hindu Widow's Remarriage Act to give the girl in marriage. *Sant Ram v. Emperor*.

31 Cr. L. J. 648 :

124 I. C. 310 : 30 P. L. R. 573 :

11 Lah. 178 : A. I. R. 1929 Lah. 713.

———S. 366—Offence under—Kidnapping for purposes of marriage—Minor incapable of giving consent—Consent of guardian not obtained.

A Muhammadan girl of 10 or 11 years of age was handed over by her mother to the accused and the mother consented to the marriage of the accused with her daughter. The marriage was performed but the girl did not consent to it, as she was not capable of giving her consent, nor had the consent of her brother been obtained who was her guardian for marriage under the Muhammadan Law: *Held*, that the accused was guilty of an offence under S. 366, Penal Code. *Ahmed Bepari v. Emperor*.

26 Cr. L. J. 290 :

84 I. C. 434 : A. I. R. 1925 Cal. 578.

———S. 366—Offence under—Kidnapping girl from lawful guardianship—Child temporarily in

PENAL CODE ACT (XLV OF 1860)

custody of maternal uncle—Mother resuming custody—Taking with mother's consent, whether amounts to offence.

Where the accused was charged with kidnapping a girl from the lawful guardianship of her maternal uncle, and it appeared that the mother of the girl was present with the accused when he was leading the girl to a railway station, and consented to the girl's being so taken: *Held*, (1) that the maternal uncle had ceased to have the girl under his guardianship and the mother had again taken custody of the girl as her guardian; (2) that taking with her consent did not amount to an offence under S. 366, Penal Code. *In re : Natesa Padayachi*.

16 Cr. L. J. 237 :

27 I. C. 909 : A. I. R. 1915 Mad 1143.

———S. 366—Offence under—Kidnapping—Girl remaining at the house of a naikin.

Two girls below the age of 16 ran away from their houses. They remained for about two days in the house of the accused, who was a woman belonging to a well-known caste of *naikins* in Kumaun. The accused made no report of it to the *Padhan* or *Patwari*: *Held*, that she was guilty of an offence under S. 366. *Jasauli v. Emperor*.

13 Cr. L. J. 300 :

14 I. C. 764 : 9 A. L. J. 307 : 34 All. 340.

———S. 366—Offence under—Seduction, meaning of, whether refers to first connection only.

The word 'seduction' as used in S. 366, Penal Code, is not to be confined to the first connection with an unmarried girl. When a man has induced a girl while in the custody of her parents to surrender her chastity to him, and thereafter induces her to leave the protection of her parents and live with him in a condition of concubinage not sanctioned by law, he commits an offence under S. 366, Penal Code. *Pcsumal v. Emperor*.

27 Cr. L. J. 1292 :

98 I. C. 188 : A. I. R. 1927 Sind 97.

———S. 366—Offence under.

There can be seduction even in the case of a woman who had at one time surrendered her chastity provided that at the time of the abduction she had returned to a life of chastity. *Local Government v. Baliram*.

37 Cr. L. J. 270 :

160 I. C. 255 : 18 N. L. J. 49 :

8 R. N. 169.

———S. 366—Offence under, when complete—Evidence.

L enticed a girl to come out of a *gaehhi* to the road and then to a motor car which the accused had brought to kidnap her and in which the accused was sitting and the accused drove away with her: *Held*, that the offence of kidnapping was completed only by the petitioner driving her off in the car and the accused was guilty of an offence under S. 366, Penal Code. Whether kidnapping is complete or not, it is a question of fact and must be decided upon the particular evidence of each particular case. *Rekha Rai v. Emperor*.

28 Cr. L. J. 820 :

104 I. C. 436 : 6 Pat. 471

A. I. R. 1928 Pat. 159.

PENAL CODE ACT (XLV OF 1860)

—S. 366—Presumption as to intention—Evidence of girl abducted—Value of—Girl of Marriageable age abducted by young man—Duty of prosecution—Burden of proof as to intention.

In cases of offences under S. 366, Penal Code, the evidence of the girl is to be taken with a great amount of caution. Even a forcible abduction does not amount to an offence under S. 366, Penal Code, unless there are other ingredients, namely the intention either that the girl should be seduced or forced to illicit intercourse or that she should be compelled to marry against her will. In a case under S. 366, there can seldom be direct evidence as to the actual intention of the abductor, and that intention must be inferred from the circumstances. Human nature being what it is, whenever one finds a young man abducting a girl of marriageable age, the first and natural presumption must be that he has abducted her with the intention of having sexual intercourse with her, either forcibly or with her consent after seduction or after marrying her. If he has any intention other than that which is suggested by the natural circumstances of the case, the burden lies upon him under S. 106, Evidence Act, to prove that intention. *Mohammad Sadiq v. Emperor*.

39 Cr. L. J. 844 :

177 I. C. 97 : 40 P. L. R. 730 :

11 R. L. 265 (2) : A. I. R. 1938 Lah. 474.

—S. 366—Procedure—Age of girl—Question to Jury.

In cases under S. 366, Penal Code, it is the duty of Judges with Jury to adopt in part the system which is prevalent in England, and that is to put a specific question to the Jury as to the conclusion they have come to in relation to the age of the girl whose maltreatment has been the subject of the charge. It is very doubtful that the Jury, unless it is specifically put to them ever really understand what their duty is under S. 366. *Samarali v. Emperor*.

38 Cr. L. J. 176 :

166 I. C. 323 : 9 R. C. 494 :

A. I. R. 1936 Cal. 675.

—S. 366—Procedure.

Though the offence of kidnapping and abduction are referred to in the same section of the Penal Code, they are distinct offences and separate charges should be drawn up if it is intended to charge the accused with both the offences. *Mozam Dafadar v. Emperor*.

34 Cr. L. J. 682 :

144 I. C. 93 : I. R. 1933 Cal. 499 :

A. I. R. 1933 Cal. 563.

—S. 366—Retrial—Charge for kidnapping—Conviction for abduction—Legality of conviction—Prejudice to accused.

Notice of a charge of kidnapping under S. 366, Penal Code, is not a fair, proper or sufficient notice of a charge of abduction. Where the charge against the accused was one of kidnapping under S. 366, Penal Code, but the Judge told the Jury that it was open to them to convict the accused of abduction under the same section and the Jury convicted the accused of abduction : *Held*, that it was im-

PENAL CODE ACT (XLV OF 1860)

possible to say under the circumstances that the accused had not been prejudiced, and the accused were, therefore, entitled to ask for a retrial. *Fedu Sheikh v. Emperor*.

30 Cr. L. J. 857 :

117 I. C. 862 : 32 C. W. N. 1245 :

I. R. 1929 Cal. 622.

—S. 366—Scope of—Abduction of married woman—"Marry," meaning of.

S. 366, Penal Code, applies to the case of the abduction of a married woman. The word "marry" in this section has the same meaning as it has in S. 494 of the Code, i. e., the going through a form of marriage, whether the marriage should prove in fact legal and valid or illegal and invalid. *Taher Khan v. Emperor*.

19 Cr. L. J. 640 :

45 I. C. 688 : 27 C. L. J. 436 :

22 C. W. N. 695 : 45 Cal. 641 :

A. I. R. 1918 Cal. 136.

—S. 366—Scope of—Kidnapping—Guardian, knowledge of, whether necessary.

It is not necessary for a conviction under S. 366, Penal Code, that the accused should know definitely who the guardian of a minor girl is whom he finds wandering about and makes use of for his own ends. *Idu v. Emperor*.

25 Cr. L. J. 913 :

81 I. C. 529 : 27 O. C. 32 :

A. I. R. 1924 Oudh 335.

—S. 366—Scope of.

Where a father sent his daughter to live in a house with certain of his relations and one of those relations married in that house the daughter without the consent of the father : *Held*, that no offence under S. 366, Penal Code, was committed by the relative, because there was not taking out of lawful guardianship, inasmuch as the daughter never left the house where she was residing with the consent of her father. *Jagan Nath v. Emperor*.

15 Cr. L. J. 630 :

25 I. C. 638 : 1 O. L. J. 330 :

A. I. R. 1914 Oudh 126.

—S. 366—'Seduced to intercourse,' meaning of.

The phrase 'seduced to illicit intercourse' implies two distinct stages in the act of the accused, the seduction and the illicit intercourse. They must be two distinct acts, though they may follow in immediate sequence. *Emperor v. Baij Nath*.

33 Cr. L. J. 669 :

138 I. C. 609 : 1932 A. L. J. 483 :

54 All. 756 : I. R. 1932 All. 488 :

A. I. R. 1932 All. 409.

—S. 366—Seduction—Each illicit intercourse, whether seduction.

On each occasion that a woman is persuaded to indulge in illicit intercourse, she is being seduced within the meaning of the term "seduction" in S. 366, Penal Code, and it is not a correct proposition that once a girl has lost her chastity, she cannot be seduced. *Emperor v. Saran*.

28 Cr. L. J. 66 :

99 I. C. 98 : A. I. R. 1927 Sind 104.

PENAL CODE ACT (XLV OF 1860)

———S. 366—'Seduction,' meaning of.

For the purposes of S. 366, Penal Code, seduction does not mean surrender or loss of chastity for the first time, and an accused may be convicted under the said section even if the woman had illicit intercourse with him before she was kidnapped. *Suppiah v. Emperor*.

32 Cr. L. J. 357 :

129 I. C. 463 (1) : I. R. 1931 Mad. 271 :
A. I. R. 1930 Mad. 980.

———S. 366—Seduction—Nature of offence—Charge to Jury, essentials of.

Seduction is a comprehensive expression and does not exclude the possibility of deceitful means being used in order that seduction may be practised with effect. Where the prosecution case was such as to indicate that the case was one of the girl being compelled by force to leave her father's house, and the Judge put the entire case before the Jury explaining the section comprehensively and fully presenting the facts before them : *Held*, that the charge could not be objected to merely because the Judge did not suggest to the Jury that if they found that the girl had not been compelled by force to leave her father's house, then they should never proceed to consider whether deceitful means had been practised upon her by the accused, and whether by such means, she had been induced to leave her parent's house. *Mohammad Jalaluddin v. Emperor*.

31 Cr. L. J. 1092 :

126 I. C. 762 : A. I. R. 1930 Cal. 433.

———S. 366—Sentence—Abduction—Parties related—Act committed to bring about marriage—No excessive violence.

In a prosecution for abduction it was found that the abducted and the accused were relations, that the accused was not actuated by any evil desire to disgrace the girl but only to bring about a marriage, and that the act of abduction was not attended by any unnecessary or excessive violence : *Held*, that under the circumstances, a heavy sentence was not called for. *Nga San Min v. Emperor*.

28 Cr. L. J. 424 :

101 I. C. 456 : 6 Bur. L. J. 25 ;
A. I. R. 1927 Rang. 336.

———S. 366—Separate charges—Kidnaping and abduction.

Although kidnapping and abduction are referred to in the same section of the Penal Code, they are distinct offences and separate charges should be drawn up against an accused if it is desired to charge him with both the offences. *Mafizaddi v. Emperor*.

28 Cr. L. J. 805 :

104 I. C. 245 : 45 C. L. J. 561 :
31 C. W. N. 940 : A. I. R. 1927 Cal. 644.

———S. 366—Taking out of keeping of lawful guardian, significance of.

The expression "taking out of the keeping of the lawful guardian" must signify some act done by the accused which may be regarded as the proximate cause of the person going out of the keeping of the guardian or, in other words, an act but for which the person would not have gone out of the keeping of the guar-

PENAL CODE ACT (XLV OF 1860)

dian as he or she did. *Abdul Sathar v. Emperor*.

29 Cr. L. J. 635 :

109 I. C. 907 : 54 M. L. J. 456 :

27 L. W. 683 : A. I. R. 1928 Mad. 585.

———S. 366-A—Absence of force or fraud—No offence.

Under S. 366-A the person who induces a girl of an age between the years 16 and 18 without force or fraud to go from any place with the intention that she will have illicit intercourse with himself does not commit any offence. *Abbas Behara v. Emperor*.

34 Cr. L. J. 341 :

142 I. C. 308 : 37 C. W. N. 317 :

I. R. 1933 Cal. 261 : A. I. R. 1933 Cal. 362.

———S. 366-A—Burden of proof as to age—Traffic in women—Father inducing daughter to leave her husband's house to live with another, whether guilty—'Inducement,' meaning of—Benefit of doubt.

Where A and B went to the house of C who had married A's daughter and took A's daughter from C's house and left her at B's house in the position of B's wife : *Held*, that A was guilty of an offence under S. 366-A, Penal Code ; (2) that A's telling his daughter to come away from C's house amounted to an 'inducement' ; (3) that B was not, however, guilty under the said section. In a prosecution under S. 366-A, Penal Code, the burden is on the prosecution to prove that the woman was over 18 years of age and the benefit of doubt must be given to the accused. *Ram Saran v. Emperor*.

31 Cr. L. J. 861 :

125 I. C. 577 : 1930 A. L. J. 1113 :

A. I. R. 1930 All. 497.

———S. 366-A—Continuing offence.

The offence under S. 366-A, Penal Code, is a continuing offence. The differences between S. 366 and S. 366-A merely concern the manner of the inducement and the age of the girl and are irrelevant for the question of continuing offence. *Chiragh v. Emperor*.

38 Cr. L. J. 474 :

167 I. C. 847 : 9 R. L. 561 :

39 P. L. R. 365 : A. I. R. 1936 Lah. 850.

———S. 366-A—Conviction under—Girl already seduced but left alone—Accused taking her with a view to profit by her sex by conveying her to other persons—Accused, whether guilty.

Where a girl who is already seduced by some, but left alone, is taken away by the accused, with a view to profit from her sex and her youth by conveying her to some man other than her original seducer, he cannot claim immunity from a conviction under S. 366 in respect to this young and helpless girl on the ground that other men had previously taken advantage of her. *Emperor v. Jagannath Gir*.

38 Cr. L. J. 621 :

168 I. C. 833 : 1937 A. L. J. 547 :

1937 A. W. R. 203 : 9 R. A. 676 :

A. I. R. 1937 All. 353.

PENAL CODE ACT (XLV OF 1860)

———S. 366-A—Conviction under—Kidnaping—Consent of girl kidnapped, effect of—Consent induced by accused—Girl following accused even after knowledge of his bad intention.

The fact that the minor is a consenting party would not prevent the commission of an offence under S. 366-A, Penal Code. Where in a prosecution for an offence under S. 366-A, Penal Code, it appeared that the accused first put forward the story that the girl was to be taken to her sister, but even after the girl discovered that she was not being so taken, she fell in with the plan of the accused: *Held*, that the offence of inducement had been committed and the girl's subsequent willingness neither prevented the offence nor reduced its gravity and the accused was, therefore, guilty under S. 366-A, Penal Code. *Bhagwati Prasad v. Emperor*. 30 Cr. L. J. 985 : 119 I. C. 14 : I. R. 1929 All. 974 : A. I. R. 1929 All. 709.

———S. 366-A—Duty of Judge—Evidence of age—Value of—No evidence that age of girl was under sixteen—Charge depends on proof of force or deceit.

In a case of offence under S. 366-A, Penal Code, the question of age is the crucial one and strict and exact evidence of age is essential. Where, however, there is no exact evidence of age, the Judge should strongly emphasise this feature of the case and clearly direct the Jury that if they are not completely satisfied that it had been established that the girl was under eighteen, they are bound to acquit upon that charge. Where, as in cases of this nature, the law is somewhat complicated and liable to be misunderstood by Jury, it is essential for the Judge to say exactly how he has explained it to the Jury, so that the Appellate Court may be in a position to judge whether he has done so correctly and fully. Where there is no evidence that the girl is under sixteen, the charge under S. 366 depends entirely on the proof of force or deceit. The Judge should explain this to the Jury and ask them to consider carefully whether any deceit had really been shown to have been practised upon the girl. *Lachminder Rai v. Emperor*. 41 Cr. L. J. 1 : 184 I. C. 354 : 18 Pat. 698 : 6 M. R. 41 : 20 P. L. T. 898 : 12 R. P. 238 : A. I. R. 1939 Pat. 536.

———S. 366-A—Essentials of—Mere fact that accused tried to sell girl for immoral purposes, whether sufficient to establish offence under S. 366-A.

The mere circumstance that the accused accompanied a person who was alleged to have raped the girl or that he was trying to sell the girl, possibly for immoral purposes, may be suspicious but is not sufficient to establish the essential ingredients of the offence under S. 366-A, Penal Code. *Hardial v. Emperor*. 39 Cr. L. J. 967 : 177 I. C. 938 : 40 P. L. R. 903 : 11 R. L. 380 : A. I. R. 1938 Lah. 684.

———S. 366-A—Offence under—Ingredients

PENAL CODE ACT (XLV OF 1860)

of the offence—Sheltering girl and taking from place to place—Intention or knowledge of illicit intercourse absent.

Merely giving shelter to a girl or carrying her from place to place without knowing that she was married and without any intention or knowledge that she was likely to be forced or seduced to illicit intercourse, does not amount to an offence under S. 366-A. *Rati Ram v. Emperor*. 28 Cr. L. J. 584 : 102 I. C. 552 : 28 P. L. R. 260 : A. I. R. 1927 Lah. 727.

———S. 366-A—Separate trials, legality of—Seduction of girl—Offer to several persons for sale.

An offence under S. 366, Penal Code, is one of inducement with a particular object and when after inducement the offender offers the girl to several persons, a fresh offence is not committed at every fresh offer for sale. Several offers for sale evidence the criminal intention of the offender just as much as one offer for sale. *Sis Ram v. Emperor*. 30 Cr. L. J. 904 : 118 I. C. 384 : 1929 A. L. J. 800 : I. R. 1929 All. 864 : 51 All. 888 : A. I. R. 1929 All. 585.

———S. 366-A—Trial under—Fact that girl is handsome, if shows that accused intended to make her inmate of brothel—Held there was misdirection to Jury on this point.

In a trial under S. 366-A, Penal Code, the fact that a girl is handsome is no evidence at all to show that the persons with whom she goes away had any intention that she should become an inmate of a brothel. Where the Judge in dealing with the evidence regarding the intention under S. 366-A told the Jury to look at the surrounding circumstances, and he then pointed out that the girl was handsome: *Held*, that it amounted to a serious misdirection. *Ekkari Das v. Emperor*. 40 Cr. L. J. 660 : 182 I. C. 447 : 43 C. W. N. 668 : 12 R. C. 65 : A. I. R. 1939 Cal. 290.

———Ss. 366 and 343—Acquittal—Evidence showing abduction improbable—Accused must be acquitted.

Where the circumstances rendered it more probable that the girl had eloped with the accused rather than that she was abducted, *held*, that the accused should be acquitted. *Mohabbat Singh v. Emperor*. 5 L. L. J. 38 : A. I. R. 1923 Lah. 274.

———Ss. 366, 346—Separate charges—Accused charged with both kidnapping and abduction—Held, on facts that occurrence though single transaction, separate charges should have been framed for separate offences.

A married girl whom the Jury found to be under 16 years of age, was due to return to her husband's house after a visit to her father in a village. On the way she passed the house of the accused. He asked her to come inside on the pretext that his wife wanted her. When she went in, he bolted the door and demanded that she should remain with him.

PENAL CODE ACT (XLV OF 1860)

In the night he ravished her. Later on, he took her out and was joined by the other three appellants. They took her away, and according to her story, her ornaments were taken off. All were jointly charged both with kidnapping and abduction: *Held*, that the whole incident could not be regarded as constituting a single offence and though it may be said that the whole occurrence was one single transaction, even in that case, separate charges should have been framed for separate offences which went to make up that transaction. *Nanda Ghosh v. Emperor*.

40 Cr. L. J. 649 :
182 I. C. 322 : 12 R. C. 40 :
A. I. R. 1939 Cal. 321.

———Ss. 366, 366-A—*Absence of force or deceit, effect of—Abduction of girl under 18 years of age—Procuration—Offence.*

Accused took a girl of less than 18 years of age from place to place with the intention of compelling her to marry against her will or in order that she may be forced or seduced to illicit intercourse. There was no evidence that the girl was compelled to accompany the accused by force or by deceitful means: *Held*, that the accused could not be convicted of an offence under S. 366, Penal Code, but that he was guilty of an offence under S. 366-A. *Saadat Khan v. Emperor*. 26 Cr. L. J. 1151 :
88 I. C. 463 : 2 O. W. N. 445 :
A. I. R. 1925 Oudh 454.

———Ss. 366, 368—*Lawful guardianship—Kidnapping from lawful guardianship—Muhammadan Law—Girl having attained the age of 15 years.*

A Mohammadan girl after having attained the age of 15 years does not cease to be under the lawful guardianship of her mother with whom she is actually residing within the meaning of Ss. 366 and 368, Penal Code. *Emperor v. Miran Baksh*. 3 Cr. L. J. 296 :
60 P. R. Cr. 1905 : 7 P. L. R. 74.

———Ss. 366, 372—*Offence under.*

Where a female minor met a person in the street and went away voluntarily with that person, she was just as much in the possession of her legal guardians when she was walking in the street, unless she had given up the intention of returning home, as if she had actually been in her guardian's house when taken off. Letting a female minor for a single act of sexual intercourse is not an offence under S. 372, Penal Code. *Nga Shwe Thwe v. Emperor*. 6 Cr. L. J. 30 :
U. B. R. 1907 Penal Code 1 :
13 Bur. L. R. 30.

———S. 366—*Minor voluntarily leaving her guardian—Kidnapping—Selling minor for purpose of prostitution.*

A *chamar* girl between the age of 18 and 14 voluntarily left the house of her husband and parents, met *E* on a public road and stayed with him for a month. Afterwards *E* made over the girl to certain other persons who bored her nose and made her appear a *Jal* girl. Subsequently the girl passed several

PENAL CODE ACT (XLV OF 1860)

hands until she was made over to a person to be married to his brother: *Held*, that *E* was neither guilty of the offence of taking or enticing the girl out of the keeping of her lawful guardian nor of the offence of selling the minor with the intent that she might be employed or used for the purpose of prostitution. *Ewaz Ali v. Emperor*.

16 Cr. L. J. 663 :
30 I. C. 647 : 13 A. L. J. 854 : 37 All. 624 :
A. I. R. 1915 All. 390.

———Ss. 366, 376—*Consent of minor.*

On a charge under Ss. 366 and 376, Penal Code, the question of the age of the woman abducted is material inasmuch as if she was less than 14 years of age, her consent to the acts referred to in Ss. 366 and 376, is in law immaterial. *Mohiuddin v. Emperor*.

32 Cr. L. J. 455 :
129 I. C. 834 : 51 C. L. J. 352 :
I. R. 1931 Cal. 274 :
A. I. R. 1930 Cal. 437.

———Ss. 366, 376—*Conviction under S. 366 propriety of—Accused charged under Ss. 366 and 376—Acquittal under S. 376 but conviction under S. 366.*

There is no necessary inconsistency in Jury's acquitting the accused of the main charge of rape under S. 376 and convicting him of abduction under S. 366. The offence of abduction under S. 366 of the Code is made out as soon as the accused person takes away a woman. But when he has committed the offence of abduction under S. 366 of the Code, the further question to be decided is whether, when he has had illicit intercourse with the woman, that fact amounts to rape as defined by S. 375, Penal Code. Where a man has illicit intercourse with an adult woman with her consent, it is not rape, under the law. In such a case, the accused person will be held guilty under S. 366 of the Code, but not guilty under S. 376 of the Code. *Ebadi Khan v. Emperor*. 39 Cr. L. J. 674 :
176 I. C. 10 : 11 R. C. 36 :
A. I. R. 1938 Cal. 460.

———Ss. 366, 376—*Separate convictions—Acts disclosing offences of kidnapping and rape—Conviction for both, legality of.*

Where the series of acts proved against the accused, establish two distinct offences falling under Ss. 366 and 376, Penal Code, the accused can be convicted separately for both the offences. *Tek Singh v. Emperor*.

29 Cr. L. J. 248 :
107 I. C. 388.

———Ss. 366, 376—*Separate convictions—Kidnapping and rape—Separate sentences, legality of.*

The ingredients of the offences under Ss. 366 and 376, Penal Code, are essentially distinct from each other and separate convictions under the two sections are perfectly legal. *Baga v. Emperor*.

29 Cr. L. J. 485 :
109 I. C. 213.

PENAL CODE ACT (XLV OF 1860)

———Ss. 366, 376, 392—*Sentence—Marriage by forcible seizure—Gonds in Berar and Betul—Offences of rape, robbery, how far mitigated.*

The *rakshasa* form of marriage, viz., the seizure of a maiden by force from her house against her consent or that of her parents is prevalent amongst *Gonds* in Betul District as also those in Berar. Subsequent consent cannot prevent the acts technically constituting wrongful confinement and rape when they are committed and it does not reduce their culpability. Carrying of a *Gond* maiden by force and having a sexual intercourse with her against her will and taking away her bracelet with the intention of detaining her are, no doubt, sufficient to convict a *Gond* for wrongful confinement, rape and robbery but the sentence should not be so heavy in view of the fact that the marriage by seizure is customary among the *Gonds*. *Garab Singh v. Emperor.*

28 Cr. L. J. 659 :
103 I. C. 195 : A. I. R. 1927 Nag. 279.

———Ss. 366, 376, 498—*Miscellaneous—Offence under Ss. 366 and 376 not established—Conviction under S. 498, propriety of.*

A person who is prosecuted under Ss. 366 and 376, I. P. C., cannot be held to be guilty of having committed an offence under S. 498, I. P. C., if the offences with which he was charged are not established. *Haidarali v. Emperor.*

41 Cr. L. J. 499 :
187 I. C. 690 : 12 R. A. 579 :
1940 A. L. J. 97 : A. I. R. 1940 All. 201.

———Ss. 366, 394—*Miscellaneous—Abduction—Intention—Inference—Robbery and abduction—Separate convictions.*

The intent with which a woman is abducted or kidnapped, is more or less a matter of inference. There may be some cases in which the matter is capable of direct proof, but very generally one has to infer from the circumstances of the case and the subsequent conduct of the accused as to what was the intention with which the kidnapping or the abduction had been brought about. In such cases, it is for the accused to explain away the incriminating circumstances and to prove that he had no improper or sinister object in view. Where a woman is first robbed of her ornaments and is then carried off, the abduction although immediately following the robbery is no part of that offence, it not being necessary to complete the offence of robbery that the woman should also be abducted. In such a case, separate convictions and sentences of the accused under the two offences are right and proper. *Chanda Singh v. Emperor.*

23 Cr. L. J. 459 :
67 I. C. 731 : 3 L. L. J. 574 :
A. I. R. 1921 Lah. 323.

———Ss. 366 and 420—*Offence, nature of—Conspiracy to bring girl in order to sell—Girl not kidnapped from lawful guardianship—Offence committed is one under Ss. 420 and 511 read with S. 120-B and not under S. 366 read with S. 120-B.*

If a conspiracy exists between certain persons that a girl should be brought to Sind and sold

PENAL CODE ACT (XLV OF 1860)

there to some persons who might be willing to buy her and that to such person it should be stated that the girl was a relation of one of the party of the conspirators and it is not proved that the girl is kidnapped from lawful guardianship, the offence committed falls under Ss. 420 and 511 read with S. 120-B. *Mohan-singh v. Emperor.* 31 Cr. L. J. 949 : 126 I. C. 55 : A. I. R. 1930 Sind 164.

———Ss. 366, 498—*Evidence—Abducting woman to compel marriage.*

An abduction was supported by a letter received by the complainant from his wife stating that she had been abducted to a brothel in Bombay by the accused, and also by her statement that she had been persuaded that if she went to Bombay she would be well off and be married to a rich husband. The alleged writer and the cover of the letter were not produced. The accused had once been seen talking with the woman. He had then disappeared and was arrested on his return. He, in examination, incidentally admitted having been to Bombay. The woman was rescued by the Bombay Police, but the policeman was not summoned : *Held*, that as abductions were secretly carried out, the substance of the letter was a sufficient indication of its genuineness ; that it would have been satisfactory if the alleged writer of the letter had been produced but that what might have been a mere practical difficulty, must not be allowed to vitiate what, from a general aspect of the case, appeared to be good evidence. *Emperor v. Marwada Gholio Rughnath.*

1 Cr. L. J. 701.

———S. 367—'Lawful guardianship,' test of.

The test of lawful guardianship is that the infant or minor should be in a position to apply to his guardian for protection. It is not necessary and the law does not require that the Crown should prove that a minor has been taken actually from the actual custody of his guardian. *Mohammad Salleh, son of Ghulam Mohammad v. Emperor.*

A. I. R. 1929 Sind 249 (2).

———S. 368.

See also (i) Cr. P. C., 1898, S. 207.

(ii) Penal Code, 1860, Ss. 109, 303, 306.

———S. 368—Benefit of doubt.

Prosecution story disbelieved—Possibility of truth in story of accused as to the presence of the girl in his house—Accused, held entitled to benefit of doubt. *Khazari Singh v. Emperor.*

36 Cr. L. J. 1089 :
157 I. C. 168 : 8 R. A. 126.

———S. 368—'Concealment,' meaning of—Kidnapped girl taken to a well where she is allowed to move in neighbouring fields—Whether concealment.

'Concealment' means a withdrawal from the actual observation of others of the person kidnapped or abducted and not merely taking her away to a long distance so that her father or guardian would not know where she was.

PENAL CODE ACT (XLV OF 1860)

Where a kidnapped girl is taken to a well where she is allowed to move in the neighbouring fields, it cannot be said that she is concealed. *Shiv Singh v. Emperor*.

40 Cr. L. J. 277 :
179 I. C. 874 : 11 R. L. 648 :
41 P. L. R. 162 : A. I. R. 1939 Lah. 26.

-----S. 368—Conviction, essentials of.

A conviction under S. 368, Penal Code, can only be maintained if the accused could be charged with the knowledge of the fact that an offence under S. 368, Penal Code, had been committed in respect of the girl abducted. *Sohan Singh v. Emperor*.

40 Cr. L. J. 684 :
182 I. C. 520 : 41 P. L. R. 45 :
12 R. L. 53 : A. I. R. 1939 Lah. 180.

-----S. 368—Ingredients—Offence under.

A conviction under S. 368, Penal Code, cannot be maintained on the evidence that the accused said that they wanted to sell the girl. It must be proved that the accused concealed the girl or kept her in wrongful confinement. *Amar Ali v. Emperor*.

27 Cr. L. J. 554 :
93 I. C. 1050 : A. I. R. 1926 Lah. 384.

-----S. 368—Jurisdiction.

The venue for the trial of a case under S. 368 is the Court within whose jurisdiction the kidnapped or abducted person has been wrongfully concealed or confined. *Nanhua Dhimar v. Emperor*.

32 Cr. L. J. 690 (b) :
131 I. C. 246 : 1930 A. L. J. 1485 :
53 All. 140 : I. R. 1931 All. 358 :
A. I. R. 1931 All. 55.

-----S. 368—Procedure.

It is the duty of the prosecution in a case under S. 368 to place the first information report before the Court, and if the prosecution does not do so and as the accused does not come to know of this report at an earlier stage, it is necessary, that on application under S. 428, Cr. P. C., made to the Sessions Judge, additional evidence should be taken by him. *Sarnam Singh v. Emperor*.

36 Cr. L. J. 117 :
152 I. C. 550 : 1934 A. L. J. 1234 :
4 A. W. R. 949 : 7 R. A. 360 :
A. I. R. 1935 All. 63.

-----S. 368—Scope of—No proof of kidnapping—Offence, if made out.

S. 368, Penal Code, pre-supposes that the offence of kidnapping or abduction has taken place, so that any one wrongfully concealing or confining the person kidnapped or abducted, is guilty of an offence under S. 368, Penal Code. But where kidnapping is not proved, wrongfully confining or concealing does not constitute an offence under S. 368. *Francis Hector v. Emperor*.

38 Cr. L. J. 401 :
167 I. C. 676 : 9 R. A. 567 :
1936 A. W. R. 1065 : A. I. R. 1937 All. 182.

-----S. 368—Scope of.

S. 368, Penal Code, requires "knowledge" on the part of the accused and not merely suspicion or belief. *Gadadhar Sarkar v. Emperor*.

26 Cr. L. J. 1021 :
87 I. C. 845 : A. I. R. 1926 Cal. 226.

PENAL CODE ACT (XLV OF 1860)

-----S. 368—Wrongful concealment, what amounts to.

A person who is not a party to the conspiracy of kidnapping a woman, and in whose house she lives as a free agent, other people having free access to her, cannot be convicted of an offence under S. 368, Penal Code. *Karan Singh v. Emperor*.

17 Cr. L. J. 532 :
36 I. C. 580 : 14 A. L. J. 792 :
A. I. R. 1916 All. 272.

-----S. 368—Wrongfully concealing kidnapped minor.

A girl under sixteen years of age was going to a vegetable market in search of work. On her way she met another woman, who asked the girl to accompany her under a promise of obtaining work for her. The woman took the girl to her house and kept her there till evening, when she was removed by the accused in a closed carriage to a solitary bungalow far away from the town. The accused kept the girl there for two days and two nights, after which she was permitted to return to her home: *Held*, that the accused were guilty, under S. 368, Penal Code, of the offence of wrongfully concealing a minor knowing that she had been kidnapped. *Emperor v. Jettha Nathoo*.

1 Cr. L. J. 931 :
6 Bom. L. R. 785.

-----S. 370—Scope of.

In order to come within the scope of S. 370, Penal Code, the control sought to be established over the liberty of the person purported to be dealt with as a slave must be of an absolute character. A large class of domestic servants in this country adhere to the same master throughout their lives and their offspring also continue as domestic servants in the same family. It would be an outrage on one's common sense to suppose that domestic servants of this class occupy the position of slaves. Nothing more was intended by the document in this case than to transfer the supposed right of the transferor to the personal services of the Pulayan. *Koroth Mammad v. Emperor*.

19 Cr. L. J. 17 :
42 I. C. 977 : 33 M. L. J. 430 :
22 M. L. T. 262 : 6 L. W. 600 :
1917 M. W. N. 894 : 41 Mad. 334 :
A. I. R. 1918 Mad. 647.

-----S. 370—'Slave', meaning of—Pulayan of North Malabar, sale of—Offence.

Slavery within the meaning of S. 370, Penal Code, includes not only the most extreme degree of subjection wherein the master has absolute and unlimited power over the life, fortune and liberty of the slave, but also such a condition of subjection as is inconsistent with the idea of the person so treated being free as to his property, services or conduct in any substantial respect. Where a Pulayan of North Malabar, aged 25, was with his own consent sold by a Mappilla to another under a document called a *jenmam* deed "giving" Pulayan Vellan with "his heirs" and stating that "for this sum of Rs. 10 you should get work done for you by the said Vellan and his

PENAL CODE ACT (XLV OF 1860)

offspring that may come into being as your *jenmam* and act as you please," and the evidence showed that among this class of people the belief was that a Pulayan could not serve any one except his master without the latter's consent and that a Pulayan could be sold, though only with his own consent, to a new master; *Held*, that the transaction amounted to disposing of a person as a slave within the meaning of S. 370. *Koroth Mammad v Emperor*. 19 Cr. L. J. 17 : 42 I. C. 977 : 33 M. L. J. 430 : 22 M. L. T. 262 : 6 L. W. 600 : 1917 M. W. N. 894 : 41 Mad. 337 : A. I. R. 1918 Mad. 647.

—S. 372.

See also (i) Cr. P. C. 1898, S. 161.

(ii) Penal Code, 1860, Ss. 360, 373, 420.

—S. 372—Completion of offence—Minor—Disposing of for the purposes of prostitution.

The offence made punishable by S. 372, Penal Code, is complete when the person intending that a minor should be employed or used for the purpose of prostitution or for any unlawful or immoral purpose or knowing it to be likely that such minor will be employed or used for any such purpose, intentionally places the minor in a position calculated to bring about the result intended or known to be likely. If such a change in the position or circumstances of the minor has been effected with such knowledge or intention, it is quite immaterial whether third persons have or have not observed any ceremonies recognised by custom as necessary to give prostitutes a particular status. The offence consists in the intentional or conscious exposure of the minor to the danger of degradation. *Emperor v. Bhinde Pandu Doli*. 2 Cr. L. J. 500 : 7 Bom. L. R. 562.

—S. 372—'Disposal', meaning of—Recommendation to minor to go to brothel—Offence.

The word "disposal" in S. 372, Penal Code, necessarily connotes some control by the person disposing over the minor disposed of. The mere direction of the minor or recommendation to her to go to a brothel does not constitute a "disposal" of the minor within the meaning of S. 372. *In re : Nari*. 26 Cr. L. J. 868 :

86 I. C. 804 : 21 L. W. 472 : 48 M. L. J. 594 : A. I. R. 1925 Mad. 716.

—S. 372—'Disposal', what amounts to—Disposal of minor girl for purposes of prostitution—Gejjee ceremony, performance of—Offence.

The mere performance of what is known as the *gejjee* ceremony in respect of a minor girl does not amount to a disposal of the girl with the intent that she shall be employed or used for the purpose of prostitution, within the meaning of S. 372 of

PENAL CODE ACT (XLV OF 1860)

the Penal Code. *Parmeshwari Subbi v. Emperor*. 21 Cr. L. J. 721 :

58 I. C. 145 : 22 Bom. L. R. 894 : A. I. R. 1920 Bom. 63.

—S. 372—Presumption of guilt—Taking or employing minor for purposes of prostitution—Nature of proof—Adoption by temple *dasi*—Receipt of *prasadam* in temple by adoptee minor—Minor made to sing and dance in temple.

The taking of a minor girl by a temple *dasi*, though actually unattended with the forms and ceremonies of adoption, making the minor to accept *prasadam* in the temple and sing and dance there, is enough to raise a presumption of guilt under S. 372, Penal Code, on the part of the acquirer of the minor and to throw on her the burden of showing the absence of guilty intention or knowledge. *Public Prosecutor v. Kannanmal*. 14 Cr. L. J. 33 :

18 I. C. 257 : 13 M. L. T. 131 : 24 M. L. J. 211 : 1913 M. W. N. 207.

—S. 372—Scope of—Disposing of minor for purposes of prostitution—Preliminary ceremony—Offence.

In the absence of a finding that the accused has sold or let out a minor to hire or otherwise disposed of her with the intent that she should be used for the purpose of prostitution, the mere fact that a certain ceremony was performed by the accused in respect of a female minor which was a preliminary step before the selling, letting 'or disposing of the girl for the purpose of prostitution' does not make the accused's act an offence under S. 372, Penal Code. *Emperor v. Sahebava Birappa*. 26 Cr. L. J. 1482 :

89 I. C. 1050 : 27 Bom. L. R. 1022 : A. I. R. 1925 Bom. 478.

—Ss. 372, 373—Offence under, test of—'Possession' of minor girl, what constitutes—Brothel-keeper permitting minor girl to be brought to brothel for a few hours.

The law does not specify the nature of possession required to constitute an offence under S. 373, Penal Code, nor its duration, nor intensity. The only test which in law is necessary and sufficient is whether, in each case the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse. A brothel-keeper who avails herself of the supply of a procuress, can be convicted of abetment of an offence under S. 6, Bombay Prevention of Prostitution Act, 1928. S. 6, Bombay Prevention of Prostitution Act, 1928, is directed not only against procuresses but also against brothel-keepers. *Emperor v. Vithabai Sukha*. 29 Cr. L. J. 993 :

112 I. C. 209 : 30 Bom. L. R. 613 : 52 Bom. 403 : A. I. R. 1928 Bom. 336.

PENAL CODE ACT (XLV OF 1860)

———Ss. 372, 373—*Scope of*—“Letting to hire,” “obtaining possession”, meaning of—“Kanyarikam” ceremony, performance of, whether within the section.

Under Ss. 372 and 373, Penal Code, there must be making over of possession of the minor girl either by sale or by hire or by some similar arrangement in order that a case may come without the mischief of the law. Where the only evidence against the accused was that he performed the *kanyarikam* ceremony, i. e., the nuptials of a minor girl and had sexual intercourse with her for 8 days successively, but the girl continued to live with her parents who never parted with possession of her to the accused: *Held*, that these facts were not sufficient to support the conviction of the accused under S. 373 and the conviction of the girl's parents under S. 372. *Public Prosecutor v. Maddila Mutayalu*.

19 Cr. L. J. 965 :
47 I. C. 865 : 1918 M. W. N. 484 :
35 M. L. J. 157 : 24 M. L. T. 77 :
8 L. W. 253 : A. I. R. 1919 Mad. 892.

———Ss. 372, 420—*Selling married girl as virgin—Cheating.*

Accused sold a minor married girl to the complainant representing her to be a virgin: *Held*, that the accused were guilty of cheating. *Raj Bahadur v. Emperor*.

19 Cr. L. J. 931 :
47 I. C. 447 : 28 P. W. R. 1918 Cr. :
23 P. R. 1918 Cr. : A. I. R. 1918 Lah. 49.

———S. 373.

See also Penal Code, 1860, S. 372.

———S. 373—*Intention.*

A prostitute received into her house two girls, one of them being of mature age and promised to give the elder girl good clothes and ornaments if she lived with her: *Held*, that from these facts it might be reasonably inferred that the accused obtained possession of the girl with intent that one or both of them should be employed for the purpose of prostitution or knowing it to be likely that they would be so employed and that the accused were guilty of an offence under S. 373, I. P. C. *Emperor v. Musammal Sunder*.

1 Cr. L. J. 972 :
1 A. L. J. 559.

———S. 373—*Intention—Inference from circumstances—Burden of proof.*

Proof of intention or knowledge, such as are mentioned in S. 373, Penal Code, must be almost entirely a matter of inference from circumstances. Where in a prosecution under S. 373 against a woman, all the circumstances go to show that the intention of the accused was to employ a girl as a prostitute as soon as she was physically ready for the purpose, the burden lies upon the woman of proving that she intended to wait until the girl had reached the age of majority. *Khetermani Dasi v. Emperor*.

24 Cr. L. J. 104 :
71 I. C. 232 : 35 C. L. J. 451 :
A. I. R. 1922 Cal. 539.

PENAL CODE ACT (XLV OF 1860)

———S. 373—*Misdirection.*

Prosecution evidence unsatisfactory on question of age of girl—Judge points it out and telling jury to appeal to their experience and apply that experience to impression formed on seeing the girl—No caution given that such impression was not a sure guide—There is a material misdirection within S. 297, Cr. P. C. *Bhala Sardar v. Emperor*.

33 Cr. L. J. 553 :
138 I. C. 111 : 35 C. W. N. 316 :
I. R. 1932 Cal. 414 :
A. I. R. 1932 Cal. 417.

———S. 373—*Offence, where completed—Bringing minor girl from Kashmir to Bombay—Prostitution of girl in Bombay—Enhancement of sentence, application for—Accused's right to question, legality of conviction.*

A married girl who was living in Kashmir was brought to Bombay by accused No. 2, a relation of hers, at the instance of accused No. 1 for the purpose of prostitution, the fare being paid by accused No. 1. She was kept in the brothel of accused No. 1 in Bombay and the two accused shared her earnings. In a prosecution of the accused under Ss. 373 and 114, it was argued that the offence was committed in Kashmir: *Held*, that what took place at Kashmir was only a preparation for committing the offence, and that the offence was completed only in Bombay when the girl was put in the brothel of accused No. 1. An accused who has had his appeal dismissed, cannot have his case reheard on the merits of his conviction upon an application for enhancement of sentence. *Emperor v. Butubai Geneshu*.

28 Cr. L. J. 465 :
101 I. C. 593 : 29 Bom. L. R. 490 :
A. I. R. 1927 Bom. 666.

———S. 373 — ‘Possession’ — *Obtaining possession of girl for prostitution — Offence, ingredients of — Obtaining possession without intervention of third person, whether offence.*

It is not essential for an offence under S. 373, Penal Code, that the accused should have obtained possession of the minor from or through the intervention of a third person. It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for the purpose of prostitution. *Sham Sunder Prusti v. Emperor*.

31 Cr. L. J. 800 :
125 I. C. 154 : 11 P. L. T. 311 :
A. I. R. 1930 Pat. 219.

———S. 373—*Presumption as to intention — Possession of minor girl by brothel-keeper.*

When the accused is proved to have obtained possession of a female under the age of 18 years and is proved to be a person who occupies or manages a brothel, then he is to be presumed to have obtained possession of that girl with the intent that he

PENAL CODE ACT (XLV OF 1860)

shall use her for the purpose of prostitution. *Emperor v. Chiragh.*

30 Cr. L. J. 376 :
115 I. C. 65 : I. R. 1929 Lah. 321 :
30 P. L. R. 414.

—S. 373—Scope of—*Obtaining possession of minor for purpose of prostitution—Possession, whether must be obtained from third person.*

It is not requisite for the purpose of S. 373, Penal Code, that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused, in fact, obtained possession of the minor with intent that the minor shall be used for the purpose of prostitution. *Emperor v. Shamsunderbai.*

22 Cr. L. J. 29 :
59 I. C. 141 : 22 Bom. L. R. 1234 :
45 Bom. 529 ; A. I. R. 1921 Bom. 323.

—S. 373—Scope of.

S. 373, Penal Code, does not require that a minor taken possession of by an accused person would necessarily be employed or used for the purpose of prostitution. It is quite enough that such employment or use would be the probable result of the detention of the girl by the accused, even though she might not have intended the result. S. 373 does not require that the intention with respect to the employment or use of the minor for the purpose of prostitution should relate to her employment or use during her minority. The expression "such minor" is intended to designate the person intended to be employed or used for immoral purposes and not the time when such employment or use is to take place. *Public Prosecutor v. Kannammal.*

14 Cr. L. J. 33 :
18 I. C. 257 : 13 M. L. T. 131 :
24 M. L. J. 211 : 1913 M. W. N. 207.

—Ss. 373, 372—Scope of—S. 373 should be read with reference to S. 372—'Possession' implies some sort of control by accused—Conviction under S. 373, legality of.

S. 373, Penal Code, is not self-contained and should not be read as a self-contained whole without any reference to S. 372. They are correlative of each other being aimed against what may be broadly described as trafficking in girls under the age of eighteen. On this view the words "otherwise obtains possession" must be construed *ejusdem generis* with "buying" and "hiring". The word "possession" implies some sort of control. A girl ran away with the accused of her own accord. In spite of the fact that she was taken home by her father-in-law, she ran away again and re-joined the accused. There was nothing to show that he had possession of her in any sense of the term or that he attempted to control her movements in any way and there was nothing to prevent her from leaving him at any moment she chose : *Held*, that under the circumstances, the accused could not be convicted under S. 373. *Jatindra Mohan Das v. Emperor.*

38 Cr. L. J. 696 :
169 I. C. 76 : 41 C. W. N. 447 :
9 R. C. 891 : I. L. R. 1937, 2 Cal. 187 :
A. I. R. 1937 Cal. 250.

PENAL CODE ACT (XLV OF 1860)

—S. 374.

See also, Penal Code, 1860, S. 302.

—S. 375.

See also (i) Cr. P. C., 1898, S. 100 (1) (b) and (c).
(ii) Evidence Act, 1872, S. 6.

—S. 376.

See also (i) Cr. P. C., 1898, S. 30, 177, 199, 250.
(ii) Evidence Act, 1872, Ss. 6, 8.
(iii) Penal Code, 1860, Ss. 71, 342, 354, 366, 376, 392, 511.

—S. 376—Attempt to commit rape.

A boy of ten who has attained sufficient maturity of understanding to judge the nature and consequences of his conduct, can be convicted of an attempt to commit rape. *Emperor v. Nga Nyun.*

37 Cr. L. J. 94 :
159 I. C. 450 : 8 R. Rang. 267 :
A. I. R. 1935 Rang. 393.

—S. 376—Attempt to commit rape, what constitutes.

From the moment when the intention is formed to commit an offence, every act done which facilitates the commission of the offence and which is done with that object in view, is in one sense an act done towards the commission of the offence, but the doing of every such act does not constitute an attempt to commit the offence. It must, in every case, be a question depending upon the circumstances whether a particular act done with the requisite intention towards the commission of an offence is sufficiently proximate to its commission to constitute an attempt or is so remote as merely to constitute preparation for its commission. Act which amounts to an attempt to commit rape does not lose that character merely because the offender does not display a determination to effect his object at all costs. *Jones v. Emperor.*

27 Cr. L. J. 916 :
96 I. C. 260 : 4 Bur. L. J. 83 :
A. I. R. 1925 Rang. 247.

—S. 376—Benefit of doubt—Charge of rape—Delay in First Information Report—Doubt as to guilt of accused.

Where in a charge of rape it appeared that there was no direct reliable evidence as to the commission of the offence and no semen or blood was found on the person of the prosecutrix, and further that there had been great delay in making the First Information Report which had not been satisfactorily explained, and that the family of the accused and the prosecutrix were at enmity with each other : *Held*, that all these circumstances combined to raise a doubt in favour of the accused and that he was entitled to the benefit of the doubt. *Abdul Rahman v. Emperor.*

17 Cr. L. J. 150 :
33 I. C. 630 : 17 P. W. R. 1916 Cr.
A. I. R. 1916 Lah. 292.

PENAL CODE ACT (XLV OF 1860)

———S. 376—Consent of woman—Effect of—Copulating with a woman with her consent does not amount to rape.

Where the accused was convicted of committing rape on a woman aged 20, but there were circumstances to show that the accused was copulating with her with her consent, and when she was caught in the act of copulation, she naturally concocted a story to save her face that the accused had carried her into the room by force: *Held*, that the offence of rape was not made out. *Beli Singh v. Emperor*.

9 L. L. J. 337 :
A. I. R. 1927 Lah. 858.

———S. 376—Consent—Presumption—Rape—Girl virgin.

In a case of rape, the fact that the girl was *virgo intacta* up to the date of the occurrence, is very strong proof against the intercourse having taken place with the consent of the girl. *Sultan v. Emperor*. 26 Cr. L. J. 1488 :
89 I. C. 1056 : A. I. R. 1925 Lah. 613.

———S. 376—Consent—Rape—Complainant, uncorroborated testimony of, value of—Struggle, evidence of.

Where a person is charged with the offence of having committed rape, the question for determination is, whether the woman was or was not a consenting party, and in this connection, her testimony without any independent evidence in support thereof that she was not a consenting party, is insufficient. The first and foremost circumstance that can be looked for in cases of this kind is the evidence of resistance which one would naturally expect from a woman unwilling to yield to sexual intercourse forced upon her. Such a resistance may lead to the tearing of clothes, the infliction of personal injuries and even injuries on her private parts. *Mahla Ram v. Crown*.

25 Cr. L. J. 74 :
75 I. C. 986 : A. I. R. 1924 Lah. 669.

———S. 376—Consent—Rape—Court's duty where accused denied guilt—Confession and contradiction in evidence.

Though the accused may not have advanced the plea of having sexual intercourse with the complainant with her consent and may have alleged absolute ignorance of the matter, the Court should look at all the circumstances and decide as to their conduct and intention, apart from their own explanation and is never, and should not consider itself, bound by the explanations, because the accused may well be too ashamed to confess to their lust, and even if they were not too ashamed to do so, the Court must at least realize that the accused probably think that such a grave admission would be fatal to their own case and therefore refuse to risk telling the actual truth. Where there were no satisfactory indications of unwillingness or of resistance by the ravished woman, whilst there was confusion and contradictions in her evidence such as would only arise if she then consented and afterwards attempted to protest innocence, and certain circumstances showed that she had

PENAL CODE ACT (XLV OF 1860)

consented, the accused were acquitted. *Emperor v. Prabhatsang*. 5 Cr. L. J. 465.

———S. 376—Conviction based on uncorroborated testimony of woman raped.

In a charge for rape, in the absence of any corroboration, it is not proper to convict the accused on the bare testimony of the woman alleged to be the victim. *Amar Singh v. Emperor*.

36 Cr. L. J. 428 :
153 I. C. 894 : 35 P. L. R. 638 :
7 R. L. 470 : A. I. R. 1935 Lah. 8.

———S. 376—Conviction, illegality of.

The solitary statement of the complainant that the offence of rape has been committed upon her by the accused is not sufficient to convict him of the offence, in the absence of other independent evidence. *Baji v. Emperor*.

34 Cr. L. J. 496 :
143 I. C. 73 : 10 O. W. N. 107 :
I. R. 1933 Oudh 153 : A. I. R. 1933 Oudh 163.

———S. 376—Conviction, legality of—Rape—Absence of evidence of penetration except complainant's statement—Chemical Examiner's report, value of.

Where in a rape case, there was evidence to show that the accused had entered the house of the complainant and had assaulted her but apart from the statement of the complainant herself there was no evidence that penetration was effected and the complainant was not examined by any medical expert; *Held*, that the evidence was not sufficient for convicting the accused of rape. The report of the Chemical Examiner regarding the presence of semen on the complainant's clothing is not sufficient to prove that the complainant was actually raped. *Jalal v. Emperor*. 31 Cr. L. J. 784 :

125 I. C. 185 : 11 L. L. J. 391 :
30 P. L. R. 662 : A. I. R. 1930 Lah. 193.

———S. 376—Conviction on uncorroborated testimony of woman, legality of.

It is very unsafe to convict a person for rape on the testimony of the woman alone without substantial corroboration. *Maung Ba Tin v. Emperor*. 27 Cr. L. J. 1284 :

98 I. C. 180 : 5 Bur. L. J. 112 :
A. I. R. 1927 Rang 67.

———S. 376—Conviction, propriety of.

Girl, mother and eye-witnesses deposing for prosecution—Medical examination after four or five days—Absence of injuries and hymen—Blood-stains on *dhoti* of accused and cloth of girl—Conviction, *held* proper. *Hari Har v. Emperor*.

36 Cr. L. J. 1095 (2) :
157 I. C. 147 : 1935 A. W. R. 597 :
8 R. A. 111 : A. I. R. 1935 All. 590.

———S. 376—Duty of prosecution—Charge under S. 376—Prosecution to prove girl to be under 14.

To prove the charge under S. 376, Penal Code, the prosecution is bound to prove that the girl is below the age of 14. *Emperor v. Qudrat*.

41 Cr. L. J. 142 :
185 I. C. 271 : 1939 A. L. J. 980 :
I. L. R. 1939 All. 871 : 1939 A. W. R. 693 :
12 R. A. 310 : A. I. R. 1939 All. 708.

PENAL CODE ACT (XLV OF 1860)

—S. 376—Evidence, insufficiency of—
Accused should be acquitted.

Where there was no physical proof of the rape, the inference from the medical evidence was that at the time of the alleged offence, the girl was not a virgin, no trace of semen was found on her clothes and the girl of 17 was said to have been forced through a low arch only 3 feet high: *Held*, the evidence is not sufficient to support conviction for rape. *Khuda Bux v. Emperor*. A. I. R. 1923 Lah. 238.

—S. 376 — Evidence — Rape — Statement by complainant immediately after occurrence, admissibility of—Sentence—Suicide of complainant, whether can be taken into consideration.

In a case of rape, the statement made by the complainant immediately after the occurrence to another woman is admissible, not as evidence of the truth of the charge alleged, but as corroborating the credibility of the complainant and as evidence of the consistency of her conduct. An inference adverse to the accused cannot be drawn from the fact that the complainant was very much ashamed and even committed suicide owing to the shame brought on her. The fact of the complainant's suicide should not be taken into consideration in passing sentence in a case of rape, because that is neither the natural nor ordinary nor probable consequence of the accused's act. *Nga San Pu v. Emperor*. 19 Cr. L. J. 155 : 43 I. C. 443 : A. I. R. 1918 L. Bur. 81.

—S. 376—Inference as to innocence of accused—Girl under 10 years—Consent, effect of—Assailant suffering from gonorrhoea — Gonococci not found on girl.

In the case of a conviction for rape, where the girl is 10 years of age, no question of consent arises. The fact that a person accused of having committed rape is found to be suffering from gonorrhoea but the injured girl is not infected with the disease, is by no means conclusive of the innocence of the accused. *Emperor v. Asadali*. 29 Cr. L. J. 12 : 106 I. C. 348 : 9 P. L. T. 186.

—S. 376—Inference of rape, if justified—Existence of injury to vagina.

The mere existence of the injury to the vagina does not necessarily and inevitably justify the inference that there had been rape. *Maung Ba Yin v. Emperor*. 39 Cr. L. J. 944 : 177 I. C. 710 : 11 R. Rang. 160 : A. I. R. 1938 Rang. 298.

—S. 376—Insufficient evidence.

The accused was charged with ravishing a child of 4 who was unable to give evidence. The injuries received by the child might have been caused by any accident. Evidence was offered of statements made by the child (1) to her grandmother immediately after receiving the injuries, (2) to the headman, later when examined by him: *Held*, that the statement to the grandmother was the only statement that could possibly be proved (under S. 8, Evidence Act), and that the grandmother's evidence as to that statement was insufficient

PENAL CODE ACT (XLV OF 1860)

to support a conviction. *Nga Hlwa v. Emperor*. 4 Cr. L. J. 288 : U. B. R. Cr. 1906.

—S. 376 — Medical examination — Charge of rape brought by woman that she did not offer herself for medical examination cannot weigh against her—Criminal trial.

In a charge of rape brought by a woman, the fact that she did not offer herself for medical examination cannot weigh against her. It is the duty of the Police Officer before whom she is produced to ask her whether she was willing to submit to a medical examination in order to substantiate her charge. Whether any such examination would have any value several days after the alleged act in the case of a woman who bore several children, is doubtful. *Local Government v. Mst. Gaji*. 17 N. L. J. 189 : A. I. R. 1935 Nag. 69.

—S. 376—Punishment, measure of—
Rape.

The measure of punishment for an offence of rape, under S. 376, Penal Code, should be proportioned to the greater or less atrocity of the crime, to the conduct of the criminal and to the defenceless and unprotected state of the injured female. The fact that the family of the injured girl have condoned the offence on being paid a sum of money, should not be taken into consideration in determining the heinousness of the offence, or of the punishment to be inflicted. *Local Government v. Pearce Lal*. 20 Cr. L. J. 647 : 52 I. C. 423 : A. I. R. 1918 Nag. 50.

—S. 376—Rape, what constitutes.

It is not necessary that the hymen should be ruptured in every case. In order to constitute rape, the Statute merely requires medical evidence of penetration, and this may occur and the hymen remain intact. *Jantan v. Emperor*. 36 Cr. L. J. 310 : 153 I. C. 218 : 36 P. L. R. 35 : 7 R. L. 404 : A. I. R. 1934 Lah. 797.

—S. 376—Rape, when serious offence—Subsequent conduct and demeanour of complainant—Absence of immoral intimacy.

In a case of rape, witnesses having been attracted by the cries of the ravished woman, and she having shortly afterwards thrown herself into a well, out of shame, and her demeanour in the Court being truthful and no immoral intimacy suggested, *held*, that the accused was guilty, her cries followed by her falling into the well, strongly showing her unwillingness: *Held*, also that, as the complainant was higher in the social or caste scale than the accused, and was at the same time unmarried, the offence was serious. *Emperor v. Patha Kala*. 1 Cr. L. J. 900.

—S. 376—Scope of—Rape—Penetration, partial—Offence.

Under S. 376, Penal Code, vulvar penetration only is sufficient to constitute rape. *Natha v. Emperor*. 26 Cr. L. J. 1185 : 88 I. C. 705 : A. I. R. 1923 Lah. 536

PENAL CODE ACT (XLV OF 1860)

—S. 376—Scope of—*Rape, proof of—Probabilities of case.*

Accused was charged with rape of a girl of seventeen in a place where the girl could not easily have been forced to go against her will. There was no physical proof of the rape, and the inference from the medical evidence was that at the time of the alleged offence the girl was not a virgin: *Held*, that the offence had not been established against the accused. *Amir-ud-Din v. Emperor*. 25 Cr. L. J. 1200 : 82 I. C. 64 : A. I. R. 1923 Lah. 238.

—S. 376—Sentence—*Rape—Unchastity of girl.*

Where in a case of rape it is found that the girl is of unchaste character, a very severe sentence is not called for. *Ibrahim v. Emperor*. 28 Cr. L. J. 256 : 100 I. C. 128 : A. I. R. 1927 Lah. 772.

—S. 367—Sentence—*Rape—Violence on defenceless woman.*

Crimes of violence upon women who are not in a position to defend themselves, must be put down with a strong hand and it would be a very sad state of affairs, if criminals were to carry an impression that to criminally assault a woman or to rape her was not a very serious matter, and that they could always satisfy their unholy passions if only they were prepared to undergo a comparatively short term of imprisonment. *Kala v. Emperor*. 30 Cr. L. J. 699 : 116 I. C. 883 : 30 P. L. R. 437 : I. R. 1929 Lah. 595 : A. I. R. 1929 Lah. 584.

—S. 376—Uncorroborated evidence of girl—*Acceptance of—Nature of corroborative evidence—What girl said after rape, whether corroborative evidence.*

Corroboration is not essential even in a case of an offence of rape. The Court is entitled to accept the uncorroborated evidence of a girl but it should be slow in its acceptance of it. In other words, it must be evidence which implicates him, that is which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. What the girl said after the occurrence is really no corroboration at all. *U Toe Sein v. The King*. 40 Cr. L. J. 525 : 180 I. C. 936 : 11 R. Rang. 443 : A. I. R. 1939 Rang. 128.

—Ss. 376, 354—*Rape or indecent assault.*

Accused entered a carriage occupied by a lady who was asleep therein and sat down on the berth on which she was sleeping. She woke up and the accused threatened to strangle her if she screamed. He then began to unbutton his trousers and had unfastened the button when the lady began to struggle with him, whereupon the accused released her and asked her name. On discovering her identity, he ceased to molest her explaining that he had mistaken her for another lady: *Held*, that the accused was not guilty of an attempt to commit rape but was guilty of indecent

PENAL CODE ACT (XLV OF 1860)

assault under S. 354, Penal Code. *Jones v. Emperor*. 27 Cr. L. J. 916 :

96 I. C. 260 : 4 Bur. L. J. 83 : A. I. R. 1925 Rang. 247.

—Ss. 376 and 377—*Insufficient evidence—No evidence except statement of girl ravished—Enmity between parties proved—Delay in making report—Guilt was not established.*

Where in a case of rape and sodomy, there was no evidence to implicate the accused except the statement of the girl ravished, and there was enmity between the parties and there was much delay in making the report to Police even though the police post was very near: *Held*, that guilt of the accused had not been established. *Mullani Ram v. Emperor*. 9 L. L. J. 111 : 28 P. L. R. 235 : A. I. R. 1927 Lah. 236.

—Ss. 376, 458—*Separate sentences, legality of—Conviction under.*

The conviction of an accused person under Ss. 458 and 376, Penal Code, and the awarding of a separate sentence for each offence is not illegal, as the two offences are not portions of the same transaction, the offence under S. 458 being complete as soon as a man breaks into a house at night after making the necessary preparations as specified in the section, irrespective of his committing any other offence. *Labh Singh v. Emperor*. 24 Cr. L. J. 877 : 75 I. C. 77 : 6 L. L. J. 111 : A. I. R. 1923 Lah. 291.

—Ss. 376, 511—*Attempt to commit rape—Attempt to commit rape, what constitutes.*

An attempt consists in the intent to commit a crime combined with the doing of some act adapted to, but falling short of, its actual commission. It may consequently be defined at that which, if not prevented, would have resulted in the full consummation of the act attempted. Where the accused caught hold of a girl, got on to the *charpoy* with her, undid the string of her *pyjama* and was seen struggling with her, when on the arrival of a person, he ran away: *Held*, that he was guilty of an attempt to commit rape. *Kishen Singh v. Emperor*. 28 Cr. L. J. 663 : 103 I. C. 199 : 28 P. L. R. 575 : A. I. R. 1927 Lah. 580.

—Ss. 376, 511—*Attempt to commit rape—Boy of 12 years, whether can be guilty of an offence.*

A person physically incapable of committing the offence of rape, e. g., a boy of twelve years, can yet be held guilty of an attempt to commit it. *Emperor v. Nga Tun Kaing*. 18 Cr. L. J. 943 : 42 I. C. 175 : A. I. R. 1918 L. Bur. 96.

—Ss. 376, 511—*Conviction based on woman's allegations, legality of—Attempted rape.*

In no cases is it more difficult to arrive at a confident verdict as to whether evidence is false or true than in cases in which women allege that they have been outraged

PENAL CODE ACT (XLV OF 1860)

or that outrage has been attempted upon them. *Emperor v. Panna Lal*.

25 Cr. L. J. 981 :
81 I. C. 629 : 22 A. L. J. 162 : 46 All. 265 :
A. I. R. 1924 All. 411.

—Ss. 376, 511—*Rape, what constitutes—Rape—Partial penetration—Hymen not injured.*

Partial penetration which does not result in any injury to the hymen, is sufficient to constitute the offence of rape. *Abdul Majid v. Emperor*.

28 Cr. L. J. 241 :
110 I. C. 113 : A. I. R. 1927 Lah. 735 (2).

—S. 377.

See also Whipping Act, 1900, S. 4 (b).

—S. 377—*Corroboration—Complainant's evidence—Corroboration of, if necessary for conviction—Criminal trial—Accomplice.*

In a complaint for unnatural offence, especially where it is found as a fact that the complainant was a perfectly willing party, it is not safe to convict the accused unless the complainant's evidence is corroborated in material particulars implicating the accused. It is true that in law such corroboration is not required, but as a matter of prudence, there ought to be no conviction without such corroboration, except in very exceptional cases. *Bal Mukund Singh v. Emperor*.

38 Cr. L. J. 70 :
[165 I. C. 707 : 39 C. W. N. 1051 :
61 C. L. J. 583 : 9 R. C. 452.

—S. 377—*Evidence—Evidence to substantiate charge.*

Evidence to support a charge under S. 377, Penal Code, must be very convincing as it is very easy to bring such a charge but extremely difficult to refute it. *Emperor v. Sain Dass*.

27 Cr. L. J. 593 :
94 I. C. 257 : 8 L. L. J. 180 : 27 P. L. R. 353 :
A. I. R. 1926 Lah. 375.

—S. 377—*Proof—Unnatural offence—Proof—Evidence, uncorroborated, of person on whom offence committed, whether sufficient.*

In cases under S. 377, Penal Code, it is, as a rule, unsafe to convict on the uncorroborated testimony of the person on whom the offence is said to have been committed, unless for any reasons that testimony is entitled to special weight. *Ganpal v. Emperor*.

19 Cr. L. J. 946 :
47 I. C. 670 : 73 P. L. R. 1918 :
38 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 322.

—S. 377—*Sentence—Sentence for offence under—Whipping—Propriety of.*

The punishment of whipping in case of bestiality, e. g., sodomy on a boy of eight years, is useful as a deterrent. *Sona Khan v. Emperor*.

38 Cr. L. J. 429 :
167 I. C. 655 : 9 R. Pesh. 90 :
A. I. R. 1937 Pesh. 22.

—S. 377—*Sentence.*

Where an offence under S. 377 is committed after using violence, a sentence of whip-

PENAL CODE ACT (XLV OF 1860)

ping in addition to rigorous imprisonment is eminently right and proper. *Emperor v. Shera*.

37 Cr. L. J. 474 (1) :
161 I. C. 591 (a) : 38 P. L. R. 437 :
8 R. L. 774 (1) : A. I. R. 1936 Lah. 256.

—S. 377—*Sodomy—Sentence.*

The offence of sodomy is one of those offences for which there can hardly be extenuating circumstances, and a sentence of four months' rigorous imprisonment is an over-lenient one. *Emperor v. Mahomed Yousif*.

34 Cr. L. J. 618 :
143 I. C. 605 : I. R. 1933 Sind 131 :
A. I. R. 1933 Sind 87.

—S. 378.

See also (i) Cr. P. C., 1898, S. 235.
(ii) Penal Code, 1860, S. 382.

—S. 378—*Bona fide claim—Theft—Defence—Legal right—Dishonest action.*

It is not a sufficient defence to a charge of theft for the accused merely to assert, that he thought that he was acting within his legal rights. But if a Court finds that a person charged with theft was *bona fide* acting on what he supposed to be his legal rights, and was not acting dishonestly, the Court should not convict him. *Bhagwat Saran Misir v. Emperor*.

17 Cr. L. J. 295 :
35 I. C. 167 : 14 A. L. J. 399 :
A. I. R. 1916 All. 196,

—S. 378—*Consent under misconception—Theft.*

A consent is not such consent as is meant by S. 378, Penal Code, where it is given under a misconception of fact and the person removing the property knows that the consent was given in consequence of such misconception. Where a licensee who was allowed to remove dead or fallen trees from a Government forest, dishonestly cut green trees and pass for the removal of the timber was given by the Forest authorities under the misconception that it was dead timber : *Held*, that there was no consent within the meaning of S. 378, Penal Code, and the licensee was guilty of theft. *Maung Ba Chit v. Emperor*.

31 Cr. L. J. 387 :
122 I. C. 273 : 7 Rang. 821 :
A. I. R. 1930 Rang. 114.

—S. 378—*Dishonest intention, absence of—No offence of theft.*

Where it was quite impossible to find dishonest intention on the part of the accused in removing the crop of the Pahnai land and there was a likelihood of his having a right to do so : *Held*, that it was for the Civil Court to determine the rights of the parties and that the accused had not committed the offence of theft within the meaning of S. 378, Penal Code. *Paklu Bhagat v. Emperor*.

38 Cr. L. J. 223 :
166 I. C. 490 : 3 B. R. 174 :
9 R. P. 301 (2).

PENAL CODE ACT (XLV OF 1860)

———S. 378—*Dishonest intention, absence of—Theft of one's own property from custody of another—Wrongful loss to person in charge—Removal with implied consent.*

The accused was charged with theft of his own box from the premises of a railway station where he had alighted from an incoming train. His luggage was weighed at the station and he paid the excess fare demanded by the Station Master after weighing. He had a hot altercation with the Station Master at the time and it was alleged that he removed the box and took away the Railway receipt with him. On being requisitioned to deliver the receipt, the accused denied having removed the box. He was convicted of theft with the intention of falsely denying that he had ever received the box and so causing wrongful loss to the Station Master or to the Railway Company and wrongful gain to himself in the shape of compensation for the alleged loss of the box: *Held*, that the offence was not made out as the accused, after satisfying the demand made on him for excess luggage, must be deemed to have removed the box with the implied consent of the Station Master. *Abdul Karim v. Emperor*.

17 Cr. L. J. 468 :
36 I. C. 148 : 14 A. L. J. 417 :
A. I. R. 1916 All. 89.

———S. 378—'Taking', meaning of.

The word "taking" in S. 378, Penal Code, means "reducing to possession," that is, the moving of property should be effected with a view to obtain the possession or custody of the property. Unless the intention of an accused person is to reduce the property into his own possession, he cannot be guilty of theft. *In re : Chockalingam Pillay*.

13 Cr. L. J. 131 :
13 I. C. 819 : 11 M. L. T. 162 :
1912 M. W. N. 119.

———S. 378—Offence under — *Trees in possession of landlord cut by tenant—Offence.*

Where trees standing on a demised land are in the possession of the landlord, it is theft on the part of the tenant to sever them from the ground, apart from any question of the possession of the land itself. A clause in a *kabuliyat* provided that if the tenant cut any trees, he would pay to the landlord compensation at a certain rate. The tenant, knowing this clause, *mala fide* cut the trees in order to injure the landlord : *Held*, that the tenant was guilty of theft. *Abdul Ali Fakir v. Netali Fakir*.

19 Cr. L. J. 334 :
44 I. C. 350 : 27 C. L. J. 228.

———S. 378—Offence under — *Water when can be subject of theft.*

Water when conveyed in pipes and so reduced into possession, can be the subject of theft. Where a person takes a water connection from a Municipal water pipe into his house contrary to law and without the permission or knowledge of the Municipal Board,

PENAL CODE ACT (XLV OF 1860)

he is guilty of an offence under S. 378, Penal Code. *Mahadeo Prasad v. Emperor*.

24 Cr. L. J. 911 :
75 I. C. 159 : 21 A. L. J. 654 :
45 All. 680 : A. I. R. 1924 All. 131.

———S. 378—Offence under.

Where the owner of a buffalo which was impounded in an open plot with a mere boundary fence rescued it after opening a door of the pound by slipping the chain over the lock: *Held*, that he committed an offence under S. 24, Cattle Trespass Act, and under Ss. 378 and 441, Penal Code, but that he cannot be convicted either under S. 380 or S. 454, Penal Code. *In re : Lakshmana Goundan*.

28 Cr. L. J. 248 :
100 I. C. 120 : 52 M. L. J. 143 :
38 M. L. T. 163 :
A. I. R. 1927 Mad. 343.

———S. 378—Possession.

Ownership of *jalkar* right in a running stream does not give such possession of the fishes in it as to make the taking away of the fish, theft within the meaning of S. 378 and no theft can be committed in respect of such fish. *Elahi Bux v. Emperor*.

37 Cr. L. J. 452 :
161 I. C. 477 : 17 P. L. T. 189 :
2 B. R. 333 (1) : 8 R. P. 454 (1) :
A. I. R. 1936 Pat. 152.

———S. 378—Subject of theft — *Fish in ponds, whether can be subject of theft.*

Fish in ponds which cannot escape from the ponds and go elsewhere can legally be the subject of theft. *Nokole Behara v. Emperor*.

28 Cr. L. J. 1002 :
105 I. C. 826 : 1927 M. W. N. 788 :
26 L. W. 651 : 53 M. L. J. 759 :
39 M. L. T. 588 : A. I. R. 1928 Mad. 20.

———S. 378—Subject of theft—*Theft—Fish in open water—Ferae naturae—Incapable of possession.*

Fish in open and unenclosed water are *ferae naturae*. They are not capable of possession and hence cannot form the subject of theft. Only such movable property which is capable of possession can be the subject of theft. *Changal Halapoto v. Basarmal*.

13 Cr. L. J. 22 :
13 I. C. 214 : 5 S. L. R. 122.

———S. 378—Subject of theft.

Where the fish are able to go in or out of a private fishery, the act of fishing though followed by removal of the fish, does not amount to theft. *Kaloo Khan v. Aaya Nath Haldar*.

32 Cr. L. J. 572 (1) :
130 I. C. 503 (2) : 35 C. W. N. 455 :
A. I. R. 1931 Cal. 358 (1).

———S. 378—Theft—*Cutting string of hass and forcing its ends slightly apart in order to remove it, whether constitutes sufficient moving of hass—Enhanced punishment—Charge, previous convictions not specified in, effect of.*

Where the accused cut the string with which a *hass* was fastened round the complainant's neck forcing the ends of the *hass* slightly apart, intending to remove the same from her

PENAL CODE ACT (XLV OF 1860)

neck, but on account of the struggle that ensued between him and the complainant, the *hass* fell from the latter's neck and was found on the bed later on: *Held*, that the act of cutting the string and forcing the ends apart constituted a sufficient moving of the *hass* to bring the act within the purview of S. 378, Penal Code. *Bisakhi v. Emperor*.

18 Cr. L. J. 875 :

41 I. C. 987 : 29 P. R. 1917 Cr. :

37 P. W. R. 1917 Cr. :

A. I. R. 1918 Lah. 397.

———S. 378—*Theft, essentials of.*

The essence of the offence of theft consists in the dishonest taking of property out of the possession of the owner, rather than in the taking of it into the thief's own possession, that is, it is only necessary that the thief should "intend to take," it is not necessary that he should succeed in taking. A person who diverts more water to his lands than he is entitled to by lowering the door of the sluice of a Government canal without the permission of the officers of Government, commits theft in respect of water under S. 378, I. P. C. *In re : Chockalingam Pillay*. 13 Cr. L. J. 131 : 13 I. C. 819 : 11 M. L. T. 162 : 1912 M. W. N. 119.

———S. 378—*Theft, what constitutes—Forcible removal of property to compel payment of amount due, whether theft.*

It is essential for theft as defined in S. 378, Penal Code, that property should be removed with the intention to take it dishonestly; in other words, there must be an intent to cause wrongful gain to one person or wrongful loss to another person. The forcible removal of property with the intention of compelling the owner to make a payment which he is legally bound to make, does not amount to theft, inasmuch as there is no dishonest intention. *Daulat Shaw v. Emperor*. 22 Cr. L. J. 673 : 63 I. C. 609 : 2 P. L. T. 583 : A. I. R. 1921 Pat. 390.

———S. 378—*Theft, what constitutes—Joint property—Theft by co-owner.*

If a jointly-owned animal is actually in the possession of one co-owner and is taken away by another co-owner, this circumstance alone would not be sufficient to bring the act of the latter within S. 478, Penal Code. To constitute theft, the act must be done dishonestly as defined in the Penal Code. *Hassni v. Emperor*. 28 Cr. L. J. 767 :

103 I. C. 847 : A. I. R. 1927 Lah. 650.

———S. 378—*Wrongful loss—Theft—Taking an animal without owner's consent—Motive immaterial—Refund of price to owner, effect of.*

R purchased a buffalo from a person, the sale was completed, the price paid, and the animal was in the lawful possession of *R*. *P*, who interested himself in the protection of cattle, took away the buffalo from *R* without the latter's consent and made the vendor to refund the price to *R*. The motive of *P*'s action was to save the animal from being killed and eaten;

PENAL CODE ACT (XLV OF 1860)

Held, that *P* caused wrongful loss to *R* and was guilty of theft. The respectability of motive was immaterial except as to the question of punishment: *Held*, also that the subsequent conduct of *R* in taking back his money under protest did not affect the character of the offence. *Parichat v. Emperor*.

9 Cr. L. J. 389 :

1 I. C. 800 : 5 N. L. R. 17.

———Ss. 378, Illustration (A), 425—*Theft or mischief—Trees, cutting of, to annoy.*

Theft of trees will be committed only when they were cut to remove them from the possession of the owner, and not when the cutting was merely to annoy him. The act will amount only to mischief. *In re : Kuttiah Odayoth Vettil Komar Nambiar*.

16 Cr. L. J. 544 :

29 I. C. 672 : A. I. R. 1916 Mad. 1071.

———Ss. 378, 379—*Subject of theft—Possession.*

Whether in the case of any particular river, channel or reservoir, Government can be said to be in possession of water must depend on circumstances and the question must be regarded as one of fact to be decided on the evidence in each case. Waters in rivers are presumably vested in Government. And when the Government has taken elaborate steps and employed a large establishment to control the use of water in a river or channel and to prevent any person, not having the right to do so, from using it, the water in the river or channel should be regarded as being in possession of Government so as to be the subject of theft. *In re : Chockalingam Pillay*.

13 Cr. L. J. 131 :

13 I. C. 819 : 11 M. L. T. 162 :

1912 M. W. N. 119.

———S. 378, 379—*Subject of theft—Quarrying and carrying away stones from land in the possession of another—Movable property—Theft—Dishonest intention.*

Any part of "the earth," whether it be stones or sand or clay or any other component, when severed from "the earth" is movable property and is capable of being the subject of theft. When the accused quarried and carried away stones, dishonestly from land, the property of another: *Held*, that it amounted to the offence of theft. *Suri Venkatappaya Sastri v. Madula Venkanna*.

1 Cr. L. J. 429 :

14 M. L. J. 155.

———Ss. 378, 380, 454—*"Building" meaning of.*

An open plot of land with a mere boundary fence, even with a masonry wall, cannot, for purposes of either S. 380 or S. 454, Penal Code, be regarded as a building or a building or a house. The expression 'building' more especially having regard to the expressions 'tent' and 'vessel' that follow, must be regarded as indicating some structure intended for affording some sort of protection to the persons dwelling inside it or for the property placed there for custody. A structure which does not afford any such protection by it-

PENAL CODE ACT (XLV OF 1860)

self but merely serves as a fencing or other means of merely preventing ingress or egress cannot make the place a building or a house within the meaning of either of those two sections. *In re : Lakshmana Goundan.*

28 Cr. L. J. 248 :

100 I. C. 120 : 52 M. L. J. 143 :

38 M. L. T. 163 : A. I. R. 1927 Mad. 343.

———Ss. 378 and 395—*Theft.*

The accused who were alleged to have committed theft of straw, were charged and convicted of the offences of dacoity and grievous hurt under Ss. 395 and 325, Penal Code : *Held*, on the evidence adduced, that the act of the accused did not amount to robbery and dacoity, since they did not cause hurt or wrongful restraint or fear of hurt or wrongful restraint in carrying away the stolen property and that, therefore, they were guilty of theft only. *Bore Gowda v. Government of Mysore.*

9 Cr. L. J. 386 :

12 M. C. C. R. 282.

———Ss. 378, 403, 425—*Theft and mischief.*

The causing of wrongful loss or wrongful gain to some person is a common element in both the offences of theft and mischief. But it cannot be said that simply because the accused has caused wrongful loss to another person by taking away his property without his consent, the subsequent act of destruction of that property would not be an offence because the wrongful loss is already caused by taking it away from its possessor. Wrongful loss to a person can be caused in a variety of ways. The nature of the loss in both cases is different and falls under the definitions of distinct offences. It is, therefore, possible to commit the offence of mischief in respect of the stolen property even though some loss has already been caused to its possessor by the offence of theft. *Nga Paw Din v. The King.*

39 Cr. L. J. 607 :

175 I. C. 515 : 1938 Rang. 63 :

10 R. Rang. 503 : A. I. R. 1938 Rang. 138.

———Ss. 378, 424 — *Dishonest removal—Movable property in possession of accused—Bombay Land Revenue Code, Ss. 86, 141, 142—Watchman appointed to prevent removal of crop by lessee—Lessee removing crop.*

The removal of movable property which is already in the physical possession of another, does not amount to theft under S. 378, Penal Code. If the removal is dishonest, it might amount to an offence under S. 424. Where a watchman has been appointed under Ss. 86 and 141 Bombay Land Revenue Code, to prevent the removal of the crop by the lessee, and the latter removes the crop, the offence would be one punishable under S. 142, Bombay Land Revenue Code. *Lekhraj v. Imambur.*

12 Cr. L. J. 611 :

12 I. C. 987 : 5 S. L. R. 130.

———S. 379.

———Benefit of doubt.

———*Bona fide* belief.

———*Bona fide* claim.

———Conviction.

———Dishonest intention.

PENAL CODE ACT (XLV OF 1860)

———Duty of prosecution.

———Essential of.

———Intention.

———Joint-ownership.

———Master and servant.

———Miscellaneous.

———Movable property.

———Offence under.

———Possession.

———Procedure.

———Proof.

———Right of occupancy *raiya*ts.

———Scope of.

———Sentence.

———Subject of theft.

———Theft.

———Wrongful loss.

———S. 379.

See also (i) Cr. P. C., 1898, Ss. 4, Cl. (b), 145, 145 (2), 179, 237, 576 (a).

(ii) Electricity Act, 1910, S. 39.

(iii) Evidence Act, 1872, S. 114, Illus. (a).

(iv) Penal Code, 1860, Ss. 24, 75, 114, 143, 145, 145 (2), 147, 186, 215, 302, 323, 378, 379, 382, 406, 419.

———S. 379—Benefit of doubt—*Accused found in possession of skin of missing goat—Charge of theft.*

When the accused was found in possession of two freshly flayed skins of a goat and kid within 24 hours of the theft and was charged under S. 379, Penal Code : *Held*, (1) that it was absolutely necessary for the prosecution to establish that the skins with the accused were those of the goats recently stolen; (2) that as the prosecution witness had not seen the skins for more than three weeks after the theft, the Jury were not wrong in holding that the identification was suspicious; (3) that the accused was entitled to the benefit of the doubt and ought to be acquitted. *In re : Irula Sadayan.*

16 Cr. L. J. 440 :

29 I. C. 72 : A. I. R. 1916 Mad. 783.

———S. 379—*Bona fide* belief—*Offence.*

Accused and complainant owned adjoining fields. Accused removed certain crops from the field belonging to the complainant under the *bona fide* belief that the crops had been sown by him and belonged to him : *Held*, that the accused could not be convicted of theft. *Bodh Kishen Goala v. Emperor.*

24 Cr. L. J. 454 :

72 I. C. 614 : 4 P. L. T. 608 :

A. I. R. 1924 Pat. 125.

———S. 379—*Bona fide* belief—*Theft—Removal of property pending civil dispute.*

Complainant sued the *raiya*t of a holding and the accused for possession of the holding on the allegation that the *raiya*t had transferred the holding to the accused in the absence of a custom of transferability of occupancy holdings. The suit was decreed but an appeal against the decision was filed by the *raiya*t and it was after the filing of this appeal that the complainants obtained delivery of posses-

PENAL CODE ACT (XLV OF 1860)

sion of the holding. Three days thereafter the accused were alleged to have cut and removed the crops growing on the holding. They were thereupon prosecuted and convicted of an offence under S. 379 of the Penal Code. A few days later the appeal filed by the *raiyat* was decreed: *Hdd*, that under the circumstances of the case the conviction could not be upheld inasmuch as the accused had no idea of causing wrongful gain to the *raiyat* or wrongful loss to the complainant, they having cut and removed the crops under the *bona fide* belief that they belonged to the *raiyat*. *Sobha Mahlon v. Emperor*.

28 Cr. L. J. 72 :

99 I. C. 104 : 8 P. L. T. 79 :

A. I. R. 1927 Pat. 130.

-----S. 379—Bona fide claim.

A criminal charge of theft depends not on the question of title but on the question of intention. Consequently, an acquittal of a charge under S. 379 will be proper on a finding that the accused believed the stolen property to be theirs. *Ramchander Rai v. Ram Bidas Tewari*.

34 Cr. L. J. 407 :

142 I. C. 624 : 14 P. L. T. 71 :

I. R. 1933 Pat. 161 (1) :

A. I. R. 1933 Pat. 179 (1).

-----S. 379—Bona fide claim.

A person may be guilty of theft even if he be asserting a right to property which he believes to be a valid right, if in the assertion of such right he does something which he knows he has no right to do. *Jiandaishah v. Emperor*.

34 Cr. L. J. 366 :

142 I. C. 584 : I. R. 1933 Sind 106 :

A. I. R. 1933 Sind 90.

-----S. 379—Bona fide claim—Conviction for theft, whether legal.

Seizure and removal of a thing in the assertion of a *bona fide* claim of right will not make the person liable for an offence of theft under S. 379, Penal Code, as the seizure and removal though proved to be illegal, cannot be said to be dishonest. *Zeba v. Emperor*.

28 Cr. L. J. 949 :

105 I. C. 661 : A. I. R. 1927 Nag. 404.

-----S. 379—Bona fide claim—Dispute as to right—Act whether amounts to theft.

Where there is a dispute between a landlord and his tenant about the right to trees standing on the holding, and the landlord determines to exercise his right and cut trees from the holding, the person cutting the trees on behalf of the landlord under a *bona fide* claim of right cannot be convicted of theft under S. 379, Penal Code. *Madhusudan Das v. Emperor*.

25 Cr. L. J. 546 :

81 I. C. 34 : A. I. R. 1922 Pat. 12.

-----S. 379—Bona fide claim—Removal of standing crops raised by another—Bona fide claim of title to land, whether valid defence.

It may be safely laid down as a general proposition though not as a universal rule that in cases where the alleged theft consists in the removal of crops grown on land, the most vital question to be investigated is as

PENAL CODE ACT (XLV OF 1860)

to which of the parties had grown the crops, and a decision on this point will, in the majority of cases, enable the Court to come to a definite conclusion, as to whether the claim of the accused is made in good faith or is a mere pretence. A person who removes crops from land which is in the possession of another, knowing that the crops have been raised by the latter, cannot escape liability for theft by merely proving that he has a *bona fide* claim of title to the land upon which the crops were grown. *Abdul v. Emperor*.

30 Cr. L. J. 511:

115 I. C. 684 : 10 P. L. T. 57 :

I. R. 1929 Pat. 236 : A. I. R. 1929 Pat. 86.

-----S. 379—Bona fide claim.

The accused, as tenants of one person, had grown crops on certain land, which was taken possession of by another person under a Civil Court decree. The accused asked the latter to let them continue as his tenants, but he refused and sent his own men to reap the crops. The accused thereupon took away the crops. It appeared probable that the accused took away the crops under the impression that the decree referred to the land and not to the crops: *Held*, that the accused not having acted dishonestly, were not guilty of theft. *Sit Pein v. Emperor*.

25 Cr. L. J. 809 :

81 I. C. 345 : 2 Bur. L. J. 160 :

A. I. R. 1924 Rang. 72.

-----S. 379—Bona fide claim.

The Criminal Court should not convict of theft any person who asserts a claim of right unless it is in a position to say that claim is a mere pretence. A person cannot be said to act dishonestly, that is, with an intention of causing gain to himself or his master or wrongful loss to another when he takes movable property which he believes to belong to himself or his master. In short, if the person taking any movable property does it under a *bona fide* claim of right, then he cannot be found guilty of the offence of theft unless the claim is a mere pretence. *The Advocate-General, Orissa v. Bhikhari Charan Mahanti*.

41 Cr. L. J. 509 :

187 I. C. 825 : 6 B. R. 550 :

12 R. P. 655 : A. I. R. 1940 Pat. 588.

-----S. 379—Bona fide claim.

The removal of property under a *bona fide* assertion of right does not constitute theft, even though the claim be one which is not valid in law. Where such a claim is raised, the Court has no right to convict unless upon the whole of the evidence, it comes to the conclusion that the claim set up is not a genuine one. *Ismail v. Emperor*.

27 Cr. L. J. 1023 :

96 I. C. 879 : 2 Lah. Cas. 341 :

27 P. L. R. 635 : A. I. R. 1926 Lah. 683.

-----S. 379—Bona fide claim—Theft—Jurisdiction—Removal of property under belief of title—Offence.

If a claim of title to property is honestly made and is not merely colourable, the

PENAL CODE ACT (XLV OF 1860)

jurisdiction of the Criminal Courts is ousted and a man who honestly believes that he is taking away property from his own land, cannot and ought not to be convicted of theft. *Sadasiv Singh v. Emperor*.

18 Cr. L. J. 507 :
39 I. C. 475 : 1 P. L. W. 155 : 1918 Pat. 47 :
A. I. R. 1917 Pat. 40.

———S. 379—Bona fide claim—Minor's property held by others—Guardian's duty.

A removal of property in the assertion of bona fide claim of right, though unfounded in law and fact, does not constitute theft. But a mere colourable pretence to obtain or keep possession of property does not avail as a defence. Though it is the duty of a guardian of a minor's property to get into his own hands all the property of the minor, it is not his duty to take forcible possession of it but to resort to the Law Courts if it is held against him by others. *Tukaram v. Emperor*.

25 Cr. L. J. 349 :
77 I. C. 237 : A. I. R. 1924 Nag. 311.

———S. 379—Bona fide claim—Theft.

One who asserts a claim should not be convicted of theft, unless the Court is in a position to say that the claim is a mere pretence. *Dhirendra Mohan v. Emperor*.

11 Cr. L. J. 248 :
5 I. C. 794 : 14 C. W. N. 408.

———S. 379—Bona fide claim—Theft, removal of property in assertion of bona fide claim of right, whether constitutes.

Where property is removed in the assertion of a bona fide claim of right, the removal does not constitute theft. *Lakanaw v. Emperor*.

18 Cr. L. J. 355 :
38 I. C. 739 : U. B. R. 1916, II 124 :
10 Bur. L. T. 167 : A. I. R. 1917 U. Bur. 2.

———S. 379—Bona fide claim—Theft—Removal of trees to establish or create evidence of title—Defence of bona fide claim of right.

The proprietor of a jungle, in whose name the jungle was recorded, issued a proclamation forbidding villagers from cutting trees from the jungle. The *raiya*s announced their intention of cutting and set up a right to do so, and on a concerted plan, started cutting operations on a large scale. The petitioners who were the leaders of the *raiya*s were charged with theft; *Held*, that the petitioners did not, under the circumstances, cut the trees in exercise of a bona fide claim of right, and were guilty of theft. *Jaigi Uraon v. Emperor*.

30 Cr. L. J. 1100 :
119 I. C. 887 : I. R. 1929 Pat. 615 :
A. I. R. 1929 Pat. 502.

———S. 379—Bona fide claim—Theft, what constitutes.

A certain kind of long grass growing in a village tank used to be divided among the proprietors. One of the latter sold his land to accused. The latter asserted his right to a share in the grass but his vendor and the other proprietors denied this right.

PENAL CODE ACT (XLV OF 1860)

When the grass was being cut, accused removed a portion of it, and it was not found that the portion removed was in excess of the share claimed by him: *Held*, that the removal being under a bona fide claim, the accused could not be held to have been guilty of theft. *Srinivasulu Reddiar v. Govinda Goundan*. 24 Cr. L. J. 254 :
71 I. C. 798 : 17 L. W. 104 : 44 M. L. J. 138 :
1923 M. W. N. 182 : 32 M. L. T. 153 :
A. I. R. 1923 Mad. 239.

———S. 379—Bona fide claim.

When the petitioner cut and took away some bamboos from a piece of land which he claimed as his, and the Government claimed as theirs: *Held*, that the act of the petitioner was not dishonest if he bona fide believed that the land was his even though, in fact, it was not his. If Government officers take summary possession of a man's land otherwise than under the Land Acquisition Act or other legal authority, his rights are no more affected by such illegal action than they would be by the illegal seizure of his land by a private person. In such a case, the Revenue Officers are mere trespassers, and there is nothing dishonest in the owner retaking possession of his property. *Algarasawmi Tevan v. Emperor*.

2 Cr. L. J. 754 :
I. L. R. 28 Mad. 304.

———S. 379—Bona fide claim.

Where it is found that the accused had no bona fide claim of right but it is not found that they did not bona fide believe that they had such a bona fide claim, the accused cannot be held to be guilty of theft. *Mali Lal De v. Emperor*. 37 Cr. L. J. 1 :
159 I. C. 36 : 8 R. C. 256 :
A. I. R. 1935 Cal. 675.

———S. 379—Conviction, illegality of—Carrying away of crops of a tamarind tree—Absence of finding as to possession of tree—Right to crops also not determined—Proof of sale of tree to the accused—Dishonesty cannot be imputed to the accused.

Where the accused was convicted of having dishonestly carried away the produce of a tamarind tree which the accused contended was sold to him: *Held*, that the conviction was bad in the absence of a finding upon either of the questions, whether the accused was or was not the owner of the produce, or whether the complainant had or had not a right to possession of the tree. *Ohinna Garala v. Emperor*.

11 Cr. L. J. 484 :
7 I. C. 416 : 8 M. L. T. 119.

———S. 379—Conviction—Maintainability—Attachment of property without warrant—Property removed by owner—Offence, whether committed.

Accused having failed to repay a *takawi* advance, his property was attached, but the attaching officer had not with him, at the time of the attachment, a warrant of attachment, the property was subsequently

PENAL CODE ACT (XLV OF 1860)

ordered to be sold when it was discovered that the accused had removed it, he accordingly was placed on his trial and convicted under S. 379, Penal Code: *Held*, that as the attaching officer had not with him a warrant of attachment at the time he attached the property, there was no valid attachment, and consequently, the conviction of the accused could not be sustained. *Molai v. Emperor*. 22 Cr. L. J. 107 : 59 I. C. 411 : 2 U. P. L. R. All. 335.

————S. 379—Dishonest intention, absence of—Theft.

Accused who was an "illiterate low caste cultivator" applied for Letters of Administration with the Will annexed to the estate of a deceased person who had made a registered Will in favour of the accused. Before Letters of Administration were granted but at a time when he had no suspicion that a *caveat* was likely to be entered, he removed a certain safe which was in the possession of the widow of the deceased, but which had been bequeathed to the accused under the Will. Subsequently, the widow entered a *caveat*, and charged the accused with the theft of the safe: *Held*, that the conduct of the accused did not disclose the presence of a guilty intention on the part of the accused and that, therefore, he could not be convicted of theft. *Dulal Bachar v. Emperor*. 26 Cr. L. J. 652 : 85 I. C. 940 : A. I. R. 1926 Cal. 241.

————S. 379—Dishonest intention, absence of—Theft.

Before an accused can be found to be guilty of the offence of theft, it must be found that he dishonestly took some property out of the possession of another person. Where a tenant, believing that a legal distraint had been made by his landlord of the crops of his holding which had been previously attached in execution of a decree against him, cut and removed the crops: *Held*, that the tenant was not guilty of theft inasmuch as he could not be said to have dishonestly taken the property out of the possession of any other person. *Emperor v. Ram Dayal*. 16 Cr. L. J. 812 : 31 I. C. 828 : 13 A. L. J. 1058 : 38 All. 40 : A. I. R. 1915 All. 418.

————S. 379—Dishonest intention, absence of—Theft—Wrongful gain or loss.

In order to constitute theft, there must be dishonesty. Certain articles belonging to the accused were attached and secured in his own shop, but possession was transferred to the decree-holder under a bond in Form No. 15-A, Appendix E to O. XLI, r. 3 of the C. P. C. The accused preferred a claim to the articles which was allowed. The accused thereupon took forcible possession of the articles in the absence of decree-holder: *Held*, that the act of the accused did not amount to theft inasmuch as there was no intention to cause wrongful loss to the complainant or wrongful gain to the accused. *In re : Lakshminarayana Chettiar*. 24 Cr. L. J. 414 : 72 I. C. 526 : 42 M. L. J. 490 : 16 L. W. 15 : A. I. R. 1922 Mad. 405.

PENAL CODE ACT (XLV OF 1860)

————S. 379—Dishonest intention.

In order to constitute "theft" the factor of dishonest intention must be present. Intention is the gist of the offence of theft. *Bhurasing v. Emperor*. 36 Cr. L. J. 1310 : 158 I. C. 282 : 29 S. L. R. 121 : A. I. R. 1935 Sind 115.

————S. 379—Dishonest intention—Person allowed to remove certain number of beams, removing more—Conviction for theft is proper—Cartman engaged by him—No proof of conspiracy—Conviction, if proper.

Where a man is trusted by another to go to a place where some of his property is stored, and help himself to a given quantity of material and the other taking advantage of the confidence thus reposed in him takes away something in addition as well, it is more than a merely technical offence. There is an abuse of confidence, and the intention with respect to the property removed in excess is obviously dishonest and a conviction for theft is proper. *Ganpat Rao v. Emperor*. 38 Cr. L. J. 440 : 167 I. C. 722 : 19 N. L. J. 187 : 9 R. N. 205.

————S. 379—Dishonest intention—Theft—Acts done under bona fide claim of right, when culpable.

The dictum that a person who takes property in the assertion of a *bona fide* claim of right, cannot be convicted of theft is true only in this sense that where the accused has a claim of right which he believes to be good and has attempted to assert that right by doing an act in good faith, then the person is innocent of theft. It does not mean that the accused cannot be convicted of theft where, knowing that his claim is disputed and that his proper course is to have recourse to the Courts of Law, he removes the property from the possession of his opponent. In such cases, the act would be dishonest and the accused would be guilty of theft. *Rangaswami v. Emperor*. 29 Cr. L. J. 603 : 109 I. C. 683 : 6 Rang. 54 : I. L. T. 40 Rang. 54 : A. I. R. 1928 Rang. 113.

————S. 379—Dishonest intention—Theft—Taking passenger's umbrella to compel him to pay fare.

The accused was in the employ of a steamer company and it was his business to see the tickets of the passengers. The complainant, a passenger, had not got a ticket, and therefore, the accused took possession of his umbrella as security that the complainant might be compelled to pay his fare: *Held*, that the accused cannot be convicted of theft as he did not intend either to get any wrongful gain to himself by compelling payment of the fare or to cause any wrongful loss to the complainant who was bound to pay his fare. *Matabbar Saekh v. Emperor*. 11 Cr. L. J. 444 : 7 I. C. 257 : 14 C. W. N. 936.

PENAL CODE ACT (XLV OF 1860)

—S. 379—*Dishonest intention—Theft—Trivial charge.*

Dishonest intention cannot be assumed where the charge is of theft of clods of earth worth 6 pies from a public channel-bed belonging to Government, unless it is shown that the accused knew that the public officers in charge of the bed had notified that the removal of earth would injure the pecuniary or other interests of Government or from the clandestine nature of the act, such knowledge could be inferred. *Public Prosecutor v. Tsandra Ramaswami.* 18 Cr. L. J. 632 : 39 I. C. 1000 : A. I. R. 1918 Mad. 540.

—S. 379—*Duty of prosecution—Dishonest intention—Burden of proof—Assertion of bona fide claim of right.*

When a person is prosecuted for the offence of theft, it is for the prosecution to show that he was acting dishonestly. If the circumstances show that he was acting in the assertion of a bona fide claim of right, a dishonest intention cannot be attributed to him. *Lunidoma v. Emperor.* 16 Cr. L. J. 715 : 30 I. C. 1003 : 9 S. L. R. 75 : A. I. R. 1915 Sind 25.

—S. 379—*Essential of—Debtor giving property to creditor—Subsequent knowledge—Debt time-barred.*

An essential ingredient of theft is the taking of the property out of the owner's possession and without the owner's consent. Hence, where a debtor gave certain property to his creditor, and subsequently found that the debt was time-barred : *Held*, that the charge of theft could not be sustained against the creditor, inasmuch as there was a full and unqualified consent on the part of the debtor at the time of his giving away the property. *Mst. Piari Dulaiya v. Emperor.* 1 Cr. L. J. 803 : 1 A. L. J. 508.

—S. 379—*Intention—Theft—Snatching goods from a person—No intention of depriving the owner of property permanently—"Wrongful gain"—"Wrongful loss."*

Under the Indian Law, theft may be committed even where there is no intention to deprive the owner of the property permanently. The accused snatched some books from a boy as he was coming out of school and told the boy that he would return the books if he came to his house. It was found that the object of the accused was to get the boy into his house and commit an unnatural offence upon him : *Held*, that the accused committed the offence of theft under S. 379, Penal Code. There was "wrongful gain" to the accused and "wrongful loss" to the school boy within the definition of those terms in the Code. *Naushe Ali v. Emperor.* 12 Cr. L. J. 580 : 12 I. C. 844 : 8 A. L. J. 1037 : 34 All. 89.

—S. 379—*Joint ownership.*

Accused purchasing share in land and structures jointly owned by co-sharers in execution of decree against one of them—Accused utilizing material of old huts and

PENAL CODE ACT (XLV OF 1860)

building new huts on same land—No offence under S. 379 or S. 447. *Nityananda Poddar v. Rupai Bepari.* 37 Cr. L. J. 747 :

162 I. C. 660 : 8 R. C. 632 (2) : A. I. R. 1936 Cal. 261.

—S. 379—*Master and servant.*

A servant may well be in a stronger position than his master, because a servant might, in certain circumstances, honestly believe that his master was the owner of certain property, whereas the master might well know that he was not. A servant should not be held guilty of the offence of theft when what he did was at his master's bidding, unless it should have been shown that he participated in his master's knowledge of the dishonest nature of the acts. *Advocate-General, Orissa v. Bhikhari Charan Mohanti.* 41 Cr. L. J. 509 :

187 I. C. 825 : 6 B. R. 550 : 12 R. P. 655 : A. I. R. 1940 Pat. 588.

—S. 379—*Master and servant—Servant removing property to enforce payment of wages, whether offence.*

Where a servant to whom wages are due from his master remove, removable property belonging to his master out of the control of the master and refuses to give it up until his wages are paid, he is guilty of theft. *Mata Prasad v. Jokhu.* 28 Cr. L. J. 531 : 102 I. C. 339 : A. I. R. 1927 All. 470,

—S. 379—*Master and servant—Theft—Claim of title—Bona fides.*

One must be careful to see that the criminal Law is not put in motion with a view to assist in the prosecution of a civil claim. A criminal Court should not convict of theft a person who arrests a claim of right unless the claim is a mere pretence. A servant is not guilty of the offence of theft when he acts at his master's bidding, unless it can be shown that he participated in his master's knowledge of dishonesty. There must be some evidence from which such knowledge on the part of the servant can be inferred. *Hari Bhumali v. Emperor.* 2 Cr. L. J. 836 : 9 C. W. N. 974.

—S. 379—*Master and servant—Theft—Servant assisting master in removing goods, guilt of.*

Where a servant knowing perfectly well that his master is removing the goods of another without even a pretence of right, assists him in doing so, he acts dishonestly and is equally guilty along with his master of the offence of theft. *Barhamdeorai v. Emperor.*

26 Cr. L. J. 1559 : 90 I. C. 439 : 7 P. L. T. 272 : A. I. R. 1926 Pat. 36.

—S. 379—*Miscellaneous.*

Conviction on charge of theft from a plot in a patti—Acquittal in appeal merely on ground of absence of evidence to show that the plot is in the particular patti—Error of law is

PENAL CODE ACT (XLV OF 1860)

committed—Acquittal, should be set aside.
Kesho Prasad v. Nandji Singh.

35 Cr. L. J. 537 :
147 I. C. 1017 : 6 R. P. 386 (2) :
A. I. R. 1934 Pat. 302.

———S. 379—Miscellaneous.

Gang of persons going to land of another with intention of removing paddy by force—Some of them committing theft—All held responsible for both violence and theft. *Emperor v. Basa Meah.*

37 Cr. L. J. 416 :
161 I. C. 90 : 8 R. Rang. 451 :
A. I. R. 1936 Rang. 70.

———S. 379—Movable property.

So long as the person owns movable properties, his property-mark which has been or may be impressed upon them remains his, though any particular article out of it may, after such impression, pass out of his hands and cease to be his. The term “movable property” in S. 379, Penal Code, is intended by the Legislature to include a class or category of properties falling under one ownership, not merely the parts of it which may pass from the hands of the owner into other hands. The class is stable, though the unit is ambulatory. The term is intended to include collective class nouns, *i. e.*, nouns that express a number of objects of the same class collected together. The function of a property-mark to denote certain ownership is not destroyed or exhausted merely because any particular property on which it was impressed has ceased at any moment to be of that ownership. *Emperor v. Dayabhai Chakasha.*

1 Cr. L. J. 581 :
6 Bom. L. R. 512.

———S. 379—Offence under, if made out—Theft.

Where the cattle belonged to and were throughout in the possession of the owners, but they had been taken to the pound not by the persons whose crop had been damaged but by one who did not have any connection with the crop, said to have been damaged, and the owners of the cattle came to the pound and drove away the cattle to their home, and were subsequently convicted under S. 379, Penal Code: *Held*, the seizure by the person who had no connection with the affair was itself not legal, and it certainly conferred no right of possession either on himself or on persons whose crop had been damaged. The persons who removed the cattle from the pound were the owners who were in possession, and there could be no theft by an owner of goods belonging to him from his possession. *Chitti-boyina v. Danduboyina Narappa.*

40 Cr. L. J. 908 :
184 I. C. 280 : 1939 M. W. N. 470 :
12 R. M. 430 : A. I. R. 1939 Mad. 775.

———S. 379—Offence under—Land attached under S. 88, Cr. P. C.—Person removing crop from it is guilty under S. 379.

Where land is attached under S. 88, Cr. P. C. and actual possession is taken by posting a constable on the spot, a person removing

PENAL CODE ACT (XLV OF 1860)

standing crop from such land is guilty under S. 379, I. P. C. *Emperor v. Bande Ali Sheikh.*

41 Cr. L. J. 396 :
187 I. C. 125 : I. L. R. 1939, 2 Cal. 429 :
12 R. C. 549 : A. I. R. 1940 Cal. 163.

———S. 379—Offence under—Order to remove crop—Offence.

Where a crop was dishonestly cut and removed by the order of the accused, he himself being present. *Held*, that the accused was guilty of an offence under S. 379, Penal Code. *Bhavant Sahu v. Prem Mashi Christian.*

19 Cr. L. J. 116 :
43 I. C. 404 : A. I. R. 1918 Pat. 145.

———S. 379—Offence under—Property under attachment, removal of—Claim of right.

Accused forcibly took away a buffalo which was under attachment but which was claimed by him as his own: *Held*, that the accused could not be said to have acted under a *bona fide* claim of right because he must have known that whatever his rights may be, he had no right to forcibly remove the animal so long as it was under attachment and that, therefore, the accused was guilty of theft. *Lal Behari v. Emperor.*

26 Cr. L. J. 905 :
86 I. C. 969 : 2 O. W. N. 202 :
12 O. L. J. 159 : A. I. R. 1925 Oudh 464.

———S. 379—Offence under—Receiver in insolvency—Property, removal of, from possession—Bona fide claim, offence.

A person who removes from the possession of a Receiver in insolvency property attached by the latter even though he does it under assertion of a *bona fide* claim of title, is guilty of an offence under S. 379, Penal Code. *Kamla-pat v. Emperor.*

27 Cr. L. J. 860 :
95 I. C. 940 : 24 A. L. J. 364 :
48 All. 368 : A. I. R. 1926 All. 382.

———S. 379—Possession.

Delivery of symbolical possession is only effective against the judgment-debtor. It is of no effect as against a third person, and his possession is not disturbed or affected in the least by delivery of such possession to a purchaser at a Court sale. By the delivery of symbolical possession, he is not dispossessed at all, and unless dispossessed physically, no proceedings under O. XXI, r. 100, C. P. C., would be maintainable at his instance. *Banka Nath v. Abdul Kadir.*

37 Cr. L. J. 1098 :
165 I. C. 154 (2) : 39 C. W. N. 1306 :
9 R. C. 349.

———S. 379—Possession—Loss of property—Theft of, if can take place.

Where bullocks follow a cow and disappear and are not found on search by the owner, the owner must be held to have lost possession of the animals and no theft of them can take place. *Nga Shwe Zan v. Emperor.*

18 Cr. L. J. 300 :
38 I. C. 332 : 10 Bur. L. T. 261 :
A. I. R. 1917 L. Bur. 15.

PENAL CODE ACT (XLV OF 1860)

———S. 379—*Possession—Theft—Landlord and tenant jointly cultivating crop—Removal by landlord.*

Where a landlord cut and removed the crops cultivated jointly by himself and non-occupancy tenant: *Held*, that the landlord could not be convicted of theft as he must be deemed to have been in possession of the property. *Phul Singh v. Emperor.* 14 Cr. L. J. 3 : 18 I. C. 146 : 10 A. L. J. 527.

———S. 379—*Possession—Theft of crops—Land, actual possession of, by complainant necessary—Order directing complainant to be put in possession, whether sufficient.*

An accused was convicted for having stolen crops growing on a certain land alleged to be the property of the complainant. In a previous case between the parties concerning the same land, an order directing that the complainant be put in possession of the land was passed but it was never executed: *Held*, that before conviction, it must be found who was actually in possession of the land on the date of the offence and that because there was that order in the previous case, it could not be presumed as a matter of law that the complainant continued to be in possession and sowed the crops. *In re: Kota Appadu.* 17 Cr. L. J. 81 : 32 I. C. 673 : A. I. R. 1917 Mad. 898.

———S. 379—*Possession, what is—Theft—Distrain of chattels, how effected—Removal of attached goods—Bombay Land Revenue Code, S. 154.*

A seizure for distraint of chattels may be either actual or constructive. It is not necessary that the goods must actually be touched or handled. Physical contact is not necessary to complete physical possession, and possession depends upon the physical possibility of the possessor dealing with the thing exclusively. Accused having made default in the payment of land revenue, the *Mamlatdar* proceeded to their house and under S. 154, Bombay Land Revenue Code, made *panchnama* declaring their buffaloes to be under attachment. Subsequently the accused removed the buffalo: *Held*, that the *Mamlatdar* must be deemed to have been in possession of the buffaloes and that their removal constituted the offence of theft. *Emperor v. Lallu Waghji.* 20 Cr. L. J. 391 : 50 I. C. 999 : 21 Bom. L. R. 251 : 43 Bom. 550 : A. I. R. 1919 Bom. 39.

———S. 379—*Procedure—Theft of grass—Dispute as to ownership of land.*

A conviction for theft of grass under S. 379, Penal Code, cannot stand where there is a dispute between the complainant and the accused as to the ownership of the land on which the grass grew and the Court has failed to find definitely from what spot the grass was cut and whether the spot belonged to the complainant. In case of doubt, the complainant should be left to resort to the Civil Court. *Shib Das v. Emperor.* 14 Cr. L. J. 659 : 21 I. C. 899 : 40 P. W. R. 1913 Cr. : 335 P. L. R. 1913.

PENAL CODE ACT (XLV OF 1860)

———S. 379—*Proof—Theft of cash—Stolen money found secreted and separated from other cash—Its evidentiary value.*

Where the accused being the only inmate of the complainant's compartment was found to have secreted and separated exactly the lost amount in his trouser pocket: *Held*, it was a strong circumstantial evidence showing the guilt of the accused. *The Public Prosecutor v. Saddayan.* 7 Cr. L. J. 218 : 2 M. L. T. 498.

———S. 379—*Right of occupancy raiyats—Occupancy raiyat seizing by force fish captured by trespasser from his holding—No offence—Fisheries.*

Prima facie, the raiyat of an occupancy holding has a right to the fish that may come on his land when it is flooded, and he does not commit an offence by seizing the fish by force from a trespasser who has captured them from the water covering his land provided he does not exercise undue violence. *Ramji Rai v. Emperor.* 32 Cr. L. J. 4 : 127 I. C. 565 : 12 P. L. T. 286 : I. R. 1930 Pat. 709 : A. I. R. 1930 Pat. 508.

———S. 379—*Scope of—Sale of trees by Chairman.*

The Municipal Board passed a resolution authorising its Chairman to sell certain trees. The trees were sold by auction and were purchased by the accused. Before the sale was confirmed by the Board, the accused being apprehensive that the Board may be moved to rescind the sale, commenced to cut down and remove the trees: *Held*, that the accused not having been notified at the time of the auction that the sale was subject to confirmation by the Board, could not be presumed to have known that he had no title to the trees till such confirmation, and that therefore, could not be said to have been guilty of theft in cutting down and removing the trees. *Faruq Hussain v. Emperor.* 27 Cr. L. J. 1313 : 98 I. C. 385.

———S. 379—*Scope of.*

The accused were charged with having committed theft of fish from a tank. It was found that they had been in possession of the plot and of the tank for several years and had been selling fish to various persons. It was also in the evidence that this tank was connected with river and that the fish and water came from the river to this tank and *vice versa*: *Held*, that the fish were *ferae naturae* and not in "the possession of the complainant." Where fish would get into or out of a private fishery, taking away fish from such a fishery did not constitute theft. The present case was still stronger inasmuch as the land in which the tank was situated was in tenancy and possession of the accused. *Jokhan Singh v. Emperor.*

40 Cr. L. J. 22 : 178 I. C. 256 : 1938 O. W. N. 1096 : 11 R. O. 99 : 1938 O. L. R. 477 : 14 Luck. 322 : A. I. R. 1939 Oudh 14.

PENAL CODE ACT (XLV OF 1860)

———S. 379—*Scope of—Theft—Catching fish in poromboke tank in assertion of bona fide right—Offence.*

Catching fish in a *poromboke* tank in the assertion of a *bona fide* right does not amount to the offence of theft. *Vailhi Matharan v. Narayanaswami Iyer.* 27 Cr. L. J. 343 (a) : 92 I. C. 855 : 22 L. W. 673 : A. I. R. 1926 Mad. 210.

———S. 379—*Scope of—Theft—Identity of stolen property.*

From the mere fact that a common article of clothing similar in pattern and texture to one lost by the complainant is found in the possession of the accused it cannot be presumed that the article was stolen by the accused. *Maung E Gyi v. Emperor.*

25 Cr. L. J. 618 : 81 I. C. 106 : 1 Rang. 520 : A. I. R. 1924 Rang. 91.

———S. 379—*Scope of—Theft—Irrigation tank—Removal of fish—Facts of each case to be looked into.*

Whether the removal of fish from an irrigation tank amounts to theft depends upon the facts of each case. When the water is so low that the fish could not escape, the removal may be theft. *In re : Subbiah Serrai.*

13 Cr. L. J. 38 : 13 I. C. 278 : 11 M. L. T. 23 : 1912 M. W. N. 42 : 22 M. L. J. 184.

———S. 379—*Sentence—Cattle theft.*

Offences of cattle theft are particularly mean and despicable offences in a community where so much depends upon cattle. They are inspired by no other motive than the ordinary motive of gain which, in many other cases, prompts a thief to steal, and it must be made plain to young men who steal cattle that if they are not going to prison, they will have at least to pay a heavy fine. The fine must be such as to make it clear that cattle-lifting is not profitable. *Emperor v. Mirol Ghulam Hussain.*

41 Cr. L. J. 187 : 185 I. C. 428 : 1940 Kar. 88 : 12 R. S. 168 : A. I. R. 1939 Sind 339.

———S. 379—*Sentence—Deliberate thefts of motor wheels—Plea of being first offender—Substantive punishment, if called for—Criminal trial—First offender.*

In the case of three deliberate thefts of motor wheels, the mere fact that thief is a first offender is not a sufficient reason for imposing a sentence of fine only, especially when his crime, if undetected, might well have caused considerable financial profit to him. In such a case, a substantive term of imprisonment should be imposed. *Emperor v. Faqir Mohammad.*

37 Cr. L. J. 1024 : 164 I. C. 822 : 9 R. Pesh. 25 : A. I. R. 1936 Pesh. 170.

———S. 379—*Sentence—Theft from Railway train—Accused previously convicted of theft and bound over for good behaviour—Deterrent sentence.*

PENAL CODE ACT (XLV OF 1860)

When a Magistrate is satisfied that an accused had committed the offence of theft from a Railway train, the sentence should be of a deterrent nature, especially where the accused had already been convicted of theft and had been repeatedly bound over for good behaviour. *Emperor v. Ananda Lawman Babaji.*

13 Cr. L. J. 531 : 15 I. C. 803 : 5 S. L. R. 265.

———S. 379—*Sentence—Theft of articles worth Rs. 30—Fine of Rs. 100 should be reduced.*

Where no conspiracy between the cartman engaged by the person removing the goods and such person is established, no dishonest intention can be imputed to the cartman who would be entitled to an acquittal: *Held*, that where the property removed in excess was only worth Rs. 15, a fine of Rs. 100 was very heavy and should be reduced. *Ganpal Rao v. Emperor.*

38 Cr. L. J. 440 : 167 I. C. 722 : 19 N. L. J. 187 : 9 R. N. 205.

———S. 379—*Subject of theft—Fish in enclosed tank—Sluice closed—Inability to escape.*

Where the sluice of a private enclosed tank remains closed, and the fish in it cannot escape, such fish are in possession of the owner of the tank and are liable to become the subject of theft. *Manchu Paidugadu v. Kadim-selhi Tammayya.*

15 Cr. L. J. 77 : 22 I. C. 429 : 1914 M. W. N. 63 : A. I. R. 1914 Mad. 453.

———S. 379—*Subject of theft—Palk's Bay—Gulf of Mannar—Property in Chank-beds.*

Palk's Bay being an arm of the sea landlocked by his Majesty's Dominions and the islands in it also forming part of his territories, is not to be regarded as an open sea outside the territorial jurisdiction of His Majesty, but is an integral part of His Majesty's Dominions. The Raja of Rumnad has the monopoly of taking chanks in Palk's Bay, and he or the person claiming under him must, in law, be regarded as being in possession of the chank-bed *propter impotentiam*. A person taking chanks out of the chank-bed in the possession of the Raja removes movable property out of the possession of the Raja and will be guilty of theft under S. 379, Penal Code. *Annakumar Pillai v. Muthupayal.*

1 Cr. L. J. 809 : 14 M. L. J. 248 : I. L. R. 27 Mad. 551.

———S. 379—*Subject of theft—Res nullius—Abandonment.*

A currency note cancelled by Currency Officer by tearing off certain significant parts as a step towards its destruction by the further process of cutting it into pieces and then burning it, is not a *res nullius*, though in itself it has no value, and can form the subject of theft. *Moti v. Emperor.*

26 Cr. L. J. 189 : 83 I. C. 893 : 17 S. L. R. 260 : A. I. R. 1925 Sind 21.

———S. 379—*Theft—Crops grown by trespasser—Trespasser ejected by owner—Crops cut and taken away by landlord of trespasser—Offence.*

Complainant obtained a decree of ejectment

PENAL CODE ACT (XLV OF 1860)

against a trespasser and got into actual possession of the land. The trespasser had grown paddy on the land and when the crop was ready, the accused, acting on behalf of the trespasser, cut and removed the paddy : *Held*, that after the complainant had obtained actual possession of the land, the trespasser or his representatives had no right to enter upon the land and to remove the paddy, and that, therefore, the accused were guilty of theft. *Abinash Ohandra Sarkar v. Atul Krishna Bose*.

20 Cr. L. J. 38 :
48 I. C. 678 : 28 C. L. J. 120 :
23 C. W. N. 385 : A. I. R. 1919 Cal. 588.

————S. 379—*Theft—Crops sown in another's field—Removal by latter.*

A person who cuts and takes away crops sown by another, is guilty of theft. The fact that the crops in question stood upon fields in the cultivatory possession of the person removing them and were sown there without any right is of no consequence. *Muhammad Ata v. Emperor*.

23 Cr. L. J. 402 :
67 I. C. 498 : 19 A. L. J. 961 :
A. I. R. 1921 All. 158 (1).

————S. 379—*Theft—Decision of claim to property necessary before conviction—Charge.*

Where a person alleges his right to a property, he cannot be convicted of theft for removing it unless it has been found as a matter of fact that he is not entitled to it. *Harcandra Narayan Das v. Ramjan Khan*.

15 Cr. L. J. 298 :
23 I. C. 506 : 18 C. W. N. 397 :
41 Cal. 433 : A. I. R. 1914 Cal. 476.

————S. 379—*Theft, essence of—Possession of accused, effect of.*

An offence under S. 379, Penal Code, is an offence against possession, and a person cannot, therefore, be convicted of stealing something of which he was already in possession. *Shaikh Garib Haji v. Muchiram Sahu*.

27 Cr. L. J. 133 :
91 I. C. 805 : 30 C. W. N. 359 :
A. I. R. 1925 Cal. 1020.

————S. 379—*Theft—Tenant's right to cut standing crop—Ejection—Tenant not paid price of crop.*

A tenant was ejected from his holding under the provisions of the Agra Tenancy Act. Formal possession was delivered to the *zemindar*, but as he failed to tender the price of the standing crops, the tenant cut and removed them : *Held*, that the tenant was not guilty of theft. *Jodha Singh v. Emperor*.

13 Cr. L. J. 298 :
14 I. C. 762 : 11 A. L. J. 270.

————S. 379—*Theft, what amounts to—Bona fide belief of legal right.*

The essence of the offence of theft is the dishonest taking of movable property out of the possession of some person. In the absence of dishonest intention, a charge of theft cannot be sustained. Where a person removes property under a mistaken notion of law that the property is his and that he is entitled to retain it, he cannot be held to have committed theft

PENAL CODE ACT (XLV OF 1860)

of the property. *Hamid Ali Bepari v. Emperor*.

27 Cr. L. J. 80 :
91 I. C. 256 : 52 Cal. 1015 :
A. I. R. 1926 Cal. 149.

————S. 379—*Theft, what amounts to—Creditor taking goods of debtor to compel payment of debt, whether commits theft.*

A creditor by taking any movable property of his debtor from the debtor's possession without his consent with the intention of coercing him to pay his debt, commits the offence of theft as defined in S. 378, Penal Code. *Emperor v. Ganpat Krishnaji Parit*.

31 Cr. L. J. 975 :
125 I. C. 911 : 32 Bom. L. R. 351 :
A. I. R. 1930 Bom. 167.

————S. 379—*Theft, what amounts to—Crops sown and cut down by accused—Cr. P. C., S. 145.*

Where an order under S. 145, Cr. P. C., was made in favour of the complainant, but as a matter of fact the crops had been sown by the accused : *Held*, that the crops being the property of the accused, the cutting down of these crops by them could not constitute the offence of theft. *Sarju v. Emperor*.

17 Cr. L. J. 75 :
32 I. C. 667 : A. I. R. 1916 All. 314.

————S. 379—*Theft, what amounts to—Mortgagee in possession of trees under terms of deed without having right to cut and appropriate them, cutting and appropriating them—If commits theft.*

Where a mortgagee who is in possession of trees under the terms of mortgage-deed without having right to cut and appropriate them, cuts and appropriates the trees, he does not commit theft. *Tarachand Sah v. Emperor*.

41 Cr. L. J. 795 :
189 I. C. 737 : 6 B. R. 854 :
13 R. P. 138 : A. I. R. 1940 Pat. 701.

————S. 379—*Theft, what amounts to—Removal of crops by tenant—No delivery to the landlord—Landlord's seal—Possession—Actual delivery essential.*

The removal by a tenant of the heaps of grain, in his possession and control, does not amount to theft, unless there was actual delivery to the landlord of his share of the grain, although the landlord may have put a seal on the heaps. *In re : Annamalai Oddayar*.

15 Cr. L. J. 186 :
22 I. C. 762 : 1914 M. W. N. 106 :
1 L. W. 178 : A. I. R. 1914 Mad. 286.

————S. 379—*Theft, what constitutes—Bona fide claim of right, how far a defence.*

Where property is removed in the assertion of a *bona fide* claim of right, the removal does not constitute theft. But the claim of right must be an honest one, though it may be unfounded in law or in fact. If the claim is not made in good faith, but is a mere colourable pretence to obtain or keep possession, it avails not as a defence. Whether the claim is honest must be decided by the Court from all the circumstances of the case

PENAL CODE ACT (XLV OF 1860)

and it should not convict unless it is in a position to say that the claim is a mere pretence. *Suraj Ali v. Arfan Ali*.

17 Cr. L. J. 456 :
36 I. C. 136 : 20 C. W. N. 1270 :
A. I. R. 1917 Cal. 648.

S. 379—Theft, what constitutes.

It may be the intention of the owner of a movable property to destroy it, yet as long as the destruction or abandonment is not fulfilled, and as long as it is still in the hand of the owner to countermand such destruction or abandonment, the property is still the property of the owner, and the taking it out of his possession is theft, and improper use of it is breach of trust. *Moti v. Emperor*.

26 Cr. L. J. 189 :
83 I. C. 893 : 17 S. L. R. 260 :
A. I. R. 1925 Sind 21.

S. 379—Theft, what constitutes—Removal under bona fide claim of right is not theft.

To constitute an offence under S. 379, Penal Code, the determining factor is the intention of the taker and where articles have been removed in the bona fide exercise of a right of ownership which is believed to exist, the act does not amount to theft. The Criminal Court should not be used as a lever to harass an inconvenient adversary. *Madan Lal v. Emperor*.

31 Cr. L. J. 1222 :
127 I. C. 528 : 1930 A. L. J. 457 :
I. R. 1930 All. 928.

S. 379—Wrongful loss—Theft—Tenant removing trees belonging to landlord—Custom set up by tenant—Burden of proof.

The accused, tenants of a village, removed certain trees which had been uprooted in a duststorm. The trees were the property of the *zemindar*, and the accused admitted having removed them, but alleged that under a custom in the village, they had the right to do so, and produced certain extracts from the *wajib-ul-arz* in support of their allegation. The Court held that the removal of the trees amounted to the offence of theft, and convicted the accused accordingly : *Held*, that the extracts from the *wajib-ul-arz* did not evidence a custom authorising the removal of fallen trees by tenants without the consent of the landlord, as the removal caused loss to the landlord, which was wrongful to him and caused wrongful gain to the accused, the case fell within illustration (a) of S. 378, Penal Code, and the conviction was justified. *Dunyapat v. Emperor*.

20 Cr. L. J. 710 :
52 I. C. 790 : 17 A. L. J. 974 :
1 U. P. L. R. All. 133 : 42 All. 53 :
A. I. R. 1919 All. 90.

S. 379—Removal of calf without consent of owner to prevent its being sacrificed, whether theft.

The Hindus of a locality apprehended that A, a Muhammadan who owned a calf was going to sacrifice that calf. An agreement was come to by which A consented that the calf might be tied up in B's house, which was close by.

PENAL CODE ACT (XLV OF 1860)

C, a Hindu, who arrived on the scene subsequently carried away the calf without the consent of A or B, to prevent all chances of its being sacrificed. C was convicted of theft : *Held*, (1) that the calf, though it was tied up in B's house was still in the possession of A when C removed it ; (2) C's removal of the calf was 'dishonest,' though his motive was only to save it from being killed ; (3) that the act of C, therefore, amounted to theft and the conviction was not illegal. *Jagannath Misra v. Emperor*.

30 Cr. L. J. 546 :
115 I. C. 895 : I. R. 1929 Pat. 271 :
10 P. L. T. 483 : A. I. R. 1929 Pat. 429.

Ss. 379, 392—Evidence—Accused previously acquitted of dacoity—Evidence of association with dacoits, admissibility of—Evidence of bad character, admissibility of.

Once a man has been acquitted on a charge of dacoity, it is not open in a subsequent criminal prosecution to prove that he actually committed that offence. But even if a person has been acquitted on a charge of dacoity, it is open to the Crown in a subsequent case to prove that he was seen in the neighbourhood of the place of dacoity in order to prove his habit and association with dacoits. Under S. 54, Evidence Act, in criminal proceedings evidence of bad character is inadmissible unless evidence has been given that he has a good character. But this section does not apply to cases where the bad character of any person is itself a fact in issue and evidence of bad character is admissible to prove a relevant fact, e. g., habit and association of the accused which cannot be proved *aliunde*. *Lale v. Emperor*.

30 Cr. L. J. 922 :
118 I. C. 423 : 6 O. W. N. 441 :
I. R. 1929 Oudh 439 : A. I. R. 1929 Oudh 321.

Ss. 379 and 403—Dishonest intention, absence of, proof of—Theft—Criminal misappropriation—Finding property in crowded place and retaining it for a short time, no proof of dishonest intention—Previous conviction.

Where a person in a crowded gathering picks up from the floor of a temple a purse containing articles of appreciable value, places it in his waist cloth, has not taken action to discover its owner and is arrested a short while after by the Police, is neither guilty of theft under S. 379, I. P. C., in the absence of any clear proof to that effect, nor of criminal misappropriation under S. 403, I. P. C., as these circumstances alone cannot establish that the person intended to appropriate or convert the property to his own use. When determining whether a person has committed an offence, his previous convictions should altogether be out of consideration and he should be supposed of unblemished character. *Phuman v. Emperor*.

8 Cr. L. J. 250 :
3 P. W. R. Cr. 72 : 11 P. R. Cr. 1908.

Ss. 379, 403—Intention—Theft—Criminal misappropriation.

The accused, finding the complainant's pony at large which had broken loose from its tether to which it had been tied the previous

PENAL CODE ACT (XLV OF 1860)

night, mounted it and took a ride on it returning home on the following day in the evening : *Held*, that he had not committed the offence of theft, to constitute which there must be an intention on the part of the person who takes a thing to steal it, and that he might have been proceeded against under S. 408 instead of S. 379, Penal Code. *Rup Lal Singh v. Durga Prasad Dubey*. 18 Cr. L. J. 564 : 39 I. C. 804 : 1 P. L. W. 416 : A. I. R. 1917 Pat. 459.

———Ss. 379, 403, 424—*Miscellaneous—Trees in possession of tenants—Landlord jointly entitled—Removal by tenant—Theft—Conviction for theft, whether can be converted into one under S. 403 or S. 424.*

Removal of trees by a tenant when in his actual possession does not amount to theft even if his landlord is jointly interested in them. Where the necessary ingredients for an offence under S. 403 or 424 have not been considered in trial under S. 379, it is prejudicial to the accused to convert his conviction under S. 379, to one under S. 403 or S. 424. *Thoppulan v. Sankaranarayana Iyer*. 15 Cr. L. J. 440 : 24 I. C. 176 : 1914 M. W. N. 483 : A. I. R. 1914 Mad. 61.

———Ss. 379, 405—*Theft or criminal breach of trust—Land with standing paddy entrusted to accused—Cutting of paddy by accused—What offence.*

Certain land on which was standing a crop of paddy was entrusted to the accused to take care of and watch until the paddy was ripe, when they were to give notice to the complainant who would cut it. When the paddy was ripe, the accused themselves cut the crops and disposed of the same : *Held*, that the accused were guilty of either criminal breach of trust or theft. *Durga Tewari v. Emperor*. 10 Cr. L. J. 253 : 3 I. C. 189 : 36 Cal. 758.

———Ss. 379, 406—*Theft or misappropriation—Property in possession of shahna—Appropriation of property by judgment-debtor.*

In execution of a decree against the applicant, his movable property was attached and placed in the custody of one Khemraj. Khemraj died. The applicant took his property and appropriated it to his own use : *Held*, that the applicant was guilty not of misappropriation under S. 406 but of theft under S. 379, Penal Code. *Chunnoo v. Emperor*. 12 Cr. L. J. 374 : 11 I. C. 142 : 8 A. L. J. 656.

———Ss. 379, 409, 417, 420, 511—*Distinction between offences under—Theft, criminal breach of trust, criminal misappropriation and cheating.*

The distinction between theft, criminal breach of trust, criminal misappropriation and cheating is that in theft, the original taking is without honesty and without the consent of the owner, and in criminal breach of trust, it is with both. In obtaining property by cheating, the taking is dishonest but with the consent of the owner. and in criminal misappropriation, it is honest but without the consent

PENAL CODE ACT (XLV OF 1860)

of the owner. *Narsinghdas Marwari v. Emperor*. 29 Cr. L. J. 86 :

106 I. C. 678 : A. I. R. 1928 Nag. 113.

———Ss. 379, 411—*Evidence—Theft—Receiving stolen property—Accused pointing out place of concealment.*

The mere pointing out by an accused person of the place where stolen property is concealed, which place is not in his possession, is not of itself sufficient evidence to maintain a conviction for theft, or for dishonestly receiving stolen property. *Indar Singh v. Emperor*. 24 Cr. L. J. 587 :

73 I. C. 331 : 5 L. L. J. 87 : A. I. R. 1921 Lah. 385.

———Ss. 379, 411—*Inference of guilt, legality of—Theft—Receipt of stolen property—Property found at a place in the possession of several persons.*

When stolen property is found at a place in the possession of several persons, the mere giving of information to the Police that it would be found there, is not conclusive of the guilt of the informer, as it is consistent with his not being the thief or the guilty receiver of it. *Hakiman v. Emperor*. 2 Cr. L. J. 230 : 6 P. L. R. 196 : 20 P. R. 1905 Cr.

———Ss. 379, 411—*Possession—Presumption of guilty knowledge—Property belonging to two different owners—Evidence Act, S. 114, illus. (a).*

The possession after recent theft raises ordinarily a presumption either that the person in possession is the thief or had dishonestly received the property knowing it to be stolen. The possession of the property stolen from two different owners is a circumstance which, under S. 114, illus. (a), Evidence Act, must be borne in mind in estimating the probability of guilty knowledge in the accused. *Emperor v. Hari Ramji*. 5 Cr. L. J. 63 : 9 Bom. L. R. 27.

———Ss. 379, 411—*Presumption—Theft—Receiving stolen property—Possession of stolen property—Conviction for theft.*

As to which of the two presumptions should be drawn in any particular case, whether of theft or of receipt of stolen property, would depend on the circumstances, the length of time that has elapsed after the theft, how much of the stolen property is found in possession of the person in question, the circumstances which led to the discovery, and other facts connected with the discovery of the property. It is not necessary to raise a presumption in favour of the possessor of the stolen property being the receiver, that there should be evidence that he knew it to be stolen. *In re : Gorle Kandungadu*. 13 Cr. L. J. 140 : 13 I. C. 828 : 1912 M. W. N. 97.

———Ss. 379, 411, 380, 454—*Sentence—Procedure.*

The mere fact that an accused person points out the place in which the stolen property is concealed, does not give rise to any presumption under S. 114, Evidence Act, or justify his conviction for the offence of receiving stolen property, still less for the offence

PENAL CODE ACT (XLV OF 1860)

of theft. Theft and house-breaking are offences for which separate punishments can be given. If the accused is convicted under S. 379, theft, or S. 380, theft in a building, he may, in a proper case, be released on probation of good conduct. If he is convicted of house-breaking with intent to commit theft, a sentence of imprisonment is obligatory. When, therefore, the accused is convicted under both these sections and the Magistrate considers that it is not desirable to inflict a substantial sentence of imprisonment, his proper course is to direct the accused to execute a bond under S. 562 (1) for the offence of the theft and to sentence him to imprisonment until the rising of the Court for the offence of house-breaking. *Emperor v. Yeshaba Sakhoba Patil*.

40 Cr. L. J. 48 :

178 I. C. 330 : 40 Bom. L. R. 927 :

11 R. B. 155 : A. I. R. 1938 Bom. 463.

———Ss. 379, 426—*Legality of conviction under S. 426—Charge under S. 379.*

Where the accused were tried under S. 379, Penal Code, in respect of the cutting and removal of some unripe *kalai*, but were convicted under S. 426, Penal Code : *Held*, that the conviction under S. 426, Penal Code, was not illegal as the accused were not in any way prejudiced. *Kalachand Ghose v. Tatu (Tahir) Shaik*.

31 Cr. L. J. 474 :

123 I. C. 243 : 50 C. L. J. 285 :

A. I. R. 1929 Cal. 773.

———Ss. 379, 429—*Enhancement of sentence, illegality of—Appeal against two convictions—Setting aside of the conviction on confirming the sentences in both.*

Where in an appeal against two sentences, the Appellate Court set aside the conviction in one but confirmed the sentences in both as being not severe : *Held*, that the Appellate Court's order was illegal as it amounted to an enhancement of the sentence. *Emperor v. Varadan*.

11 Cr. L. J. 483 (a) :

7 I. C. 415 : 8 M. L. T. 117.

———Ss. 379, 429—*Theft—Subsequent killing—Double conviction, whether legal—Assisting in skinning carcass, whether offence.*

Where theft of an animal has been committed, the mere killing of it afterwards by the person who stole it for the purpose of eating it himself, cannot add another offence. A person assisting others in skinning an animal stolen and killed by them, is not guilty either under S. 379 or under S. 429, Penal Code. *Husain Buksh v. Emperor*.

26 Cr. L. J. 277 :

84 I. C. 341 : 3 Pat. 804 :

A. I. R. 1925 Pat. 34.

———Ss. 379, 429—*Theft or mischief—Theft of animal—Subsequent destruction—Separate convictions for theft and mischief, whether legal.*

A person cannot be convicted separately under Ss. 379 and 429, Penal Code, for stealing an animal and afterwards killing it. The wrongful loss to complainant is complete with the theft and the subsequent destruction of the animal,

PENAL CODE ACT (XLV OF 1860)

though it may benefit the offender, does not amount to mischief. *Jairo v. Emperor*.

17 Cr. L. J. 239 :

34 I. C. 655 : 9 S. L. R. 204 :

A. I. R. 1916 Sind 77.

———Ss. 379, 442, 457, 511—*Attempt to commit theft—Trespass in cattle enclosure—'Building,' meaning of.*

The mere surrounding of an open space of ground by a wall or a fence of any kind cannot be deemed to convert the open space into a "building" within the meaning of S. 442, Penal Code, and a person entering such an enclosure with intent to commit theft of cattle cannot be convicted under S. 457 of the Code. But he is guilty of an offence under Ss. 379/511, as the attempt to commit theft may be said to have begun when he entered the enclosure. *Kohmi v. Emperor*.

16 Cr. L. J. 1 :

26 I. C. 305 : 24 P. R. 1914 Cr. :

208 P. L. R. 1915 : A. I. R. 1914 Lah. 584.

———Ss. 379, 447—*Dishonest intention, absence of.*

Where certain persons, purchasing a share in the land and structures jointly owned by some co-sharers, in execution of a decree against one of them, took out possession through Court and utilized some of the old materials of huts belonging to the co-sharers which had been blown away and built a hut on the same land : *Held*, that they were not guilty under S. 379, Penal Code, there being no dishonesty on their part or any wrongful loss to other co-sharers. Nor could they be convicted under S. 447 as being part owners of the land. They entered upon it for the purpose of exercising their rights of ownership. *Nityananda Poddar v. Rupai Bepari*.

37 Cr. L. J. 747 :

162 I. C. 660 : 8 R. C. 632 (2) :

A. I. R. 1936 Cal. 261.

———Ss. 379, 447, 511—*Inference of intention, validity of—Trespass—Attempt.*

Accused was caught at night in the vicinity of some cattle which were tethered on complainant's land and near which complainant and his brother were sleeping : *Held*, that it could reasonably be inferred that accused intended to commit theft and he was, therefore, guilty of the offence of criminal trespass, but that he could not be held guilty of an attempt to commit theft. *Nauranga v. Emperor*.

24 Cr. L. J. 248 :

71 I. C. 792 : A. I. R. 1924 Lah. 223.

———Ss. 379, 511—*Intention—Attempt, meaning of—Entry into cattle enclosure—Theft, prevented by owner of cattle—Attempt to commit theft.*

When a man does an intentional act with a view to attain a certain end and fails in his object through circumstances independent of his own will, then he has attempted to effect the object at which he aimed. Accused entered a thorned enclosure at the well of the complainant and was about to enter a smaller enclosure in which complainant's cattle were tethered when he was interrupted by the complainant : *Held*, that the intention of the

PENAL CODE ACT (XLV OF 1860)

accused was to steal the cattle and that he could not carry out his intention on account of the intervention of the complainant and that, therefore, the accused was guilty of the offence of attempting to commit theft. *Jaimal v. Emperor*. 26 Cr. L. J. 1424 : 89 I. C. 848 : 1 Lah. Cases 331 : A. I. R. 1926 Lah. 147.

———S. 380.

See also (i) Cr. P. C., 1898, Ss. 35, 106, 236, 303, 412.

(ii) Penal Code, 1860, Ss. 23, 378, 380, 441, 447, 454.

(iii) Whipping Act, 1900, S. 3.

———S. 380—Dealing with property after theft, if offence.

The accused restored to the owners jewellery, which, there was some ground for suspecting, had been stolen by his son. The accused was sent for trial as he would not explain from whom he got the property so returned. The Magistrate's finding was that the motive of the accused was to save his son from being punished and that his conduct in returning the property and then denying it with this object amounted to 'assisting the act done by his son.' The accused was convicted under S. 414/380, Penal Code: *Held*, that the accused had committed no offence. Dealing with the stolen property after the theft was committed, would not amount either to theft or to abetment of theft. *Nga Yan E v. Emperor*. 11 Cr. L. J. 493 :

7 I. C. 465 : U. B. R. 1910 Cr. P. C. 8.

———S. 380—Dishonest removal—Theft—Offence.

Accused entered into an agreement with the complainant that the latter should advance him money up to a certain sum on the hypothecation of goods to be deposited by him as security. The goods were deposited in a godown, and under the agreement, accused was entitled to take advance up to 70 per cent of the value of the goods. Some time afterwards the accused removed some of the hypothecated goods from the godown: *Held*, that under the agreement all goods placed in the godown were hypothecated to the complainant: that the removal of the goods not having been proved to be honest, the accused was guilty of theft. *Kartikeswar Roy v. Bansidhar Byas*. 25 Cr. L. J. 222 :

76 I. C. 654 : A. I. R. 1923 Cal 594.

———S. 380—Inference of guilt, if justified—Knowledge of place of concealment of goods stolen, whether justifies inference of guilt.

The mere fact that a person points out a place not his own nor within his control but accessible to the public in general as the place where stolen goods are concealed, does not justify an inference of guilt of theft or house-breaking in the absence of any direct evidence to establish the complicity of the person. *Public Prosecutor v. Pakkiriswami*. 31 Cr. L. J. 449 :

122 I. C. 648 : 57 M. L. J. 548 : 1929 M. W. N. 785 : 30 L. W. 791 : A. I. R. 1929 Mad. 846.

PENAL CODE ACT (XLV OF 1860)

———S. 380—Offence of theft under, when constituted.

The owner of a kettle gave it to a workman for repairing it within 6 or 7 days for Rs. 6. After 11 or 12 days when the owner demanded return of the kettle, the workman said that he had not completed repairs but that he would return the kettle if he was paid Rs. 5 for the part of the work he had already done. The owner refused to pay the amount, took away the kettle from the almirah and walked out of the shop: *Held*, (1) that S. 170 of the Contract Act had no application to the case and that the workman had no lien over the kettle; (2) that even if the owner acted improperly in demanding and taking back the kettle, he was not guilty of an offence under S. 380, Penal Code, as his object was not to cause wrongful loss to the workman or wrongful gain to himself but to recover his kettle after the lapse of reasonable time. *Judah v. Emperor*. 26 Cr. L. J. 1505 :

90 I. C. 289 : 29 C. W. N. 1011 : 53 Cal. 174 : A. I. R. 1926 Cal. 464.

———S. 380—Offence under—Creditor removing debtor's goods to enforce payment of debt—Theft.

A creditor, who by force takes the goods of his debtor out of his possession against his will in order to compel him to discharge his debt, is guilty of theft within the meaning of S. 380, Penal Code. *Bakhtawar v. Emperor*. 25 Cr. L. J. 650 :

81 I. C. 138 : 1 Lah. Cases 56 : A. I. R. 1925 Lah. 131.

———S. 380—Possession—Recent possession of stolen property—Possession of stolen article on the person of accused's sister 12 days after theft—Accused and his sister occupying same house—Property traced to accused's possession.

Where stolen property was found in the neck of accused's sister 12 days after the theft, and accused and his sister were living in the same house and the Jury found accused guilty of being in possession of stolen property: *Held*, that possession was rightly traced to the accused and that the High Court could not interfere with the Jury's verdict. *In re : Lal Singh*. 12 Cr. L. J. 48 :

9 I. C. 288 : 9 M. L. T. 291.

———S. 380—Sentence of whipping—First offender—Young boy.

A young man may be given a fresh start in life and should not, unless it is imperatively necessary, be sent to prison, but that because a young man has well-to-do parents or because no particular reason can be assigned for his breach of the law, is no reason why he should escape punishment altogether. *Maung Sein Hlaing v. The King*. 39 Cr. L. J. 478 :

174 I. C. 842 : 10 R. Rang. 436 : A. I. R. 1938 Rang. 112.

———S. 380—Theft—Constituents of.

In order to constitute the offence of theft, the prosecution must establish (a) that there

PENAL CODE ACT (XLV OF 1860)

was dishonest intention to take property, (b) that the property was movable property, (c) that it was taken out of the possession of another, (d) that it was taken without the consent of that other, and (e) that there was removal of the property in order to accomplish the taking of it. *Ajodhya Nath Parbi v. Emperor*. 21 Cr. L. J. 208 : 54 I. C. 992 : A. I. R. 1920 Pat. 582.

S. 380—Theft from Railway godown.

The accused went to a Railway godown with a carter. The latter removed a bag from the godown and the accused accompanied the carter to his house and there took delivery of the bag. The bag consisted of pilferings from a number of bags consigned to different persons: *Held*, that the bag being in the possession of the Railway as bailee until it left the ground, the actually taking it out of the godown was theft and that the accused and the cartman were jointly guilty of theft. *Soukhi Chand v. Emperor*. 19 Cr. L. J. 884 : 47 I. C. 80 : 3 P. L. J. 354 : A. I. R. 1918 Pat. 314.

S. 380—Theft in house—Personation—Former and subsequent conduct.

Accused, a Charan, became a guest of the complainant, passing himself as a *Kathi*, a high casteman. After a few days he disappeared, and, shortly afterwards, the box lying in the room where he stayed, was found broken into, and its contents rifled. The complainant told this only to his friends, one of whom, after several months, happened to see the accused in a foreign country, where a complaint was lodged, but no stolen property found: *Held*, that to establish the guilt there was: (1) his previous conduct in passing himself off as another, and thereby obtaining a footing in the complainant's house; (2) the lying of the box in his room, and (3) his disappearance just before the theft was found, without giving any explanation of his conduct: *Held*, also that the plea of no stolen property having been found in his possession, was of no avail, he having had several months to dispose of it. *Pingalsht Mansur v. Emperor*. 2 Cr. L. J. 306.

S. 380—Theft, what amounts to—Materials of a house taken away dishonestly—Ownership and possession of immovable property.

If the materials of a house are taken away dishonestly, the act is theft even though the house is left uncared for. Ownership and possession of immovable property are not so easily separated as ownership and possession of movable property. *Emperor v. Nawlara Singh*. 1 Cr. L. J. 558 : 4 B. R. 1904 : 1st Qr. P. C. 7 : 10 Bur. L. R. 356.

Ss. 380, 109—Sentence—Sentence of whipping for offence under—Legality of—Criminal trial—Sentence—Double sentences of whipping, if legal—'Concurrent' sentences, significance of.

PENAL CODE ACT (XLV OF 1860)

The sentence of whipping passed for the offence under S. 380, read with S. 100, Penal Code, is not legal. Double sentences of whipping are illegal, and the position is no better if they are ordered to run concurrently because sentences of whipping cannot run concurrently. The word "concurrent" properly applies only to sentences of imprisonment. If it were applied to sentences of whipping, the literal meaning would be that the prisoner was to be flogged by two operators simultaneously. *Emperor v. Veerappa*. 38 Cr. L. J. 1013 : 171 I. C. 71 : 10 R. Rang. 127 : A. I. R. 1937 Rang. 310.

Ss. 380, 201, 511—Attempt to cause disappearance of document—Theft.

The accused brought a civil suit in the Court of the Subordinate Judge of Monghyr on the basis of a forged promissory note. The file of the case was sent for and kept in the Court of the Additional Munsif of Jaunpur being required in connection with a suit pending in the Court, and it somehow found its way to the house of an official of the Court. The accused got into the inner verandah of the house and removed the forged promissory note from the file. From that place, on being pursued, they tore it to pieces: *Held*, that they were guilty of an offence under S. 380, Penal Code: *Held*, further, that they were also guilty under S. 201/511, Penal Code. *Sheonandan v. Emperor*. 16 Cr. L. J. 791 : 31 I. C. 647 : A. I. R. 1915 All. 385.

Ss. 380, 411—Removal of Chaukidar's Birth Register for producing in Court, if offence.

The removal of a Chaukidar's Birth Register from his possession without his consent for producing it in Court to prove the date of birth of a certain person, does not amount to an offence either under S. 411 or any other section of the I. P. C. *Chima v. Emperor*. 15 Cr. L. J. 522 : 24 I. C. 834 : 37 P. L. R. 1914 Cr. : 19 P. W. R. 1914 Cr. : A. I. R. 1914 Lah. 174.

Ss. 380 and 457—Jurisdiction—Property seized outside jurisdiction of Mysore Courts—Burden of proof.

When property alleged to be stolen is seized in a place beyond the jurisdiction of the Mysore Courts the burden of proving that it was received within the jurisdiction lies on the prosecution. In the absence of such proof, the Court has no jurisdiction to try the case. *Thimmarreddy v. Government of Mysore*. 9 Cr. L. J. 334 : 12 M. C. C. R. 96.

Ss. 380, 457—Separate sentences—Separate consecutive sentences, legality of.

Separate consecutive sentence under Ss. 457 and 380, Penal Code, cannot be passed. *Khalir Jama Khan v. Emperor*. 31 Cr. L. J. 492 : 123 I. C. 393 : A. I. R. 1930 Pat. 385.

PENAL CODE ACT (XLV OF 1860)

—Ss. 380, 463, 466, 467, 474—*Removal of documents from judicial records—Offence—Theft—Forgery—Falsification—Fabrication of false evidence.*

Accused while inspecting a judicial record, removed a certain document from the record with the intention of substituting another document in its place with a view to weaken a criminal charge brought against him. Before, however, the substitution was effected the clerk in charge of the record detected the action of the accused and stopped him from effecting the substitution: *Held*, (1) that the accused was guilty of an offence under S. 380, Penal Code; (2) that the document which the accused had attempted to substitute in place of the one removed by him, having been made without any of the intents mentioned in S. 463, Penal Code, he could not be convicted of forgery; (3) that the document attempted to be substituted by the accused not being a document of the description mentioned in S. 466 or S. 467, Penal Code, the accused could not be convicted of an offence under S. 474 of the Code; (4) that the accused was guilty of attempting to fabricate false evidence but he could not be convicted of that offence inasmuch as it had been committed in relation to a proceeding in Court and no complaint in respect of such an offence had been made by the Court as required by S. 195, Cr. P. C. *Radha Kishan v. Emperor.*

26 Cr. L. J. 847 :
86 I. C. 671 : 7 L. L. J. 118 :
26 P. L. R. 95 :
A. I. R. 1925 Lah. 327.

—S. 381.

See also Calcutta Police Act, 1860, S. 54-A.

—S. 381—Aggravation of offence.

A servant accused of an offence under S. 381 aggravates his offence by making imputations on the chastity of the complainant's wife. *Emperor v. Brij Lal.* 14 Cr. L. J. 113 :
18 I. C. 673 : 13 P. L. R. 1913 :
27 P. W. R. 1913 Cr.

—S. 381—Bona fide claim—*Theft by servant—Removal in assertion of bona fide claim of right—Offence.*

Removal of property from the possession of another in the assertion of a bona fide claim of right, though unfounded in law and fact, does not constitute theft, but a mere colourable pretence to obtain or keep possession of property does not avail as a defence. Accused who was an employee in a press, removed certain type from the press, which he alleged belonged to him, on the ground that his employers had failed to carry out an agreement to take the accused into partnership or to purchase the type. It was not proved that the type belonged to the press: *Held*, that the accused was not guilty of theft inasmuch as he had removed the type in the assertion of the bona fide claim of right. *Harnam Singh v. Emperor.*

25 Cr. L. J. 697 :
81 I. C. 185 : 5 Lah. 56 :
A. I. R. 1924 Lah. 453.

PENAL CODE ACT (XLV OF 1860)

—S. 381—Clerk or servant, what is—Unpaid apprentice.

An unpaid apprentice is a "clerk or servant" within the terms of S. 381, Penal Code. *Sohan Lal v. Emperor.* 3 Cr. L. J. 70 :
6 P. L. R. 556 : 50 P. R. 1905 Cr.

—S. 381—Evidence—*Evidence Act, Ss. 11, 32—Ownership of alleged stolen property—Witness stating what a deceased person had said to him—Admissibility of such statement.*

A witness's statement as to what a deceased person had said to him regarding the ownership of the property alleged to be stolen, is not admissible in evidence either under S. 11, or under S. 32, Evidence Act. In the absence of evidence as to the ownership of stolen property, a conviction under S. 381, Penal Code, cannot stand. *In re : Dorasami Aiyar,* 16 Cr. L. J. 640 :
30 I. C. 464 : A. I. R. 1916 Mad. 1103.

—Ss. 381, 34, 193, 466—*Dishonest intention—Removing official file from proper custody—Theft—Abetment—Destruction and mutilation of documents.*

A correspondence file belonging to Government was in the custody of a *Mamlatdar* who handed it over for safe custody to a clerk. The latter kept the file at his house, but while he was away, accused No. 1, *karkun* in the *Mamlatdar's* office, obtained the key of the house from the person with whom it had been left, and removed the file. Accused No. 1 then accompanied accused Nos. 2 and 3, who were interested in the property to which the file related, to the house of their Pleader who had been retained to prepare an appeal, and for that purpose, wanted to inspect the file. Accused No. 1 handed over the file to accused Nos. 2 and 3 at the Pleader's house and himself went away. He returned in the evening and having obtained the file from accused Nos. 2 and 3 replaced it in the house of the clerk. It was subsequently discovered that during the interval that the file had been in the possession of accused Nos. 2 and 3, one document had been abstracted and some others had been mutilated. The file contained documents of which accused Nos. 2 and 3 were not entitled to have inspection: *Held*, (1) that accused No. 1 having removed the file from the possession of the clerk who had the custody of it on behalf of the *Mamlatdar*, without the consent of the *Mamlatdar* with intent to cause wrongful gain to accused Nos. 2 and 3, he was guilty of an offence under S. 381, Penal Code, (2) that accused Nos. 2 and 3 were guilty of an offence under Ss. 381-109 of the Penal Code. *Vallabhram Ganpatram v. Emperor.*

27 Cr. L. J. 689 :
94 I. C. 881 : 27 Bom. L. R. 1391 :
A. I. R. 1926 Bom. 122.

—S. 382.

See also Penal Code, 1860, Ss. 328, 390.

PENAL CODE ACT (XLV OF 1860)

———S. 382—Applicability of—No proof of any preparation on part of accused to commit any act mentioned in section—Mere possession of dagger, if enough justification for conviction under S. 382.

The accused entered the betel plantation with intention to commit theft and was surprised there by the owner and the latter's wife. The accused had with him a dagger of the kind used for cutting palm stems by toddy extractors. The owner of the plantation was a man of 65. The accused inflicted no injury with the dagger and although thus armed, was actually over-powered and tied up by the old gentleman and his wife: *Held*, that S. 382, Penal Code, had no application in this case. The mere possession of a dagger did not justify a conviction under this section, in the absence of any proof of any preparation to cause any of the acts mentioned in the section. *Nga Shwe Bra v. Emperor*.

39 Cr. L. J. 277 (b) :
173 I. C. 144 : 10 R. Rang. 313 :
A. I. R. 1937 Rang. 542.

———S. 382—Miscellaneous.

The charges of criminal breach of trust and extortion, in respect of the same moneys, are incompatible. Consequently a conviction both for criminal breach of trust and extortion is not proper when they are in respect of the same moneys. *Shamu Mal v. R. A. Gordon*.

37 Cr. L. J. 457 :
161 I. C. 295 : 8 R. S. 135 :
A. I. R. 1936 Sind 29.

———S. 382, 378, 379—Proof—Knife or other weapon which, if used on human being, might cause death or hurt—Possession by thief at the time of committing theft of.

The possession by a thief at the time of his committing a theft of a knife or other weapon, which, if used on a human being, might cause death or hurt, would not of itself justify a conviction under S. 382, Penal Code. There must be something to show or from which it may properly be inferred that the offender made preparation for causing one or more of the results mentioned in the section. *Nga Shan v. Crown*.

1 Cr. L. J. 378 :
10 Bur. L. R. 87.

———S. 383.

See also Penal Code, 1860 Ss. 54, 220, 420.

———S. 383—Demand of heavy fee—Nikah khawan, whether bound to perform Nikah—Demand of the heavy fee, whether an offence.

A *nikah khawan* is not bound to read a *nikah* for a person unless he chooses to do so, and it is no offence for him to demand any fee he likes for doing so. *Nizam Din v. Emperor*.

24 Cr. L. J. 958 :
75 I. C. 542 : 4 Lah. 179 :
A. I. R. 1924 Lah. 162.

PENAL CODE ACT (XLV OF 1860)

———S. 383—Extortion, essentials of—Injury, meaning of—Promise to recommend—Promise to return property.

Before a person can be said to put another person into fear of an injury for the purpose of S. 383, Penal Code, it must appear that he has held out some threat to do or to omit to do what he is legally bound to do in the future. On the other hand, if all that a man does is to promise to do a thing which he is not legally bound to do and says if money is not paid to him he would not do that thing, he cannot be said to have committed the offence of extortion. If a person promises to speak favourably to a person in authority and to do his best to induce him to do something, and in consideration of this promise, receives money, he cannot be said to have threatened to cause injury to the person who gives the money and thereby committed extortion. *Habibul Razzaq v. Emperor*.

25 Cr. L. J. 961 :
81 I. C. 609 : 21 A. L. J. 850 :
46 All. 81 : A. I. R. 1924 All. 197.

———S. 383—Extortion, what amounts to—Picketing shops and realising fines—Offence.

The realisation of fines by means of picketing for the purpose of preventing the sale of foreign cloth, is extortion within the meaning of S. 383, Penal Code. *Local Government v. Hanmant Rao*.

25 Cr. L. J. 60 :
75 I. C. 764 : A. I. R. 1924 Nag. 19.

———Ss. 383, 192—Non-compoundable offences—Offences under, if private disputes.

Charges of extortion and fabricating false evidence are not private disputes as neither of these offences is compoundable. *Virumal Manghanmal v. Muhammad Khan*.

37 Cr. L. J. 1086 :
164 I. C. 1020 : 30 S. L. R. 217 :
9 R. S. 85 : A. I. R. 1936 Sind 146.

———S. 384.

See also Penal Code, 1860, Ss. 120-B, 220, 423 (1) (b).

———S. 384—Extortion—Dishonest intention.

Where the accused forcibly removed certain property from the possession of the complainant, claiming that the same belonged to himself, and placed it in trust with a shopkeeper, and it appeared that there was some evidence to show that the property did in fact belong to the accused: *Held*, that it was clear that the accused had no dishonest intention in removing the property, and no offence under S. 384, Penal Code, was established against him. *Ujagar Singh v. Emperor*.

26 Cr. L. J. 794 :
86 I. C. 426 : 26 P. L. R. 97 :
7 L. L. J. 121.

———S. 384—Fear of injury—What amounts to.

The terror of a criminal charge, whether true or false, amounts to a fear of injury, and though to threaten to use the process of law is lawful, to do so for the purpose of enforcing payment of money not legally

PENAL CODE ACT (XLV OF 1860)

due is unlawful, and such a threat made with such an object, is a threat of injury sufficient to constitute the offence of extortion. *Emperor v. Nga Kan Tha.*

14 Cr. L. J. 413 :
20 I. C. 237 : 6 Bur. L. T. 82.

—S. 384—Irregularity, effect of—*Extortion—Charge, accurate statement of, necessity of—Cr. P. C., Ss. 22, 222, 223.*

Where an offence charged involves consequences which may be stated in a general form, such as may arise in a case of arson where a man may by one act of arson set fire and destroy several stacks of several persons, no particular is required, the nature of the offence being sufficiently stated by the date, time and place of the setting of fire; but extortion or obtaining money from persons by unlawful means involves stating with some approach to accuracy the approximate amounts alleged to have been obtained from each person and the nature of the extortion used against each person. It is not sufficient to say that at the close of the evidence the accused knows what is alleged against him. Such an irregularity is fatal to the trial. *Ram Chandar Sahai v. Emperor.*

17 Cr. L. J. 411 :
35 I. C. 971 : A. I. R. 1916 All. 60.

—Ss. 384, 379—Conviction for extortion, legality of—*Charge for theft.*

Accused cannot be convicted for an offence of extortion on a charge of theft. *Amanullah v. Emperor.*

13 Cr. L. J. 597 :
16 I. C. 165.

—Ss. 384, 385—Picketing of shop, if offence—*Levy of fine—Loss in trade and profits—Offence.*

Where a person causes loss in trade and profits to a trade by picketing his shop and forces him to pay a fine for persisting in the sale of foreign goods, he is guilty of extortion and may be convicted under Ss. 384 or 385, Penal Code. Picketing is not only harmless but even laudable where certain number of well-intentioned and law-abiding persons wish to argue in a legitimate and peaceful manner with a man pointing out to him that in his own advantage he should not follow a certain course, and the fear of it, would not be fear of injury within the meaning of the law. But when the word "picketing" is associated with another word "boycotting" and when the boycotting is apt to proceed from ostracism to active annoyance, and when the active annoyance has been known, in many instances, to culminate in bodily injury, a man who is threatened with picketing is put in fear of injury within the meaning of S. 385, Penal Code. *Chaturbhuj v. Emperor.*

24 Cr. L. J. 62 :
71 I. C. 110 : 20 A. L. J. 877 : 45 All. 137 :
A. I. R. 1922 All. 529.

—S. 385.

See also (i) Cr. P. C., 1898, S. 239.
(ii) Penal Code, 1860, S. 511.

PENAL CODE ACT (XLV OF 1860)

—S. 385—Circumstantial evidence—*Dacoity—Pointing out place where stolen property found.*

Where the sole evidence against a person charged with an offence under S. 385, Penal Code, consisted of the fact that the accused had pointed out the place where some remains of the stolen property were found: *Held*, that the above circumstantial evidence was not sufficient to show that the accused had committed the offence, inasmuch as it did not exclude other theories compatible with his innocence. *Surat Singh v. Emperor.*

15 Cr. L. J. 404 :
23 I. C. 1004 : 1 O. L. J. 74 :
A. I. R. 1914 Oudh 185.

—S. 385—Essentials of.

For the purpose of S. 385, Penal Code, it is necessary that the accused should have put some person in fear of injury in order to extort some property from him. *In re : Mantripragadu Mallapalli Narasimha Rao.*

19 Cr. L. J. 445 :
44 I. C. 973 : A. I. R. 1919 Mad. 954.

—S. 385—'Illegal', meaning of.

The word 'illegal' in S. 385, Penal Code, has the same meaning as 'unlawful'. *Emperor v. Fazlur Rahman.*

32 Cr. L. J. 87 :
128 I. C. 141 : 9 Pat. 725 :
I. R. 1931 Pat. 29 : 12 P. L. T. 97 :
A. I. R. 1930 Pat. 593.

—S. 385—Offence under—*Legal practitioner threatening to put scandalous questions to witness with intent to extort money—Offence—'Illegal', meaning of.*

Where a *Mukhtar* who appeared on behalf of the accused in a criminal case, threatened a prosecution witness that unless the latter paid him a certain sum of money, he would put questions to the witness and to the ladies of his household, which were entirely irrelevant to the matters at issue and which were scandalous and indecent: *Held*, that the accused was guilty of an offence under S. 385, Penal Code. *Emperor v. Fazlur Rahman.*

32 Cr. L. J. 87 :
128 I. C. 141 : 9 Pat. 725 :
I. R. 1931 Pat. 29 : 12 P. L. T. 97 :
A. I. R. 1930 Pat. 593.

—Ss. 385, 507, 508, 511—Offence under—*Cheating—Threat of Divine displeasure in case complainant failed to make payment—Payment made—Offence, what is.*

Accused sent anonymous letters to the complainant purporting to come from God and directing the complainant to pay certain sums of money to the accused and threatening him with ruin and death if he failed to do so. A reference was also made in the letters to the recent death of the complainant's father as being the result of disobeying similar previous warnings. The complainant sought out the accused and paid the money to him: *Held*, (1) that the accused was not guilty of any offence under Ss. 385, 507 or 508 of the Penal Code; (2) that if the complainant was deceived by the accused, the accused was guilty of an offence

PENAL CODE ACT (XLV OF 1860)

under S. 420 of the Penal Code : (3) that if the complainant was not deceived by the accused, the accused was guilty of an offence of attempting to cheat under Ss. 420-511 of the Penal Code. *In re : Doraswami Iyer.*

26 Cr. L. J. 755 :
86 I. C. 339 : 21 L. W. 174 :
48 M. L. J. 190 : 1925 M. W. N. 113 :
48 Mad. 774 : A. I. R. 1925 Mad. 480.

—S. 387—*Offence under.*

A went up into *B*'s house having a *dah* in one hand. He called out to *B* that if *B* did not give him money, he would cut *B* and his wife. *B* and his wife were in an inner room, the door of which was closed against *A*. *A* kicked at it and slashed it with his *dah* but the door did not give way. *A* then went to the door of another room ; he kicked at it and slashed it but when the door opened, *A* fell down. Meanwhile *B* and his wife had fled through the back part of the house. *B* assembled a number of villagers, but when they approached the house, *A* fled away. He was, subsequently, found in his father's house in a drowsy condition. *A* was charged with having attempted to commit robbery armed with a deadly weapon. It was ascertained that *A* had been drinking toddy before the commission of the offence. His offence was that he was drunk and did not know what he did. He was convicted under S. 308, Penal Code : *Held*, (1) that *A* was not so drunk as to be incapable of forming in his mind the dishonest intention necessary to constitute the offence of extortion in case his demands had been acceded to ; (2) that *A* was guilty of an offence under S. 387, Penal Code ; (3) that at the time *A* uttered his threat to *B* and his wife, the latter were inside a room, the door of which was shut against *A*, who could not get at them, it was doubtful whether the conditions necessary to constitute the offence of an attempt at robbery were fulfilled in the case, and that *A* should have the benefit of this doubt. *Nga Tun Baw v. Emperor.* (F. B.)

13 Cr. L. J. 864 :
17 I. C. 800 : 5 Bur. L. T. 193.

—S. 389—*Dishonest intent, absence of—Taking fruit from trees standing on joint property—Theft—Assertion of right—Criminal intent—Offence.*

Where the petitioners, by the orders of their employer, plucked and took fruit from trees standing on a plot in which their employer was entitled to a share, such fruit having been taken in assertion of the employer's right to share in the proceeds of the plot : *Held*, that the petitioners could not be convicted for theft, as no criminal dishonesty could be imputed to them. *Imam v. Emperor.*

18 Cr. L. J. 286 :
38 I. C. 318 : A. I. R. 1917 Cal. 98.

—S. 390.

See also Penal Code, 1860, S. 305.

—S. 390—*Robbery—Theft—Causing hurt to effect escape.*

A stole some rice from a house. While carrying it away, he was seized by *B*. He thereupon

PENAL CODE ACT (XLV OF 1860)

dropped the rice and then stahhed *B* with a knife. He was convicted of voluntarily causing hurt in robbery, under S. 394, Penal Code, and appealed to the Chief Court : *Held*, that as *A* dropped the rice before stabbing *B*, he could not have caused the hurt for the purpose of carrying away the rice, and his offence was, therefore, not robbery. The conviction was altered to one of theft after making preparation for causing hurt under S. 382, Penal Code, and of voluntarily causing hurt with a knife under S. 324, Penal Code. *Nga Paing v. Emperor.*

7 Cr. L. J. 446 :
4 L. B. R. 147.

—S. 390—*Robbery, what constitutes—Robbery—Extortion, when amounts to robbery.*

In order to constitute the offence of robbery under S. 390, Penal Code, it is not necessary that the extortion should follow immediately upon the restraint provided there is fear or restraint at the time. *Kalluva Rowther v. Suppan Asari.*

28 Cr. L. J. 164 :
99 I. C. 596 : 25 L. W. 86 :
A. I. R. 1927 Mad. 307.

—Ss. 390, 381—*Robbery and theft—Violence used for escape, whether converts theft into robbery.*

The essence of the offence of robbery is that the offender, for the end of committing theft or of carrying away or attempting to carry away property, obtained by theft, commits one or the other of the wrongful acts mentioned in S. 390, Penal Code. Where a thief after abandoning the stolen property uses violence against his pursuers in order to avoid capture, the theft is not thereby converted into robbery. *Nga Po Thei v. Emperor.*

19 Cr. L. J. 27 :
42 I. C. 987 : A. I. R. 1917 L. Bur. 1.

—Ss. 390, 392—*Whipping when should be inflicted—Robbery—Sentence of fine only illegal—Imprisonment essential.*

Where a charge under S. 393, Penal Code, is proved against an accused person, a sentence of fine only which may or not be accompanied with a sentence of whipping is illegal, as under S. 392 of that Code, a sentence of imprisonment is essential and ought to be imposed. Although in such a case whipping may also be inflicted, yet under the Whipping Act, as amended, a sentence of whipping should be imposed only where there is a certain amount of aggravation in the commission of the original offence; where the degree of injury is extremely slight, the penalty of whipping should not be added to the sentence of imprisonment. *Badri Prasad v. Emperor.*

23 Cr. L. J. 274 :
66 I. C. 418 : 20 A. L. J. 388 :
4 U. P. L. R. All. 67 : 44 All. 538 :
A. I. R. 1922 All. 245.

—Ss. 390, 396—*Sentence—Dacoity—Murder committed during retreat—Offence—Liability of members of gang.*

A murder committed by a member of a gang of dacoits while carrying away the stolen pro-

PENAL CODE ACT (XLV OF 1860)

perty is murder committed in the commission of dacoity within the meaning of S. 396, Penal Code, and all members of the gang are liable to the punishment provided by that section. *Lashkar v. Emperor*.

22 Cr. L. J. 687 :
63 I. C. 623 : 2 Lah. 275 :
A. I. R. 1921 Lah. 115.

—Ss. 396, 397—*Dacoity, what constitutes—'For that end,' meaning of.*

To constitute the offence of dacoity, it is necessary that death or hurt or wrongful restraint or fear of such instant evils should be caused by the offenders not only in order to the committing of theft or in committing theft, or in carrying away property obtained by theft, but also for that end, and that five or more persons should be acting conjointly. The words "for that end" in S. 390, Penal Code, cannot be read as meaning "in those circumstances." *Karuppa Gaundan v. Emperor*.

18 Cr. L. J. 346 :
38 I. C. 730 : A. I. R. 1918 Mad. 821.

—S. 391—*Dacoity—Robbery with violence.*

Taking the words of S. 391, Penal Code, in the most literal sense and strongly in favour of the Crown, they point to a robbery with violence by five or more persons. *In re : Naramban*.

24 Cr. L. J. 269 :
71 I. C. 877 : 15 L. W. 552 :
1922 M. W. N. 326 :
A. I. R. 1922 Mad. 195.

—S. 391—*Trial by Jury—Duty of Court.*

Three known and named persons were charged with dacoity along with two other unknown men. The Jury acquitted one of the three accused and convicted the other two of the offence with which they had been charged: *Held*, (1) that it was quite open to the Jury, while holding that one of the accused who was supposed to have been known to the witnesses had not been properly identified, to find that the total number of dacoits was five; (2) but that the Judge should have asked the Jury definitely whether they had considered the possible result of the acquittal and whether they still found that the number of robbers was five, since it was possible that if the questions had been put, the remaining two accused would have been found guilty only of robbery and received lighter sentences. *In re : Abbas Ali Sahib*.

29 Cr. L. J. 5 :
106 I. C. 341 : 55 M. L. J. 732 :
1927 M. W. N. 853 :
I. L. T. 40 Mad. 126 :
A. I. R. 1928 Mad. 144.

—Ss. 391 and 392—*Conviction for dacoity, maintainability of—Six persons charged—Three acquitted—Conviction altered into one for robbery.*

Where the evidence showed that there were six robbers and three were acquitted, the conviction of the rest under S. 391 was not sustainable and was altered into one for robbery under S. 392. *Pidda Enumundugaru v. Emperor*.

11 Cr. L. J. 249 :
5 I. C. 797 : 1 M. W. N. 52.

PENAL CODE ACT (XLV OF 1860)

—S. 392.

See also (i) Cr. P. C., 1898, S. 260.
(ii) Penal Code, 1860, Ss. 94,
302, 366, 376, 379, 392.

—S. 392—*Conviction under, legality of—Dacoity alleged to be committed by five persons—Acquittal of two—Conviction of others, legality of.*

The case for the prosecution was that a robbery was committed by five persons. The Sessions Judge acquitted two of them, on the ground that there was no evidence to connect them with the commission of the offence: *Held*, that under the circumstances it could not be held that five persons took part in the commission of the robbery and the remaining accused could not be convicted under S. 395, Penal Code, but only under S. 392. *Girdhar v. Emperor*.

28 Cr. L. J. 547 :
102 I. C. 483 : A. I. R. 1927 Lah. 519.

—S. 392—*Miscellaneous.*

Hurt must be proved to be caused in order to the committing of theft or in committing it or in carrying away property. Hurt must be conscious and voluntary act separate and distinct from theft. *Karmun v. Emperor*.

35 Cr. L. J. 297 :
147 I. C. 99 : 35 P. L. R. 186 :
6 R. L. 333 : A. I. R. 1933 Lah. 407.

—S. 392—*Scope of.*

S. 392 contemplates that the accused should have, from the very start, the intention to deprive the complainant of the property and should, for that purpose, either hurt him or place him under wrongful restraint. *Mir Baz v. Emperor*.

36 Cr. L. J. 894 :
155 I. C. 952 : 7 R. Pesh. 105 :
A. I. R. 1935 Pesh. 49.

—Ss. 392, 395—*Approver's testimony, value of.*

An approver's testimony is not sufficiently corroborated so as to base a conviction thereon by; (a) the accused's producing stolen property from a place not in his possession, as such an evidence can be easily fabricated. (b) the evidence of the witnesses alleging to have recognized the culprit at the time of committing the crime where his name does not find a place in the first report to the Police made by a person who had ample time before doing so to discuss the matter with them (witnesses). *Uda v. Emperor*.

16 Cr. L. J. 634 :
30 I. C. 458 : 26 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 244.

—Ss. 392, 395—*Offence of robbery—Conversion of to one of dacoity, legality of.*

An offence of robbery cannot be converted into an offence of dacoity where there is a simple allegation but not adequate proof on behalf of the prosecution that five or more persons have taken part in committing or attempting to commit the crime. *Uda v. Emperor*.

16 Cr. L. J. 634 :
30 I. C. 458 : 26 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 244.

PENAL CODE ACT (XLV OF 1860)

———Ss. 392, 397—*Direction to convict under S. 397—Misdirection to Jury—Absence of evidence that accused caused grievous hurt—Hurt caused by some of the robbers.*

Where, on a charge against the accused under Ss. 392 and 397, Penal Code, the Sessions Judge, while pointing out to the Jury that there was no evidence that the accused caused grievous hurt or used deadly weapons, directed them to convict under S. 397, Penal Code, because grievous hurt was caused by some of the robbers, some of whom used knives: *Held*, it was misdirection to Jury. *In re: Arumachella Thevan*. 13 Cr. L. J. 42 :

13 I. C. 282 : 11 M. L. T. 20 :
1912 M. W. N. 35 : 22 M. L. J. 186.

———Ss. 392, 397, 398—*Sentence—“Uses a deadly weapon”—Carrying dagger for overawing—“Armed with a deadly weapon”—Intention of Legislature to be considered.*

The words “uses a deadly weapon” in S. 397, Penal Code, include the carrying of a weapon for the purpose of overawing the person robbed. S. 398 provides a minimum punishment for those who attempt to commit robbery “armed with a deadly weapon” and the Legislature cannot have intended that a criminal should be urged to complete his purpose by the reflection that if he stops short of an attempt, the minimum imprisonment that can be inflicted on him under S. 398 is seven years, while if he completes the offence, he will not come within the provisions of S. 397, but may be sentenced to two or three years’ imprisonment under S. 392. *Ngai v. Emperor*.

13 Cr. L. J. 267 :
14 I. C. 651 : 5 Bur. L. T. 9 :
6 L. B. R. 41.

———S. 393.

See also Cr. P. C., 1898, S. 233.

———S. 394.

See also (i) Penal Code, 1860, S. 323.

(ii) Whipping Act, 1900, S. 4.

———Ss. 394, 397—*Identification evidence.*

A conviction should not be under S. 397 alone, which merely provides a minimum sentence, but under one of the preceding sections read with S. 397. It is seldom safe to convict on the evidence of a single witness as to identification, when the identification has been made after dark and the witness has at first professed to be unable to identify any one. *Tha Hmu v. King-Emperor*.

1 Cr. L. J. 475 :
2 L. B. R. 206.

———S. 395.

See also (i) Cr. P. C., 1898, Ss. 164, 207.

(ii) Evidence Act, 1872, S. 133.

(iii) Penal Code, 1860, Ss. 147,
140, 325, 392, 395, 400.

———S. 395—*Conviction under—Less than five persons, whether can be convicted.*

Less than five persons cannot be convicted

PENAL CODE ACT (XLV OF 1860)

of dacoity unless it is proved that at least five persons took part in its commission. *Ikrumuddin v. Emperor*. 18 Cr. L. J. 491 :

39 I. C. 331 : 15 A. L. J. 206 : 39 All. 348 :
A. I. R. 1917 All. 173.

———S. 395—*Dacoity—Charge—Particulars of.*

To constitute the offence of dacoity, it is necessary to prove that five or more persons joined in a robbery. To justify a conviction for dacoity by the application of Ss. 34 or 140, Penal Code, it is necessary to charge and prove that the unlawful assembly as a whole had the common intention of committing dacoity or that each accused knew that dacoity was likely to be committed in prosecution of the common object of the unlawful assembly. Where the accused were charged with being members of an unlawful assembly, whose common object was to commit mischief and cause hurt, but there was no count in the charge that the common object of the unlawful assembly was to commit dacoity or to cause hurt for the purpose of committing theft, no conviction for dacoity by force of Ss. 34 or 140, Penal Code, can be sustained. *In re: P. Kottoora Thevan*. 25 Cr. L. J. 396 :

77 I. C. 444 : 19 L. W. 211 :
46 M. L. J. 311 : 1924 M. W. N. 238 :
A. I. R. 1924 Mad. 584.

———S. 395—*Dacoity.*

No resistance from inmates of house. Consequent absence of use of force or show of force—Offence committed held was dacoity. *Ram Chand v. Emperor*. 34 Cr. L. J. 448 :

146 I. C. 790 : 1932 A. L. J. 1078 :
55 All. 117 : I. R. 1933 All. 142 (1) :
A. I. R. 1933 All. 114.

———S. 395—*Dacoity—Transportation instead of imprisonment—Period of.*

Where, therefore, an accused, on conviction for an offence under S. 395, Penal Code, was sentenced to transportation for 15 years, the High Court reduced the sentence to transportation for a term to ten years, that being the period of imprisonment provided for the offence. *Ala-ud-Din v. Emperor*.

20 Cr. L. J. 561 :
52 I. C. 49 : A. I. R. 1919 All. 327.

———S. 395—*Essence of robbery.*

The essence of the offence of robbery is the inflicting of hurt in order to the committing of theft. Hurt, independent of theft, does not amount to robbery. *Daulat v. Emperor*.

31 Cr. L. J. 153 :
120 I. C. 721 : A. I. R. 1930 Nag. 97.

———S. 395—*Essentials of dacoity.*

The essentials of the offence of dacoity are that the theft should be perpetrated by means either of actual violence or of threatened violence. The threatened violence may be implied in the conduct and character of the mob. It is not necessary that the force or menace should be displayed by any overt act. It cannot assist the accused or reduce the

PENAL CODE ACT (XLV OF 1860)

gravity of their offence that no actual hurt was caused for the reason that no one dared to resist the overwhelming show of force, which was sufficient to terrify, and, did, in fact, terrify those whose business it was to protect the property. *Emperor v. Chaudra*.

8 Cr. L. J. 143 ;
10 Bom. L. R. 632,

—S. 395—Evidence—Dacoity cases—Identification of dacoits.

In dacoity cases evidence adduced as to the identification of dacoits ought not to be accepted too readily, but should be looked at with great caution. *Kallu v. Emperor*.

18 Cr. L. J. 456 :
39 I. C. 296 : 4 O. L. J. 83 :
A. I. R. 1917 Oudh 118.

—S. 395—Evidence—Dacoity—Proof—Identification of accused—Tracker, evidence of—Benefit of doubt.

The accused were convicted of the offence of dacoity on the statements of the complainants as to their identification and of the trackers as to the identification of their tracks. The dacoits had issued from the roadside jungle, made a sudden attack on the complainants and put dust into their mouths. The night was a dark one and each complainant was separately assaulted and overpowered so that he did not and could not see what the dacoits did with the other. Two trackers were originally mentioned in the *chalan*, but only one was examined by the prosecution, the other was examined by the defence. Their evidence was found to be extremely suspicious: *Held*, that though there were suspicious circumstances against the accused, they could not be convicted of the offence charged as the evidence was not shown to be reliable. The Court observed that the tracker examined by the defence must be regarded for all practical purposes as a witness for the prosecution. *Jahana v. Emperor*.

11 Cr. L. J. 598 :
8 I. C. 239 : 71 P. L. R. 1910.

—S. 395—Identification—Identification doubtful—Accused should be acquitted.

Complainant who said he followed the dacoits on a dark night to Railway station, came to the station later on and accused the appellants on suspicion without being certain that they were the men who had been at his village for dacoity: *Held*, the identity of the appellants with persons who might have trespassed in complainant's house had not been established beyond the possibility of reasonable doubt and it was not possible to support the conviction. *Hazura v. Emperor*.

5 L. L. J. 82 :
A. I. R. 1923 Lah. 161.

—S. 395—Jurisdiction.

A Judge who is empowered by the Local Government to try cases under Ss. 121-A, 122, 121 and 396, Penal Code, is not competent to try an offence under S. 395 when no murder is involved. *Nga Aung Pa v. Emperor*.

34 Cr. L. J. 929 :
145 I. C. 251 : 6 R. Rang. 32 :
A. I. R. 1933 Rang. 161.

PENAL CODE ACT (XLV OF 1860)

—S. 395—Miscellaneous—Dacoity committed in Lucknow District—Trial by jury and not by Assessors—Government Notification No. 1692, VI, 545-A-9.

Under Government Notification No. 1692, VI 545-A-9, dated 10th December, 1884, which is in force, no person can be tried on a charge under S. 395, Penal Code, by the Court of Session in Lucknow, when such person has been committed to that Court by a Magistrate exercising jurisdiction in Lucknow District with respect to an offence of dacoity alleged to have been committed in Lucknow District except by a jury. *Rama Dhin v. Emperor*. 16 Cr. L. J. 169 (a) : 27 I. C. 553 (a) : A. I. R. 1915 Oudh 120 (a).

—S. 395—Offence under—Dacoity, simple and that with deadly weapons—Ordinary plain sticks not deadly weapons.

Where accused caused simple hurt to the complainant in a dacoity probably by sticks, *held* that they were guilty under S. 395 and not under S. 397, ordinary plain sticks not being deadly weapons. *Emperor v. Sukha Dana*.

1 Cr. L. J. 901.

—S. 395—Proof—Dacoity—Dacoits, association with, whether evidence of guilt.

Mere association with persons who are afterwards proved to have participated in a dacoity may create suspicion, but is not proof of the fact that the person so associating took part in the dacoity. *Salam v. Emperor*.

19 Cr. L. J. 79 :
43 I. C. 111 : 14 N. L. R. 192 :
A. I. R. 1917 Nag. 81.

—S. 395—Proof—Dacoity, participation in proof of—Harbouring dacoits—Failure to give information.

Accused admitted that a gang of thirteen persons assembled at his hut at night before a certain dacoity was committed, that he was aware of their purpose, that he did not give any information to the authorities, and that after the dacoity was over, the dacoits, or some of them, once more came to his hut and told him what had happened. He informed the *mukhia* the next morning and some property proved to have been stolen in the dacoity was found in *lathi* crop surrounding his hut, which he alleged was thrown away by the dacoits when they left him as he began to raise an alarm: *Held*, that these facts were not sufficient to prove that the accused actually took part in the dacoity. *Umrao Singh v. Emperor*,

25 Cr. L. J. 949 :
81 I. C. 597 : 11 O. L. J. 356 :
A. I. R. 1924 Oudh 367.

—S. 395—Scope of.

Detention of produce under *bona fide* belief of right to do so—Assault—Criminal intention absent—Offence under S. 395 held not established. *Nura v. Emperor*.

34 Cr. L. J. 1258 :
146 I. C. 295 : 34 P. L. R. 956 :
6 R. L. 204.

PENAL CODE ACT (XLV OF 1860)

—S. 395—Sentence.

Dacoity—Gunners having lightness to spot out persons—Shot fired only on lower part of body—Injury on stomach—Death: *Held*, there was no intention to kill—Dacoity of the worst description—Deterrent punishment is called for. *Pran Krishna Chakravarty v. Emperor*. (S. B.) 36 Cr. L. J. 1322 :

158 I. C. 176 : 39 C. W. N. 188 :
8 R. C. 166 : A. I. R. 1935 Cal. 580.

—S. 395—Sentence.

Where the accused was sentenced to transportation for life having committed an offence under S. 395, Penal Code, the Chief Court reduced the term of transportation to ten years, the maximum term allowed under the section. *Arura v. Emperor*. 1 Cr. L. J. 89 :

5 P. L. L. 41 : 31 P. R. Cr. of 1903.

—S. 395—Sentence of transportation.

A sentence of twelve years' transportation is not legal, and that though under S. 395, Penal Code, a sentence of transportation for life can be given, or, by applying S. 59, a sentence of transportation from seven to ten years can also be given, a term of transportation under S. 395, Penal Code, cannot be given between ten years and life. *Nga Shue Sin v. Emperor*. 4 Cr. L. J. 385 :

12 Bur. L. R. 237.

—S. 395—Separate offences—Dispute between two communities—Looting of shops.

In consequence of a dispute between the members of two communities, the members of one community raided and looted a large number of shops in the bazar belonging to the other community: *Held*, that the looting of each shop was a separate offence, and that in respect of each such offence, the Court must come to a finding what the offence amounted to. *Dargahi v. Emperor*. 26 Cr. L. J. 1213 :

88 I. C. 733 : 52 Cal. 499 :
A. I. R. 1925 Cal. 831.

—Ss. 395, 396—Dacoity, when begins—Shot fired to keep off rescue party—Dacoity with murder.

A dacoity begins as soon as there is an attempt to commit robbery and a shot fired thereafter in order to keep off a rescue party and to allow the theft to be committed, is an act committed in committing the dacoity within the meaning of S. 396, Penal Code. *Sita Ram v. Emperor*. 26 Cr. L. J. 1364 :

89 I. C. 452 : 12 O. L. J. 421 :
2 O. W. N. 550 : A. I. R. 1925 Oudh 723.

—Ss. 395, 396—Dacoity with murder—Number of persons, finding as to, whether necessary—Dacoity with murder—Charge, form of.

An offence under S. 395, Penal Code, can be committed only if the number of persons concerned in the robbery is not less than five. Where murder is committed during the course of a dacoity, it is proper to charge the accused persons with an offence under S. 396 rather than with two offences of mur-

PENAL CODE ACT (XLV OF 1860)

der and dacoity separately. *Labh Singh v. Emperor*. 26 Cr. L. J. 1153 :

88 I. C. 513 : 6 Lah. 24 :
A. I. R. 1925 Lah. 337.

—Ss. 395, 396—Sentence.

Murder, committed by dacoits while carrying off the stolen property, is murder committed "in the commission" of dacoity or robbery, as the case may be, and is punishable under S. 306 of the Penal Code. *Villi Thevan v. Villi Thevan*. 5 Cr. L. J. 201 :

17 M. L. J. 118.

—Ss. 395, 396, 400—Joint trial, impropriety of—Dacoity—Habitual association for purposes of committing dacoity.

Fourteen persons were tried at one trial and convicted of an offence under S. 400, Penal Code, for having formed a gang for the purpose of habitually committing dacoity. Between the 7th March 1908 and 15th December 1909, four serious dacoities were committed at four different places, and in two of these, dacoity was accompanied by murder. The accused, it was alleged by the prosecution and found proved, took part in one or more of these dacoities: *Held*, that the joint trial of all the accused for the offence under S. 400, Penal Code, though not illegal, was improper. It would have been better to try separately the accused persons for having committed offences under Ss. 396 and 397, in respect of dacoities in which it was alleged they took part. *Ghulam Mustafa v. Emperor*. 12 Cr. L. J. 260 :

10 I. C. 833 : 68 P. L. R. 1911 :
45 P. W. R. 1911 Cr.

—Ss. 395, 397—Duty of Court—Dacoity with torture—Sentence—Leniency, whether should be shown—Jail identification—Magistrate superintending, evidence of, whether necessary.

A person found guilty of the offence of dacoity with torture, ought not, in the matter of sentence, to be treated with any considerations of leniency. Where a jail identification is held in the presence of a Magistrate, the Magistrate should be produced at the trial as a witness, and it is the duty of the Court to call him before the conclusion of the trial. *Emperor v. Sundar*. 21 Cr. L. J. 515 :

56 I. C. 77 : 2 U. P. L. R. All. 115 :
A. I. R. 1920 All. 60,

—Ss. 395, 403—Irregularity, effect of—Charge of dacoity—Conviction for misappropriation—No reference to Assessors regarding latter—Validity of conviction.

It is permissible to convict a person, who is accused of the offence of dacoity under S. 395, Penal Code, for the offence of criminal misappropriation under S. 403 of the said Code, and the fact that the Sessions Judge did not expressly invite the Assessors' opinion on a charge under the latter section, is a mere irregularity and does not vitiate the conviction under that section, especially when no prejudice has been caused to the accused thereby. *Haroon v. Emperor*. 30 Cr. L. J. 875 :

118 I. C. 193 : I. R. 1929 Sind 161 :
A. I. R. 1929 Sind 147.

PENAL CODE ACT (XLV OF 1860)

—Ss. 395, 411—*Robbery, when complete—Fear caused by one band—Theft by another—Offence.*

In order that the offence of robbery be committed, it is not necessary that fear should be caused to the owner of the house after the robbers have entered the house. If the robbers scare away the owner on account of the fear caused in his mind before they are able to make an entry into the house, the offence of robbery would be quite complete. On the other hand, where the owner of a house is scared away by one crowd of persons and the house is subsequently robbed by another crowd, acting independently of the first crowd, the offence cannot be said to be one of robbery. *Yamin v. Emperor.* 26 Cr. L. J. 145 : 83 I. C. 705 : A. I. R. 1924 All. 701.

—Ss. 395, 412—*Conviction under S. 412, legality of—Charge under S. 395.*

A person who has been charged with dacoity under S. 395, Penal Code, may be convicted under S. 412, Penal Code, if the facts establish the commission of the latter offence, even though he was not charged under S. 412. *Hazari v. Emperor.* 31 Cr. L. J. 1210 : 127 I. C. 247 : 7 O. W. N. 527 : A. I. R. 1930 Oudh 353.

—Ss. 395, 457—*Alternative charges under, legality of.*

Alternative charges under Ss. 395 and 457, Penal Code, are not bad in law. *Bikram Ali v. Emperor.* 31 Cr. L. J. 610 : 124 I. C. 66 : 50 C. L. J. 467 : 57 Cal. 801 : A. I. R. 1930 Cal. 139.

—Ss. 395, 457—*Conviction under S. 457, legality of—Charge under S. 395.*

The circumstances of a case were such that it was open to the Crown to have charged the accused under Ss. 457, 395 or 302, Penal Code. The accused were charged under S. 395 but convicted under S. 457 although there was no fresh charge under the latter section : *Held*, that the conviction was not illegal in view of the provisions of Ss. 236 and 237. *Mathura v. Emperor.* 28 Cr. L. J. 460 : 101 I. C. 492 : 4 O. W. N. 442 : 2 Luck. 444 : A. I. R. 1927 Oudh 196.

—S. 396.

See also (i) Cr. P. C., 1898, S. 221.
(ii) Penal Code, 1860, S. 302.
(iii) Sentence.

—S. 396—*Common object—Dacoity—Liability of each and all dacoits.*

Where the common object of dacoits is to resist all opposition even to the point of committing murder, it is clear under S. 396, Penal Code, even if there be no circumstances in the case to point to that conclusion, that if one of the dacoits commits murder, all of them are responsible for that one's act, and it is not necessary for the prosecution to prove that the others expected that murder would be committed. *Emperor v. Giryappa Lawmappa.*

1 Cr. L. J. 258 : 6 Bom. L. R. 248.

PENAL CODE ACT (XLV OF 1860)

—S. 396—*Conviction under—Robbery with murder—Existence of five persons proved—Some of them not identified—Liability of others.*

Where a burglary was committed by a party of five persons, one of whom committed murder in the commission of burglary, and four of them were identified but the fifth was not traced out : *Held*, that the four persons who were identified could be convicted under S. 396, Penal Code. *Mohammad Ahsan v. Emperor.*

31 Cr. L. J. 112 :

120 I. C. 490 : A. I. R. 1930 Lah. 263.

—S. 396—*Dacoity—Charge against eight persons—Four of whom acquitted—Whether charge sustainable.*

When a certain number of persons are charged with having committed a dacoity and half of them are acquitted, the charge of dacoity does not necessarily fail. The charge need not specify that there were other persons accused of the offence besides those convicted and acquitted. The mere fact that the evidence is not sufficient to convict all those actually charged would not, in any way, affect the question of the number of persons engaged. *Nashidazzaman v. Emperor.*

12 Cr. L. J. 193 :

10 I. C. 684 : 15 C. W. N. 434.

—S. 396—*Dacoity with murder.*

Murder by one of the dacoits in attempting to carry away stolen property—All are punishable for murder. All will be liable if murder is committed by one of the members of the gang "in the commission of the dacoity" though murder is not within contemplation of all. *Punjab Singh Ujagar Singh v. Emperor.*

35 Cr. L. J. 322 :

147 I. C. 2 : 35 P. L. R. 51 :

15 Lah. 84 : 6 R. L. 339 :

A. I. R. 1933 Lah. 977.

—S. 396—*Enhanced punishment—Dacoity with murder—Murder committed by dacoits while retreating.*

Murder committed by the dacoits while retreating or carrying away stolen property in order to facilitate their escape, is "murder committed, in the commission of dacoity" within the meaning of S. 396, Penal Code, and renders all of them liable to the enhanced punishment prescribed by that section. *Sunda v. Emperor.*

25 Cr. L. J. 700 :

81 I. C. 188 : A. I. R. 1925 Lah. 142.

—S. 396—*Extreme penalty.*

Normally extreme penalty is called for in case of wanton murder in dacoity. But where accused made confession without inducement and rendered service to Police, death sentence should not be passed. *Nga San Ba v. Emperor.*

37 Cr. L. J. 414 :

161 I. C. 14 : 8 R. Rang. 449 :

A. I. R. 1936 Rang. 75.

—S. 396—*Jurisdiction.*

Jurisdiction to try the offence primarily vests in the Courts of the place where the dacoity was committed, though the offenders may also be liable to be tried for one or other of the

PENAL CODE ACT (XLV OF 1860)

offences by the Court within whose jurisdiction the previous hurt or death was caused. *Punjab Singh Ujagar Singh v. Emperor*.

35 Cr. L. J. 322 :
147 I. C. 2 : 35 P. L. R. 51 :
15 Lah. 84 : 6 R. L. 339 :
A. I. R. 1933 Lah. 977.

—S. 396—Murder in the commission of dacoity—Murder by dacoits while escaping.

A murder committed in the compound of a house raided by dacoits when they were making good their escape is murder committed in the commission of dacoity within the purview of S. 396, Penal Code. *Karim Bakhsh v. Emperor*.

25 Cr. L. J. 319 :
76 I. C. 1039 : A. I. R. 1923 Lah. 329.

—S. 396—Scope of—Definition—Dacoity with murder—Murder committed while dacoits were escaping.

Where after the commission of a dacoity, in which, however, the dacoits being interrupted by the villagers, did not get any plunder, the dacoits were attempting to escape, and one or more of them in order to facilitate the escape attacked and killed one of the pursuing party, it was held that S. 396, Penal Code, did not apply, but only the person or persons actually taking part in the killing were liable therefor. *Emperor v. Chandar*.

3 Cr. L. J. 294 :
26 A. W. N. 47.

—Ss. 396, 302—Sentence—Distinction between in matter of sentence—Sentence of death, if a rule in case of conviction under S. 396, where death has been caused.

As a general rule, a sentence of death should not necessarily follow a conviction under S. 396, Penal Code, where death has been caused, and this section differs from S. 302, Penal Code, in that respect; The rule under S. 302 is that a sentence of death should follow unless reasons are shown for giving a lesser sentence. *Lal Singh v. Emperor*.

40 Cr. L. J. 132 :
178 I. C. 694 : 1938 A. L. J. 943 :
1938 A. W. N. 642 : 11 R. A. 327 :
I. L. R. 1938 All. 875 :
A. I. R. 1938 All. 625.

—Ss. 396, 412—Miscellaneous—Cr. P. C., S. 110—Result of proceeding under S. 110, whether admissible in prosecution for dacoity.

Where an accused person is on his trial for an offence under S. 396, Penal Code, the fact that in proceedings under S. 110, Cr. P. C., he had been required to give security and had been unable to give it, is not admissible. *Asimuddin Sardar v. Emperor*.

22 Cr. L. J. 60 :
59 I. C. 204 : 32 C. L. J. 89 :
A. I. R. 1920 Cal. 698.

—S. 397.

See also (i) Cr. P. C., 1898, S. 162.

(ii) Criminal trial.

(iii) Penal Code, 1860, Ss. 34, 44, 805, 894, 897.

PENAL CODE ACT (XLV OF 1860)

—S. 397—Applicability of—Dacoity—One of several dacoits causing grievous hurt—Others, if can be convicted under S. 397.

When a number of persons jointly commit robbery or dacoity, S. 397, Penal Code, applies only to such of them as actually use any deadly weapon or cause grievous hurt or attempt to cause death or grievous hurt to any person. *Fazal v. Emperor*.

27 Cr. L. J. 1098 :
97 I. C. 362.

—S. 397—Applicability of—Dacoity with use of deadly weapons—Applicability of section.

S. 397, Penal Code, applies only to the actual person or persons who at the time of committing robbery or dacoity may use any deadly weapon, or may cause grievous hurt to any person or may attempt to cause death or grievous hurt to any person. *Emperor v. Nageshwar*.

3 Cr. L. J. 322 :
26 A. W. N. 61 : I. L. R. 28 All. 404.

—S. 397—Applicability of—Dacoity with use of deadly weapon.

S. 397, Penal Code, applies only to the persons who actually cause grievous hurt or are themselves armed with deadly weapons. *Mohar Singh v. Emperor*.

26 Cr. L. J. 1144 :
88 I. C. 456 : 2 Lah. Cas. 5 : 7 L. L. J. 537 :
A. I. R. 1926 Lah. 48.

—S. 397—Applicability of.

S. 397, Penal Code, applies only to those persons who come within the four corners of the enactment and to no other. This section does not create an offence but merely regulates the measure of punishment and is, therefore, applicable only to the individual whose case is covered by it. *Maru v. Emperor*.

39 Cr. L. J. 119 :
172 I. C. 351 : 10 R. L. 301 :
A. I. R. 1937 Lah. 561.

—S. 397—Conviction under—Dacoity—Deadly weapon used by some alone—Constructive liability of others.

It is only the offender who actually uses the deadly weapon that can be convicted under S. 397, Penal Code, and the constructive liability of his companions does not arise under the section. *Khuda Dad v. Emperor*.

28 Cr. L. J. 156 :
99 I. C. 412 : A. I. R. 1927 Lah. 791 (2).

—S. 397—Deadly weapons—What are.

Obiter.—Sticks are deadly weapons within the meaning of S. 397, Penal Code, in a country where many, if not most, murders are committed with sticks. *Ghassu v. Emperor*.

25 Cr. L. J. 1181 :
82 I. C. 45 : A. I. R. 1925 Nag. 136.

PENAL CODE ACT (XLV OF 1860)

—S. 397—Interpretation.

The words of S. 397, Penal Code, do not exclude the operation of the provisions of Ss. 114 and 34 of the Code. *Ghassu v. Emperor*. 25 Cr. L. J. 1181 : 82 I. C. 45 : A. I. R. 1925 Nag. 136.

—S. 397—Lathi, if deadly weapon.

A lathi cannot be rightly described as a deadly weapon within the meaning and for the purposes of S. 397, Penal Code. *Lal Khan v. Emperor*. 13 Cr. L. J. 182 : 13 I. C. 998 : 19 P. W. R. 1912 Cr. : 11 P. L. R. 1912.

—S. 397—Miscellaneous.

Though the mere omission to tell the Jury that a finding that each individual accused used deadly weapon is necessary in order to convict him under S. 397, is not misdirection or non-direction, yet it is safer for the Judge to do so. *Sahadev Sain v. Emperor*. 32 Cr. L. J. 476 : 130 I. C. 267 : I. R. 1931 Pat. 171 : A. I. R. 1931 Pat. 49.

—S. 397—Offence of—Dacoity, when established—Dangerous weapons used—Offence—Sticks, whether “dangerous weapons”—Ss. 34, 114, operation of.

S. 397 and not S. 398, Penal Code, applies to a case in which a dacoity has been committed and not merely attempted, and weapons were not merely carried by the dacoits but were actually used by them, if only by being shown or brandished, even without verbal threats of using them. *Ghassu v. Emperor*. 25 Cr. L. J. 1181 : 82 I. C. 45 : A. I. R. 1925 Nag. 136.

—S. 397—Scope of—Dacoity—Accused not proved to have used deadly weapon or caused grievous hurt—Conviction under S. 397, whether illegal.

S. 397, Penal Code, only applies to a person who himself uses a deadly weapon or causes grievous hurt. An accused who is not proved to have used any deadly weapon or caused grievous hurt cannot, therefore, be convicted under S. 397, Penal Code. *Abdul Karim v. Emperor*. 28 Cr. L. J. 520 : 102 I. C. 216 : 4 O. W. N. 459 : A. I. R. 1927 Oudh 193.

—S. 397—Scope of—Dacoity—One of a band of dacoits using deadly weapon.

The fact that one of a band of dacoits uses a spear, does not necessarily bring the other dacoits within the provisions as to punishment in S. 397, Penal Code. *Nga Sein v. Emperor*. 3 Cr. L. J. 354 : 3 L. B. R. 121.

—S. 397—Scope of—Deadly weapon carried by one of the robbers.

PENAL CODE ACT (XLV OF 1860)

A robber cannot be convicted under S. 397, Penal Code, merely because one of his associates carried a deadly weapon. *Po Win v. Emperor*. 14 Cr. L. J. 432 : 20 I. C. 416 : 6 Bur. L. T. 88 : 7 L. B. R. 26.

—S. 397—Scope of—Dacoity with grievous hurt—Conviction, form of—Enhanced punishment liability of.

S. 397, Penal Code, does not contain any substantive offence but merely prescribes the minimum punishment which can be awarded if robbery or dacoity is attended with certain circumstances mentioned in the section. A conviction merely under S. 397 has no meaning. A conviction in the case of a dacoity should be under S. 395 read with S. 397, Penal Code, in cases where the latter section applies. S. 397 applies only to the case of persons taking part in a dacoity, who themselves used deadly weapons, or themselves caused grievous hurt, or attempted to cause death or grievous hurt, and does not apply to the case of persons taking part in a dacoity who may be liable for substantive offences committed by some of the parties only by virtue of S. 34 of the Code. *Dulli v. Emperor*. 26 Cr. L. J. 570 : 85 I. C. 714 : 47 All. 59 : A. I. R. 1925 All. 305.

—S. 397—Scope of.

S. 397 can only be applied to persons who actually used deadly weapons at the time of the commission of the dacoity or caused or attempted to cause death or grievous hurt at the time. *Bala Huddar v. Emperor*. 35 Cr. L. J. 594 : 148 I. C. 157 : 6 R. N. 167 : A. I. R. 1933 Nag. 252.

—S. 397—Scope of.

S. 397, Penal Code, does not constitute a separate offence; it merely provides for a minimum sentence in cases where in the course of committing a dacoity any offender causes grievous hurt. *Wadhawa Singh v. Emperor*. 25 Cr. L. J. 259 : 76 I. C. 819 : A. I. R. 1923 Lah. 389.

—S. 397—Scope of—Stolen property recovered from accused—Accused identified by prosecution witnesses—No allegation that he was armed with deadly weapon or that he caused grievous hurt or death—S. 397, whether applies.

Where apart from the fact that a part of the stolen property is recovered from the accused, he has been identified by most of the prosecution witnesses who had come into contact with him at the time the robbery was committed but no witness has alleged that he was armed with any deadly weapon at the time of committing robbery or that he had caused grievous hurt or attempted to cause death or grievous hurt to any of his victims, S. 397, is not applicable. *Maru v. Emperor*. 39 Cr. L. J. 119 : 172 I. C. 351 : 10 R. L. 301 : A. I. R. 1937 Lah. 561.

PENAL CODE ACT (XLV OF 1860)

———S. 397 — Sentence — Seven years' rigorous imprisonment.

A person convicted under S. 397, Penal Code, cannot be sentenced for a period of imprisonment less than seven years. *Emperor v. Radhia*.

29 Cr. L. J. 35 :
106 I. C. 451 : 9 P. L. T. 572.

———S. 397—Sentence under — Robbers exhibiting weapons but not inflicting blows with them if can be punished under section.

If robbers so exhibit dangerous weapons as to intend that by their exhibition of them, the persons robbed or sought to be robbed are likely to be further intimidated and that the commission of robbery might be facilitated, the robbers can be punished under S. 397, Penal Code, although they do not actually inflict blows with these weapons. *In re : Thevar Servai*.

39 Cr. L. J. 323 :
173 I. C. 450 : 1938 M. W. N. 215 :
10 R. N. 587 : A. I. R. 1938 Mad. 477.

———S. 397—'Such offender', meaning of—Grievous hurt caused by one of several offenders—Others, whether liable to enhanced punishment.

The words "such offender" in S. 397, Penal Code, refer to the offender who uses a deadly weapon or causes grievous hurt to any person and do not include those who jointly commit robbery or dacoity with him. *Ilahia v. Emperor*.

24 Cr. L. J. 405 :
72 I. C. 517 : A. I. R. 1924 Lah. 409.

———S. 397—'Uses any deadly weapon', scope of.

The words "uses any deadly weapon" in S. 397, include a case in which a person levels a revolver in the hands of another person to overawe him. *Chandra Nath v. Emperor*.

33 Cr. L. J. 926 :
139 I. C. 742 : 9 O. W. N. 152 :
7 Luck. 543 : I. R. 1932 Oudh 387 :
A. I. R. 1932 Oudh 103.

———S. 397—'Uses,' meaning of—Use of handle of axe, whether use of deadly weapon.

The word "uses" in S. 397, Penal Code, should be construed in a wide sense so as to include not merely cutting, stabbing or shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed. A hatchet being a deadly weapon, it will be deemed to have been used as a deadly weapon whether it is its head or handle that is used. *Nazar Shuh v. Emperor*.

27 Cr. L. J. 334 (b) :
92 I. C. 750 : 20 S. L. R. 46 :
A. I. R. 1926 Sind 150.

———Ss. 397, 326—Power of Judge—Robbery—Robbery not proved—Conviction for grievous hurt under S. 326.

A Jury, in a Sessions case, is competent, where a charge under S. 397, Penal Code, is not established, to convict the accused of an offence under S. 326, Penal Code, where the facts proved establish the commission of that offence. *In re : Adabala Abdul Muthiyalu*.

13 Cr. L. J. 739 :
17 I. C. 51 : 37 Mad. 236.

PENAL CODE ACT (XLV OF 1860)

———Ss. 397, 398—Scope of—Companions of actual offender, liability of—Abetment of offence under S. 398.

S. 398, Penal Code, does not by itself create an offence but merely lays down a minimum punishment for attempted robbery or for dacoity of a certain kind. Ss. 397 and 398, Penal Code, apply only to the person actually armed and cannot be utilised as against the companions of the actual offender who themselves are not armed with deadly weapons at the time when the substantive offence is committed. Neither can a man be convicted of abetting an offence under S. 398, Penal Code. *Nga Pu v. Emperor*.

27 Cr. L. J. 1285 (b) :
98 I. C. 181 : 5 Bur. L. J. 103 :
A. I. R. 1926 Rang. 207.

———Ss. 397, 398—Scope of—Dacoity—Dacoits armed with deadly weapons—"Offender" and "such offender," meaning of—S. 34, applicability of.

Neither S. 397, nor S. 398, Penal Code, creates an offence. The effect of these sections is merely to limit the minimum of punishment which may be awarded if certain facts are proved. The intention of the Legislature in framing Ss. 397 and 398, was that while all persons who combine to commit robbery or dacoity are liable in respect of the substantive offence, any particular offender who is proved to have used or carried a deadly weapon shall receive a punishment not less than that specified in those two sections. The terms "offender" and "such offender" in S. 397 and 398, denote those persons only who have personally committed the acts therein described, and do not refer to other persons who in combination with such persons have committed the offences of robbery or dacoity. S. 34 Penal Code, has no materiality when the Court is considering the meaning of Ss. 397 and 398. *Emperor v. Ali Mirza*.

25 Cr. L. J. 1024 :
81 I. C. 800 : 51 Cal. 265 :
A. I. R. 1924 Cal. 643.

———S. 398.

See also Penal Code, 1860, S. 34.

———S. 398—Applicability of.

S. 398 is applicable only to a case of an attempt to commit robbery and has no application to a case in which the robbery has actually been committed. *Chandra Nath v. Emperor*.

33 Cr. L. J. 926 :
139 I. C. 742 : 9 O. W. N. 152 :
7 Luck. 543 : I. R. 1932 Oudh 387 :
A. I. R. 1932 Oudh 103.

———S. 398—Charges for abetment of offence under S. 398, legality of.

Where the accused were charged under two heads, viz. (1) that they committed the offence of robbery and aided and abetted each other in that offence, and (2) that they committed the robbery, and at the time of committing such offence, were armed with a deadly weapon and aided and abetted each other in the commission of the said offence: *Held*, that that part

PENAL CODE ACT (XLV OF 1860)

of the second charge which fell under S. 114 of the Penal Code read with S. 398, was illegal and should be withdrawn from the Jury. *Emperor v. Nabibux Karimbux Mulla*.

29 Cr. L. J. 383 :
107 I. C. 705 : 30 Bom. L. R. 88 :
52 Bom. 168 : 1 L. T. 40 Bom. 92 :
A. I. R. 1928 Bom. 52.

———S. 398—Scope.

S. 398, Penal Code, does not create any substantive offence, but only regulates the punishment when certain facts are found to exist in the commission of the substantive offence of robbery. *Emperor v. Nabibux Karimbux Mulla*.

29 Cr. L. J. 383 :
107 I. C. 705 : 30 Bom. L. R. 88 :
52 Bom. 168 : 1 L. T. 40 Bom. 92 :
A. I. R. 1928 Bom. 52.

———S. 398 — Scope of—Section does not create substantive offence.

S. 398 does not create a substantive offence. It merely provides that if any member of gang of dacoits is armed with lethal weapon during the commission of a dacoity, such member is to suffer a minimum punishment of 7 years. *Bakhtawar Singh v. Emperor*.

A. I. R. 1923 Lah. 66.

———Ss. 398, 393 — Miscellaneous—Charge and finding under S. 398—S. 393, should also be mentioned—Omission curable under S. 537, Cr. P. C.

In a charge and finding under S. 398, Penal Code, the substantive S. 393, should be mentioned as well as the supplementary S. 398. The omission to specify the section would, however, be covered by S. 537, Cr. P. C. *Chan Hok v. Emperor*.

12 Cr. L. J. 468 :
11 I. C. 1004 : 4 Bur. L. T. 198.

———S. 399.

See also Cr. P. C., 1898, S. 230 (d).

———S. 399 — Conviction under, legality of.

Group of persons sitting round fire—Some of them having fire-arms—No evidence of intention to commit dacoity—On seeing headman, running away: *Held*, conviction under S. 399 could not be sustained. *Nga Lim v. Emperor*.

36 Cr. L. J. 1384 (2) :
158 I. C. 500 : 8 R. Rang. 173 :
A. I. R. 1935 Rang. 294.

———S. 399—Evidence.

Accused found with gun, lathis, etc., in a room—Prosecution proving offence under S. 399—Accused offering no explanation of incriminating circumstances: *Held*, prosecution evidence must be accepted. *Bhagwan Bakhsh v. Emperor*.

36 Cr. L. J. 1003 :
156 I. C. 815 : 8 R. O. 4 :
1935 O. W. N. 770 :
A. I. R. 1935 Oudh 471.

———S. 399—Evidence—Evidence of previous conduct of accused, admissibility of.

PENAL CODE ACT (XLV OF 1860)

Where in a trial upon a charge under S. 399, Penal Code, the accused plead that their presence at the particular spot, armed and in company was accidental and innocent, it is open to the prosecution to rebut the plea, and S. 15, Evidence Act, admits the production of any evidence which would determine the construction to be placed upon the acts of the accused which in themselves might or might not be preparation for dacoity, and evidence that one or more members of the gang had been concerned in previous and similar offences committed at the same place is admissible for the purpose. *Khwaja Hassan v. Emperor*.

24 Cr. L. J. 136 :
71 I. C. 360.

———S. 399—Offence under—Preparation to commit dacoity—Assembling armed near scene of contemplated dacoity, whether amounts to preparation.

Though the mere assemblage to commit dacoity does not amount to preparation within the meaning of S. 399, Penal Code, yet where the members of the gang have taken into their possession instruments of house-breaking and arms for the purpose of offence and defence, and have actually proceeded to a place near the scene of the contemplated dacoity, they are guilty of an offence under the section. *Karim Bakhsh v. Emperor*.

29 Cr. L. J. 575 :
109 I. C. 593 : 9 Lah. 550 :
A. I. R. 1928 Lah. 193.

———S. 399 — Preparation for committing dacoity, what constitutes—Mere assemblage not enough—Overt act towards commission of dacoity necessary.

In order to constitute the offence of "preparation for committing dacoity" within the purview of S. 399, Penal Code, it is not necessary that the accused should have done an overt act towards the commission of dacoity. The law requires that they should have done some act to get ready for a dacoity. A mere assemblage to commit dacoity does not amount to preparation; but where it is found that the members of a gang had taken in their possession instruments for house-breaking, the Court is justified in holding that there was not a mere assemblage but that the members of the assembly had got ready for the actual commission of a dacoity. *Karmun v. Emperor*.

17 Cr. L. J. 280 :
34 I. C. 1000 : 6 P. R. 1916 Cr. :
37 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 334.

———S. 399—Preparation to commit dacoity.

Six persons joined together and went to a village with the object of committing dacoity armed with fire-arms. On being suspected by villagers, some of them fired at the villagers and wounded them: *Held*, that the conduct of the accused amounted to preparation to commit dacoity within the meaning of S. 399, Penal Code, and they can be convicted of an

PENAL CODE ACT (XLV OF 1860)

offence under that section. *Indar Singh v. Emperor*.

27 Cr. L. J. 1161 :
97 I. C. 745 : 8 L. L. J. 406 :
27 P. L. R. 752.

———S. 399—Scope of.

In order to establish an offence under S. 399, Penal Code, it is not necessary that the persons, to be making the preparation, should be five or more in number. But it is necessary to prove that the raid for which they were making preparation, was to be committed by five or more persons. Otherwise, it would not be dacoity but merely robbery, and mere preparation for committing robbery, unless it ends in an actual attempt, is not punishable by law. *Khwaja Hassan v. Emperor*.

24 Cr. L. J. 136 :
71 I. C. 360.

———Ss. 399, 400, 402—Alternative charges.

Where the charge against the accused was of two separate offences laid in an alternative form, viz., one under S. 399 and another under S. 402, Penal Code, but it appeared that the charges were treated not alternatively but as addition and the Sessions Judge acquitted them of the charge under S. 399, Penal Code, and convicted them of the charge under S. 402, Penal Code : *Held*, that the acquittal under S. 399, did not involve an acquittal under S. 402, and the conviction under the latter section was not wrong and the judgment of the Sessions Judge was not vitiated by repugnancy : (2) that even if there was any repugnancy, it was open to the High Court to alter the finding of acquittal under S. 399, into one of conviction maintaining the sentence ; (3) that the offences of commission of dacoity, preparation for it and assembling for the same purpose have this in common that they presume an intention or agreement to commit dacoity by five or more persons. A mere assembly without further preparation is not a preparation within the meaning of S. 399, for if it were, S. 402, Penal Code, would be redundant. S. 402, applies to the case of mere assembling without proof of other preparation. A person can thus be not guilty of dacoity yet guilty of preparation and not guilty of preparation yet guilty of an assembly. *Romesh Chandra Banerjee v. Emperor*.

15 Cr. L. J. 385 :
23 I. C. 985 : 18 C. W. N. 498 :
41 Cal. 350 : A. I. R. 1914 Cal. 456.

———Ss. 399, 402—Knowledge, computation of.

Where after searching a hut arms were found under a *machan* inside the hut and in the ceiling of the hut : *Held*, that the knowledge of the existence of the arms would not, without other evidence, be imputable to any other than the lessee of the hut, nor would the presumption operate even against him if it were shown that the circumstances were such that arms might be in his place without his knowing it. *Romesh Chandra Banerjee v. Emperor*.

15 Cr. L. J. 385 :
23 I. C. 985 : 18 C. W. N. 498 :
41 Cal. 350 : A. I. R. 1914 Cal. 456.

PENAL CODE ACT (XLV OF 1860)

———Ss. 399, 402—Preparation for committing dacoity—Assembling for purpose of committing dacoity.

Some members of a gang of robbers agreed to meet at a certain rendezvous taking with them what arms they had, and in pursuance of that agreement, K and L arrived unarmed together with others at that rendezvous, where they were arrested : *Held*, (1) that there was clear and distinct evidence against K and L of preparation for the commission of dacoity : (2) that even if they could not be convicted under S. 399, Penal Code, the offence under S. 402 was proved against them. *Emperor v. Khushi Ram*.

19 Cr. L. J. 43 :
42 I. C. 1003 : A. I. R. 1918 All. 361.

———Ss. 399, 402—Preparation to commit dacoity.

The accused assembled on a night under a *shisham* tree outside a village to commit dacoity. Two of them were armed with revolvers and one with a spear. Three of them were residents of another District : *Held*, that the accused were guilty of the offence of preparing to commit dacoity under S. 402, Penal Code. *Emperor v. Ahmad*.

29 Cr. L. J. 14 :
106 I. C. 350 : A. I. R. 1928 Lah. 144.

———Ss. 399, 402—Presumption—Incriminating articles discovered.

Where an article is found in a man's house, the ordinary presumption is that he is as owner of house is aware of its contents. This is subject to the qualification that no other person has access to that particular place. It follows that if the house is in the occupation of more persons than one having access to the particular place, there is no presumption against them individually that they have put the article where it is found; though if it be proved that an article has been for a considerable period of time in a place to which all have frequent access, it might reasonably be presumed that all were aware of its existence. *Romesh Chandra Banerjee v. Emperor*.

15 Cr. L. J. 385 :
23 I. C. 985 : 18 C. W. N. 498 :
41 Cal. 350 : A. I. R. 1914 Cal. 456.

———S. 400.

See also (i) Cr. P. C. 1898, S. 337.

(ii) Penal Code, 1860, S. 341.

———S. 400—Association for habitual pursuit of dacoity—What must be established to convict accused—Approver's testimony—Corroboration—Acquittal—No adverse inference against accused after acquittal—Past misconduct of accused, when may be considered.

Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime, it must be established, for the purpose of conviction, that the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved. Corroboration of the testimony of an approver must connect the accused with the offence, that is, association of a gang of persons for the business,

PENAL CODE ACT (XLV OF 1860)

of habitually committing dacoity. No adverse inference can be drawn against the accused after their acquittal. Therefore, if some of the persons accused under S. 400, had been tried on a charge of dacoity but acquitted, that fact cannot be relied on by the prosecution to prove that they were habitual dacoits. If the association for the purpose of habitually committing dacoity be made out, the past history of the accused, that they had been convicted of dacoity or had been bound down to be of good behaviour would be significant. *Kader Sundar v. Emperor*. 13 Cr. L. J. 39 : 13 I. C. 279 : 16 C. W. N. 69.

————S. 400 —‘Belong. implication of—
Gang of dacoits, belonging to.

The term “belong,” in S. 400, Penal Code, implies something more than the idea of casual association; it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is the habitual commission of dacoity. *Hira Lal v. Emperor*. 11 Cr. L. J. 554 : 7 I. C. 1012 : 13 O. C. 243.

————S. 400 —‘Belong,’ implication of.

The term “belong” in S. 400, Penal Code, implies something more than the idea of casual association; it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band the common purpose of which, is the habitual commission of dacoity. *Bachchu v. Emperor*. 32 Cr. L. J. 162 : 128 I. C. 739 : 7 O. W. N. 862 : I. R. 1931 Oudh 67 : A. I. R. 1930 Oudh 455.

————S. 400 — “Belong,” meaning of—
Casual association with dacoits, whether sufficient.

The term “belong” in S. 400 of the Penal Code, implies something more than the idea of casual association; it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is the habitual commission of the dacoity. Therefore, a person who has joined dacoits in one dacoity, and as such, must have known that they were a gang of habitual dacoits, cannot be said to “belong” to the gang within the meaning of S. 400, I. P. C. *Bhabuti v. Emperor*. 22 Cr. L. J. 663 : 63 I. C. 455 : 19 A. L. J. 725 : 3 U. P. L. R. All. 170. A. I. R. 1921 All. 32.

————S. 400 —‘Belonging to gang of dacoits,’
meaning of.

PENAL CODE ACT (XLV OF 1860)

A person cannot be said to belong to a gang of dacoits within the meaning of S. 400, Penal Code, in respect of whom the Court is satisfied that his connection with the gang was limited and was always intended to be limited to a series of acts, none of which amounted either to dacoity or to abetment of dacoity, though they might be punishable under S. 216-A, Penal Code. *Gaya Din v. Emperor*. 11 Cr. C. J. 551 : 7 I. C. 1006 : 13 O. C. 235.

————S. 400—Conviction under—Evidence.

It is not necessary for a conviction under S. 400, Penal Code, that the person convicted must have taken part in any one dacoity. Evidence, showing the actual participation by an accused in any given dacoity, is evidence both of his association with the gang and of his object in such association. Evidence, though not believed for the purpose of a conviction under S. 395, Penal Code, may yet be relied upon for the purpose of a conviction under S. 400, Penal Code. A conviction under S. 400, Penal Code, cannot be considered bad in law merely because the evidence on the record would also have justified conviction for a specific offence under S. 395, Penal Code. *Gaya Din v. Emperor*. 11 Cr. L. J. 551 : 7 I. C. 1006 : 13 O. C. 235.

————S. 400 —Conviction under — Proof—
Gang of dacoits, existence of—Complicity in every
dacoity, whether necessary—Approver’s testimony
—Acquittal of some accused, effect of.

In examining the question of the existence of a gang, the Court need not look for the complicity of every one of the appellants in every one of the dacoities. A conviction under S. 400, P. C., can be had even where no actual commission of a dacoity is proved. Evidence of association affords strong corroboration of an approver’s testimony as to the existence of a gang. The acquittal of some of the accused persons for want of corroboration of an approver’s testimony cannot weaken the weight of such testimony. Where, however, even one accused person has been acquitted not for want of corroboration but in virtue of a finding that accused person is innocent of the crime, the approver’s testimony would be looked upon with the greatest suspicion. *Murli v. Emperor*. 26 Cr. L. J. 1412 : 89 I. C. 836 : 27 O. C. 385 : A. I. R. 1925 Oudh 374.

————S. 400—Conviction under, when sus-
tained.

To sustain a conviction on a charge under S. 400 (1), Penal Code, for having belonged to a gang of persons associated for the purpose of habitually committing dacoity, there must be : (1) proof of association, and (2) proof that the association was for purpose of habitually committing dacoity and the habit must be proved by an aggregate of acts. *Walia v. Emperor*. 11 Cr. L. J. 364 (b) : 6 I. C. 492 : 18 P. L. R. 1910 Cr.

PENAL CODE ACT (XLV OF 1860)

———S. 400—Evidence—*Habitually associating for the purpose of committing dacoity—Previous conviction or order directing security to be of good behaviour, whether admissible.*

In a trial in respect of an offence under S. 400, Penal Code, evidence of the commission of an offence by the accused or that the accused were bound down under S. 110 of the Cr. P. C., is admissible for the purpose of proving habit as well as association. *Ledu Molla v. Emperor.*

26 Cr. L. J. 1037 :

87 I. C. 925 : 52 Cal. 595 :

42 C. L. J. 501 : A. I. R. 1925 Cal. 872.

———S. 400—Evidence.

It is not necessary for a conviction under S. 400, Penal Code, that the person convicted must have taken part in any one dacoity. Evidence, showing the actual participation by an accused in any given dacoity, is evidence both of his association with the gang and of his object in such association. Evidence which though not believed for the purpose of a conviction under S. 395, Penal Code, may yet be relied upon for the purpose of a conviction under S. 400, Penal Code. A conviction under S. 400, Penal Code, cannot be considered bad in law merely because the evidence on the record would also have justified a conviction of a specific offence under S. 395, Penal Code. *Bahehu v. Emperor.*

32 Cr. L. J. 162 :

128 I. C. 739 : 7 O. W. N. 862 :

I. R. 1931 Oudh 67 :

A. I. R. 1930 Oudh 455.

———S. 400—Evidence.

Previous convictions of the accused for dacoity along with other dacoities are relevant against him under Explanation 2 of S. 14, Evidence Act. But the propriety of the accused's conviction must be judged exclusively by reference to the evidence adduced by the prosecution at the trial. The confessions made by accomplices at previous trial for dacoity cannot be taken into consideration against the accused under S. 30, Evidence Act. Such confessions do not stand on a better footing than the sworn testimony of an accomplice and cannot be treated as good evidence against the accused without being corroborated *alimunde* by independent evidence in material particulars and specially in respect of the identity of the accused. *Walia v. Emperor.*

11 Cr. L. J. 364 (b) :

6 I. C. 492 : 18 P. L. R. 1910 Cr.

———S. 400—Evidence—Prosecution, what must prove—Evidence of other crimes, whether relevant—Approver, evidence of—Corroboration necessary.

In a case under S. 400, Penal Code, the first point which the prosecution has to establish is the existence of a gang associated for the purpose of habitually committing dacoity. Evidence of other crimes committed by the gang is not irrelevant. One of the chief points to establish in a case of gang dacoity is association in crime; and if it can be proved that certain persons have joined together to commit burglaries as well as

PENAL CODE ACT (XLV OF 1860)

dacoities, the former fact is strong evidence of criminal association and is, therefore, relevant to show that they are members of the gang; and if that gang can also be shown to have been associated for the habitual commission of dacoities, evidence as to these burglaries may very well be relevant against the accused. The evidence of an approver must be submitted to severe scrutiny and no conviction would be justified unless there is some corroboration of his statement from other sources. *Nidhi v. Emperor.*

26 Cr. L. J. 123 :

83 I. C. 683 : 11 O. L. J. 632 :

1 O. W. N. 660 : A. I. R. 1925 Oudh 144.

———S. 400—Member of the gang, who is.

Only those persons can be convicted of an offence under S. 400, Penal Code, who have either taken an active part in the crime or been employed for the purpose of scouting or in other ways facilitating the commission of the crime. A receiver of stolen property or a person harbouring a gang, is not necessarily a member of the gang within the meaning of S. 400, Penal Code. The mere fact that a person produced the stolen property does not prove that he took part in the dacoity. *Nidhi v. Emperor.*

26 Cr. L. J. 123 :

83 I. C. 683 : 11 O. L. J. 632 :

1 O. W. N. 660 : A. I. R. 1925 Oudh 144.

———S. 400 Offence under—Gang of dacoits—Habitually committing dacoity, what constitutes.

In a case under S. 400, Penal Code, the prosecution is bound to prove that the accused belonged to a gang which was consciously associated for the purpose of habitually committing dacoities. Evidence to show that the accused had committed crimes other than dacoities is really evidence of bad character, and such evidence is inadmissible under S. 54, Evidence Act, in all cases where the bad character of the accused is not a fact in issue. *The Public Prosecutor v. Donigiri Pottigadu.*

9 Cr. L. J. 567 :

2 I. C. 307 : 5 M. L. T. 100 : 32 Mad. 179.

———S. 400—Offence under, nature of.

The word 'belong' in S. 400 of the Penal Code, implies something more than a casual association. It involves the idea of continuity rather than of permanency and also of a connection extending long enough to warrant the inference that the accused has identified himself with the gang. The essence of the section is the agreement habitually to commit dacoity, not the actual commission or attempted commission of dacoities and the existence of such an agreement may be inferred from circumstances. *Suresh Chandra Banerjee v. Emperor.*

29 Cr. L. J. 703 :

110 I. C. 449 : 47 C. L. J. 471 :

A. I. R. 1928 Cal. 309.

———S. 400—Scope of.

The general criminality of a tribe or caste cannot be imputed to individual members

PENAL CODE ACT (XLV OF 1860)

operating in gangs where the prosecution is under S. 400. The offence under S. 400, is one of a very special character and entirely the creature of statute. The section must, therefore, be strictly construed. Association for the habitual pursuit of dacoity is the gist of the offence under S. 400. *Kader Sunder v. Emperor*.

13 Cr. L. J. 39 :
13 I. C. 279 : 16 C. W. N. 69.

-----S. 400—Sentence—Duty of Court.

If it is established that a gang, however small in number, was formed for the purpose of habitually committing dacoity, all persons who thereafter joined that gang in one or more cases come within the purview of S. 400. In cases under S. 400, Penal Code, against a gang consisting of desperate men prepared to proceed to all lengths in carrying out their crimes, the heaviest possible sentences should be passed. In awarding sentences, the Court ought to consider not so much whether particular offenders were concerned in only one or more of the dacoities committed by the gang, as whether it was clearly established that they did in fact join a recognised gang. *Ghulam Mustafa v. Emperor*.

12 Cr. L. J. 260 :
10 I. C. 833 : 68 P. L. R. 1911 :
45 P. W. R. 1911 Cr.

-----S. 400—Sentence.

It is not illegal to pass separate sentences on a person who has been proved to have been a member of a gang of dacoits and to have participated in a particular dacoity. The provisions of S. 397 of the Cr. P. C., will apply in such a case and it will be at the discretion of the Court whether the two sentences should run concurrently or not. *Murli v. Emperor*.

26 Cr. L. J. 1412 :
89 I. C. 836 : 27 O. C. 385 :
A. I. R. 1925 Oudh 374.

-----Ss. 400, 401—Evidence—Association for purpose of committing theft—Conviction before date of charge—Admissibility of conviction.

In cases where the other evidence has established association for purposes of habitually committing theft, evidence of previous convictions whether for offences against property or for bad livelihood is admissible, not as evidence of character but as evidence of habit, and of such evidence, convictions for bad livelihood would be more cogent than those for isolated thefts. *Bonai v. Emperor*.

12 Cr. L. J. 97 :
9 I. C. 555 : 38 Cal. 408 :
15 C. W. N. 461.

-----S. 401.

See also (i) Cr. P. C., 1898, S. 110.
(ii) Penal Code, 1860, Ss. 75, 378, 379, 390, 391.

-----S. 401—Admissibility in evidence—Previous conviction, evidence of, whether admissible in trial under S. 401, Penal Code.

PENAL CODE ACT (XLV OF 1860)

Evidence of previous conviction for an offence under the Penal Code or evidence to show that accused has been previously bound down under S. 108, Cr. P. C., is inadmissible in a trial under S. 401, Penal Code, for the purpose of proving the conviction or proving bad character, but such evidence may be used for proving association. *Kasim Ali v. Emperor*.

21 Cr. L. J. 386 :
55 I. C. 994 : 47 C. L. J. 192 :
A. I. R. 1920 Cal. 87.

-----S. 401—Agoo, if offender.

The *agoo* (the receiver of stolen property in the interests of thieves who form a gang), is a principal member of the gang and is within the purview of S. 401. *Beja v. Emperor*.

16 Cr. L. J. 33 :
26 I. C. 625 : 13 P. R. 1914 Cr. :
223 P. L. R. 1915 : A. I. R. 1914 Lah. 539.

-----S. 401—Association—Evidence of—Evidence of association before period of charge, admissibility to corroborate other evidence of association during that period.

Where several persons are being tried under S. 401, Penal Code, of being members of a large gang, the evidence that a big gang was in existence and was committing acts of depredation on the community all over India, Burma and Ceylon, and that some of the accused who were residents of a particular village were found associated together in crime characteristic of the gang in parts so distant as Calcutta, Midnapore, Karachi, various parts of Ceylon and Rangoon, is sufficient to justify a Judge even on very little proof of actual association of particular accused—In leaving it to the jury to decide whether the accused was a member of the gang. In such a case, evidence of association before the period of charge is admissible to corroborate the evidence of association during that period. *Arumugam v. Emperor*.

40 Cr. L. J. 355 :
180 I. C. 431 : 1938 M. W. N. 595 :
48 L. W. 639 : 11 R. M. 700 :
A. I. R. 1938 Mad. 858.

-----S. 401—Evidence—Admissibility of facts showing prevalence of thefts in locality and their nature.

In the absence of direct evidence, the purpose of association may be established by proof of acts from which this may be reasonably inferred. The prevalence of thefts in a certain area and the rise and fall coinciding with action taken against members of the supposed gang, are as much relevant circumstances in a trial under S. 401, Penal Code, as are the convictions obtained against certain members. Of course, the possibility has to be kept in mind that certain of these crimes may have been committed by independent persons. *Amdu Miyan v. Emperor*.

38 Cr. L. J. 251 :
166 I. C. 587 : 9 R. N. 132 :
I. L. R. 1937 Nag. 315 at p. 324 :
A. I. R. 1937 Nag. 17 at p. 23.

PENAL CODE ACT (XLV OF 1860)

———S. 401—*Evidence—Convictions prior to formation of gang and orders under S. 110, Cr. P. C., admissibility of evidence as to.*

In a trial under S. 401, Penal Code, evidence of the previous convictions of some of the accused for offences of theft, house-breaking and receiving or concealing stolen property both prior and subsequent to the year when the nucleus of the gang was for the first time formed, is admissible as proving habit. Orders passed from time to time against the accused under S. 110, Cr. P. C. demanding from them security for good behaviour are also relevant evidence against them for the purpose of proving association and intention to habitually commit theft within the meaning of S. 401, Penal Code. *Hidayata v. Emperor.*

16 Cr. L. J. 300 :

28 I. C. 524 : 3 P. R. 1915 Cr. :

191 P. L. R. 1915 : A. I. R. 1914 Lah. 545.

———S. 401—*Evidence—Evidence necessary to prove offence.*

The accused who were convicted under S. 401, Penal Code, were all members of one family. The only evidence against them was that two of them had been previously convicted under S. 454, Penal Code, that they had no ostensible means of livelihood, and that during their progress through a certain district, a number of petty thefts were committed within various distances up to ten miles from their encampments. No stolen property was traced to their possession and it was not shown that the country through which the gang passed was free from petty crime when the gang was not about: *Held*, that the evidence did not establish a charge under S. 401, Penal Code. *Dukharan v. Emperor.*

1 Cr. L. J. 690 :

7 O. C. 163.

———S. 401—*Evidence—Evidence that certain members were seen on scene of house-breaking before or after event—Relevancy.*

In a trial under S. 401, Penal Code, in considering whether there was an association of gang, evidence that certain of the persons were seen near the scene of house-breaking either before or after the event, is a relevant fact. *Amdu Miyan v. Emperor.*

38 Cr. L. J. 251 :

166 I. C. 587 : 9 R. N. 132 :

I. L. R. 1937 Nag. 315 at p. 324 :

A. I. R. 1937 Nag. at p. 23.

———S. 401—*Evidence—Previous association—Evidence of previous convictions and orders under S. 110, Cr. P. C.—Admissibility.*

Evidence of previous convictions of dacoity and of orders under S. 110, Cr. P. C., is admissible for the purpose of proving habit and association in a subsequent trial under S. 401, Penal Code. Thus the fact that certain of the accused were previous convicts and bound over is not without significance. *Amdu Miyan v. Emperor.*

38 Cr. L. J. 251 :

166 I. C. 587 : 9 R. N. 132 :

I. L. R. 1937 Nag. 315 at p. 324 :

A. I. R. 1937 Nag. at p. 23.

PENAL CODE ACT (XLV OF 1860)

———S. 401—*Evidence—Previous conviction for dacoity—Evidence, whether relevant.*

When a person is being tried for the offence of belonging to a gang of thieves, evidence that he was previously convicted of dacoity is relevant and admissible. But if the conviction took place long before the second prosecution, no weight can be attached to such evidence for the purpose of proving that the accused had a habit of committing thefts. *Moti Ram Hari v. Emperor.*

26 Cr. L. J. 1391 :

89 I. C. 527 : 26 Bom. L. R. 1223 :

A. I. R. 1925 Bom. 195.

———S. 401—*Evidence—Previous conviction of each individual, relevancy of.*

When, under S. 401, Penal Code, it has to be determined whether a party of accused persons constitute a gang of persons associated for the purpose of habitual theft, evidence that each individual of the party is a convicted thief, is relevant evidence for the purposes of that question. That evidence can be tendered whether before or after the prosecution have established the association. *Emperor v. Tukaram.*

13 Cr. L. J. 539 :

15 I. C. 811 : 14 Bom. L. R. 373.

———S. 401—*Evidence.*

The fact that an accused person is of bad character or is reputed to be a thief or a habitual thief, is no evidence against him for the purposes of a charge under S. 401, Penal Code. *Beja v. Emperor.*

16 Cr. L. J. 33 :

26 I. C. 625 : 13 P. R. 1914 Cr. :

223 P. L. R. 1915 : A. I. R. 1914 Lah. 539.

———S. 401—*Ingredients—Associating for habitually committing theft.*

In order to establish a case under S. 401, Penal Code, it is not necessary to prove that each individual member of the gang has habitually committed theft or any particular acts of theft. Once it is proved that a gang was formed for the purpose of habitually committing theft, all persons who thereafter join the gang in committing one more theft, come within the purview of S. 401, Penal Code. *Darya Singh v. Emperor.*

25 Cr. L. J. 520 :

77 I. C. 984 : A. I. R. 1923 Lah. 666.

———S. 401—*Ingredients—Associating for habitually committing theft, requisites of—Proof.*

To sustain a conviction on a charge under S. 401, Penal Code, it is necessary to prove: (1) that there existed a gang of persons; (2) that those persons were associated for the purpose of committing theft or robbery; (3) that theft or robbery was to be committed habitually; and (4) that the accused was a member of such gang. *Pir Bukhsh v. Emperor.*

24 Cr. L. J. 703 :

73 I. C. 815 : A. I. R. 1923 Lah. 327.

———S. 401—*Ingredients—Associating with gang of thieves, what constitutes.*

In order to sustain a conviction on a charge

PENAL CODE ACT (XLV OF 1860)

under S. 401, Penal Code, it must be proved ; (1) that there existed a gang of persons ; (2) that those persons were associated for the purpose of committing theft or robbery was to be committed habitually, and (4) that the accused was a member of such gang. *Wasawa Singh v. Emperor.* 17 Cr. L. J. 443 : 35 I. C. 1003 : 110 P. L. R. 1916 Cr. : 47 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 447.

———S. 401—*Ingredients - Association for the purpose of habitual theft.*

The essential requisites for a conviction under S. 401, Penal Code are :—(1) proof of association, and (2) proof that the association was for purposes of habitual theft. The accused, in company with three others, whose whereabouts were unknown, came to a village. They were regarded with suspicion, and on being challenged ran away, but in the pursuit, the accused was caught. It was not shown who the others were, or whether they had before been seen together in the neighbourhood, or at some other place under suspicious circumstances, or that any one of them had ever been suspected or found guilty of theft or robbery : *Held*, (1) that the conviction under S. 401, Penal Code, could not be sustained. *Ishar Das v. Emperor.* 13 Cr. L. J. 799 : 17 I. C. 543 : 36 P. W. R. 1912 Cr. : 258 P. L. R. 1912.

———S. 401—*Ingredients.*

In order to sustain a conviction on a charge under S. 401, Penal Code, it is necessary to prove : (1) that there existed a gang of persons ; (2) that those persons were associated for the purpose of committing theft or robbery ; (3) that theft or robbery was to be committed habitually ; and (4) that the accused was a member of such gang. But it is not necessary that each individual member of the gang should be proved to have habitually committed theft in company with the other members. Once it is established that gang, however small in number, was formed for the purpose of habitually committing theft, all persons who thereafter joined that gang in one or more cases of theft, come within the purview of S. 401. *Beja v. Emperor.*

16 Cr. L. J. 33 : 26 I. C. 625 : 13 P. R. 1914 Cr. : 223 P. L. R. 1915 : A. I. R. 1914 Lah. 539.

———S. 401—*Intention - Proof of.*

For the purposes of S. 401, Penal Code, it must be clearly established either by direct evidence or by facts from which the inference may be legally drawn that the members composing a gang have combined or come together for the purpose of habitually committing theft or robbery. The fact that several members of a gang of a wandering tribe were dishonest and did commit thefts and other crimes, is not in itself sufficient to show that the purpose for which they had combined was to habitually commit theft. The mere fact that the women and children belonging to such gang, lived with adult males of the gang, is insufficient for a Court to hold that they were associated with their husbands and parents for the purpose of

PENAL CODE ACT (XLV OF 1860)

habitually committing theft. The fact that some of the members of such gang were guilty of theft and burglary, does not establish that the association of the gang was one which was brought about for the purposes contemplated by S. 401, Penal Code. *Ajita v. Emperor.*

12 Cr. L. J. 204 : 10 I. C. 32.

———S. 401—*Membership - Receiver of stolen property from a gang, whether member of the gang.*

It cannot be laid down as a general proposition that a person who receives stolen property from a gang of the character described in S. 401, Penal Code, is a member of the gang. The object of S. 401, Penal Code, obviously is to punish persons who organise thieving expeditions and form a party to commit theft and a person who merely receives stolen property from a gang does not come within the section. *Abdulla v. Emperor.*

28 Cr. L. J. 179 : 99 I. C. 851 : 28 P. L. R. 19 : A. I. R. 1927 Lah. 524.

———S. 401—*Membership and liability.*

An association with the members of a gang of thieves at fairs, weddings and liquor shops cannot be presumed against the accused as for the purpose of committing theft or robbery, nor should any inference unfavourable to the accused be drawn from such association. *Wasawa Singh v. Emperor.*

17 Cr. L. J. 443 : 35 I. C. 1003 : 47 P. W. R. 1916 Cr. : 110 P. L. R. 1916 Cr. : A. I. R. 1916 Lah. 447.

———S. 401—*Membership and liability.*

The rule that once it is established that a gang was formed for the purpose of habitually committing theft, all persons who thereafter join the gang in one or more cases of theft, come under the purview of S. 401, does not mean that any person who joins the members of such a gang in committing theft becomes *ipso facto* a member of that gang. It should be taken to mean that any person who, knowing of the existence of such a gang, joins that gang for the purpose of committing even one theft, is guilty under S. 401, but an accused person may take part in a theft with one or more members of a gang without himself becoming a member of that gang. *Wasawa Singh v. Emperor.*

17 Cr. L. J. 443 : 35 I. C. 1003 : 110 P. L. R. 1916 Cr. : 47 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 447.

———S. 401—*Procedure.*

Police proceeding under S. 110, Cr. P. C., though Police could have proceeded under S. 401, Penal Code—*Procedure*, held not objectionable. *Hu'dar Ali v. Emperor.*

34 Cr. L. J. 852 : 144 I. C. 944 : 10 O. W. N. 325 : 6 R. O. 20 : A. I. R. 1933 Oudh 251.

PENAL CODE ACT (XLV OF 1860)

————S. 401—*Procedure—Two Sessions cases against accused tried under S. 401—Accused members of one gang—Case, if can be combined.*

Where two Sessions cases are started against persons accused under S. 401 of being members of a gang, it is not only permissible to combine the two trials but when all the accused are members of one gang, this procedure is also convenient and proper. *Arumugam v. Emperor.*

40 Cr. L. J. 355 :
180 I. C. 431 : 1938 M. W. N. 595 :
48 L. W. 639 : 11 R. M. 700 :
A. I. R. 1938 Mad. 858.

————S. 401—*Proof—Conviction under, nature of.*

Evidence of the commission of several thefts, of meeting together, of being seen disposing of articles and the like, are sufficient to support a conviction under S. 401, Penal Code. *Mahadeo v. Emperor.*

27 Cr. L. J. 807 :
95 I. C. 471 : A. I. R. 1926 Nag. 426.

————S. 401—*Proof—Gang, existence of, not proved, effect of.*

Ten persons were put on their trial for an offence under S. 401, Penal Code, as being members of a gang associated for the purpose of habitually committing theft. Nine out of the ten were acquitted and the appellant alone was convicted. In addition to the evidence of the approver against the appellant, there was the evidence that several thefts and several articles stolen from different houses were discovered on the information supplied by him and that he made promises to restore certain stolen property : *Held*, that the story of the approver having been disbelieved with regard to the remaining nine accused, the inference was that his testimony that they were members of an alleged gang was not true and that the mere fact that certain stolen property had been discovered as the result of information given by the accused and that he had promised to restore other stolen property was not enough to prove that he was the member of a gang of habitual thieves whose existence had not been established. *Banwari v. Emperor.*

26 C. L. J. 1024 :
87 I. C. 848 : A. I. R. 1925 Lah. 604.

————S. 401—*Proof—That each member committed theft, need not be shown.*

In a trial under S. 401, Penal Code, it is not necessary to prove that each individual member of the gang has habitually committed theft or any particular act of theft, once the existence of the gang for such purpose is proved. *Amdu Miyan v. Emperor.*

38 Cr. L. J. 251 :
166 I. C. 587 : 9 R. N. 132 :
I. L. R. 1937 Nag. 315 at p. 324 :
A. I. R. 1937 Nag. 17 at p. 23.

————S. 401—*Proof.*

The associating and the purpose of the association may be proved by direct evidence, such as that the accused or the accused and others met and determined to join together for the purpose of habitually committing theft or robbery. In the absence of direct evidence,

PENAL CODE ACT (XLV OF 1860)

the associating and the purpose of the association may be established by proof of nets from which these may reasonably be inferred. For instance, the commission of a large number of thefts by the accused within a comparatively short time gives rise to an inference that they must have been associated for the purpose of habitually committing theft. *Pir Bukhsh v. Emperor.*

24 Cr. L. J. 703 :
73 I. C. 815 : A. I. R. 1923 Lah. 327.

————S. 401 — *Prosecution — Prosecution under S. 401, nature of.*

A prosecution under S. 401 is of a peculiar nature differing from an ordinary case, in respect of the number of accused involved, and the extent of time covered by their operations. There can be no definite rule of limitation barring responsibility for stolen property after a certain time. Each case must be judged in view of the circumstances. Important factors are the number of articles recovered and the way in which information led to their recovery. *Amdu Miyan v. Emperor.*

38 Cr. L. J. 251 :
166 I. C. 587 : 9 R. N. 132 :
I. L. R. 1937 Nag. 315 at p. 324 :
A. I. R. 1937 Nag. 17 at p. 23.

————S. 401—*Scope of.*

It is not necessary for a conviction under S. 401, Penal Code, that the person convicted must have taken part in any one theft or robbery and evidence which has not been believed for the purpose of a conviction under S. 379, or S. 392, Penal Code, may yet be relied upon for the purpose of conviction under S. 401, Penal Code. A conviction under S. 401, Penal Code, is not bad in law merely because the evidence on the record would also have justified a conviction of specific offence under S. 379 or S. 392, Penal Code. *Lale v. Emperor.*

30 Cr. L. J. 922 :
118 I. C. 423 : 6 O. W. N. 441 :
I. R. 1929 Oudh 439 : 5 Luck. 101 :
A. I. R. 1929 Oudh 321.

————S. 401—*Sentence.*

Though being member of a gang associated for the purpose of committing burglaries is different from actually taking part in them, yet it is not equitable to give separate sentences under Ss. 401 and 457. *Surjen Singh v. Emperor.*

33 Cr. L. J. 251 :
136 I. C. 27 : 33 P. L. R. 602 :
I. R. 1932 Lah. 203 : A. I. R. 1932 Lah. 298.

————S. 402.

See also Penal Code, 1860, S. 399.

————S. 402—*Association—Assembly for committing dacoity—Members of one party split up, if material.*

Fifteen men were seen approaching a village and split up into three bands just outside the village. Subsequently different members of these three bands were caught and found to be in possession of arms and ammunitions, and none of them could explain his presence at the spot : *Held*, that they were members

PENAL CODE ACT (XLV OF 1860)

of a party and had collected for the purpose of committing dacoity and were consequently liable to be convicted under S. 402, Penal Code. *Bhola v. Emperor*. 26 Cr. L. J. 380 : 84 I. C. 860 : 22 A. L. J. 1028 : A. I. R. 1925 All. 62.

—S. 402—Ingredients.

Where the accused belonging to different villages are found at a lonely well at a long distance from their homes fully armed and equipped for committing dacoity, a conviction under S. 402, Penal Code, is maintainable. *Waryam Singh v. Emperor*.

27 Cr. L. J. 605 :
94 I. C. 269.

—S. 402—Scope of—*Assembly for concerting plans, whether within the section.*

Where in a trial for dacoity it was found that the accused had met together in order to discuss the possibility of committing a dacoity and had considered various suggestions with regard to looting several places but there was no evidence that the accused persons had assembled for the purpose of committing a dacoity or had made preparations for committing that offence: *Held*, that they were not guilty of any offence under S. 309 or S. 402, Penal Code. *Bachinta v. Emperor*.

17 Cr. L. J. 97 (b) :
32 I. C. 833 : 7 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 380.

—S. 402—Scope.

Quare.—Whether S. 402, Penal Code, postulates a determination to commit a dacoity, and an assemblage of five or more persons for the purpose of concerting plans for a dacoity yet remote or contingent is not within the meaning of the section. *Bachinta v. Emperor*.

17 Cr. L. J. 97 (b) :
32 I. C. 833 : 7 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 380.

—S. 403.

See also (i) Conviction.

(ii) Cr. P. C., 1898, S. 222 (2).

(iii) Penal Code, 1860, Ss. 75, 378, 379, 395, 406, 411.

—S. 403—Conviction—*Criminal misappropriation—Agreement to repay, if material.*

D was tried for criminal misappropriation of money. The Magistrate acquitted him on the ground that there had been no misappropriation as the complainant had agreed to give him time to repay the money; *Held*, that the acquittal was illegal. *Nanhi Bahu v. Dhunde*.

10 Cr. L. J. 417 :
3 I. C. 908 : 6 A. L. J. 758.

—S. 403—Criminal misappropriation—*Repudiation of trust.*

S. 403, Penal Code, is in no way restricted to appropriating property to one's own use. If a trustee repudiates the trust and asserts that he now holds the property on behalf of a person other than the one who entrusted him with it, he has misappropriated the property just as much as he would have been said

PENAL CODE ACT (XLV OF 1860)

to misappropriate it if he had been putting forward his own claim to it. *Indar Singh v. Emperor*.

27 Cr. R. J. 297 :
92 I. C. 585 : 24 A. L. J. 270 :
48 All. 288 : A. I. R. 1926 All. 302.

—S. 403—Dishonest misappropriation or conversion—*Proof.*

Accused and complainant were sitting at a table when a letter was delivered to the latter, who read it and threw it on the table. Accused picked up the letter and subsequently attached it to an affidavit filed by him in a case of judicial separation between the complainant and his wife, in order, as he said, to "strengthen the wife's case and to improve my position": *Held*, that the accused could not be convicted of criminal misappropriation as there had been no dishonest misappropriation or conversion to his own use of the letter. *Ashley Clarke Harris v. Emperor*.

19 Cr. L. J. 174 :
43 I. C. 590 : 16 A. L. J. 12 :
40 All. 119 : A. I. R. 1918 All. 353.

—S. 403—Dishonesty — *Dishonest motive—Overt act of dishonesty, evidence of.*

The chief element for a conviction under S. 403, Penal Code, is the dishonest misappropriation of the property or conversion to one's own use. In the absence of any overt act on the part of the accused no inference of dishonest motives can be imputed to him simply because he has retained certain documents in his custody. *Ram Byas Rai v. Emperor*.

19 Cr. L. J. 943 :
47 I. C. 667 : A. I. R. 1918 Pat. 489.

—S. 403—Dishonesty—*Use of strayed animal—False statement by accused.*

The accused was found riding on a mare which had strayed away from the possession of its owner. The day after he was found riding, he confessed that he had found the mare hobbled, had unfastened the rope, and used it as a bridle; had mounted the mare intending to ride her to his house, being tired, and to loose her when he reached his house. Subsequently he stated before the Magistrate that his intention was to take the strayed mare to a Police Station. He was convicted under S. 403, Penal Code: *Held*, that the conviction was illegal, for it could not be assumed that the intention of the accused was dishonest. The subsequent statement being attributable to fear, did not affect the question of the accused's guilt. *Emperor v. Muhammada*.

3 Cr. L. J. 299 :
7 P. L. R. 100.

—S. 403—Dishonesty.

In a case of partnership the gist of the offence of criminal breach of trust, viz., dishonest misappropriation is wholly wanting, the accused being a part owner of the property. *Bhupendra Nath Sinha v. Ghirdharilal*.

34 Cr. L. J. 958 :
145 I. C. 416 (2) : 37 C. W. N. 982 :
60 Cal. 1316 : 6 R. C. 106 :
A. I. R. 1933 Cal. 582.

PENAL CODE ACT (XLV OF 1860)

—S. 403—*Dishonesty.*

It cannot be laid down as a general proposition that whenever marriage negotiations break down, the relatives of the girl have a right to retain the presents made with a view to marriage. But before any action can be taken against them, it is necessary to prove dishonesty on their part. *Nasir Khan v. Fyaz Hussain.*

24 Cr. L. J. 348 :
72 I. C. 348 : A. I. R. 1922 Cal. 57.

—S. 403—*Ingredients.*

All that is required is that there should be intention to cause such gain or loss which would amount to dishonesty. Loss or gain need not have actually occurred before an offence is completed. *Kashuran Mehta v. Emperor.*

(F. B.) 35 Cr. L. J. 982 :
149 I. C. 420 : 1934 A. L. J. 308 :
3 A. W. R. 506 : 6 R. A. 902 :
A. I. R. 1934 All. 499.

—S. 403—*Meaning of words—"To appropriate," if misappropriate, meaning of.*

In connection with S. 403, I. P. C., the verb "to appropriate" means setting apart for, or assigning to a particular person or use and to "misappropriate" means to set apart for or assign to the wrong person or a wrong use, and this act must be done dishonestly. *Sohan Lal v. Emperor.*

16 Cr. L. J. 795 :
31 I. C. 651 : 13 A. L. J. 1131 :
A. I. R. 1915 All. 380.

—S. 403—*Miscellaneous — Partner, whether can be prosecuted by co-partner.*

Where the necessary ingredients justifying a prosecution are present, the law imposes no bar to the prosecution by a partner of his co-partner of the offence of criminal misappropriation or of criminal breach of trust. *Bhudhar Mal v. Ramchander.*

21 Cr. L. J. 338 :
55 I. C. 674 : 1 P. L. T. 127 :
A. I. R. 1920 Pat. 112.

—S. 403—*Offence to screen another offence—Dishonest misappropriation—Forgery and falsification of accounts and False vouchers made to screen offence, if one offence.*

Where moneys are dishonestly misappropriated and false accounts or vouchers prepared for the purpose of screening the misappropriation, the offence of falsification becomes a part and parcel of the offence of misappropriation, and the whole transaction must be considered practically as one offence consisting of criminal misappropriation. *Emperor v. Anant Narayan.*

1 Cr. L. J. 105 :
6 Bom. L. R. 94.

—S. 403—*Offence under—Camel found in possession of accused 7 months after it was lost—Reasonable explanation of getting it—Offence, if committed.*

Where a man is found in possession of a camel about seven months after it strayed away and there is no other evidence against him but that of possession, he ought not to be asked to account for it, particularly when he gives a reasonable explanation of how he got

PENAL CODE ACT (XLV OF 1860)

hold of it. Where a man in whose possession stolen property is found, gives a reasonable account of how he came by it, as by telling the name of the person from whom he received it (and who is known to be a real person), it is incumbent on the prosecutor to show that the account is false; but if the account given by that man is unreasonable or improbable on the face of it, it is his duty to establish the truth of his story. *Mangaya Shah v. Emperor.*

17 Cr. L. J. 68 :
32 I. C. 660 : 41 P. W. R. 1915 Cr. :
62 P. L. R. 1916 Cr. : A. I. R. 1916 Lah. 288.

—S. 403—*Offence under S. 403 and 420, merely for squeezing money out of accused—Criminal complaint is not maintainable.*

A partner can be convicted of criminal breach of trust in respect of the partnership property. The partnership may be for one purpose, and one partner may, for his own quite different purpose, dishonestly and fraudulently abstract money from the partnership assets and criminally misappropriate it, and it cannot, in such a case, be said that there is no room for the criminal law at all. It is not then a matter merely of dispute between partners. But where in a case the chief matter in dispute between the complainant and the accused is a dispute between the partners, and the allegations of criminal offences under Ss. 403 and 420, Penal Code, are made in the complaint, for the purpose of squeezing money out of the accused, the complaint is not maintainable as the dispute is of a civil nature. *Muhammad Jamadar Jhangir v. Ghulam Rasool Mirza.*

40 Cr. L. J. 246 :
179 I. C. 687 : 11 R. S. 147 :
A. I. R. 1939 Sind 21.

—S. 403—*Offence under — Constable appropriating strayed sheep, if offence.*

A sheep intended for sacrifice at the Id escaped and strayed away from its owner and was captured the next day by the accused, who was a constable. The latter instead of sending the animal to the pound, kept it. A few days later he was transferred to another Thana. He took the sheep with him to the second Thana and kept it there; Held, that the accused was guilty of an offence under S. 403, Penal Code. *A. Sarju Mallah v. Emperor.*

20 Cr. L. J. 218 :
49 I. C. 778 : 17 A. L. J. 145 :
1 U. P. L. R. All. 88 : A. I. R. 1919 All. 302.

—S. 403—*Offence under — Dishonestly exchanging Railway tickets, if offence.*

A and B were about to travel by the same train from Benares City. A had a ticket for Ajudbia. B had two tickets of Benares Cantonment. A voluntarily handed over her ticket to B in order that he might tell her if it was right. B, under pretence of returning A's ticket, substituted therefor one of his own, and kept A's ticket: Held, that the offence committed by B was that of criminal misappropriation as defined by S. 403, Penal Code, rather than cheating as defined by S. 415 of the Code. *Emperor v. Raza Hussain.*

2 Cr. L. J. 94 :
25 A. W. N. 9.

PENAL CODE ACT (XLV OF 1860)

————S. 403—*Offence under—Employee withdrawing security amount deposited by him without employer's permission and before adjustment of accounts, if offence.*

Where an employee withdraws the amount deposited by him as a security during his appointment without his employer's permission and before adjustment of the amounts between him and the employer, the withdrawal amounts to criminal misappropriation. *Surendra Nath Basu v. Emperor.*

39 Cr. L. J. 691 :
176 I. C. 126 : 42 C. W. N. 618 :
11 R. C. 41 : I. L. R. 1938, 2 Cal. 257 :
A. I. R. 1938 Cal. 451.

————S. 403—*Offence under—Finding insignificant article on road—Attempt to sell, if offence.*

Where the accused found a spanner which was not of any appreciable value and attempted to sell it and was convicted under S. 403, Penal Code: *Held*, that the case was governed by Illus. (a) and not by Illus. (f) to S. 403 and the accused was not guilty of criminal misappropriation. *Mahadev Govind Nagarkar v. Emperor.*

31 Cr. L. J. 926 :
125 I. C. 712 : 32 Bom. L. R. 356 :
A. I. R. 1930 Bom. 176.

————S. 403—*Offence under—Removal by co-owner, if offence.*

It is not criminal misappropriation for one of three joint owners to take property belonging to them all, unless it is also found that he appropriated the property to his sole use. *Krishna Chandra v. Har Kishore.*

25 Cr. L. J. 669 :
81 I. C. 157 : A. I. R. 1925 Cal. 154.

————S. 403—*Offence under—Marriage negotiations, break down of—Refusal to return presents, if criminal misappropriation.*

Where there is a *bona fide* intention on the part of an accused to give his girl in marriage and certain presents are delivered to him as preliminary, if the negotiations break down on account of certain unfortunate disagreements, and the accused refuses to return the presents, he is not guilty of criminal misappropriation. In such a case, a Civil Court is the proper tribunal for the parties to seek a settlement of their dispute. *Nasir Khan v. Fyaz Hossain.*

24 Cr. L. J. 348 :
72 I. C. 348 : A. I. R. 1922 Cal. 57.

————S. 403—*Offence under—Person authorised to take and sell cotton of another—Selling cotton as such, if misappropriation—Sale money not handed over to owner—Action lies in Civil Court.*

The act of the accused selling the cotton belonging to another, where he is authorised to so take it, cannot amount to misappropriation of the cotton itself within the meaning of S. 403, Penal Code, and where after the sale of the cotton he refuses to pay the money due to the owner, the

PENAL CODE ACT (XLV OF 1860)

remedy lies only in Civil Court. *K. V. Ramaswami Naick v. Rangaswami Chettiar.*

39 Cr. L. J. 144 :
172 I. C. 501 : 1937 M. W. N. 733 :
10 R. M. 457 : 47 L. W. 140 :
A. I. R. 1937 Mad. 968.

————S. 403—*Offence under—Person finding lost parcel and retaining it, if offence.*

A person who finds an article which has been lost by the owner is bound, within a reasonable time, to communicate with the Police, and if he fails to do so, he is guilty of an offence under S. 403, Penal Code. If the article in question is a parcel containing several articles, the offence committed is a single offence, and a separate offence is not committed in respect of each article in the parcel. Whether the person retaining stolen property knowing it to be stolen, is the original thief or misappropriator, or merely a subsequent guilty receiver, such retaining is a continuing offence as long as the retaining of the stolen property continues. *Ram Pershad v. Emperor.*

25 Cr. L. J. 907 :
81 I. C. 443 : 2 Rang. 80 :
A. I. R. 1924 Rang. 256.

————S. 403—*Offence under—Railway servant arranging with claimant and receiving amounts from him—Amount not credited to Railway, if offence.*

A Claims Inspector of a Railway whose duty it was to investigate claims and to report what arrangements he could make with persons making claims against the Railway, arranged for the sale of some bags of skin lying in the Railway Shed to a person who had preferred a claim with respect to similar articles of his which had been lost in transit and received from the claimant the price of the same. The sum was not credited to the Railway, and on inquiry, the Inspector denied the receipt of the sum: *Held*, that the accused was guilty of criminal misappropriation under S. 403, Penal Code, and not of an offence under S. 408, Penal Code. *Mathra Das v. Emperor.*

28 Cr. L. J. 161 :
99 I. C. 593 : 8 L. L. J. 515.

————S. 403—*Offence under.*

Ss. 392, 403—*A* giving money to *B* enclosed in an envelope and writing address on it—*B* changing original envelope and writing address on another—*A* suspecting *B* and demanding original envelope—*Altercation—A's* original envelope and cont torn—*B* charged under S. 392—*B* should have been charged with attempting to criminally misappropriating notes—Sentence reduced to six months from that of 15 months: *Rabu Saleh v. Emperor.*

34 Cr. L. J. 802 :
144 I. C. 427 : I. R. 1933 Sind 189 :
A. I. R. 1933 Sind 139.

————S. 403—*Offence under—Stray bullock, found by accused and sold after effort to discover owner, if offence.*

Accused took possession of a *lawaris* bullock, kept it for 20 days, advertised for the owner.

PENAL CODE ACT (XLV OF 1860)

and nobody having turned up, eventually sold it: *Held*, that under the circumstances, it could not be said that the accused was guilty of an offence under S. 403, Penal Code. *Amir Husan Khan v. Emperor*.

27 Cr. L. J. 5 :
91 I. C. 37 : A. I. R. 1926 All. 251.

———S. 403—Offence under.

Taking delivery of goods in pursuance of notice of an order to the contrary by a Court of Appeal—Notice of the trial Magistrate containing alternative of forfeiture in case of failure to take delivery—Goods disposed of—No offence under S. 403 is committed. *Nagendra Nath Roy v. Emperor*.

35 Cr. L. J. 886 :
149 I. C. 36 : 6 R. C. 499 :
A. I. R. 1934 Cal. 454.

———S. 403—Offence under—Taking possession of missing animal and trying to sell it, if offence.

Where a person takes possession of a missing animal and tries to dispose of it, he is guilty of an offence under S. 403, Penal Code, but he cannot be convicted under S. 411, Penal Code, unless there is evidence to show that the animal was lost to its owner by the commission of any one of the offences mentioned in S. 410 of the Code and that the accused knew or had reason to believe that it was stolen property. *Phul Chand v. Emperor*.

30 Cr. L. J. 1133 :
119 I. C. 863 : I. R. 1929 All. 1103 :
1930 A. L. J. 220 : A. I. R. 1929 All. 917.

———S. 403—Offence under.

Where a person retains in his custody animals which have stayed away from a grazing ground and there is no evidence to show that he stole them, he is guilty of an offence under S. 403, and not S. 411 of the Penal Code. *Chandaria v. Emperor*.

12 Cr. L. J. 439 :
11 I. C. 623 : 36 P. W. R. 1911 Cr. :
235 P. L. R. 1911.

———S. 403—Place of offence—What is.

The offence of dishonest misappropriation is committed not at the place where the accused withdraws the money, but at the place where he dishonestly appropriates it or converts it to his own use. *Mangal Prasad v. Emperor*.

36 Cr. L. J. 112 :
152 I. C. 463 : 11 O. W. N. 1352 :
1934 O. L. R. 859 : 7 R. O. 225 :
A. I. R. 1935 Oudh 4.

———S. 403—Place of trial of offence.

The loss caused to a person by an act of misappropriation of his property by another, is not an essential ingredient of the offence of criminal misappropriation. The offence is complete if the conversion is done with the intention of causing wrongful gain to the offender irrespective of any loss which may ensue to any other person. The offence does not depend on the consequence which has ensued but only on the act which has

PENAL CODE ACT (XLV OF 1860)

been done. Therefore, a person cannot prosecute another for criminal misappropriation of the property under S. 179 of the Cr. P. C., at the place of his own residence on the ground that, as a consequence of the act of the accused, wrongful loss was caused to him at that place. *Ahmed Ebrahim v. A. A. Ganny*.

24 Cr. L. J. 746 :
74 I. C. 74 : 1 Rang. 51 :
2 Bur. L. J. 40 : A. I. R. 1923 Rang. 209.

———S. 403—Principal and Agent—Liability—Liability of Manager—Custody and charge under proprietor's control.

The Manager of a Provident Institution is not criminally liable for any misappropriation by the Proprietor of the Institution or his Agent when by the terms of the contract of Manager's employment the custody and application of the Provident Funds was in the hands and under the control of the Proprietor or Agent. *Emperor v. Kamal Krishna*.

11 Cr. L. J. 189 :
4 I. C. 1106 : 5 M. L. T. 141.

———S. 403—Proof—Misappropriation of some money proved—Exact amount uncertain—Legality of conviction.

An accused person can be convicted for misappropriation where the prosecution establishes that some of the money mentioned in the charge has been misappropriated by him, even though it may be uncertain what is the exact amount so misappropriated. *Emperor v. Byramji Jamselji Chawalla*.

29 Cr. L. J. 407 :
108 I. C. 505 : 30 Bom. L. R. 325 :
52 Bom. 280 : A. I. R. 1928 Bom. 148.

———S. 403—Proof—Proof of receipt of money and mere failure to account, whether sufficient—There must be proof of conversion.

Not only has the prosecution in a case of criminal misappropriation to prove that the accused received the money and has not accounted for it, but also to prove that he converted it to his own use. Proof of receipt and failure to account is naturally a long way towards proof of misappropriation, but it is not the whole way. *Ghulam Haider v. Emperor*.

39 Cr. L. J. 851 :
177 I. C. 278 : 40 P. L. R. 870 :
11 R. L. 288 : A. I. R. 1938 Lah. 634.

———S. 403—Property—What is.

Quare.—Whether an envelope thrown by the owner of the envelope into a waste paper basket and picked up and carried away by another person is "property" within the meaning of the Penal Code. *Harris A. C. v. Emperor*.

19 Cr. L. J. 174 :
43 I. C. 590 : 16 A. L. J. 12 :
40 All. 119 : A. I. R. 1918 All. 353.

———S. 403, Expl. (2)—Offence under—Derelict animal—Possession—If offence—Duty of finder of property.

A person who takes possession of a derelict animal of which no owner can be discovered, is not guilty of any offence and cannot be

PENAL CODE ACT (XLV OF 1860)

convicted of an offence under S. 403, Penal Code. A person finding a property of which from the nature of it, there must be an owner must take reasonable care of it and endeavour to find out the owner, but he is not bound to adopt extraordinary means for the discovery, nor is he bound to be out of pocket in discovering the owner by means of advertisement. *Sarajul Haque v. Emperor*.

23 Cr. L. J. 401 :
67 I. C. 497.

———Ss. 403, 405—Criminal breach of trust
—Where instituted.

Reading Ss. 403 and 405, Penal Code, together, it is clear that criminal breach of trust is a species of criminal misappropriation, being a criminal misappropriation by a person entrusted with the property misappropriated, and as regards criminal misappropriation, a dishonest misappropriation for a time only is misappropriation. The same principle applies to temporary misappropriation. *Local Government, C. P. v. Madho Patwari*.

23 Cr. L. J. 557 :
68 I. C. 157 : A. I. R. 1923 Nag. 146.

———Ss. 403, 405—Proof.

In order to constitute criminal misappropriation or breach of trust, it is not necessary that the accused must have actually taken tangible property, such as cash from the possession of another to his own. A dishonest transfer of an amount from the account of another person to the accused's account may constitute criminal misappropriation. *Ram Chand Gurwala v. Emperor*. 27 Cr. L. J. 1383 : 98 I. C. 599 : A. I. R. 1926 Lah. 385.

———Ss. 403, 406—Offence under — Goods delivered in pursuance of contract—Denial of receipt, if offence.

Where goods are delivered to a person in pursuance of a contract for their purchase, there is no entrustment which would give rise to a trust, and the mere fact that the person denies receipt of goods delivered, does not render him guilty of an offence either of criminal misappropriation or criminal breach of trust. *Obiter*.—A decision of a Civil Court is admissible in evidence to disprove an allegation on the truth of which the guilt of a person in a criminal case depends. *In re : Velayutham Chetty*.

24 Cr. L. J. 332 :
72 I. C. 172 : A. I. R. 1924 Mad. 516.

———Ss. 403, 406—Offence under—Refusal to return bond on payment of bond debt, and subsequent denial of payment, if offence.

The complainant paid off a debt due to the accused on a bond on condition that the latter would return the bond. The accused, however, did not return the bond and subsequently denied the fact of payment: *Held*, that the accused were not guilty of any offence either under S. 403 or S. 406, Penal Code. *Gulam Husain v. Emperor*.

20 Cr. L. J. 151 :
49 I. C. 343 : 22 C. W. N. 1005 :
A. I. R. 1919 Cal. 155.

PENAL CODE ACT (XLV OF 1860)

———Ss. 403, 406, 417—Offence under—Commission agent advancing money to potato-grower on mortgage of crop—Mortgage to secure to former sale of crop and his commission—Sale by grower to another agent in breach of contract—Whether offence under S. 403 or S. 406 or S. 417.

Where a commission agent advances a sum to a grower of potatoes upon the mortgage of his crops, the mortgage not being security for repayment of money advanced but to secure to the commission agent, the sale of crop and his commission, and in breach of the agreement, the grower sends the potatoes to another agent for sale, the grower cannot be said to have committed criminal misappropriation, or criminal breach of trust or cheating. *Tarumal Ghandumal v. Ismail Haji Saleh*.

40 Cr. L. J. 278 :
179 I. C. 841 : 11 R. S. 154 :
A. I. R. 1939 Sind 48.

———Ss. 403, 411—Criminal misappropriation—Dishonestly retaining—Distinction.

A person which is proved to have dishonestly misappropriated property cannot be convicted of the offence of dishonestly retaining it under S. 411, Penal Code. That section applies when a person who has come honestly into the possession of property, retains it after discovering that it is stolen property. S. 75, I. P. C., applies to S. 411, but not to S. 403. *Shwe Twi v. Emperor*.

5 Cr. L. J. 413 :
3 L. B. R. 254.

———Ss. 403, 415—Scope—Distinction between.

In order to constitute the offence of criminal misappropriation, the property must have come into the possession of the accused innocently in the first instance. The essence of the offence of cheating is the original deceit whereby the delivery of property is dishonestly induced. *W. E. Gardner v. U. Kha*.

38 Cr. L. J. 48 :
165 I. C. 596 : 9 R. Rang. 217 :
A. I. R. 1936 Rang. 471.

———S. 404.

See also Penal Code, 1860, Ss. 22, 27, 403.

———S. 404—Object.

S. 404, Penal Code, is intended to punish servants and strangers who can have possibly no right to, or interest, in the effects of a dead man and not near relatives who take possession under a claim of right. *In re : Karri Mangadu*.

15 Cr. L. J. 602 :
25 I. C. 514 : 1914 M. W. N. 791 :
A. I. R. 1914 Mad. 506.

———S. 404—What constitutes offence—Decree obtained against assets of deceased—Removal of property to cause loss to decree-holder—If offence.

A suit was instituted against D as the legal representative of a deceased debtor in order to recover from him the debt due by the deceased out of the assets left by the deceased.

PENAL CODE ACT (XLV OF 1860)

ed which were in the hands of *D*. *D* pleaded that *A* was the heir of the deceased and that he himself had nothing to do with the assets of the deceased. A decree was, however, passed against the assets of the deceased in the hands of *D*. While the decree was outstanding, *D* and his son *S* removed certain rafters from the roof of the house left by the deceased: *Held*, that *D* and *S* having removed the rafters from the house of the deceased in order to obtain a wrongful gain to the prejudice of the decree-holder whose decree was still outstanding, they were guilty of an offence under S. 404, Penal Code. *Daud Khan v. Emperor*. 27 Cr. L. J. 17 : 91 I. C. 49 : 24 A. L. J. 153 : A. I. R. 1925 All. 673.

———Ss. 404, 424—*What constitutes offence—Mother of deceased owner taking possession of her son's effects, whether guilty under S. 404—Debtor discharged by mother, whether liable under S. 424.*

Where, a mother takes possession of her son's movables as against her daughters-in-law and discharges one of the debtors of her son from his obligation, she cannot be convicted of an offence under S. 404, nor can the discharged debtor be convicted under S. 424, Penal Code. *In re : Karri Mangadu*. 15 Cr. L. J. 602 : 25 I. C. 514 : 1914 M. W. N. 791 : A. I. R. 1915 Mad. 506.

———S. 405.

See also (i) Cr. P. C., 1898, Ss. 179, 181 (2) 435.
(ii) Penal Code, 1860, S. 109.

———S. 405—*Applicability.*

The first part of S. 405, will apply where it is known that the accused had dishonestly misappropriated certain property at a particular place and the jurisdiction to try the accused will be at the place where that dishonest misappropriation has taken place. But where it is alleged that the accused has failed to account for the property, then the second part of S. 405 will apply and jurisdiction exists at the place where the property should have been delivered by the accused. *Mohan Lal v. Emperor*. 37 Cr. L. J. 284 : 160 I. C. 356 : 1936 A. L. J. 3 : 1936 A. W. R. 23 : 8 R. A. 595 : A. I. R. 1936 All. 193.

———S. 405—*Applicability to partners.*

S. 405, I. P. C., applies to partners and a partner can be convicted of criminal breach of trust. *Mandavalli Satyanarayana Murthi v. Kotha Manikyala Rao*. 41 Cr. L. J. 398 : 187 I. C. 126 : 1939 M. W. N. 1252 : 12 R. M. 687 : A. I. R. 1940 Mad. 265.

———S. 405—*Applicability to partners.*

The words of S. 405, I. P. C., are large enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property or with dominion over it and has dishonestly misappropri-

PENAL CODE ACT (XLV OF 1860)

ated it, or converted it to his own use. *Alla Rakha v. Liakat Hossain*. 41 Cr. L. J. 796 : 189 I. C. 769 : 44 C. W. N. 650 : 13 R. C. 122 : A. I. R. 1940 Cal. 371.

———S. 405—*Applicability to partnership.*

A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or which he has dominion over, is guilty of an offence under S. 405, Penal Code. *Emperor v. Laloo Ghella*. 1 Cr. L. J. 757 : 6 Bom. L. R. 553.

———S. 405—*Charge.*

Where a charge under the section does not indicate which of the several offences was intended and does not state who made the alleged entrustment, or who suffered from the alleged breach of trust, it is indefinite and embarrassing. *Abinash Chandra Sarkar v. Emperor*. 37 Cr. L. J. 439 : 161 I. C. 280 : 63 Cal. 18 : 8 R. C. 502.

———S. 405—*Clerk, misappropriation by—Offence, what is.*

Accused was in the service of an Estate as a clerk, and as such, he was entrusted with dominion over money only to receive and pay it into the treasury on receiving it ; he received a sum of money and misappropriated it to his own use and was convicted of an offence under S. 403, Penal Code : *Held*, that the offence fell within the definition of criminal breach of trust in S. 405, Penal Code, and that the conviction should have been under S. 403 of that Code. *In re : Pindripolu Venkatasubba Rao*. 21 Cr. L. J. 824 : 58 I. C. 824 : 1920 M. W. N. 518 : 12 L. W. 295 : A. I. R. 1920 Mad. 965.

———S. 405 — *Cognisance — Fiduciary relationship—Case ex-facie civil.*

If the prosecution in a matter which is *ex facie* a civil dispute, is unable to prove clearly and beyond doubt that the accused has acted dishonestly and with a view to enrich himself clandestinely at the expense of those with whom he was working and with whom he was bound by a fiduciary relationship, the case should not be entertained by a Criminal Court on a charge of criminal breach of trust. *Koorathatwar Chetty v. Emperor*. 21 Cr. L. J. 309 : 55 I. C. 469 : 11 L. W. 144 : 1920 M. W. N. 346 : A. I. R. 1920 Mad. 150.

———S. 405—*Conviction—Accused willing to make good the loss, if can be convicted.*

Allegation of dishonest user of cattle in violation of *spurdnama*. Accused bringing cattle and willing to produce them—Conviction under S. 405 should be set aside. *Sardar Khan v. Emperor*. 34 Cr. L. J. 1163 (1) : 145 I. C. 936 : 34 P. L. R. 883 : 6 R. L. 147 : A. I. R. 1933 Lah. 235 (1).

———S. 405—*Conviction under, when justified.*

Where it is proved that the two accused or either of them were in fact entrusted with certain property as servants, and they set up

PENAL CODE ACT (XLV OF 1860)

a claim that it belongs to them, and refuse to return it, that in itself is evidence of conversion to justify a conviction under S. 405, Penal Code. *Jagannath Rahalgir v. Deokinandan*. 16 Cr. L. J. 543 (b) : 29 I. C. 671 : A. I. R. 1916 Cal. 310.

————S. 405—Criminal breach of trust—Offence.

The accused started a betting business, principal object of which was to provide facilities to constituents to back horses at various race meetings in India. He was to remit sums furnished by customers for this purpose to some person present at the race meeting, who would put them on the selected horses either through the Totalizator or otherwise. Certain sums of money were placed in his hands as bets on horses running in the Poona races then taking place, and on a charge against the accused of criminal breach of trust under S. 405, Penal Code, in that he failed to forward the money to Poona as he was bound to do under the terms of the contract: *Held*, that the contract being one of wager, within the meaning of S. 30, Contract Act, was void and there was, therefore, no violation of a legal contract within Cl. (b) of S. 405, Penal Code. *In re: K. R. Uppasani*. 28 Cr. L. J. 381 : 100 I. C. 989 : 52 M. L. J. 179 : A. I. R. 1927 Mad. 425.

————S. 405—Dishonesty—Failure to give correct account—Dishonest intention not shown, if offence.

Where the master was in debt to the servant for a sum exceeding Rs. 300 : *Held*, that the mere failure of the servant to give a correct and true account of the manner in which the servant had spent a sum of Rs. 32 in numerous Court proceedings, did not necessarily imply a dishonest intention. Unless dishonest intention is shown, an offence under S. 405, I. P. C., cannot be made out. *Datta Ram v. Emperor*. 10 Cr. L. J. 255 : 3 I. C. 285.

————S. 405—Dishonesty—How established.

To establish dishonesty, it is not necessary that the prosecution should establish an intention to retain permanently the property misappropriated. An intention wrongfully to deprive the owner of the use of the property for a time and to secure the use of the property for his own benefit for a time may be sufficient. *Emperor v. Chaturbhuj Narain Chowdhury*. 37 Cr. L. J. 877 : 164 I. C. 74 : 15 Pat. 108 : 17 P. L. T. 302 : 2 B. R. 696 : 9 R. P. 77 : A. I. R. 1936 Pat. 350.

————S. 405—Dishonesty—How to be ascertained.

It cannot well be said that a person has the requisite criminal intent when it is doubtful whether the property has or has not passed, whether he is entrusted with the goods under the terms of a trust agency, or whether there is an out and out sale, whether by cash or credit, with the property in the goods passing.

PENAL CODE ACT (XLV OF 1860)

But if it is clear that the trust receipt is, what it is really intended to be, a trust agency, whereby the buyer binds himself to sell the goods on behalf of the seller and is entrusted with the goods under certain clear terms and conditions, there is an entrustment within the meaning of S. 405, Penal Code, and if there be a violation of the terms and conditions of the entrustment with the necessary intent, there can be a conviction for criminal breach of trust. *Muhammad Ashfaq Imam Illahi v. Motiram Maghanmal Advani*. 40 Cr. L. J. 173 : 179 I. C. 135 : 11 R. S. 116 : 1939 Kar. 248 : A. I. R. 1939 Sind 1.

————S. 405—Dishonesty—No proof of conversion—Only delay in remittance—Explanation available of dishonesty.

In a prosecution for criminal breach of trust, delay in making remittance to the head office of moneys received, according to departmental rules is a circumstance to be taken into consideration and it may be, if there is no explanation, *prima facie* evidence of dishonesty. But where an explanation is available, mere delay in making the remittance in the absence of proof of conversion or falsification of accounts is nothing more than evidence of breach of departmental rules. *Parmod Ban Behari Saran v. Emperor*. 29 Cr. L. J. 90 : 106 I. C. 682.

————S. 405—Dishonesty—Person having reasonable claim against another for more than amount belonging to other in his hands—User of this amount for his own purpose—Whether offence.

If a man is proved to have had a reasonable claim against another for more than the sum of money belonging to the other in his hands, his retention of it, and even his user of it for his own purposes, would not, in law, amount to criminal breach of trust because the intention could not have been dishonest, that is to say, to cause wrongful loss or wrongful gain. *Rea v. V. Krishnan*. 41 Cr. L. J. 824 : 190 I. C. 123 : 1939 M. W. N. 1213 : 13 R. M. 386 : A. I. R. 1940 Mad. 329.

————S. 405—Dishonesty.

Where in a case the seller had never seriously directed his mind to the words of the trust receipt at all, that he never contemplated that its terms would be complied with, and all he thought that it secured was due payment of the purchase price at due date and the purchaser took delivery of goods but did not pay the purchase price either on the date mentioned in the trust receipt or afterwards: *Held*, that the purchaser could not be said to have criminal intent required by S. 405, Penal Code, as, whatever be the legal relation established by the trust receipt, the purchaser had good reason to believe that he was the purchaser of the goods in the ordinary sense of the term, that the property or the goods had passed to him on delivery, and that all he had to do was to pay the draft on the due date,

PENAL CODE ACT (XLV OF 1860)

Muhammad Ashfaq Imam Illahi v. Motiram Manghanmal Advani. 40 Cr. L. J. 173 :

179 I. C. 135 : 11 R. S. 116 :

1939 Kar. 248 : A. I. R. 1939 Sind 1.

—S. 405—Entrustment—Accused need not be 'trustee' in a technical sense.

S. 405, Penal Code, does not limit the offence which is there defined to the case of persons who are entitled to be called trustees in the technical sense. The section is couched in broad terms and covers any person who is in any manner entrusted with any property. *Shah Naim Ata v. Emperor.* 31 Cr. L. J. 1012 :

126 I. C. 395 : 7 O. W. N. 663 :

A. I. R. 1930 Oudh 401.

—S. 405.

Entrustment—Payment by debtor to creditor if entrustment—Agent having no claim against principal—Retention by him of principal's money without doing anything with it—If guilty under S. 405. *Rex v. Krishnan.*

41 Cr. L. J. 824 :

190 I. C. 123 : 1939 M. W. N. 1213 :

13 R. M. 386 : A. I. R. 1940 Mad. 329.

—S. 405—Ingredients.

Even when an agent may have no claim against the principal, even then if he retains principal's money merely and does not pay it, but does not do anything else with it, there is no criminal breach of trust. It is only a civil liability, and of course, the principal can, at any time, if he chooses, compel him to pay, send him a notice and file a suit. Mere retention of money entrusted to a person without any misappropriation, even though he was directed by the person to pay it to so and so, or to deal with the money in a particular way, is not a criminal breach of trust; unless there is some actual user by him which is in violation of law or contract, there is no criminal breach of trust; and even if there is such user, there must be a dishonest intention. Putting the money into one's own account in the Bank may be misappropriation or may not be misappropriation. If it is drawn upon for his own purposes, it is misappropriation. But if he did not draw on it but kept the money in the Bank, there is no misappropriation, and no criminal misappropriation, because unless there is misappropriation, there can be no question of dishonest misappropriation. *Rex v. V. Krishnan.* 41 Cr. L. J. 824 :

190 I. C. 123 : 1939 M. W. N. 1213 :

13 R. M. 386 : A. I. R. 1940 Mad. 329.

—S. 405—Ingredients.

The definition of criminal breach of trust in S. 405, Penal Code, penalises a dishonest misappropriation or conversion or dishonest use or disposal of property in an improper manner, that is to say, dishonesty is an essential ingredient in the offence and must be proved. *Emperor v. Chaturbhuj Narain Ghoudhury.* 37 Cr. L. J. 877 :

164 I. C. 74 : 15 Pat. 108 : 17 P. L. T. 302 :

2 B. R. 696 : 9 R. P. 77 :

A. I. R. 1936 Pat. 350.

PENAL CODE ACT (XLV OF 1860)

—S. 405—Ingredients.

The offence of criminal breach of trust is complete when there is dishonest misappropriation or conversion to one's own use or when there is dishonest use or disposal in violation of any direction of law prescribing the mode in which the trust is to be discharged or of any local contract, express or implied, which the accused has made touching the discharge of the trust, or when the accused wilfully suffers another person to do so. *Gunananda Dhone v. Santi Prakash Nandy.* 26 Cr. L. J. 725 :

86 I. C. 213 : 41 C. L. J. 80 : 29 C. W. N. 432 :

A. I. R. 1925 Cal. 613.

—S. 405—Ingredients.

The offence of criminal breach of trust consists in a person dishonestly misappropriating or converting entrusted property to his own use or dishonestly using or disposing of that property in violation of any direction of law or of any legal contract, and it is the dishonest misappropriation or conversion or user or disposal as the case may be, that is the essence of the offence. *Mukhi Tirathdas v. Jethanand Matualomal.* (F. B.) 38 Cr. L. J. 512 :

168 I. C. 89 : 9 R. S. 222 : 31 S. L. R. 123 :

A. I. R. 1937 Sind 68.

—S. 405—Ingredients.

The offence of criminal breach of trust involves entrustment or dominion over property and dishonest misappropriation, conversion, use or disposal thereof. It is not possible to find these elements unless one can form a conception as to what the property is. There must, therefore, be a definite finding of a certain definite sum traced to the accused in order to form the basis of his conviction. *Khironde Kumar Mukerji v. Emperor.* 26 Cr. L. J. 532 :

85 I. C. 372 : 29 C. W. N. 54 :

40 C. L. J. 555 : A. I. R. 1925 Cal. 260.

—S. 405—Ingredients.

To constitute an offence of criminal breach of trust, there must be an entrustment; there must be misappropriation or conversion to one's own use or use in violation of any legal direction or of any legal contract; and thirdly, the misappropriation or conversion or disposal must be with a dishonest intention. Every payment of money by one person to another is not entrustment unless there are circumstances attending it from which it can be gathered that it was an entrustment and not a mere payment. Whether in a particular set of circumstances a delivery or passing of property from one to another amounts to an entrustment or not, is not a point of law on which the Judge can give a binding direction to the Jury. *Rex v. V. Krishnan.* 41 Cr. L. J. 824 :

190 I. C. 123 : 1939 M. W. N. 1213 :

13 R. M. 386 : A. I. R. 1940 Mad. 329.

—S. 405 — Interpretation — Cancelled cheques, if property.

A cancelled cheque falls within the meaning

PENAL CODE ACT (XLV OF 1860)

of the "property" as used in S. 405, Penal Code; even if it is worth no more than the value of the paper upon which it is written. *Emperor v. Maula Bakhsh*.

1 Cr. L. J. 603 :
24 A. W. N. 153 : I. L. R. 27 All. 28.

———S. 405—*Interpretation* — "Entrusted," meaning of.

The word "entrusted" in S. 405, Penal Code, when used with respect to money means that the money has been transferred to the accused under circumstances which show that notwithstanding its delivery to the accused, the property in it continues to vest in the prosecutor, and the money remains in the possession or control of the accused as a bailee and in trust for the prosecutor as bailor, to be restored to him or applied in accordance with his instructions. *Emperor v. Ghanshamdas*.

29 Cr. L. J. 431 :
108 I. C. 663 : 23 S. L. R. 13 :
A. I. R. 1928 Sind 106.

———S. 405—*Interpretation*—'Entrusted with property', meaning of.

The word 'property' in S. 405, Penal Code, includes the sale proceeds of goods entrusted to the accused. Where certain goods were entrusted to the accused and under the contract between him and the complainant, he had to sell those goods and obtain money for them which he was to hold on account of the complainant subject to deduction of certain charges: *Held*, that the accused must be deemed to have been entrusted with property when he received such sale proceeds though he did not actually receive them from the complainant. *Dwarkanadas Haridas v. Emperor*.

30 Cr. L. J. 329 :
114 I. C. 399 : 30 Bom. L. R. 1270 :
I. R. 1929 Bom. 255 :
A. I. R. 1928 Bom. 521.

———S. 405—*Interpretation*—*Entrustment*—*Meaning of*.

A person who tricks another into delivering property to him, bears no resemblance to a trustee in the ordinary acceptance of that term; and S. 405 gives no sanction to regard him as a trustee. *Emperor v. John Melver*. (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (2) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 : 8 R. M. 1000 :
A. I. R. 1936 Mad. 353.

———S. 405—*Interpretation*—*Entrustment*—*Meaning of*—*Criminal breach of trust*—*Money entrusted to broker*—*Broker to bear all loss*—*Ownership*—*Trustee*—*Agent*.

In pursuance of the following contract, a Company advanced Rs. 4,500 to the petitioner who acted as the Company's broker. "Whereas the broker has requested the Company to entrust him with advances of money and acknowledges that he will receive all such advances and hold the same in trust for the Company it is agreed that:

PENAL CODE ACT (XLV OF 1860)

(1) the broker is not the agent of the Company; (2) the broker shall employ the money of the Company in and about the purchase and transport of paddy to the Company's mill; (3) the property in the money and paddy purchased therewith shall be and remain in the Company; (4) the broker shall upon arrival of the paddy tender the same to the Company; (5) the Company shall take delivery of the paddy and either pay or credit the broker with price of the same at the current market rate: (6) (7) The broker shall be responsible for the payment of the money or the supply of paddy to the value thereof if either the money or the paddy shall be lost by any means including the Act of God, thieves or other causes over which the broker has no control, the broker shall indemnify the Company against all loss: *Held*, [by the majority, *Hartnoll, Offg. C. J.*, dissenting] that the money was not "entrusted" to the broker within the meaning of S. 405, Penal Code. *Nga Po Ywet v. Emperor*. (F. B.)

15 Cr. L. J. 452 :
24 I. C. 332 : 1 L. B. R. 278 :
7 Bur. L. T. 209 : A. I. R. 1914 L. B. 1.

———S. 405—*Interpretation*—*Entrustment*—*Meaning of*.

If the person paying, intends to repose trust in the other expecting him to dispose of the money in a particular way, then only there is entrustment. The mere payment by a debtor to a creditor is not entrustment. *Rex v. Krishnan*.

41 Cr. L. J. 824 :
190 I. C. 123 : 1939 M. W. N. 1213 :
13 R. N. 386 : A. I. R. 1940 Mad. 329.

———S. 405—*Interpretation*—*Entrustment*—*Meaning of*.

Per Mockell, J.—There can be no consent by a person who is cheated, and so, if there was deceit which prevented an true consent arising, there could be no entrusting; the terms are mutually exclusive. *Emperor v. John McIyer*. (F. B.)

37 Cr. L. J. 637 :
162 I. C. 592 (2) : 1936 M. W. N. 281 :
43 L. W. 548 : 70 M. L. J. 635 :
8 R. M. 1000 : A. I. R. 1936 Mad. 353.

———S. 405—*Interpretation*—*Entrustment*—*Meaning of*.

The term "entrustment" is not necessarily a term of law. It may have different implications in different contexts. In its most general signification, all it imports is the handing over the possession for some purpose which may not imply the conferring of any proprietary right at all. *N. N. Burjorjee v. Emperor*.

37 Cr. L. J. 190 :
159 I. C. 952 : 8 R. Rang. 301 :
A. I. R. 1935 Rang. 453.

———S. 405—*Interpretation*—'Wrongful gain'—'Wrongful loss,' meanings of.

Wrongful gain includes wrongful retention, and wrongful loss includes being wrongfully kept out of property as well as being wrongfully

PENAL CODE ACT (XLV OF 1860)

deprived of property. *Emperor v. Chaturbhuj Narain Choudhury*. 37 Cr. L. J. 877 : 164 I. C. 74 : 15 Pat. 108 : 17 P. L. T. 302 : 2 B. R. 696 : 9 R. P. 77 : A. I. R. 1936 Pat. 350.

———S. 405—Miscellaneous.

It is not necessary to strain the language of S. 405 to catch the cheat, for he can be dealt with apart from that section. In fact, there would be little use for S. 415 if cheating is only a form of criminal breach of trust. Cheating is a complete offence by itself and cannot be criminal breach of trust. *Emperor v. John McIvor*. (F. B.) 37 Cr. L. J. 637 : 162 I. C. 592 (2) : 1936 M. W. N. 281 : 43 L. W. 548 : 70 M. L. J. 635 : 8 R. M. 1000 : A. I. R. 1936 Mad. 353.

———S. 405—Offence under—*Auctioneer not carrying out terms of contract, liability of.*

An auctioneer cannot be said to be liable for criminal breach of trust if he does not punctually carry out every term in the agreement. *Ballhasar v. Emperor*.

15 Cr. L. J. 683 : 26 I. C. 131 : 41 Cal. 844 : 19 C. W. N. 422 : A. I. R. 1915 Cal. 266.

———S. 405—Offence under—*Disposal of a pledged article in a manner not justified by the terms of the pledge.*

A pawnee, who dishonestly disposes of the thing pledged to him in a manner not justified by the terms of the pledge, is guilty of criminal breach of trust, within the meaning of S. 405, Penal Code. Complainant alleged that on the 22nd May 1907, accused-respondent borrowed from him a gold chain and a pendant to wear at a wedding. Complainant lent respondent the chain, respondent promising to return it on the following day. Complainant met respondent three days later, when respondent denied that he had ever borrowed the chain. The District Magistrate, before whom the case came in revision, held that the chain was not entrusted to respondent within the meaning of the word as used in S. 405, Penal Code : *Held*, that there was *prima facie* evidence that Chetty entrusted to respondent a gold chain upon the express condition that the chain should be returned to him ; that there was evidence that respondent, after admitting the entrustment and promising to return the chain, subsequently denied that he had ever received it and that, therefore, the case must be remanded, under S. 487, Cr. P. C., to the District Magistrate with direction to make further inquiry into the complaint, or to direct further inquiry to be made by such Subordinate Magistrate as he may appoint. *Vadivaloo Chetty v. Abdul Razak*.

6 Cr. L. J. 334 : 13 Bur. L. R. 286.

———S. 405—Offence under—*Hire-purchase agreement with regard to car—Purchaser mortgaging car in violation of agreement, if guilty.*

A motor car was entrusted to the appellant under a hire-purchase agreement providing, *inter alia*, that the appellant "shall not, dur-

PENAL CODE ACT (XLV OF 1860)

ing the hiring, assign, underlet or part with the possession of the same in any way whatsoever." In violation of the agreement, the appellant mortgaged the car for different sums to three different persons who were given, under their respective mortgages, either the right to recover possession of the car or to recover their money by its sale : *Held* (1) that the mortgage transactions amounted to assignments within the meaning of the hire-purchase agreement ; (2) that the appellant was guilty of the offence of criminal breach of trust, inasmuch as he caused wrongful gain to himself by obtaining moneys on the security of the motor car contrary to a legal agreement prohibiting him from assigning any interest in that car, and he caused wrongful loss to the owners by putting in their way difficulties in recovering the moneys due from him to them and by subjecting their car to the risk of attachment and litigation. *Silas Moses v. Emperor*.

16 Cr. L. J. 665 : 30 I. C. 649 : 17 Bom. L. R. 670 : A. I. R. 1915 Bom. 206.

———S. 405—Offence under—*Station Master failing to credit over-charge on sale of tickets sold, if offence.*

An Assistant Station Master of the North Western Railway, one of whose duties was to issue tickets to passengers and charge fares as fixed by the Railway, was convicted of an offence under S. 405 of the Penal Code, in that he had made an over-charge of the aggregate amount over some of the tickets issued by him and had not credited the excess realized to the Railway : *Held*, that although the over-charges had actually been made and their payment deliberately withheld from the Railway, accused could not be convicted under S. 405 of the Penal Code, as he was not a trustee within the meaning of that section. *Kudrat Nath v. Emperor*.

24 Cr. L. J. 879 : 75 I. C. 79 : 6 L. L. J. 125 : A. I. R. 1923 Lah. 295.

———S. 405—Offence under.

The bare refusal by the accused to allow the removal of a box left in his house by the complainant, unless some debt due to him by the complainant was paid, did not amount to a criminal breach of trust. *In re : Adinarayana Iyer*.

6 Cr. L. J. 330 : 17 M. L. J. 413.

———S. 405—Offence under—*When complete.*

The offence of criminal breach of trust is completed by the misappropriation or conversion of the property dishonestly, i. e., with the intention of causing wrongful gain or wrongful loss. It is only the intention which is essential. Whether wrongful gain or loss actually results is immaterial ; it is a consequence but no essential part of the offence, and a person is not accused of the offence by reason of it. *In re : Rambilas*.

15 Cr. L. J. 688 : 26 I. C. 136 : 16 M. L. T. 505 : 1914 M. W. N. 894 : A. I. R. 1915 Mad. 600.

PENAL CODE ACT (XLV OF 1860)

———S. 405—Proof—*Mere failure to deliver full quantity, if sufficient to support conviction for.*

The facts proved were that 200 hides and other goods were entrusted to the 1st accused-appellant, the tindal of a cargo-boat, to be carried to a steamer. On delivery on the steamer, 22 hides were missing. There was no evidence of what became of them. The only person, who could have committed criminal breach of trust of 22 hides was the 1st accused-appellant: *Held*, that the mere failure to deliver the full quantity was not sufficient to support a conviction of him for having dishonestly misappropriated or converted to his use the missing quantity. *Ramaya v. Emperor*.

1 Cr. L. J. 908 :
10 Bur. L. R. 170.

———S. 405—Scope—*Misappropriation of sale proceeds, if offence.*

S. 405, Penal Code, does not cover misappropriation of the sale-proceeds of property entrusted to a person. A person cannot be said to have disposed of the sale-proceeds of property entrusted to him in violation of his contract dishonestly, unless it is shown that he had the intention of dishonestly appropriating the sale-proceeds at the time of the sale. *Balthosar v. Emperor*.

15 Cr. L. J. 683 :
26 I. C. 131 : 41 Cal. 844 :
19 C. W. N. 422 : A. I. R. 1914 Cal. 266.

———S. 405—Trust — *Proof of—Necessity of—Advance to brokers on pro-notes—Trust.*

A, a paddy dealer, entered into an agreement with B, the object of which was that A should supply B, with certain baskets of paddy to be bought at a particular place and to be delivered at B's mills. On the same day, B advanced A Rs. 10,000 to enable him to obtain this paddy, and it was agreed that the account should be settled by B taking over the paddy at the ruling market rate on the day of delivery. A undertook to use this sum to no other purpose than the purchase of paddy for B. Simultaneously, A executed five promissory notes for Rs. 2,000 each in favour of B bearing no interest. A was to bear the loss, if any, and was to retain the profit, if any: *Held*, that there was no entrustment of the money to A within the meaning of S. 405, Penal Code, that the effect of the transaction was to create the relationship of debtor and creditor between A and B. *Nga Po Seik v. Emperor*.

13 Cr. L. J. 888 :
17 I. C. 800 : 5 Bur. L. T. 143 :
6 L. B. R. 100.

———S. 405—Value of property, if material.

In the matter of a conviction for criminal breach of trust, the question of the value of the property in respect of which the breach of trust is committed is, except so far as S. 95 of the Code is concerned, quite immaterial. *Emperor v. Maula Bakhsh*.

1 Cr. L. J. 603 :
24 A. W. N. 153 : I. L. R. 27 All. 28.

PENAL CODE ACT (XLV OF 1860)

———S. 405—What constitutes offence.

A clerk in a record room made over a document forming part of a record in his custody to a person who was entitled to the document, but who would otherwise have had to present an application on stamped paper in order to secure its return in a manner *Held*, that the clerk was under the above circumstances, rightly convicted under S. 409 of the offence of criminal breach of trust by a public servant. *Emperor v. Ganga Prasad*.

1 Cr. L. J. 894 :
24 A. W. N. 228 : I. L. R. 27 All. 260.

———S. 405—What constitutes offence.

Buyer obtaining from seller documents of title of goods on certain terms and conditions—Buyer, dealing dishonestly with goods in violation of terms and with guilty intent, comes under S. 405. *Dorabji v. Sobhraj Chellaram*.

40 Cr. L. J. 235 :
179 I. C. 554 : 11 R. S. 138 :
1939 Kar. 283 : A. I. R. 1939 Sind 27.

———S. 405 — *What constitutes offence—Criminal breach of trust, if can be committed in respect of one's own property.*

Entrustment within the meaning of S. 405, Penal Code, does not necessarily imply actual delivery by the owner of the property to the accused and it cannot be held that a person cannot commit criminal breach of trust of his own property. *Gobindram C. Motwani v. Emperor*.

39 Cr. L. J. 509 :
174 I. C. 560 : 10 R. S. 266 :
A. I. R. 1938 Sind 73.

———S. 405 — *What constitutes offence—Nominal sale of engine by person entrusted, whether amounts to offence.*

Accused who was entrusted with an engine, executed a nominal sale-deed therefor to a third person but the engine was not removed from its place and was still available to the true owner who suffered no loss by the sale: *Held*, that on these facts a conviction of the accused for criminal breach of trust was not sustainable. *Rukmani Ammal v. Muthuswami Reddi*.

27 Cr. L. J. 331 :
92 I. C. 747 : 50 M. L. J. 94 :
24 L. W. 603.

———S. 405 — *What constitutes offence—Pledge of bond entrusted for sale, whether criminal breach of trust.*

A person to whom a bond is endorsed for the purpose of selling the same and remitting the proceeds to the endorser, commits an offence under S. 405, Penal Code, if he pledges the same with another and utilises the amount borrowed for his own purposes though the claim of the endorser is subsequently satisfied. *Ram Chand Gurwala v. Emperor*.

27 Cr. L. J. 1383 :
98 I. C. 599 : A. I. R. 1926 Lah. 385.

———S. 405 — *What constitutes offence—Pledgee of goods, sub-pledging the goods to the extent of his interest therein—If offence.*

Where a pawnee or pledgee makes a sub-

PENAL CODE ACT (XLV OF 1860)

pledge of the goods pawned to him for the same amount, i. e., to the extent of his interest in it, this raises a pure question of civil law, i. e., whether such sub-pledging to the same extent, that is to say, for the same amount as the debt for which the original pledge was made, is a wrongful act, for, if such sub-pledging was within the rights of the pledgee, any sub-pledging by him, cannot be regarded as amounting to a criminal offence, as it is obvious that what a man does within the limits of the right given to him, by the law, cannot amount to a criminal offence. As pledgee, the person has a right to sub-pledge to the extent of his interest in the pledged properties. Even if the view is not correct, still the pledgee must be deemed to have acted honestly under the mistaken belief as to the extent of his rights as a pledgee, and the sub-pledges of the pledged goods cannot be regarded as amounting to criminal breach of trust. *In re : Nemichand Parakh.*

39 Cr. L. J. 716 :
176 I. C. 391 : 1938 M. W. N. 255 :
1938, 2 M. L. J. 161 :
47 L. W. 359 : 11 R. M. 71 :
I. L. R. 1938 Mad. 639 :
A. I. R. 1938 Mad. 551.

—S. 405—*What constitutes offence—Repayment made on demand—Effect of.*

It is possible that a person may commit a breach of trust between misappropriation of money and its repayment, but when repayment is made at once on demand, the Court should be slow to assume guilt in an accused person. *Emperor v. Stewart.* 27 Cr. L. J. 1217 :
97 I. C. 1041 : A. I. R. 1927 Sind 28.

—S. 405—*What constitutes offence.*

Trust receipt containing term that buyer should pay interest on price of goods until payment—Default in payment—Trust receipt held not valid declaration of trust—Dispute held was civil and did not fall under S. 405. *Dorabji v. Sobhraj Ohellaram.*

40 Cr. L. J. 235 :
179 I. C. 554 : 11 R. S. 138 :
1939 Kar. 283 : A. I. R. 1939 Sind 27.

—S. 405.

A pleader retaining fees, the legal recovery of which is time-barred, is not guilty of criminal breach of trust. *Krishna Rao v. Emperor.* 24 Cr. L. J. 591 :

73 I. C. 335 : 6 N. L. J. 119 :
A. I. R. 1924 Nag. 47.

—Ss. 405, 406—*What constitutes offence—Money paid to another for purchase and supply of paddy—Paddy not supplied and moneys appropriated, if offence.*

A paid B Rs. 1,355 to be used by B in buying paddy and supplying it to A. B dishonestly converted the money to his own use and did not supply any paddy : Held, that B had been "entrusted" with the money within the meaning of S. 405, Penal Code, and had been

PENAL CODE ACT (XLV OF 1860)

rightly convicted of criminal breach of trust under S. 406. *Tha Po v. Emperor.*

4 Cr. L. J. 466 :
3 L. B. R. 200.

—Ss. 405, 406—*What constitutes offence—Trust for illegal purpose—Breach, whether offence.*

The trust contemplated by Ss. 405 and 406, Penal Code, need not be in furtherance of a lawful object and it will be no defence to a prosecution for an offence under S. 406 of the Penal Code to say that there was no legal contract to deliver the trust property to the complainant. A stake-holder who misappropriates to his own use the stakes deposited with him for a wager, is not absolved from criminal liability by the fact that there was no legally enforceable contract to pay the money over to the winner. *Mohadeo Koshti v. Narayan.*

28 Cr. L. J. 506 :
101 I. C. 890 : 10 N. L. J. 79 :
A. I. R. 1927 Nag. 225.

—S. 406.

See also (i) Contract Act, 1872, S. 78.
(ii) Cr. P. C., 1898, Ss. 170, 181,
181 (2), 195, 234, 252,
347, 430, 439, 517, 537,
502.

(iii) Criminal trial.

(iv) Penal Code, 1860, Ss. 62,
403.

(v) Revision.

—S. 406—*Applicability—Immovable property, if can be subject of—Breach of trust.*

Criminal breach of trust cannot be committed in respect of immovable property. *Chandan Lal v. Emperor.* 27 Cr. L. J. 760 :

95 I. C. 280 : A. I. R. 1926 Lah. 478.

—S. 406—*Applicability—Money advanced as part of contract—Breach of contract, if criminal liability of accused.*

Where a sum of money is advanced as part of a contract and not by way of trust, a dispute arising out of a breach of the contract is one of a civil nature and no criminal action lies. *Mukhlal Rai v. Emperor.*

27 Cr. L. J. 949 (b) :
96 I. C. 501.

—S. 406—*Applicability to partnership—Liability of a partner to account for partnership money.*

A partner is entitled to be called upon for an account of the expenditure of the money, which he has received, and it is open to him to spend the money received by him and to account for it in dealing with the partnership. Where it was not satisfactorily made out that this was not done, and could not be made out in the absence of a proper demand for accounts, it was held that there was no dishonest conversion, which would justify his conviction under S. 406, Penal Code. *Debi Prasad Bhagat v. Nagar Mull.*

9 Cr. L. J. 74 :
35 Cal. 1108.

—S. 406—*Charge—Illegality of charge.*

The accused was charged with committing criminal breach of trust in respect of a large

PENAL CODE ACT (XLV OF 1860)

sum of money between August 17, 1909, and August 15, 1910. There is evidence to prove that in February and May, 1911, he appropriated part of the sum to his own use, but there the evidence of the commission of such an offence before August 15, 1910, was insufficient: *Held*, that it is not enough to show that there was embezzlement at some time, before, during or after that period, that the charge being framed under the special provision contained in Cl. (2) of S. 222 of the Cr.P.C. and the proviso thereto, it is at any rate necessary to show an act or acts of embezzlement in respect of the gross sum named, or some part of it, committed within the space of one year, that this error in the charge and the discrepancy between the dates specified and the actual dates on which the offence appears to have been committed was not a mere irregularity which might be cured by the provisions of S. 537, Cr. P. C. *Promotha Nath Ray v. Emperor*. 14 Cr. L. J. 219 :

19 I. C. 315 : 17 C. W. N. 479.

—S. 406—Cognisance—Administration, whether can be proceeded against without sanction of Court—Accounts passed by Court—Administration, liability of.

Where an estate is entrusted to an Administrator by the Court in the exercise of its intestate jurisdiction, a complaint charging him with criminal breach of trust under S. 406, Penal Code, in respect of the goods entrusted to him cannot be entertained without the sanction of the Court appointing him. The mere fact that accounts have been filed in the Probate Court, or even the fact that the accounts have been passed by the Court, does not absolve the Administrator from his liability for any particular sums of money which may have been misappropriated by him and he may be sued in the ordinary way for such sums. *Krishna Lal v. Profulla Kumar*.

22 Cr. L. J. 295 :
60 I. C. 791 : 33 C. L. J. 252 :
A. I. R. 1921 Cal. 431.

—S. 406—Conviction—Benefit of doubt.

Complainant handed over a sum of money to accused, it was alleged, for the purpose of paying a certain firm on account of the price of some grain purchased by the complainant from them through accused as broker. Accused appropriated the money to himself and alleged that the sum was paid to him on account of brokerage due to him and not for payment to any firm. It was found that on the date of the payment some money was due by the complainant to the accused on account of brokerage, and it was not clearly proved on which account the money was paid to the accused: *Held*, (*Beachcroft, J.*, dissenting) that the accused must be given the benefit of the doubt, and that his conviction under S. 406, Penal Code, was bad. *Duli Chand Dalal v. Emperor*.

18 Cr. L. J. 437 :
38 I. C. 997 : A. I. R. 1918 Cal. 208.

—S. 406—Criminal breach of trust—Charge—Essentials of.

The charge which does not unfold to the person accused of criminal breach of trust,

PENAL CODE ACT (XLV OF 1860)

even approximately, the dates between which he dishonestly converted to his own use the property in question, and leaves that part of the prosecution case in obscurity by referring merely to the date on which the conversion was discovered, must necessarily seriously prejudice the accused in his defence in the trial and is, therefore, bad in law. In that sense the charge is bad for vagueness. *Baburao Tatyarao v. Emperor*.

38 Cr. L. J. 9 :
165 I. C. 867 : 9 R. B. 171 :
38 Bom. L. R. 946 :
A. I. R. 1936 Bom. 379.

—S. 406—Criminal breach of trust.

In a suit for money, attachment before judgment of certain bales of jute belonging to the defendant having been applied for, the plaintiff was appointed Receiver in respect of these bales. Subsequently on the application of the defendant the Court directed the Receiver to make over the bales to the defendant on his furnishing security for the amount claimed in the suit. The defendant after taking delivery of some of the bales, lodged a complaint against the Receiver for criminal breach of trust in respect of those bales, on the allegation that the Receiver had substituted jute of an inferior quality in the bales affixing thereon the labels of the defendant: *Held*, that as the jute in question was entrusted to the Receiver not by the defendant but by the Court, it was not open to the defendant to commence proceedings against the Receiver for criminal breach of trust without first obtaining the leave of the Court. *Santok Chand v. Sugan Chand*.

19 Cr. L. J. 820 :
46 I. C. 836 : 22 C. W. N. 910 :
28 C. L. J. 115 : A. I. R. 1919 Cal. 647.

—S. 406—Dishonesty—Failure to account for money entrusted—Dishonest misappropriation may be inferred from circumstances.

Failure to account for money entrusted to the accused for a particular purpose constitutes criminal breach of trust. Dishonest misappropriation may sometimes be inferred from the circumstances without direct evidence. *Girsham v. Mutusamy*.

11 Cr. L. J. 44 :
4 I. C. 762 : U. B. R. 1909 :
1 I. P. C. p. 21.

—S. 406—Dishonesty.

Mere retention of money does not necessarily raise a presumption of dishonest misappropriation to one's own use, but dishonest misappropriation may sometimes be inferred from the circumstances without direct evidence. *Nga Tha Zan v. Emperor*.

2 Cr. L. J. 478 :
U. B. R. 1905 I P. C. 19.

—S. 406—Disposal of property on conviction of offence under—Criminal breach of trust—Sale of goods taken on approval with condition to pay cash—Title of buyer of such goods—Cr. P. O. (Act V of 1898), Ss. 517,

PENAL CODE ACT (XLV OF 1860)

590—Contract Act (IX of 1872), S. 78—Passing of property in goods.

Where goods are taken on approval under the arrangement that property in them will pass to the person, who has taken them, only (i) when he exercises his approval and (ii) pays cash for the goods, the trust continues and the property in the goods does not pass to him until both the conditions are fulfilled. A buyer of the goods from such a person, before the property in them has passed to their seller, acquires no title to them and is not entitled, therefore, on the conviction of the latter for criminal breach of trust, to get the goods from the Court. *Kshitish Chandra v. Emperor*.

25 Cr. L. J. 1235 :
82 I. C. 163 : 51 Cal. 796 :
A. I. R. 1924 Cal. 816.

—S. 406—Duty of prosecution—Accused entitled to acquittal, when case for prosecution false.

Before an accused person can be convicted, it is necessary that the Court should be satisfied that the charge framed against him has been established. If in a case under S. 406, Penal Code, the accused is charged with being entrusted with a certain sum of money and the prosecution cannot prove how he came by the money, they do not establish one of the first essentials of the offence charged, that he was entrusted with that money and he is entitled to be acquitted. If the case of the prosecution is false on the whole, the accused is entitled to an acquittal whether his defence be true or false. *Gouri Narain Barua v. Tilvikram Chetti*.

23 Cr. L. J. 220 :
65 I. C. 1004 : 25 C. W. N. 838 :
A. I. R. 1921 Cal. 531.

—S. 406—Duty of prosecution.

The mere fact that a person accused of an offence under S. 406, Penal Code, admits the delivery of the property in dispute to him does not place on him the burden of proving that he received the property in the capacity other than that of a trustee. The prosecution must prove affirmatively that a trust had been created in respect of the property and that the accused had violated that trust. *Piran v. Emperor*.

26 Cr. L. J. 615 :
85 I. C. 839 : A. I. R. 1923 Lah. 321.

—S. 406—Entrustment.

A person who intermeddles with the estate of a deceased or does any other act which belongs to the office of executor where there is no rightful executor or administrator in existence, is made accountable by the civil law to the extent of all assets which may have come to his hands. This, however, is not upon the basis of entrustment but upon the basis that not being entrusted, he had no business to intermeddle, and he cannot be convicted for criminal breach of trust even if he did not *bono fide* believe that he was

PENAL CODE ACT (XLV OF 1860)

the real owner of the property. *Susen Behary Roy v. Emperor*. (F. B.) 32 Cr. L. J. 836 :
132 I. C. 145 : 35 C. W. N. 425 :
58 Cal. 1051 : I. R. 1931 Cal. 529 :
A. I. R. 1931 Cal. 184.

—S. 406—Evidence—Books of account—Locked up in boxes—One item of property—No evidence of dishonest dealing with books—Conviction, legality of.

Held, that as the account books, in respect of which the offence was committed forming one set of account books, were found together in two locked boxes, the keys being with the accused, they may be fairly regarded as one item of property with which the accused was dealing in one particular way ; and, therefore, the objection of the accused that the charge was bad inasmuch as there was a separate offence as regards each book, and the accused could not be tried for more than three of such offences, is untenable ; that the accused could not be said to have committed an offence under S. 406, Penal Code, as regards the books until after the date when he was called upon to produce them ; that as there was no evidence to show how he dealt with the books before that date there was no evidence of any dishonest dealing before that date, and that the accused ought to be acquitted on this charge also. *Promotha Nath Ray v. Emperor*.

14 Cr. L. J. 219 :
19 I. C. 315 : 17 C. W. N. 479.

—S. 406—Evidence.

The words of the section do not embrace the case of a man who has taken an article on hire and fails to produce it. Evidence that he acted dishonestly is essential to make him criminally liable. *Manni Lal v. Emperor*.

33 Cr. L. J. 866 :
140 I. C. 78 : 1932 A. L. J. 213 :
I. R. 1932 All. 620 : A. I. R. 1932 All. 324.

—S. 406—Ingredients of.

Entrustment to accused is a necessary element of the offence of criminal breach of trust under S. 406, Penal Code. *Yeditha Subbaya v. Emperor*.

13 Cr. L. J. 453 :
15 I. C. 85 : 1912 M. W. N. 725 :
12 M. L. T. 203 : 23 M. L. J. 722.

—S. 406—Ingredients—Moral turpitude, necessary ingredient.

When money is given to a person in business, the transaction may amount either to a loan, or to a deposit or a trust. The return of a deposit to a relation of the depositor under circumstances indicating *bona fides* and absence of moral turpitude, does not amount to criminal breach of trust though it may create a civil liability. *Hussainoli Mohamedali v. Emperor*.

30 Cr. L. J. 735 :
117 I. C. 157 : I. R. 1929 Sind 141 :
A. I. R. 1929 Sind 119.

—S. 406—Jurisdiction—Offence under—Presidency Towns Insolvency Act, S. 103—Criminal breach of trust by insolvent of property entrusted—Prosecution under Penal Code, sustainability of.

PENAL CODE ACT (XLV OF 1860)

Where goods are entrusted to an insolvent by the Official Assignee for the purpose of continuing his business, and in breach of the trust, the insolvent disposes of it to various persons, a prosecution under the Penal Code, is sustainable and the mere fact that the circumstances amount also to an offence under S. 103, Presidency Towns Insolvency Act, does not deprive the Court of its jurisdiction to try the accused for the offence under the Penal Code. *In re : William Plythe Perrett.*

28 Cr. L. J. 928 :
105 I. C. 48 : 39 M. L. T. 268 :
A. I. R. 1927 Mad. 1018.

———S. 406—Miscellaneous—Property of deceased—Heir not justified in taking forcible possession of such property.

A person who claims to be an heir to a deceased person is not justified in taking possession of the property left by him by force from the person who is actually in possession of it. *Emperor v. Ram Ditta.*

11 Cr. L. J. 364 :
6 I. C. 490 : 11 P. L. R. 1910.

———S. 406—Offence under—Agent receiving money on behalf of principal and subsequently refusing to return it, if offence.

Where an agent receives money on behalf of his principal, the money so received is the property of, and is owned by, the principal, and if such agent refuses, at the request of the person paying the money, to refund it, he is not criminally liable, and, consequently, cannot be prosecuted for the offence of criminal breach of trust, as the gist of the offence is the dishonest misappropriation of the conversion by one to his own use of the property of another which has been entrusted to him. *Ram Khelawan v. Emperor.*

20 Cr. L. J. 654 :
52 I. C. 430 : A. I. R. 1919 Pat. 570.

———S. 406—Offence under—Money advanced to accused under lawful agreement—Agreement becoming incapable of execution—Retention of money in lieu of debt due to accused, if offence.

Where a sum of money is placed in the hands of a person under a lawful agreement, which, however, becomes subsequently incapable of execution, and is retained by him afterwards against a debt due to him, he cannot be held guilty of criminal breach of trust under S. 406, Penal Code. *Puran v. Emperor.*

27 Cr. L. J. 383 :
92 I. C. 895 : A. I. R. 1926 All. 298.

———S. 406—Offence, what constitutes.

The gist of the offence of criminal breach of trust is the dishonest misappropriation, conversion or disposal of the property ; the loss to the complainant is a consequence of the breach of trust and not necessarily an integral part of it. *Abdul Salam v. Ramnawal Singh.*

21 Cr. L. J. 149 :
54 I. C. 677 : 3 U. B. R. 1919 172 :
A. I. R. 1920 U. Bur. 39.

———S. 406—Procedure—Question of trust must be fully enquired into—Whole of prosecution evidence should be recorded before discharging accused on the ground that case is of civil nature.

PENAL CODE ACT (XLV OF 1860)

In a case under S. 406, Penal Code, the question of trust must be fully inquired into. For this purpose, it is essential that the whole of prosecution evidence should be recorded. The Magistrate is not so much concerned as to whether an offence has been committed against the complainant as to whether an offence has been committed which is punishable by the law of the land. Consequently, when only a few of the prosecution witnesses have been examined, it is too premature to decline to examine any more witnesses for the prosecution, and discharge the accused on the ground that the case is of a civil nature. *Chan Elliam v. L. H. Wellington.*

41 Cr. L. J. 25 :
184 I. C. 471 (2) : 12 R. Rang. 148 :
A. I. R. 1939 Rang. 377.

———S. 406—Proof.

Complete dominion with right of user over property passed with condition of its return when demanded—Owner taking no interest in the property for years—Property pawned—Parties falling out and complaint filed by owner—Offence under S. 406 held not proved. *Ma Kaung v. Emperor.*

A. I. R. 1935 Rang. 361.

———S. 406—What constitutes offence.

A stakeholder who misappropriates to his own use the stakes deposited with him for a wager, is liable to prosecution for criminal breach of trust under S. 406, Penal Code. *Nga Te v. Emperor.*

1 Cr. L. J. 730 :
2 L. B. R. 216 : 10 Bur. L. R. 249.

———S. 406—What constitutes offence—Criminal breach of trust by servant—Trust, nature of, to be established—Transaction involving adjustment of accounts—Retention of money, whether offence.

Accused was employed as an agent by the complainant to collect on his behalf the taxes of the Union Committee. He was to receive as remuneration 10 per cent of the collections, and was to hand over the collections, less his remuneration, to his master or to pay the money into the treasury, no period being fixed for the latter purpose. It was alleged that while in charge of the collections, he failed to account for a certain sum of money collected by him. He was accordingly convicted of criminal breach of trust under S. 406, Penal Code: *Held*, that in such cases the nature of the trust should be established ; that as the accused was entitled to deduct his remuneration from the collections, and as no period was fixed for payment into the treasury, a charge of criminal breach of trust could only be maintained after an adjustment of accounts the mere fact that he retained the sums collected not being conclusive proof of criminal breach of trust, and that the conviction was, therefore, not maintainable. *Nurul Hassan v. Emperor.*

21 Cr. L. J. 509 :
56 I. C. 669 : A. I. R. 1920 Pat. 168.

———S. 406—What constitutes offence—Disposing of car in contravention of hire-purchase agreement, if offence—Merger of agreement in decree.

The accused obtained a motor car from the

PENAL CODE ACT (XLV OF 1860)

complainant on a hire-purchase agreement, stipulating that so long as the whole amount of the price was not paid, the car would remain the absolute property of the complainant and that the accused would not, in any way, dispose of it. The complainant brought a suit for the recovery of the price still remaining due under the agreement and got a decree for a certain sum with costs, but no lien on the car was declared by the Court. Soon after this decree the accused sold away the car: *Held*, that the accused in disposing of the car in contravention of the original hire-purchase agreement did not commit an offence under S. 406, I. P. C., as the original contract was merged in the decree of the Civil Court. *Cohen Alec Aran v. Sasi Bhushan Das Gupta*. 18 Cr. L. J. 728 :

40 I. C. 728 : A. I. R. 1918 Cal. 663.

—S. 406—*What constitutes offence—Proof of dishonest intention—Failure to account or giving false account, effect of—Mere retention of money, whether amounts to offence.*

It is not necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused, because under the law, even temporary retention is an offence, provided that it is dishonest. Although temporary retention of money may, in certain cases, be sufficient to constitute an offence, yet in a criminal case it is incumbent on the prosecution to prove that the retention was a dishonest one. In cases of criminal breach of trust the failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused. *Harakrishna Mahatab v. Emperor*. 31 Cr. L. J. 249 :

121 I. C. 321 : 11 P. L. T. 319 :
A. I. R. 1930 Pat. 209.

—S. 406—*What constitutes offence—Hire-purchase agreement—Transfer of article during currency of agreement, if offence.*

The purchaser of an article under a hire-purchase agreement has no title to the article other than that of a hirer with a right to become the owner if he chooses to pay the instalment, and if he transfers the article to a third person before all the instalments have been paid, his act amounts to the offence of criminal breach of trust under S. 406, Penal Code. *Cadd v. Emperor*. 24 Cr. L. J. 620 :

73 I. C. 508 : 21 A. L. J. 510 :
45 All. 588 : A. I. R. 1923 All. 598.

—S. 406—*What constitutes offence—Loan of a chattel—Borrower denying the loan, if offence.*

Per *Batty, J.*—The loan of a chattel does not constitute the borrower a person entrusted with the chattel or with dominion over it within the meaning of S. 406, Penal Code; for the borrower is not a trustee but has a beneficial interest given him in the thing lent. A false denial of a loan is not in itself misappropriation at all, and may amount to no more than an attempt to evade civil liability for the money or the chattel lent. Attempt

PENAL CODE ACT (XLV OF 1860)

to evade civil liability does not necessarily imply that the property lent has been misappropriated. The false denial of a loan is compatible with the absence of criminal misappropriation and no more constitutes that offence than possession of stolen property constitutes theft or dishonest receipt. The false denial may be evidence of an offence under S. 406 as possession of stolen property may be evidence of offences under S. 379 or 411 of the I. P. C. Per *Aston, J.*—Where the property dishonestly misappropriated had come into the accused's possession through his being entrusted with or with any dominion over it, which includes a loan of a chattel, the offence committed is criminal breach of trust. *Emperor v. Girji kom Hari*. 1 Cr. L. J. 1109 :

6 Bom. L. R. 1093.

—S. 406—*What constitutes offence—Promise to return identical gold and silver after melting—Failure, if offence.*

It would be somewhat unusual for an owner of a gold ornament to transfer out and out his right therein to a goldsmith in consideration of the latter's promise to give certain quantities of gold and silver. It is more probable that the owner of an ornament desirous of obtaining its gold would have it melted and the gold given to him; but a transaction of the first kind is easily conceivable and if the evidence in the case is consistent with a transaction of that kind, the Court should not construe it so as to make it a case of the second kind and make the transferee liable under S. 406, Penal Code, for failure to return the identical gold and silver. *Emperor v. Barnanand*. 37 Cr. L. J. 1075 :

165 I. C. 182 : 1936 A. L. J. 865 :
9 R. A. 238 (2) : A. I. R. 1936 All. 691.

—S. 406—*What constitutes offence—Pawn and loan—Loan returned—Pawnee denying existence of pawn—Conviction under S. 406, legality of.*

The complainant took a loan from the accused by pawning ornaments. When he paid the amount, accused asked him to come to him next day for the ornaments. Next day accused denied the pawn. The trial Court found against the accused on all the points: *Held*, that the findings were sufficient for conviction under S. 406. *Abinash Chandra Kumar v. Dhani Buksh Muhammad*. 38 Cr. L. J. 118 :

165 I. C. 905 : 62 C. L. J. 487 :
9 R. C. 465 : A. I. R. 1936 Cal. 673.

—S. 406—*What constitutes offence—Purchase on instalment basis—Mere non-payment of instalments, if a criminal offence.*

The complainant sold a gramophone to the accused on instalment system, but on his not paying the instalments, the complainant asked for the machine. Though it was not immediately produced, it had not been sold and was produced in Court. He was convicted under S. 406, Penal Code: *Held*, that it was a matter of civil dispute and the mere non-payment of the monthly instalments could not be con-

PENAL CODE ACT (XLV OF 1860)

sidered as a criminal offence. *Kalipada Mondal v. Kali Kinkar Chatterjee.* 38 Cr. L. J. 113 : 165 I. C. 827 : 9 R. C. 460 : A. I. R. 1936 Cal. 674.

—S. 406—*What constitutes offence.*

The complainant gave money to the accused on condition that he would purchase a motor car and sell it and return her the money with half the profits. The accused applied the money to other purposes : *Held*, that the accused was not guilty of criminal breach of trust. *William Cecil Keymer v. Emperor.* 15 Cr. L. J. 284 : 23 I. C. 492 : 12 A. L. J. 730 : A. I. R. 1914 All. 196.

—S. 406—*What constitutes offence.*

Where the alleged facts were that the accused hypothecated to the complainant by a written contract, all his claims as a contractor against Government in respect of work done and materials supplied to the Executive Engineer, and undertook regularly and without fail to convey and make over to the applicant all cheques drawn by the Executive Engineer in his favour and subsequently, in violation of the said contract, cashed two such cheques and appropriated the proceeds : *Held*, that these facts constituted Criminal Breach of Trust. *Shuduthroy Bisseshurdas v. Agama Mistry.* 8 Cr. L. J. 24 : U. B. R. Cr. 1908 Penal Code 13.

—Ss. 406, 408—*Offence under—Shroff of Battery—Effect of deficiency of Government moneys in his hands, if offence.*

A Shroff or Banker, employed by the Officer Commanding a Battery, to keep custody of, and to account for, the receipts and disbursements pertaining to the Government Funds without having any power of disposition over them or using them in his business, as banker, is a trustee as regards those funds ; and that his failure to produce cash for the entire balance due, amounts to Criminal Breach of Trust either under S. 406 or 408, I. P. C. *Hira Lal v. Emperor.* 8 Cr. L. J. 492 : 19 P. R. Cr. 1908 : 3 P. W. R. 97 Cr.

—Ss. 406, 408—*What constitutes offence—Water Works Inspector misappropriating water for use of his tenants—Water-tax realised not paid to Municipality.*

Where a Municipal Inspector, whose duty it was to supervise and check the distribution of water from the Municipal Water Works, deliberately misappropriated some water for his own use and for the use of his tenants for which he paid no tax and about which he gave no information to his employers : *Held*, that the Inspector was guilty of criminal breach of trust under S. 408, Penal Code ; (2) that if he realised some money from his tenants as water-tax but did not pay the same to the Municipality, he was guilty of an offence under S. 406, Penal Code. *Bimala Charan Roy v. Emperor.* 14 Cr. L. J. 415 : 20 I. C. 239 : 11 A. L. J. 369 : 35 All. 361.

—Ss. 406, 417—*What constitutes offence—Landlord sending for tenant—Payment of rent*

PENAL CODE ACT (XLV OF 1860)

by tenant—Illegal demand by landlord—Detention of money paid, if criminal offence.

A tenant was sent for by his landlord to whom the tenant paid Rs. 90 as rent. The landlord deducted Rs. 25 towards a subscription and refused to grant a *dakhila* or return the money until Rs. 25 more was paid : *Held*, that the landlord did not commit any criminal offence. *Kumeda Charan Ghose v. Emperor.*

13 Cr. L. J. 512 : 15 I. C. 656 : 15 C. L. J. 515.

—Ss. 406, 420—*Cheating—Deception, proof of, whether necessary—Property obtained for one purpose used for another—Offence.*

To justify a conviction under S. 420, Penal Code, deception must be proved. Where in the absence of deception a person obtains property for one purpose and uses it for another, he is guilty of an offence under S. 406, and not under S. 420 of the Code. *Raghubir Kurmi v. Emperor.* 20 Cr. L. J. 413 (a) : 51 I. C. 173 : 1 U. P. L. R. All. 69 : A. I. R. 1919 All. 309.

—Ss. 406, 420—*Ingredients.*

Accused had pledged certain promissory notes with the complainant as security for a loan. Subsequently, he dishonestly induced the complainant to hand over the promissory notes to him by pretending that he required them to collect money from his debtors with the aid of which he would pay cash to the complainant. He then disposed of the promissory notes and himself appropriated the proceeds : *Held*, that the accused was guilty of criminal breach of trust under S. 406, Penal Code, inasmuch as there was both entrustment and dishonest misappropriation. *Obiter*, that the facts disclosed the offence of cheating under S. 420 of the Penal Code. *In re : Venkata-gurunatha Sastri.* 24 Cr. L. J. 452 : 72 I. C. 612 : 17 L. W. 589 : 32 M. L. T. 234 : 1923 M. W. N. 313 : 45 M. L. J. 133 : A. I. R. 1923 Mad. 597.

—S. 407—*Jurisdiction.*

Goods entrusted at one place for delivery at another—Non-delivery of portion of goods—Charge of criminal breach of trust—No evidence as to time and place of obstruction—Magistrate at place of delivery, has jurisdiction to try the offence. *Public Prosecutor v. Pedimonu Beary.* 30 Cr. L. J. 245 : 114 I. C. 238 : 55 M. L. J. 499 : 1928 M. W. N. 791 : 28 L. W. 843 : I. R. 1929 Mad. 254 : 52 Mad. 61 : A. I. R. 1928 Mad. 1136.

—S. 407—*What constitutes offence—Criminal breach of trust by a carrier—Property given to a carrier should not have been accounted for.*

Where property is entrusted to a person as a carrier, it is necessary to show at least, in order to convict him of criminal breach of trust, that some of the property could not be accounted for by him. *Emperor v. Parabhu.*

5 Cr. L. J. 235 : 9 Bom. L. R. 229.

PENAL CODE ACT (XLV OF 1860)

—S. 408.

See also (i) Contract Act, 1872, S. 178.

(ii) Cr. P. C., 1898, Ss. 179, 181(2), 222, 240, 303 (1), 581.

(iii) Penal Code, 1860. Ss. 408, 405.

(iv) Revision.

—S. 408—Attempt of offence under.

Supply of water-proof coat to Railway servant—Condition for renewal on damage or loss—Contract of bailment—Attempt to pawn the garment—Offence under Ss. 408, 511, held committed. *Nga Aung Thein v. Emperor*.

35 Cr. L. J. 788 (b) :
148 I. C. 814 : 6 R. Rang. 253 :
A. I. R. 1934 Rang. 41.

—S. 408—Charge—Misappropriation of moneys by clerk—Charge for specific sum and on general balance of account distinguished.

The accused was a pay clerk in an office and his duties were to receive cheques from his masters to cash them, keep the proceeds with him and to pay certain bills. On 30th April, 1927, the accused had a sum of Rs. 1,04,033-5-3 in his hands. Before July 6, 1928, he accused paid off bills amounting to Rs. 1,75,281-10-0, leaving a balance of Rs. 19,051-11-3, which he misappropriated. The accused was charged with criminal breach of trust in respect of this amount : Held, (1) that the charge was of a specific nature in respect of a specific sum satisfying the requirements of S. 222, Sub-s. (2), Cr. P. C., and was not bad ; (2) that the accused was guilty of criminal breach of trust. Where a clerk or servant entrusted as such by his master with a certain sum of money to be applied in particular manner misappropriates such moneys, his misappropriation and failure to apply them as directed would amount to criminal breach of trust. *Vinayak Lakshman Bhalkhande v. Emperor*.

30 Cr. L. J. 185 :
113 I. C. 612 : 30 Bom. L. R. 1530 :
I. R. 1929 Bom. 180 : 53 Bom. 119 :
A. I. R. 1928 Bom. 557.

—S. 408—Charge—Several charges of embezzlement—Conviction for three—Withdrawal of others—Legality of.

In this case the accused was charged in respect of ten receipts, but the Judge tried three of the charges. The High Court affirmed the conviction and sentence, but directed that no further proceedings be taken in respect of the other charges. *Basiruddin Ahmed v. Emperor*.

10 Cr. L. J. 482 :
4 I. C. 48 : 9 C. L. J. 257.

—S. 408—Defence.

Charge of criminal breach of trust in respect of amounts collected as complainant's *gumasta*—Prosecution must prove actual procedure adopted by the accused—Accused setting up definite case is not bound to establish it by evidence. *Bolat Chandra Khara v. Bishnu Bejoy Srimani*.

35 Cr. L. J. 715 :
148 I. C. 559 : 38 C. W. N. 474 :
6 R. C. 467 : A. I. R. 1934 Cal. 425.

PENAL CODE ACT (XLV OF 1860)

—S. 408—Defence.

In a charge under S. 408 it is not necessary for the accused to show exactly what has become of the missing property. *Nga Ba Myat v. Emperor*.

35 Cr. L. J. 849 :
148 I. C. 1035 (2) : 6 R. Rang. 267 :
A. I. R. 1934 Rang. 42.

—S. 408—Dishonesty.

Agent collecting rent—Complainant refusing to accept rents collected unless whole sum was paid—Salary due to accused—Accused can retain collections until payment of salary—Absence of proof of dishonest intention : Held, offence under S. 408 not committed. *Roshan Lal v. Emperor*.

37 Cr. L. J. 308 :
160 I. C. 382 : 8 R. A. 611 :
1935 A. W. R. 930 :
A. I. R. 1935 All. 922.

—S. 408—Dishonesty—Duty of prosecution to prove dishonest intention—Mere retention of money is not necessarily dishonesty.

The onus of proving everything essential to the establishment of the charge against the accused lies upon the prosecution who must prove the charge substantially as laid. The gravest suspicion against the accused will not suffice to convict him of a crime, unless evidence established it beyond doubt. Mere retention of money or mere failure to return it does not necessarily raise a presumption of dishonest misappropriation. The sections dealing with the offence of criminal breach of trust were intended to punish an offence of which dishonesty is the essence, and although transactions which involve civil liabilities may amount to criminal offences, and often do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, the use of the Criminal Law, not for the purpose of punishing an offender or in the public interest, but as a means of exerting pressure to extract money from an agent, is to be discouraged. *Rangit Lal v. Emperor*.

31 Cr. L. J. 1078 :
126 I. C. 679 : 7 O. W. N. 556 :
A. I. R. 1930 Oudh 321.

—S. 408—Duty of prosecution.

In a trial for criminal breach of trust in respect of money, although under S. 222 (2), Cr. P. C., the accused may be charged in respect of the gross sum received by him, without specifying any particular item of any particular date in respect of the constituent parts of the gross sum, nevertheless, the prosecution must decide what amount they are prepared to prove the accused lawfully received and lawfully expended and what total sum, and how that total sum is made up, he has either unlawfully expended or failed to account for in such a way as to leave no doubt that he has been engaged in criminal misappropriation. And, in order to convict, there must be a definite finding of a certain definite sum traced to the accused, and clearly shown to have been wilfully and unlawfully

PENAL CODE ACT (XLV OF 1860)

appropriated to his own use. *Mohan Singh v. Emperor*. 22 Cr. L. J. 84 :

59 I. C. 372 : 18 A. L. J. 633 :
2 U. P. L. R. All. 360 : 42 All. 522 :
A. I. R. 1920 All. 274.

----- S. 408—Entrustment.

When a person accepts a salary for the purpose of collecting money and accounting for the same and giving receipts to the payers, he accepts an express trust. *Basiruddin Ahmed v. Emperor*. 10 Cr. Cr. L. J. 482 :
4 I. C. 48 : 9 C. L. J. 257.

----- S. 408—Ingredients.

The distinction between a civil wrong, which gives rise to a suit for damages for that wrongful act or tort, and a criminal offence punishable under the Penal Code, is very clear. Every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust under Ss. 408 and 409 of the Penal Code. It is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort, from the offence of criminal breach of trust punishable under S. 408, Penal Code. This malicious intent on the part of a servant to deprive his master of sums of money due to the latter and the fraudulent misappropriation as evidenced by such mental act or intent to deprive the master of his property without any outward or visible trespass is the fundamental distinction between a civil wrong arising out of a breach of trust and the offence of criminal breach of trust. *Kanhaiya Lall v. Emperor*. 38 Cr. L. J. 491 :
168 I. C. 58 : 9 R. O. 432 :
1937 O. W. N. 505 : 1937 O. L. R. 202 :
A. I. R. 1937 Oudh 331.

----- S. 408—Interpretation — Cheque, if property.

A cheque is property within the meaning of S. 408, Penal Code. *S. F. Rich v. Emperor*. 31 Cr. L. J. 865 :
125 I. C. 589 : 1930 A. L. J. 849 :
A. I. R. 1930 All. 449.

----- S. 408—Interpretation — Partner not contributing any money for business, if servant or clerk.

A working partner who has not contributed anything towards partnership business, is a 'servant' or 'clerk' within S. 408 and can be held guilty of criminal misappropriation or breach of trust. *Bhikchand Gangaram v. Emperor*. 36 Cr. L. J. 818 :
155 I. C. 439 : 28 S. L. R. 84 :
7 R. S. 191 : A. I. R. 1934 Sind 22.

----- S. 408—Interpretation—Servant—Who is.

A person who works for a firm in making purchases and is remunerated for his services by a commission on purchases made by him

PENAL CODE ACT (XLV OF 1860)

is for the purpose of S. 408, Penal Code, a servant of the firm. *Pyo Gyi v. Emperor*. 20 Cr. L. J. 513 :

51 I. C. 673 : 12 Bur. L. T. 58 :
10 L. B. R. 31 : A. I. R. 1919 L. B. 60.

----- S. 408—Intention.

Employee furnishing security—At time of leaving service, withdrawing the amount : *Held*, there was no dishonest intention. *Abdul Majid Mian v. Emperor*. 38 Cr. L. J. 56 :
165 I. C. 720 : 9 R. C. 456 (1) :
A. I. R. 1936 Cal. 520.

----- S. 408—Intention—Intention to deprive owner of property.

In order to constitute the offence of criminal breach of trust, it is not necessary that the accused should have disposed of the property to a third person. His first possession of the property being lawful, the offence consists in a mental act or intent to deprive the owner of his property, without any outward or visible trespass. *Emperor v. Dina*. 26 Cr. L. J. 1149 :
88 I. C. 461 : 2 Lah. Cas. 12 :
6 Lah. 257 : A. I. R. 1925 Lah. 411.

----- S. 408—Jurisdiction.

Complaint for criminal misappropriation—No allegation as to place where money was misappropriated—Case founded on allegation as to absence of accounting—Court at place where account is to be rendered has jurisdiction to entertain the complaint. *Prakash Chandra Sirkar v. Mohini Chandra Halder*. 35 Cr. L. J. 734 :
148 I. C. 736 : 6 R. C. 478 :
A. I. R. 1934 Cal. 392.

----- S. 408—Miscellaneous — Civil wrong and criminal offence, distinguished.

Every offence of criminal breach of trust involves a civil wrong in respect of which the complainant may seek his redress for damages in the Civil Court but every breach of trust, in the absence of *mens rea* cannot legally justify a criminal prosecution. *Kanhaiya Lall v. Emperor*. 38 Cr. L. J. 491 :
168 I. C. 58 : 9 R. O. 432 :
1937 O. W. N. 505 : 1937 O. L. R. 202 :
A. I. R. 1937 Oudh 331.

----- S. 408—Miscellaneous.

Cr. P. C. S. 170, has no application to offences committed under S. 408, Penal Code. *Ali Mohommad Kassim v. Emperor*. 32 Cr. L. J. 1120 :
134 I. C. 209 : I. R. 1931 Rang. 273 :
9 Rang. 338 : A. I. R. 1931 Rang. 164.

----- S. 408—Miscellaneous.

Where there is a contract of employment under certain terms for a particular year, and the employment continues even after the expiry of that year, the ordinary presumption is that the same conditions also continue : *Held*, on facts, that there was no criminal misappropriation and any liability on that account would be a civil liability but would not give rise to a

PENAL CODE ACT (XLV OF 1860)

criminal prosecution for misappropriation.
Sheocharanlal v. Emperor. 37 Cr. L. J. 856 :
 163 I. C. 657 : 18 N. L. J. 345 : 9 R. N. 13.

—S. 408—Offence under—Temporary loss,
 if material.

The offence under S. 408, Penal Code, is committed even where the act of the accused was to cause wrongful loss to the complainant for a time only. *Emperor v. Tulsidas.*

5 Cr. L. J. 5 :
 8 Bom. L. R. 951.

—S. 408—Procedure.

Complaint under S. 408—Production of receipts by accused—Trial Court finding them not to be genuine—Appellate Court merely recording order of acquittal on order sheet—No regular judgment—Procedure deprecated—Right method indicated. *Gena Lal v. Turantil Chaudhury.*

36 Cr. L. J. 1375 :
 158 I. C. 332 : 1 B. R. 878 : 8 R. P. 192 :
 A. I. R. 1935 Pat. 495.

—S. 408—Revision—Conviction under—Interference by High Court—When proper.

Ordinarily the High Court will not interfere in revision with the concurrent findings of fact of the two lower Courts, but interference is proper where in a case under S. 408, Penal Code, it appears to the High Court that the prosecution of the accused has been misconceived and there is really no legal and satisfactory evidence to convince the Court that the accused at the time when he is said to have misappropriated certain sums of money had guilty knowledge or *mens rea* so as to convert what at best amounted to a civil wrong or tort into a penal offence amounting to criminal breach of trust by a servant. *Kanhaiya Lal v. Emperor.*

38 Cr. L. J. 491 :
 168 I. C. 58 : 9 R. O. 432 :
 1937 O. W. N. 505 : 1937 O. L. R. 202 :
 A. I. R. 1937 Oudh 331.

—S. 408—Scope—Property entrusted for sale—Owner whether can recover property from transferee through Criminal Court.

Where one person entrusts goods to another to be disposed of for money, the position of the latter is that of a factor or agent, and the former is not entitled to the assistance of a Criminal Court in recovering the goods from a person to whom they have been disposed of. *Singer Sewing Machine Co. v. Yen Kun.*

25 Cr. L. J. 675 :
 81 I. C. 163 : A. I. R. 1923 Rang. 68.

—S. 408—Sentence.

Embezzlement of various items—Sessions Judge examining evidence in respect of each item which went to make up total amount of sums embezzled as entered in charge sheet : *Held*, accused not prejudiced—Sentence—Accused as much sinned against as sinning—*Held*, sentence, should be reduced. *Krishna Priya Saran v. Emperor.*

37 Cr. L. J. 941 :
 164 I. C. 302 : 1936 O. W. N. 607 :
 1936 O. L. R. 444 : 9 R. O. 60 :
 A. I. R. 1936 Oudh 376.

PENAL CODE ACT (XLV OF 1860)

—S. 408—Sentence.

The accused who was found guilty under S. 408, Penal Code, and was sentenced to one year's rigorous imprisonment, was a young man of 18. He had previously borne a good character as testified to by his two former masters. He was getting a miserable pay of Rs. 22 per mensem for the responsible work that was entrusted to him. There was unpardonable slackness on the part of the manager in not even seeing whether the daily totals were correct or not. Had the manager checked the total of the very first day, he would have discovered the mistake of Rs. 100 either intentional or inadvertent. Thus the accused was, so to say, encouraged in his fraud by the laxity of the virtual master. He had also been in jail for some time as an under-trial prisoner : *Held*, that in the circumstances, the sentence should be reduced to one already undergone. *Sirumal Ranichand v. Emperor.*

39 Cr. L. J. 6 :
 171 I. C. 708 : 10 R. S. 123 :
 A. I. R. 1937 Sind 242.

—S. 408—What constitutes offence—Agreement between employer and servant—Arbitration provision as to—Criminal prosecution—Propriety of.

Where by the agreement between the accused and his employer, the former was to furnish a surety in Rs. 500 and any sum embezzled by the applicant or the value of any property removed by him would be recovered from the surety in case such money could not be realised from him; the clause shows that he understood that if by any chance he was suspected by his master of having embezzled any money or his accounts were held to be wrongly prepared, then the matter would be referred to the arbitration or arbitrators selected in the manner laid down in the agreement and the amount of money found to have been misappropriated recovered from his surety, and the agreement did not contemplate his being criminally prosecuted for failure to show in the account books any sum realised by him. *Kanhaiya Lal v. Emperor.*

38 Cr. L. J. 491 :
 168 I. C. 58 : 9 R. O. 432 :
 1937 O. W. N. 505 : 1937 O. L. R. 202 :
 A. I. R. 1937 Oudh 331.

—S. 408—What constitutes offence.

Clerk entrusted with money to be disposed of in certain way—Disobedience of instructions—No evidence of misappropriation—Conviction under S. 408 is not legal. *Sukhdeo Narain v. Emperor.*

30 Cr. L. J. 812 :
 117 I. C. 632 : I. R. 1929 Pat. 440 :
 A. I. R. 1929 Pat. 506.

—S. 408—What constitutes offence.

Clerk making false entries in cash book and paying into Bank lesser sums than received, later absconding and using false

PENAL CODE ACT (XLV OF 1860)

name—Offence under S. 408 is committed.
Emperor v. Sri Kishan. 37 Cr. L. J. 135 :
 159 I. C. 621 : 1935 A. L. J. 1019 :
 1935 A. W. R. 988 : 8 R. A. 482 :
 A. I. R. 1935 All. 970.

———S. 408—*What constitutes offence—Criminal breach of trust by servant—Various sums of money received by servant from master at various times by false representations and not accounted for.*

The accused, as the servant of a firm, obtained various sums of money from the manager of the firm at various times by false representations that they were required for paying coolies but could not account for them afterwards: *Held*, that the accused was guilty of criminal breach of trust as a servant. *In re: Theophilus Ramappa.*

13 Cr. L. J. 15 :
 13 I. C. 108 : 22 M. L. J. 112 :
 10 M. L. T. 517.

———S. 408—*What constitutes offence—Jewellery entrusted for sale—Jewellery pledged—Pawnee, whether can be ordered to return jewellery.*

A Criminal Court ought not to usurp the functions of a Civil Court and assist a complainant in recovering goods, which were made over to the accused to dispose of, from the person to whom they were disposed of, merely because the accused did not dispose of them in accordance with the instructions given to him. The complainant entrusted the accused with certain jewellery for sale. The accused, however, pledged them to a money-lender. The Magistrate convicted the accused for criminal breach of trust and ordered the return of jewellery to the complainant: *Held*, that as possession of the jewellery was not obtained wrongfully by the accused, the Magistrate was not justified in ordering the return of the jewellery to the complainant in the absence of bad faith on the part of the pawnee. *Annamalai Chetty v. Mrs. Basch.*

23 Cr. L. J. 216 :
 65 I. C. 1000 : 11 L. B. R. 217 :
 A. I. R. 1922 L. B. 17.

———S. 408—*What constitutes offence—Marksman engaged by station master whether servant of Railway Company—Overcharge retained by marksman, if offence.*

Accused was engaged by a station master to mark and load goods delivered to the Railway Company for despatch and was paid out of an allowance granted by the Company to the station master. The latter also entrusted the accused with the writing up of the cash register. The accused recovered a certain sum as an overcharge from a consignor of goods and converted it to his own use. He was thereupon tried and convicted of an offence under S. 408, Penal Code: *Held*, that the accused, not being a clerk or servant of the Railway Company, could not be convicted of an offence under S. 408, Penal Code, in respect of the sum

PENAL CODE ACT (XLV OF 1860)

received by him. *Karim-ud-Din v. Emperor.*

19 Cr. L. J. 967 :
 47 I. C. 867 : 16 A. L. J. 596 :
 40 All. 565 : A. I. R. 1918 All. 399.

———S. 408—*What constitutes offence—Property entrusted to servant—Failure to account—Presumption—Criminal misappropriation, if offence.*

Where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such servant fails to return the property or to account for it, or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. In such cases the Courts are entitled to draw hostile inferences and presumptions from the action and statements of the servant. *Sona Meah v. Emperor.*

26 Cr. L. J. 267 :
 84 I. C. 331 : 2 Rang. 476 :
 A. I. R. 1925 Rang. 47.

———S. 408—*What constitutes offence—Retention of money entrusted to servant, if offence—Proof.*

The retention of money by a servant or clerk for fifteen months after its receipt raises a very serious doubt of *bona fides* against him, but the mere retention is not conclusive proof of criminal misappropriation or criminal breach of trust. *Mathura Prasad v. Emperor.*

18 Cr. L. J. 655 :
 40 I. C. 803 : 15 A. L. J. 517 :
 A. I. R. 1917 All. 273.

———S. 408—*What constitutes offence.*

The accused was employed by a firm to purchase paddy and was entrusted with a large sum of money for the purpose, and his remuneration was a fixed commission on the paddy purchased by him. Instead of purchasing the paddy the accused diverted the greater portion of the money to his own use. He was tried and convicted of cheating and dishonestly inducing the firm to deliver him the money, under S. 420, Penal Code, and of criminal breach of trust as a servant, under S. 408, in respect of the same sum of money. The accused's case was that he was a trader and not merely a buyer for the firm, and that the money was advanced to him by way of a loan for a specific purpose: *Held*, that the accused acted as the agent of the firm on whose behalf he held the money and the property in it did not vest in him; that it was not a loan to him but a trust; that he had been rightly convicted under S. 408, Penal Code, but that the conviction for cheating with respect to the same sum for money could not be maintained. *Pyo Gyi v. Emperor.*

20 Cr. L. J. 513 :
 51 I. C. 673 : 12 Bur. L. T. 58 :
 10 L. B. R. 31 : A. I. R. 1919 L. Bur. 60.

PENAL CODE ACT (XLV OF 1860)

———Ss. 408, 409, 477-A—*Scope and object.*

Public exposure of mal practices in connection with banking concerns and punishment of delinquents should be the first concern of the State. *Ram Chandra Rango Sowkar v. Emperor.*

40 Cr. L. J. 579 :

181 I. C. 870 : 11 R. B. 356 :

41 Bom. L. R. 98 : A. I. R. 1939 Bom. 129.

———Ss. 408, 467, 477-A—*What constitutes offence.*

Supervision of society misappropriating money—Getting affixed to debit entry false thumb impression—Making false debit entry—*Held*, offences under Ss. 408, 467 and 477-A committed. *Keshavrao Bhicaji Patil v. Emperor.*

36 Cr. L. J. 522 :

154 I. C. 559 : 36 Bom. L. R. 1120 :

7 R. B. 340 : A. I. R. 1935 Bom. 30.

———S. 409.

See also (i) Companies Act, 1913, S. 214.

(ii) Conviction.

(iii) Cr. P. C., 1898, Ss. 17, 179, 181 (2), 197, 215, 222 (2), 234, 235 (1), 476, 497, 562.

(iv) Government of India Act, 1935, S. 270 (1).

(v) Penal Code, 1860, Ss. 24, 120-B, 379, 424.

———S. 409—*Applicability to partnership*
—*Partner can be guilty of criminal breach of trust.*

Per Din Mohammad, J.—A partner can be held guilty of criminal breach of trust if the circumstances brought on the record favour that conclusion. *Sham Lal v. Chaman Lal.*

40 Cr. L. J. 942 :

184 I. C. 358 : 41 P. L. R. 1 and 37.

12 R. L. 212 : A. I. R. 1939 Lah. 406.

———S. 409—*Charge—Form of charge.*

In a charge of criminal misappropriation there were three counts. Each count specified the sum of money alleged to have been misappropriated by the accused on a particular day; but in two out of the three cases, the total sum consisted of three separate items in each instance: *Held*, that a charge so framed did not offend against S. 234, Cr. P. C. *Emperor v. Ishtiaq Ahmad.*

1 Cr. L. J. 637 :

24 A. W. N. 165 : I. L. R. 27 All. 69.

———S. 409—*Charge—Inclusion of various items in one charge, legality of.*

Held, (1) S. 409, I. P. C., does not require the property in respect of criminal breach of trust is committed, to be the property of Government, but only requires that it shall be entrusted to a public servant in his capacity as such public servant; (2) The inclusion of various items, in respect of which the criminal breach of trust was alleged to have been committed, in one charge does not vitiate the trial, as such a procedure is in accordance with the provisions of S. 222, Cl. 2, Cr. P. C. *Emperor v. Ali Bux.*

8 Cr. L. J. 160 :

1 S. L. R. 38.

PENAL CODE ACT (XLV OF 1860)

———S. 409—*Cognisance* — *Commission received by Municipal President—Sanction for prosecution, whether necessary.*

Where a President of a Municipal Committee receives, on goods ordered by the Municipality, a brokerage commission or discount, and the money is paid to him for his personal use and not for the benefit of the Municipality, there is no trust and the President is not guilty of an offence under S. 409, Penal Code, if he keeps the money to himself. Further, the act being done by the President as a public servant under the Municipal Act, he cannot be prosecuted without the sanction of the Government under S. 197, Cr. P. C. *Emperor v. U Maung Gale.*

27 Cr. L. J. 1088 :

97 I. C. 64 : 4 Rang. 128 :

A. I. R. 1926 Rang. 171.

———S. 409—*Criminal misappropriation*
—*Onus of proof on prosecution.*

In case of criminal misappropriation, the onus lies on the prosecution to prove not only that money was paid to the accused in trust, but also that he did not apply it for the purpose for which it was given. *Pritchard v. Emperor.*

30 Cr. L. J. 18 :

112 I. C. 850 : I. R. 1929 Lah. 97.

A. I. R. 1928 Lah. 382.

———S. 409—*Defence.*

Accused charged with embezzlement of particular sum—Defence that prosecution failed to prove it, though they might have proved other embezzlements—Defence cannot hold good—Criminal trial. *Gurbaksh Singh v. Emperor.*

37 Cr. L. J. 581 :

162 I. C. 391 : 8 R. L. 900 :

A. I. R. 1936 Lah. 907.

———S. 409—*Dishonesty* — *Conversion to one's own use should be presumed from non-payment for a long time.*

It was proved by as good evidence as could have been produced that accused received the three sums in question and, as up to the time of his prosecution more than a year later, he had not paid them over to the persons authorised to receive them, he must be presumed to have converted them to his own use. *Emperor v. Ahmad Shah.*

A. I. R. 1923 Lah. 566.

———S. 409—*Dishonesty—Criminal breach of trust by public servant—Collection of large sum by Court Amin and non-payment into Court—Dishonesty—Offence.*

Where an officer of Court collects a considerable sum of money but does not pay it into Court till after the lapse of several months, it is a fair presumption to make that he had misappropriated the amount unless he can explain his action. *In re : Dewa-sikhamani Asari.*

27 Cr. L. J. 863 :

96 I. C. 913 : 23 L. W. 718 :

A. I. R. 1926 Mad. 727.

———S. 409—*Dishonesty.*

Except in exceptional circumstances, which themselves indicate the dishonest intention

PENAL CODE ACT (XLV OF 1860)

of the accused, mere non-production of money which is rightfully in the hands of the accused, will not amount to the crime of misappropriation. There must be something to prove dishonesty. Such dishonesty, of course, may be inferred from the surrounding circumstances, and the terms upon which the accused had the money on his possession. *Manmatha Nath Sirkar v. Union Board of Dhatrigram.*

37 Cr. L. J. 904 :
164 I. C. 270 : 40 C. W. N. 128 :
9 R. C. 187.

—S. 409—*Dishonesty—Irregular drawing of public funds by public servant—Dishonest intention, absence of—Offence.*

The President of a Taluk Board drew out certain money from Taluk Board Funds, due in respect of certain works that were being carried on, on contingent bills with the object of preventing the money from lapsing at the end of the financial year. It was, however, against the Local Fund Rules to draw money on contingent bills before the work was actually completed and without a contract certificate bill after the work was checked, measured and passed. But the moneys though drawn out prematurely were ultimately used for the purpose for which they were drawn: *Held*, that these facts did not import any dishonest or criminal intention and that the President could not be convicted of the offence of criminal breach of trust. *In re: Biswanath Das.*

28 Cr. L. J. 285 :
100 I. C. 365 : A. I. R. 1927 Mad. 533.

—S. 409—*Dishonesty—Mere retention of moneys by head of office whether amounts to criminal breach of trust—Dishonest intention, necessity of.*

S. 403, Penal Code, cannot properly be construed as involving that any head of an office, who is negligent in seeing that the rules about remitting money to the treasury are observed, is *ipso facto* guilty of the offence of criminal breach of trust. Something more than that is required to bring home the dishonest intention which is one of the essentials for a conviction under S. 409 of the Code. The mere fact of moneys being retained by the head of an office, for an excessive time in the office without remitting the same to the treasury is not of itself sufficient to prove a dishonest intention. *Lala Raoji Mahale v. Emperor.*

29 Cr. L. J. 922 :
111 I. C. 730 : 30 Bom. L. R. 624 :
A. I. R. 1928 Bom. 205.

—S. 409—*Dishonesty.*

The fact that money entrusted to be used for a particular purpose, was not used for such purpose, that there was retention for a sufficiently long time, would justify the inference that the accused did not intend to pay. *Akshoy Chandra Bose v. Emperor.*

35 Cr. L. J. 1279 :
151 I. C. 22 : 38 C. W. N. 467 :
59 C. L. J. 306 : 7 R. C. 89 :
A. I. R. 1934 Cal. 532.

PENAL CODE ACT (XLV OF 1860)

—S. 409—Duty of prosecution.

In a case of criminal misappropriation, the prosecution has to prove dishonest misappropriation by the accused. The view, that once the prosecution has proved that the accused had received the money, the onus of proof is shifted to the accused, is erroneous. *Robert Stuart Wauchope v. Emperor.*

35 Cr. L. J. 156 :
146 I. C. 767 : 58 C. L. J. 405 :
38 C. W. N. 187 : 6 R. C. 257 :
A. I. R. 1933 Cal. 800.

—S. 409—Duty of prosecution—Mode of misappropriation of money, prosecution not bound to prove.

A peon was charged with misappropriation of money. The prosecution proved that he had not returned the money when it was his duty to return it: *Held*, that the prosecution had proved its case; and it lay on the accused to prove his defence. The prosecution is not bound to prove the actual mode of misappropriation of the money. *Emperor v. Kadir Bakhsh.*

11 Cr. L. J. 699 :
6 I. C. 687 : 3 A. L. J. 78.

—S. 409—Entrustment.

Accused, accountant of Municipality, putting up cheques drawn to self for Chairman's consent persuading Chairman, who was ignorant of English, that they were for contractors and drawing money and misappropriating it. Conviction under S. 409 is bad as accused was not entrusted with any funds. *P. K. Subramania Ayyar v. Emperor.*

32 Cr. L. J. 756 :
131 I. C. 461 (1) : 1931 M. W. N. 399 :
I. R. 1931 Mad. 525 :
A. I. R. 1931 Mad. 439.

—S. 409—Granting bail to accused under.

Under S. 407, Cr. P. C., a Magistrate has no power to grant bail in cases falling under S. 409. *Maung Ba Maung v. Emperor.*

32 Cr. L. J. 148 :
128 I. C. 577 : I. R. 1931 Rang. 33 :
A. I. R. 1930 Rang. 335.

—S. 409—Ingredients.

It is not necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused, because under the law even temporary retention is an offence provided that it is dishonest; but the essential thing to be proved in case of criminal breach of trust is whether the accused was actuated by dishonest intentions or not. As the question of intention is not a matter of direct proof, the Courts have from time to time laid down certain broad tests which would generally afford useful guidance in deciding whether in a particular case the accused had *mens rea* for the crime. So in cases of criminal breach of trust the failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the ac-

PENAL CODE ACT (XLV OF 1860)

cused. The mental act or intent to deprive the master of his property is the gist of the offence. S. 409, Penal Code, does not require that he should be still an agent at the time of committing the breach of trust. The gist of the offence being the mental act of the accused, it is beyond the power of any other person to give direct proof of the act or of its date; the prosecutor in asking the Court to frame a charge is entitled to refer to the date of the overt act by which that intention is manifested and put into effect, and on which he relies as proof of the misappropriation. *Emperor v. Chaturbhuj Narain Chaudhury*.

37 Cr. L. J. 877 :
164 I. C. 74 : 15 Pat. 108 :
17 P. L. T. 302 : 2 B. R. 696 :
9 R. P. 77 : A. I. R. 1936 Pat. 350.

S. 409—Ingredients.

Where it is proved that the accused a Tax Daroga and cashier of a Municipality, received certain amounts and that he has failed to account for them, an offence under S. 409, Penal Code, is established. Where the prosecution succeeds, in proving the receipt by such person of certain amounts, it is for him then to show that he had not converted them to his own use. Where an amount composed of different sums payable in respect of four different holdings was realised at one and the same time and only one receipt was given for the whole amount, a single charge regarding the whole amount does not contravene the provisions of S. 284, Cr. P. C. *Harendra Kumar Ghose v. Emperor*.

28 Cr. L. J. 469 :
101 I. C. 597 : 45 C. L. J. 207 :
A. I. R. 1927 Cal. 409.

S. 409—Intention—Agent withdrawing principal's money—Failure to account—Proof of intention to misappropriate, necessity of.

To convict an agent who has withdrawn moneys belonging to the principal, of criminal breach of trust under S. 409, Penal Code, there must be proof of an intention to misappropriate. The mere fact that the agent was recalcitrant and that there is good ground for suspicion that he was not altogether honest is not enough. *Kapildeo Narain v. Emperor*.

31 Cr. L. J. 852 :
125 I. C. 513 : A. I. R. 1930 Pat. 221.

S. 409—Intention—Proof of.

The criminal intention necessary to be proved in order to sustain a conviction under S. 409, Penal Code, is a matter of inference from the facts proved. *Bishambhar Nath Bajpai v. Emperor*.

26 Cr. L. J. 1042 :
87 I. C. 962 : A. I. R. 1925 Oudh 676.

S. 409—Interpretation—'Conversion', meaning of.

A conversion does not cease to be a conversion because no cash has passed. *Mangal Sen v. Emperor*.

30 Cr. L. J. 954 :
118 I. C. 650 : I. R. 1929 Lah. 810 :
A. I. R. 1930 Lah. 57.

PENAL CODE ACT (XLV OF 1860)

S. 409—Jurisdiction—Breach of trust by manager of branch of firm—Complaint at place where Head Office is situated—Jurisdiction.

An agent whose duty it is to have certain funds or accounts delivered at a certain place, commits the offence at that place, if he fraudulently misappropriates the funds having omitted to remit them and to account for them. To hold that the principal must by some means ascertain the place where the agent actually made use of his money is unreasonable. Per *Wild, J. C.*—The word "consequence" in S. 179 of the Criminal Procedure Code is not restricted to meaning a consequence which is a necessary ingredient of an offence under S. 409, Penal Code, and ought to have its usual meaning. Therefore the fact that wrongful loss consequent on a breach of trust was caused at a particular place, gives the Court having jurisdiction over that place, jurisdiction to try the offence of breach of trust. *Gobindram Jashanmal v. Emperor*.

29 Cr. L. J. 1033 :
112 I. C. 361 : A. I. R. 1928 Sind 166.

S. 409—Jurisdiction—Court competent to try offence—Jurisdiction of Court.

The complainant who resided at Lyallpur appointed the accused his agent for sale of certain commodities at Najibabad and sent him goods in pursuance of that contract. The accused in contravention of the agreement as to the manner of selling the goods, sold the goods and misappropriated the sale-proceeds. The complainant lodged a complaint under S. 409, Penal Code, at Lyallpur: Held, that Lyallpur Court had no jurisdiction and the Court competent to entertain the complaint was that of Najibabad. *Durga Parshad v. Banwari Lal*.

29 Cr. L. J. 453 :
108 I. C. 901.

S. 409—Jurisdiction—Jurisdiction to try—Offence committed outside jurisdiction—Wrongful loss caused within jurisdiction.

A person is not accused of the offence of criminal breach of trust by reason of his having actually caused wrongful loss to anybody; it is enough that he intended to do so, even if no wrongful loss ever was in fact caused. Such loss is the usual consequence of the offence, but it is not one of the consequences by reason of which the person is accused of the commission of the offence. It is, therefore, not one of the consequences contemplated by S. 179 of the Cr. P. C., and a Court has no jurisdiction to try a person for criminal breach of trust merely by reason of the fact that wrongful loss was caused to another person as the consequence of the criminal breach of trust within the local limits of the jurisdiction of the Court. *Banerji v. Potnis*.

25 Cr. L. J. 922 :
81 I. C. 538 : 20 N. L. R. 72 :
A. I. R. 1924 Nag. 253.

S. 409—Jurisdiction—Offence under is not triable by Second Class Magistrate.

The offence under S. 409 of the Penal Code is not triable by the Magistrate of the Second

PENAL CODE ACT (XLV OF 1860)

Class and the alteration of the conviction to one under S. 409 read with S. 100 of the Penal Code is illegal. *Ponnuswami Servai v. Emperor*.

39 Cr. L. J. 465 :
174 I. C. 776 : 1938 M. W. N. 223 :
10 R. M. 742 : A. I. R. 1938 Mad. 315.

—S. 409—Offence under, when complete.

The offence of breach of trust is complete when there is dishonest misappropriation or conversion to one's own use, or when there is dishonest user in violation of a direction, express or implied, relating to the mode in which the trust is to be discharged. *Akshoy Chandra Bose v. Emperor*.

35 Cr. L. J. 1279 :
151 I. C. 22 : 38 C. W. N. 467 :
59 C. L. J. 306 : 7 R. C. 89 :
A. I. R. 1934 Cal. 532.

—S. 409—Principal and agent—Liability under.

It is quite possible that an agent might make himself responsible for loss or damage to goods belonging to his principal. There is nothing in law which would prevent an agent undertaking to be an insurer of goods consigned to his care provided that there is consideration for that insurance and this consideration would have to be something outside the terms of the employment at the ordinary rate. A manager of a firm cannot be held criminally liable under S. 409, Penal Code, where there is no personal entrustment of goods to him but to the firm in respect of which the offence is said to have been committed. *S. O. Guha v. Emperor*.

32 Cr. L. J. 149 :
128 I. C. 578 : I. R. 1931 Rang. 34 :
A. I. R. 1930 Rang. 332 (2).

—S. 409—Procedure.

Prosecution proving receipt of money and entrustment—Prosecution need not prove mode of misappropriation—Accused must prove his defence. *Akshoy Chandra Bose v. Emperor*.

35 Cr. L. J. 1279 :
151 I. C. 22 : 38 C. W. N. 467 :
59 C. L. J. 306 : 7 R. C. 89 :
A. I. R. 1934 Cal. 532.

—S. 409—Procedure.

Separate breaches of trust and falsifications of accounts on different dates—Joint trial is illegal. *Lakshminarain Apuram v. Emperor*.

13 Cr. L. J. 21 :
13 I. C. 213 : 1911 M. W. N. 536.

—S. 409—Procedure.

Trial for embezzlement of deposits, of Secretary and Assistant Secretary of Bank—Offences alleged of conspiracy to commit breach of trust and also specific charges with regard to definite sums of money—Splitting of case at trial into four separate trials—Passing of separate sentences in two cases held improper. *Jagadish Prosad Basu v. Emperor*.

40 Cr. L. J. 90 :
178 I. C. 576 : 43 C. W. N. 23 :
11 R. C. 382 : A. I. R. 1938 Cal. 697.

—S. 409—Proof—Mere delay in paying, no evidence of misappropriation.

PENAL CODE ACT (XLV OF 1860)

Mere delay in payment of money entrusted to a person when there is no particular obligation to pay it at a certain date, does not amount to, and does not furnish by itself a sufficient proof, of misappropriation. Therefore, the mere fact that a Village Munsif did not pay into the treasury the very next day, an amount received by him as an instalment of an agricultural loan, is legally insufficient, by itself to convict him for criminal breach of trust. *Munusami Nainar v. Emperor*.

31 Cr. L. J. 1198 :
127 I. C. 238 : 58 M. L. J. 649 :
31 L. W. 837 : 1930 M. W. N. 530 :
A. I. R. 1930 Mad. 507.

—S. 409—Sentence.

Clerk of many years' service and in a position of trust embezzling large sums of money—Sentence of five years' rigorous imprisonment, is not too severe. *Anwar Ullah v. Emperor*.

35 Cr. L. J. 617 :
148 I. C. 218 : 6 R. A. 653 :
1933 A. L. J. 1628 :
A. I. R. 1934 All. 173.

—S. 409—Sentence—Criminal breach of trust concerning public moneys—Sentence.

An offence of criminal breach of trust by a person in charge of public moneys is one of a specially serious nature and calls for a severe sentence. *Parma Nand v. Emperor*.

29 Cr. L. J. 1 :
106 I. C. 337.

—S. 409—Venue of trial.

A, a commission agent doing business at Bombay, received from B, at Ahmednagar a consignment of cotton for sale at Bombay. The cotton was sold, but A failed to remit the sale-proceeds to B at Ahmednagar, whereupon B filed a complaint, under S. 409 of the Penal Code, against A in the Court of the Sub-Divisional Magistrate at Ahmednagar; A took the objection that the Ahmednagar Court had no jurisdiction to try the case: Held, that, as the complainant was entitled to have the proceeds of the cotton sent to Bombay, paid to him in Ahmednagar, and as the proceeds were not so paid, loss occurred to him at Ahmednagar, and that, therefore, under S. 179, Cr. P. C., the Ahmednagar Court had jurisdiction to try the case. *Ramratan Chunilal v. Emperor*.

23 Cr. L. J. 173 :
65 I. C. 637 : 24 Bom. L. R. 46 :
46 Bom. 641 : A. I. R. 1922 Bom. 39.

—S. 409—What constitutes offence—Accused in possession of property claiming title—Offence, whether committed.

Where a person, who is accused of criminal breach of trust in respect of certain property has not made away with the property, but still has dominion over it and lays claim to it, even if the claim turns out not to be sustainable in law, there is no offence under S. 409, Penal Code, unless the claim is merely a pretence and not *bona fide*. *Harry Jones v. Emperor*.

25 Cr. L. J. 1053 :
81 I. C. 829 : 28 C. W. N. 831 :
A. I. R. 1924 Cal. 908.

PENAL CODE ACT (XLV OF 1860)

—S. 409—*What constitutes offence.*

Constable ordered to investigate offence—Property suspected of having been stolen seized—Constable has dominion over property—Misappropriation amounts to criminal breach of trust by a public servant. *Local Government v. Abasalli.* 36 Cr. L. J. 867 :

156 I. C. 184 : 31 N. L. R. 312 :
7 R. N. 224 : A. I. R. 1935 Nag. 139.

—S. 409—*What constitutes offence—Criminal breach of trust—Mere appropriation of bill drawn for payment of one bill towards another bill, whether amounts to criminal breach of trust—Payment of money by accused, whether raises inference of guilt.*

Appropriation by a clerk of money that has been drawn by a superior officer for a payment of a particular bill, towards the payment of another bill due to the same person, does not amount to the offence of criminal breach of trust though it may amount to a deliberate violation of the rules. The mere fact that on account of sheer timidity or on account of a desire to avoid running the risk of disgrace of a criminal trial and of dismissal, either the accused or some one on his behalf paid off the amount said to have been embezzled to the party to whom it was due would not furnish any proof of his guilt, although when once the Crown has established the guilt of the accused by the evidence of prosecution witnesses, then such subsequent conduct may be utilized as furnishing further proof of the correctness of the conclusion as to the guilt of the accused drawn from the evidence of the prosecution witnesses. *Chandika Prasad v. Emperor.* 31 Cr. L. J. 1081 :

126 I. C. 684 : 7 O. W. N. 554 :
A. I. R. 1930 Oudh 324.

—S. 409—*What constitutes offence - Detection of money by postal servant against rules—False entries in register and false explanation, if offence.*

Detection by a postal servant of moneys received by him in his capacity as such through V.-P. parcels, etc., for several days in violation of the postal rules, coupled with a false explanation that the moneys were not received on the days on which they were actually received and false entries in his register showing that the articles were still undelivered in the Post Office, constitutes an offence under S. 409, Penal Code. *Chandra Prasad v. Emperor.* 27 Cr. L. J. 611 :

94 I. C. 355 : 1926 Pat. 190 :
5 Pat. 578 : 7 P. L. T. 807 :
A. I. R. 1926 Pat. 299.

—S. 409—*What constitutes offence—Director of a Loan and Deposit Society—Issue of false balance-sheets—Balance-sheet containing incorrect entries—Presumption of guilty knowledge—Wrong classification of bad debts—Failure to include Director's loans as a separate item—Criminal liability.*

The mere fact that the Directors of a Deposit and Loan Society passed an incorrect balance-sheet, is not sufficient to justify the framing of a charge of cheating against them

PENAL CODE ACT (XLV OF 1860)

and placing them on their defence. The guilty knowledge of each Director cannot be presumed from the mere fact that he authorised the issue of a balance-sheet, containing false entries, but must be decided in view of all the circumstances of the case, i. e., the nature of the false statements, the ease or difficulty with which their truth or falsity could be ascertained, the course of business of the society, the position, experience and attainments of individual Directors, etc. Mistakes and omissions in the classification of debts as 'doubtful' or 'bad', cannot, in the absence of positive evidence of guilty knowledge, be taken to afford any presumption of cheating on the part of the Directors of a Limited Company. Nor does the omission by Directors to show their debts as a separate item afford any presumption of guilt. The above acts and omissions, though by themselves would entail strong civil liability on the part of the Directors, will not make them criminally liable. *Giles Seddon v. Loane.* 11 Cr. L. J. 624 :

8 I. C. 325 : 9 M. L. J. 20.

—S. 409—*What constitutes offence.*

Existence of trust depends upon actual facts and not upon legal terms used by parties—Firm financing accused for purchase and sale of goods—As security, goods to be stored in godown of firm—Rent to be paid by accused—Interest also to be paid—Sale proceeds to be credited to firm—Accused selling goods but not paying firm—Trust held was not created—Accused held committed no offence under S. 409. *Karamali Manj v. Emperor.* 39 Cr. L. J. 399 :

174 I. C. 145 : 10 R. S. 244 :
A. I. R. 1938 Sind 57.

—S. 409—*What constitutes offence—Forest Range Officer allowing licence to cut trees not covered by licence—Conviction for criminal breach of trust or mischief, legality of.*

Where a Forest Range Officer allowed a person who had a licence for felling only *aule-nathal* teak trees, to fell growing teak trees, and the officer was convicted for criminal breach of trust under S. 409, Penal Code, and in the alternative, for mischief under S. 427 of the Code: *Held*, (1) that the officer could not be convicted for criminal breach of trust as standing trees are immovable property, and S. 405 refers only to movable property; (2) that the alternative conviction was also bad as the offence of mischief is quite distinct from criminal breach of trust, and as there was further no allegation that the Government had been put to any loss by the marking and cutting down of the trees. *U Ka Doe v. Emperor.* 31 Cr. L. J. 799 :

125 I. C. 271 : 8 Rang. 13 :
A. I. R. 1930 Rang. 158.

—S. 409—*What constitutes offence.*

Lambardar not depositing land revenue collected by him, is not guilty of offence under S. 409—*Lambardar* not being in a position of

PENAL CODE ACT (XLV OF 1860)

a trustee. *Advocate-General, N.-W. F. P. v. Mirajan Shah Mir Azam.* 39 Cr. L. J. 741 : 176 I. C. 406 : 11 R. Pesh. 7 (2) : A. I. R. 1938 Pesh. 25.

—S 409—*What constitutes offence—Lambardar obtaining revenue from land owners but not handing it over to Government—Whether criminally liable.*

The money payable by a lambardar on account of land revenue demand becomes arrears of land revenue if it is not paid to the Government by the due date. The failure to deposit the land revenue on due date makes him a defaulter as contemplated by S. 8 (8), Punjab Land Revenue Act, and the land revenue can be recovered from him as an arrear of land revenue under S. 3 (7) of the same Act by proceeding against his person and property. Consequently the position of the lambardar is not that of a trustee in order to make him liable for criminal breach of trust if he does not hand over to the Government the money recovered from the land owners. His position is similar to that of a lessee and the dispute relating to the payment of the money is one of a civil nature. He is bound to pay the revenue demand subject to certain conditions, and if he does not pay, there are ample provisions in the Revenue Law to make him do so. *Said Ahmad v. Emperor.*

38 Cr. L. J. 530 : 168 I. C. 369 : 9 R. Pesh. 120 : A. I. R. 1937 Pesh. 35.

—S. 409—*What constitutes offence.*

Land owner paying money to lambardar in discharge of his liability for land revenue—Instead of depositing it in Government Treasury, lambardar converting it to his own use—Offence committed held was one under S. 409. *Emperor v. Sultan Mahmud.*

40 Cr. L. J. 910 : 184 I. C. 318 : 41 P. L. R. 432 : I. L. R. 1939 Lah. 119 : 12 R. L. 203 : A. I. R. 1939 Lah. 340.

—S. 409—*What constitutes offence—Merc refusal of agent to render accounts and allow partner to have access to account-books—Whether criminal offence.*

Intention to defraud cannot be presumed from the mere fact of refusal on the part of an agent of a firm to render accounts and to allow one of the partners to have access to the account-books, without further facts being proved. The agent cannot be prosecuted in a Criminal Court. The refusal may be a good ground for a civil action, but does not amount in any case to a criminal offence much less to an offence under S. 409, Penal Code. *Odayapa Chettyar v. K. R. O. Odayapa Chettyar.*

39 Cr. L. J. 194 : 172 I. C. 872 : 10 R. Rang. 283 : A. I. R. 1937 Rang. 505.

—S. 409—*What constitutes offence.*

Patwari receiving excess amount on account of land revenue—Amount neither credited nor returned but kept with himself—Dishonesty, held guilty of offence. *Provincial Government,*

PENAL CODE ACT (XLV OF 1860)

Central Provinces and Berar v. Shankar Gopal Brahmin, Patwari. 39 Cr. L. J. 895 : 177 I. C. 396 : 1938 N. L. J. 259 : 11 R. N. 139 : A. I. R. 1938 Nag. 445.

—S. 409—*What constitutes offence—Postal Cash Certificate—Payment to certificate-holder of sum less than that due—Appropriation of balance, if offence.*

Where in cashing Postal Cash Certificates an officer of the Post Office pays to the holders of the certificates a sum less than what is due and appropriates the balance for his own use, he commits the offence of criminal breach of trust punishable under S. 409 of the Penal Code. *Sita Ram v. Emperor.*

21 Cr. L. J. 316 : 55 I. C. 476 : 18 A. L. J. 93 : 2 U. P. L. R. All. 54 : 42 All. 204 : A. I. R. 1919 All. 95.

—S. 409—*What constitutes offence.*

Public servant responsible for proper spending of money but having no dominion over it—Owner of money exonerating him from any liability—Offence of criminal misappropriation held not made out. *Abdul Wali v. Emperor.*

35 Cr. L. J. 148 : 146 I. C. 661 : 10 O. W. N. 807 : 6 R. O. 155 : A. I. R. 1933 Oudh 387.

—S. 409—*What constitutes offence—Public servant, retention of Government money by—Money not included in balance—Misappropriation—Failure to give excess money to successor-in-office, if offence.*

The fact that the accused, a public servant, does not include the money received by him in his capacity as a public servant in the cash balance is a very strong *prima facie* evidence of misappropriation on his part. Failure to hand over the money due in his hand to his successor-in-office is a further proof of his guilt. A public servant is not entitled to retain, pending the scrutiny of accounts, any money due to the Government in his hand in excess of what the registers show to be due. If he removes the balance, he is guilty of misappropriation even if he removes it to a godown belonging to the Government. *Emperor v. Daya Shankar.*

27 Cr. L. J. 589 : 94 I. C. 205 : 3 O. W. N. 382 : 29 O. C. 245 : A. I. R. 1926 Oudh 398.

—S. 409—*What constitutes offence—Removal and deposit of night-soil—Deposit in authorised place—Sale by Sanitary Inspector—If breach of trust.*

When an arrangement is once made by a Municipality with the customary sweepers for the removal and deposit of night-soil, and the sweepers undertake to transport and deposit the night-soil at a given place in return for a remuneration at a given rate, the Municipality must be deemed to have undertaken house scavenging with the consent of the customary sweepers, within the meaning of S. 200 of the U. P. Municipalities Act, and the rubbish and soil collected under the arrangement from houses is collected by the Municipality from that moment within the

PENAL CODE ACT (XLV OF 1860)

meaning of S. 116 of the Act. A sale of such night-soil by a Municipal employee amounts to a breach of trust within the meaning of S. 409 of the Penal Code. A servant acting within the scope of his employment cannot in order to defraud his master, set up a breach of his master's regulations in his own favour. Where a Municipal Sanitary Inspector taking advantage of his influence with the sweepers induces them to deposit night-soil at an unauthorised place, it must be held that the night-soil still belongs to the Municipality, and if the Inspector proceeds to sell it, the money belongs to the Municipality, and if the Inspector appropriates it to his own use, he is guilty of a criminal breach of trust. *Hari Lal v. Emperor*.

25 Cr. L. J. 299 :
76 I. C. 971 : 21 A. L. J. 149 :
45 All. 281 : A. I. R. 1923 All. 480.

———S. 409—*What constitutes offence—Rent Collector under Government—Failure to pay to Government money realised, if offence.*

A *moujadar* executed a *kabuliyat* to Government undertaking to realise his grass rent of a certain *mauza* lying within his jurisdiction, and to deposit the said amount in the Government Treasury on or before a date to be fixed by the Government Officers from time to time. It was also stipulated in the *kabuliyat* that if he failed to deposit the rent, Government would be competent to realise from him or from his surety or sureties the sums in arrears according to the law prescribed for the realisation of arrears of rent. The *moujadar* failed to deposit the rent collected by him in time and he was convicted under S. 409 of the Penal Code : *Held*, that the position of the *moujadar* under the *kabuliyat* was that of a lessee and not a servant and it was not open to the Government to prosecute the *moujadar* in the Criminal Court for failing to deposit the money realised by him. *Nripendra Nath Das v. Emperor*.

29 Cr. L. J. 641 :
110 I. C. 97 : 47 C. L. J. 442 :
A. I. R. 1928 Cal. 321.

———S. 409—*What constitutes offence.*

Slackness of *lambardar* in remitting amounts collected to the treasury, but at the same time, depositing it in a safe place, does not amount to criminal breach of trust. *Lachhman Singh v. Emperor*.

32 Cr. L. J. 811 :
131 I. C. 910 : A. I. R. 1931 Lah. 468.

———S. 409—*What constitutes offence.*

The accused, the Managing Director of the Hindustan Bank, executed in favour of the Amritsar Bank four *hundis* for an aggregate sum of Rs. 5,000 payable six months after date, and after deducting the discount, he received the balance Rs. 4,772-11 and got it credited in his floating account with the Hindustan Bank. Some months before due date, the accused caused entries to be made in the books of the Hindustan Bank by which the liability for repayment on the date of maturity of the *hundis* was transferred from himself to the Hindustan Bank ; *Held*, (1) that the prosecution had failed to prove that the accused

PENAL CODE ACT (XLV OF 1860)

was guilty of the offence of criminal breach of trust. *Daulat Rai v. Emperor*.

16 Cr. L. J. 454 :
29 I. C. 86 : 24 P. W. R. 1915 Cr. :
162 P. L. R. 1915 : A. I. R. 1915 Lah. 457.

———Ss. 409, 379 — *Dishonesty — Head constable disclosing contents of first information to stranger, if offence.*

Accused, the senior officer in charge of a Police Station, permitted a constable to take out a first information report from a shelf and to dictate it to a stranger : *Held*, (1) that the accused was not guilty of an offence either under S. 409 or S. 379 of the Penal Code, inasmuch as (a) the document was not used by the accused within the meaning of S. 409 or moved out of the possession of any person within the meaning of S. 379, and (b) there was no finding of dishonest intention ; (2) that the accused was guilty of an offence under S. 29 of the Police Act. *Dhanpat Singh v. Emperor*.

18 Cr. L. J. 982 :
42 I. C. 598 : 1917 Pat. 297 :
2 P. L. W. 188 : A. I. R. 1917 Pat. 625.

———Ss. 409, 420—*Revision.*

An accused was committed to the Sessions Court on a charge under S. 409, I. P. C. The Court threw out the charge under that section on the ground that it should have been brought under S. 420 and directed that separate trial should take place : *Held*, that the Court ousted its jurisdiction. The Sessions Judge could have amended the charge to one under S. 420 and he might then well have directed that that charge should be put before the jury at a separate trial. But having taken the charge as it was committed to him and not amended it and having left it to some subsequent proceeding, he would now have no jurisdiction to try the accused on any other charge except S. 409. *Lal Behary Singh v. Emperor*.

12 Cr. L. J. 66 :
9 I. C. 361 : 13 C. L. J. 331.

———Ss. 409, 477-A — *What constitutes offence.*

A debtor of the Hindustan Bank executed in its favour certain *hundis* for Rs. 80,000 payable after six months. The Bank being in need of ready money, the Managing Director, the accused in the case, asked the Co-operative Bank to discount the *hundis*. But the Bank refused to do so unless the Director cleared his own account with it. In order to secure ready money, the accused brought forward his own son, who put in an application for a loan from the Hindustan Bank for the exact amount of the accused's debt to the Co-operative Bank. The accused sanctioned the loan as Agent on the security of his own moneys in the hands of the Hindustan Bank and then cleared his debit balance with the Co-operative Bank. The transaction formed the subject of the charges under S. 409 and 477-A of the Penal Code : *Held*, (1) that the prosecution had failed to establish the charge of criminal misappropriation inasmuch as the accused, in his anxiety to secure ready money for his Bank, chose a method which

PENAL CODE ACT (XLV OF 1860)

could not be said to have injured it; (2) that the prosecution had failed to prove that the application of the accused's son for loan and the accused's order thereon of sanction were really antedated and the charge of falsification of documents could not, therefore, be sustained. *Daulat Rai v. Emperor*.

16 Cr. L. J. 443 :
29 I. C. 75 : 25 P. W. R. 1915 Cr. :
164 P. L. R. 1915 : A. I. R. 1915 Lah. 450.

—Ss. 409, 477-A — *What constitutes offence—Managing Director of Bank deceiving shareholders as to real profits—Wrongful personal gain—Falsification of balance-sheet, if offence.*

Where the accused, the Managing Director of the Hindustan Bank, wishing the Bank to make a better show than the real facts of its working would warrant, in order to maintain the confidence of the shareholders and the public and so to make possible a project for increasing largely the Bank's capital, on the 17th December, 1912, got his son to present a pro-note for Rs. 3,000 to the Bank, treated this Rs. 3,000 as a *pro tanto* addition to the profits for 1912 by reducing on paper to that extent his remuneration account for Rs. 4,050, which he had actually drawn, to Rs. 1,050 and thus deceiving the shareholders at their general meeting in the following March as to the real profits, induced them to declare a dividend of 6 per cent instead of some 3 per cent, which would otherwise have been the most possible: *Held*, that the accused was guilty under S. 409, Penal Code. That both the Managing Director and the Manager of the Head Office were guilty under S. 477-A, Penal Code, as they had "falsified" the balance sheet of 1912 and the books of the Bank by showing as profits Rs. 3,000 which were not profits. That the Director was guilty of "misfeasance" and "breach of trust" and by inducing the shareholders to pay a dividend partly out of what was really capital, he "misapplied" the Company's money, and therefore, could be compelled by the Court to contribute a reasonable sum by way of compensation. *Daulat Rai v. Emperor*.

16 Cr. L. J. 473 :
29 I. C. 105 : 23 P. W. R. 1915 Cr. :
167 P. L. R. 1915 : 28 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 471.

—Ss. 409, 477 (a) — *What constitutes offence—Post Master handing over value-payable letter without payment—False entry in accounts as if delivery was made later—Offence held—Criminal breach of trust and falsification of accounts.*

Where a Post Master who received a V. P. letter to be delivered to a person on payment of a specified sum, handed over the letter to him on a particular date without getting payment and then altered his accounts so as to make it appear that he only handed over the letter four days later: *Held*, (1) that the delivery without receipt of money amounted to a breach of trust, and inasmuch as the *prima facie* natural consequences of the act was to cause wrongful gain to the consignee,

PENAL CODE ACT (XLV OF 1860)

and the *prima facie* dishonest intention was not rebutted, the accused was guilty under S. 409, Penal Code : (2) that in the absence of any reasonable explanation by the accused, his intention in breaking the rules and making false entries was an intention to deceive his superiors and the accused was also guilty of falsification of accounts under S. 477 (a), Penal Code. Under r. 141 of the rules in the Penal Guide a V. P. article is not to be delivered by the Postal Authorities except on payment of the amount entered in the form. The Post Office receives the article from the consignor to be sent on this condition, and impliedly contracts with him that the article shall be so sent. *In re : Kandasami Ayyar*.

28 Cr. L. J. 552 :
102 I. C. 488 : 25 L. W. 656 :
38 M. L. T. 318 : 52 M. L. J. 703 :
A. I. R. 1927 Mad 626.

—S. 411.

See also (i) Appeal.

(ii) Arms Act, 1878, S. 19.

(iii) Calcutta Police Act, 1800,
S. 54-A.

(iv) Cr. P. C., 1898, Ss. 85, 179,
181, 197, 233, 234, 239,
239 (b), 239 (f), 403, 439.

(v) Cr. P. C., Amendment Act,
1928, S. 239 (b).

(vi) Evidence Act, 1872, Ss. 114,
114 (a).

(vii) Penal Code, 1860, Ss. 2,
215, 302, 379, 403, 406,
411.

—S. 411—Charge to Jury—Trial by Jury—Charge to Jury—Judge, duty of.

Where a prisoner is charged with receiving stolen property, when the prosecution has proved the possession by the prisoner and that the goods had been recently stolen, the Jury may be told that they may, not that they must, in the absence of any reasonable explanation, find the prisoner guilty. But if an explanation is given which may be true, it is for the Jury to say on the whole evidence whether the accused is guilty or not, the prisoner is entitled to an acquittal, because the Crown has not discharged the onus of proof imposed upon it of satisfying the Jury beyond reasonable doubt of the prisoner's guilt. In a prosecution under S. 411, Penal Code, it is the duty of the Judge in delivering his charge to the Jury to point out that the possession of the stolen goods must be possession soon after the theft or that the stolen goods must have been "recently" stolen. *Hathim Mondal v. Emperor*.

21 Cr. L. J. 545 :
56 I. C. 849 : 31 C. L. J. 310 :
24 C. W. N. 619 : A. I. R. 1920 Cal. 342.

—S. 411—Conviction.

Conduct in running away when asked how he came to be in possession is sufficient for conviction. *Imamuddin Khan v. Emperor*.

38 Cr. L. J. 349 :
167 I. C. 31 : 17 P. L. T. 754 :
3 B. R. 287 : 9 R. P. 392 :
A. I. R. 1937 Pat. 112.

PENAL CODE ACT (XLV OF 1860)

—S. 411—Conviction.

Deaf and dumb person in possession of stolen property Proof as to knowledge of accused as to property being stolen not possible to get—Conviction under S. 411 is not legal. *Emperor v. A Deaf and Dumb Person.*

37 Cr. L. J. 107 :
159 I. C. 577 (b) : 16 P. L. T. 568 :
2 B. R. 96 : 8 R. P. 292 :
A. I. R. 1935 Pat. 451.

—S. 411—Conviction—No evidence about property being stolen—Conviction, whether justifiable.

Although there may be cases in which it may not be necessary in a case under S. 411 or 414, Penal Code, to prove that the property was stolen from a particular individual, yet, as a rule, a person cannot be called upon to account for the possession of property where there is no evidence whatever that the property has been stolen. A mere suspicion against the accused that the property was not his own, would not justify a conviction under S. 411 in the absence of direct or circumstantial evidence, establishing beyond a reasonable doubt that the property was stolen. In order to justify a conviction under S. 411, Penal Code, it is the duty of the prosecution to establish that the accused dishonestly retained the property and had knowledge at the time of the receipt that the property was obtained in one of the ways specified in S. 410, Penal Code. *Yasikhan v. Emperor.*

24 Cr. L. J. 960 :
75 I. C. 544 : 19 N. L. R. 176 :
A. I. R. 1924 Nag. 48.

—S. 411—Conviction.

Person admitting receipt of stolen articles but deposing in theft case that they were pledged with him by accused in that case—No evidence to prove whether transaction was sale or pledge—Person held could not be convicted under S. 411. *In re : Komali Jains Rangayya.*

40 Cr. L. J. 828 :
183 I. C. 603 : 49 L. W. 544 (2) :
1939 M W. N. 413 : 12 R. M. 331 (2) :
A. I. R. 1939 Mad. 582.

—S. 411—Conviction—Possession of stolen property of various thefts—Conviction for different offences, legality of.

A person found in possession of properties forming the subject-matter of different thefts, cannot be convicted of different offences of receiving stolen property, unless the prosecution establishes that the properties so recovered were received by him at different times. *Hayat v. Emperor.*

29 Cr. L. J. 737 :
110 I. C. 673 : 29 P. L. R. 541 :
10 Lah. 158 : A. I. R. 1928 Lah. 637.

—S. 411—Conviction.

Production of stolen property buried by accused—False statement that this was done under instruction from Police who themselves had buried it—Such production warrants conviction. *Billu v. Emperor.*

31 Cr. L. J. 947 :
126 I. C. 53 : 24 S. L. R. 338 :
A. I. R. 1930 Sind 168.

PENAL CODE ACT (XLV OF 1860)

—S. 411—Conviction—Property belonging to different owners and proceeding from different burglaries—Conviction for separate offences.

Where property belonging to different owners and the proceeds of different burglaries are found in the possession of one man, he cannot be convicted of several offences of receiving in respect of the property identified by different owners unless the prosecution proves that they were received by him at different times. *Chanan Singh v. Emperor.*

37 Cr. L. J. 752 :
163 I. C. 132 : 8 R. L. 1021.

—S. 411—Conviction.

Stolen gems recovered at instance of accused—Evidence to show that he had the gems for sale and that they were the property of certain jewellers—Inability of accused to explain that property was his—Conviction under S. 411 held legal. *Emperor v. Abul Rahim.*

35 Cr. L. J. 1130 :
7 R. O. 59 : 150 I. C. 845 (2) : 11 O. W. N. 905 :
1934 O. L. R. 647 : A. I. R. 1934 Oudh 399.

—S. 411—Conviction—Theft of cereals—Identification of cereals—Conviction, whether maintainable.

In order to maintain a conviction under S. 411, Penal Code, where the stolen property consists of cereals, the fact that cereals found in the house of a person residing in the same village correspond with the alleged stolen cereals is not sufficient to establish the identity of the stolen cereals with those found. It must be shown that the cereals stolen were peculiar, the like of which could not be in the possession of any other villager. Further, the exclusive and conscious possession of the stolen articles must be brought home to the accused. *Sharafat v. Emperor.*

21 Cr. L. J. 673 :
57 I. C. 913 : 1 P. L. T. 727 :
2 U. P. L. R. Pat. 207 :
A. I. R. 1920 Pat. 224.

—S. 411—Conviction.

Two brothers living jointly, younger being karta—Stolen articles found in the house—Younger brother often visited by members of criminal tribe—Elder cannot be convicted under S. 411. *Deonandan Jha v. Emperor.*

37 Cr. L. J. 1123 :
165 I. C. 230 : 3 B. R. 22 :
9 R. P. 164 : A. I. R. 1936 Pat. 534.

—S. 411—Conviction under when sustains—Person in possession of stolen property agreeing with owner for restoration—Thief not brought to justice—Conviction, whether under S. 215 or S. 411.

A person in possession of stolen property entering into an agreement with the owner for the restoration of such property without actually helping to bring the thief to justice, cannot be convicted of an offence under S. 215, Penal Code, but only of an offence under S. 411. *In re : Nalli Veerathevan.*

15 Cr. L. J. 471 :
24 I. C. 351 : 26 M. L. J. 598 :
A. I. R. 1914 Mad. 121.

PENAL CODE ACT (XLV OF 1860)

———S. 411—Conviction.

When an accused produces property known to have been stolen at different places, he can be convicted separately of each offence of receiving stolen property. *Ghulam v. Emperor*. 27 Cr. L. J. 872 : 96 I. C. 120.

———S. 411—Conviction.

Where stolen goods apparently of two thefts are found on an accused person at one and the same search and there is no proof of two distinct acts of receiving, he cannot be convicted of two offences under S. 411, I. P. C. *Kaura v. Emperor*. 5 Cr. L. J. 122 : 2 P. W. R. Cr. 8.

———S. 411—Dishonest intention—Possession of stolen property knowing it to be stolen, whether shows "dishonest intention".

It is of course not possible for the prosecution in a trial for an offence under S. 411, Penal Code, to prove what is in the mind of an accused person, but usually the possession of stolen property knowing it to be stolen is a sufficient fact upon which to base an inference of dishonest intention. *In re : Majid Appalswamy*. 40 Cr. L. J. 448 :

180 I. C. 601 : 48 L. W. 699 :
1938 M. W. N. 1124 (1) : 11 R. M. 735 :
A. I. R. 1939 Mad. 178.

———S. 411—Duty of prosecution.

In a charge under S. 411 the prosecution has got to prove : (1) that the property was stolen ; (2) that it was received or retained by the accused, and (3) that the accused knew or had reason to believe the property to be stolen. *Hori Lal v. Emperor*. 35 Cr. L. J. 621 :

148 I. C. 141 : 1933 A. L. J. 1534 :
56 All. 250 : 6 R. A. 649 :
A. I. R. 1933 All. 893.

———S. 411—Evidence—Accused pointing out places where stolen property was concealed, whether sufficient evidence for conviction under S. 411.

Where the only evidence on which a conviction under S. 411, Penal Code, was based was to the effect that the accused pointed out different places from which portions of the stolen property were recovered and the evidence further showed that the accused's father and brother were also suspected of the offence and were discharged for want of evidence : *Held*, that under the circumstances, it was quite possible that the accused might have had knowledge of the places where the properties were concealed without being himself guilty of any offence and the conviction of the accused was, therefore, illegal. *Sohan Singh v. Emperor*.

31 Cr. L. J. 774 :
125 I. C. 181 : 11 L. L. J. 439 :
A. I. R. 1930 Lah. 91.

———S. 411—Evidence—Conclusiveness of circumstantial evidence.

The accused was the father-in-law of one S. C. the cousin of P. N., one of the actual thieves. He was found in possession of the

PENAL CODE ACT (XLV OF 1860)

stolen property three days after the theft. He disposed of it in a suspicious manner : *Held*, that though the circumstances formed grounds for very grave suspicion, still they did not furnish conclusive evidence against the accused to sustain his conviction under S. 411, I. P. C. *Asvini Kumar Roy v. Emperor*.

3 Cr. L. J. 195 :
10 C. W. N. 219.

———S. 411—Evidence.

Only evidence that accused was with other accused before and after theft—Conviction under S. 411 is not proper. *In re : Sugasi Doraiswami Naidu*. 41 Cr. L. J. 96 (a) :

184 I. C. 609 (1) : 12 R. M. 471 (1) :
1939 M. W. N. 739 (1) :
A. I. R. 1939 Mad. 765.

———S. 411—Evidence—Pointing out stolen property, if evidence.

When the sole evidence against a person charged with an offence under S. 411, Penal Code, consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person : *Held*, this was not in itself sufficient to establish an offence under S. 411, Penal Code. *Hamada v. Emperor*.

4 Cr. L. J. 176 :
1 P. W. R. Cr. 1.

———S. 411—Evidence—Pointing out stolen property, if evidence.

Where the evidence against an accused person is that he, in the presence of several persons, pointed out where some stolen property was buried in a graveyard, he cannot be convicted of an offence under S. 411, Penal Code. *Mehru v. Emperor*.

14 Cr. L. J. 602 :
21 I. C. 474 : 32 P. W. R. 1913 Cr. :
315 P. L. R. 1913.

———S. 411—Evidence.

The accused was convicted of an offence under S. 411, Penal Code. The only evidence against him was that some stolen oxen were taken to his well and put up there for the night and that he subsequently promised to have the oxen restored to the complainant but did not do so : *Held*, that the conviction must be set aside as the evidence was insufficient to sustain it. *Ahmada v. Emperor*.

2 Cr. L. J. 189 :
6 P. L. R. 145.

———S. 411—Identification.

A conviction under S. 411, Penal Code, cannot be maintained unless the stolen property is undoubtedly identifiable. It is generally impossible to identify sweets. *Lal v. Emperor*.

13 Cr. L. 720 (b) :
16 I. C. 528 : 35 P. W. R. 1912 Cr. :
194 P. L. R. 1912.

———S. 411—Ingredients—Essentials of offence.

The offence of "receiving stolen property" under S. 411, Penal Code, is constituted only on proof of the accused's knowledge

PENAL CODE ACT (XLV OF 1860)

or belief that the property was stolen and of his having received the goods in that state of mind. It is not enough to prove that the accused must have suspected that the property was stolen. *Emperor v. Sankara Narayana Chetti*. 17 Cr. L. J. 312 : 35 I. C. 488 : 4 L. W. 53 : A. I. R. 1917 Mad. 418.

———S. 411—Innocent possession—*Stolen ornament found in house occupied by accused and his mother, if offence.*

Where an ornament called *kangni* stolen in a burglary is found by the Police in a jar of chillies in a house occupied by the accused and his mother, and there is nothing to show that he put it there or knew that it was there, an offence under S. 411, Penal Code, is not established. *Emperor v. Chhotu*. 27 Cr. L. J. 717 : 94 I. C. 909.

———S. 411—Interpretation — *Believe—Meaning of.*

The word "believe" is a very much stronger word than "suspect", and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. *Mohammad Ibrahim v. Emperor*. 17 Cr. L. J. 25 : 32 I. C. 153 : A. I. R. 1916 All. 86.

———S. 411—Interpretation—*Believe—Meaning of.*

The word "believe" in S. 411 is a very much stronger word than "suspect" and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. It is not sufficient to show that the accused was careless for that he had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. *Archibald George v. Emperor*. A. I. R. 1928 Cal. 264.

———S. 411—Interpretation.

The word "believe" in S. 411 involves the necessity of showing that the circumstances were such that a reasonable man must have been fully convinced in his mind that the property was stolen property. It is not sufficient to show that he had reason to suspect that the property was stolen. *Gaya Prasad v. Emperor*. 32 Cr. L. J. 1184 : 134 I. C. 401 : 8 O. W. N. 517 : 6 Luck. 658 : I. R. 1931 Oudh 353.

———S. 411—Knowledge.

Accused found in possession of ornaments nine months after robbery—Identification evidence of no value—Ornaments of the kind commonly used by ordinary people : *Held*, presumption should not be drawn. *Phul Khan v. Emperor*. 38 Cr. L. J. 671 : 168 I. C. 966 : 38 P. L. R. 975 : 9 R. L. 698 : A. I. R. 1937 Lah. 246.

PENAL CODE ACT (XLV OF 1860)

———S. 411—*Knowledge—Accused found in possession of stolen property three years after it went out of owner's possession—No guilty knowledge.*

Where a property is alleged to have been stolen some three years before it is found in possession of a person, very clear evidence is required to show that he must have known it to be stolen. An accused person should not be tried in a hasty manner and there should be an adjournment of reasonable duration for enabling him to produce whole of the evidence in support of his defence. In this case the concurrent finding of the Courts below was set aside on the ground that there was no evidence to substantiate the charge. *Lal Singh v. Emperor*. 15 Cr. L. J. 521 : 24 I. C. 833 : 18 P. W. R. 1914 Cr. : 123 P. L. R. 1914 : A. I. R. 1914 Lah. 84.

———S. 411—*Knowledge—Dishonest intention—Onus of proof.*

In a case under S. 411, Penal Code, it is for the prosecution to prove that the accused received the stolen property dishonestly and not for the accused to show that he received it honestly. *Kartar Singh v. Emperor*. 29 Cr. L. J. 594 : 109 I. C. 674 : 10 L. L. J. 316.

———S. 411—*Knowledge—Guilty knowledge—Proof necessary.*

In order to sustain a conviction under S. 411, Penal Code, there must be evidence, direct or indirect, of guilty knowledge. Mere possession of stolen property is no offence. *Arjan Das v. Emperor*. 25 Cr. L. J. 291 : 76 I. C. 963 : A. I. R. 1923 Lah. 340.

———S. 411—*Knowledge—Jewels stolen in dacoity—Accused in possession—Identification by owner—Presumption—Onus—Indian Evidence Act, S. 114.*

Where some articles of jewellery were stolen in a dacoity, and were found in possession of the accused three weeks after : *Held*, that the identification of the jewels by the owner and his wife and daughter who were in the habit of wearing them was sufficient, and unless the accused could show how he obtained possession of the property, the natural inference from all these facts warranted by S. 114, Evidence Act, was that the accused dishonestly received the same, knowing or having reason to believe that they were stolen. *Sen Raya Govindan v. Public Prosecutor*. 7 Cr. L. J. 30 : 3 M. L. T. 30.

———S. 411—*Knowledge—Joint occupancy of room—Presumption from nature of the property.*

Three bags of grain, alleged to be stolen property, were found in a room which was in the occupation of two persons, and was locked at the time of the search. Both of them were convicted for being in possession of stolen property : *Held*, that the accused had been rightly convicted. Looking to the nature of the stolen property, both the accused

PENAL CODE ACT (XLV OF 1860)

must have known that the grain was in their room, and the presumption is that they were both accomplices and in possession of the property. *Imperator v. Jumo*.

8 Cr. L. J. 184 :
1 S. L. R. 66.

-----S. 411—*Knowledge—Suspicion is not sufficient.*

In a case of receiving stolen property, the correct test of a person's guilt is whether when the property came into his possession he knew or had reason to believe that it was stolen property. Mere suspicion is not enough. *Kannappa Naicker v. Emperor*.

14 Cr. L. J. 591 :
21 I. C. 383 : 1913 M. W. N. 696.

-----S. 411—*Knowledge—Mere fact of possession, whether raises inference of dishonesty.*

The mere fact of possession of stolen property is not in itself, under all circumstances, sufficient to warrant an inference that the person in possession was in possession dishonestly, and to cast upon him the onus to displace the inference of dishonesty. Where the accused's cousins committed theft of two bullocks and the bullocks were found afterwards tied in the accused's village along with the accused's bullocks : *Held*, that the mere fact of possession did not, in the peculiar circumstances of the case, raise an inference of dishonesty. *Mahabir Pandey v. Emperor*.

31 Cr. L. J. 437 :
122 I. C. 586 : A. I. R. 1930 Pat. 353.

-----S. 411—*Knowledge—Possession long after theft—Guilty knowledge, if can be presumed.*

In a case under S. 411 of the Penal Code, the burden is on the prosecution to prove the guilty knowledge of the person prosecuted. There may, however, be circumstances in which this guilty knowledge may be inferred and may be accepted as conclusive if no explanation is forthcoming on the part of the accused person. Where certain silver ornaments of the ordinary type which had been removed during a dacoity were recovered from the person of the accused's wife, the accused being a goldsmith, 2½ years after the dacoity, and the explanation of the accused was that he had himself made the ornaments for the use of his wife : *Held*, that no presumption could arise in the case that the accused had received the ornaments knowing them to have been stolen. *Chhotey Lal v. Emperor*.

26 Cr. L. J. 578 :
85 I. C. 722 : A. I. R. 1925 All. 220.

-----S. 411—*Knowledge—Possession of stolen property long after theft—Burden of proving guilt.*

Where a person is found in possession of stolen property long after the theft, it is for the prosecution to prove affirmatively his guilt and not for him to prove his innocence or give a satisfactory explanation of his possession. *Narain Singh v. Emperor*.

29 Cr. L. J. 464 :
108 I. C. 912 : 29 P. L. R. 441 :
A. I. R. 1928 Lah. 687.

PENAL CODE ACT (XLV OF 1860)

-----S. 411—*Knowledge.*

Possession of stolen property two and a half years after theft—Presumption against accused, if does not arise. *Imamuddin Khan v. Emperor*.

38 Cr. L. J. 349 :
167 I. C. 31 : 17 P. L. T. 754 ;
3 B. R. 287 : 9 R. P. 392 :
A. I. R. 1937 Pat. 112.

-----S. 411—*Knowledge.*

Possession satisfactorily explained—Presumption under S. 114, Evidence Act (I of 1872), does not arise—Prosecution must prove guilty knowledge. *Rajendra Nath Lala v. Emperor*.

38 Cr. L. J. 129 :
166 I. C. 91 : 3 B. R. 124 :
18 P. L. T. 210 : 9 R. P. 249 :
A. I. R. 1937 Pat. 191.

-----S. 411—*Knowledge—Receiving and disposing of stolen property—Guilty knowledge necessary.*

The mere fact that a person was in possession of a stolen animal and he sold it to another, is not in itself sufficient for his conviction under S. 411 of the Penal Code. His denial of having any connection with the animal does not prove his guilty knowledge specially when there is some enmity between the alleged vendor and the vendee. *Allu v. Emperor*.

15 Cr. L. J. 654 :
25 I. C. 982 : 242 P. L. R. 1914 :
34 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 423.

-----S. 411—*Knowledge—Receiving stolen goods—Guilty knowledge—Proof—Presumption.*

It is of the essence of an offence under S. 411 of the Penal Code to show that the person who is in possession of the stolen property knew or had reason to believe it was stolen property. Where stolen property is traced to the accused's possession nearly two months after the theft, the presumption of guilt under S. 114, Evidence Act, can hardly be applied. *Ramudu Aiyar v. Emperor*.

24 Cr. L. J. 426 :
72 I. C. 538 : 44 M. L. J. 243 :
17 L. W. 370 : 32 M. L. T. 318 :
A. I. R. 1923 Mad. 365.

-----S. 411—*Knowledge—Receiving stolen property found in a house in joint possession.*

When a property is found in a house in the possession of more than one person, mere discovery of any stolen property in that house is not in itself sufficient to prove that the possession was of any one of those persons. *In re : Muhammad Ali Shet*.

9 Cr. L. J. 52 :
4 M. L. T. 415.

-----S. 411—*Knowledge—Stolen property found after considerable time—Presumption as to guilty knowledge.*

Properties of an ordinary kind alleged to have been stolen on the 28th April having been found in the possession of the accused on the 4th August following : *Held*, that

PENAL CODE ACT (XLV OF 1860)

there was no ground for a presumption under S. 114 of the Evidence Act, that the accused received the goods knowing them to have been stolen, having regard to the facts that the properties were of an ordinary kind and of small value and the evidence of their identification was weak. *Joyenallah Bepari v. Emperor*.

19 Cr. L. J. 702 (b) :
46 I. C. 158 : 22 C. W. N. 597 :
A. I. R. 1918 Cal. 243.

———S. 411—*Knowledge*.

The mere fact that the accused sold certain ornaments more than a month after the theft, should not be based to draw an inference that the ornaments were the proceeds of a burglary. *Amrit Lal v. Emperor*.

35 Cr. L. J. 654 :
148 I. C. 400 : 6 R. L. 550 :
A. I. R. 1933 Lah. 987.

———S. 411—*Knowledge—Theft of currency notes—Possession of accused after 18 months—No presumption of guilty knowledge*.

Where 18 months after a theft of currency notes, a few of them were found in the possession of the accused, and no other suspicious circumstances were found against him: *Held*, that there was no presumption of guilty knowledge on his part in the absence of an explanation and consequently the fact that he had given a false explanation of his possession was not sufficient to warrant his conviction for dishonest retention of stolen property. *In re: Vellai Ocha Thevan*.

13 Cr. L. J. 475 :
15 I. C. 315 : 11 M. L. T. 186 :
1912 M. W. N. 362.

———S. 411—*Knowledge—Time, lapse of, after theft—Presumption of guilty knowledge*.

In a prosecution for the possession or retention of stolen property under S. 411, Penal Code, lapse of time after the article was stolen is usually an important factor in determining the guilt of the accused, but the importance to be attached to it must vary with the circumstances of the individual case and will depend largely on the frequency with which the property is likely to have changed hands. No maximum period can be suggested as that beyond which no inference of guilt can be drawn. *Smith v. Emperor*.

19 Cr. L. J. 189 :
43 I. C. 605 : A. I. R. 1918 Mad. 111.

———S. 411—*Lawful entry—Entry by person having right to property*.

An entry upon land by a person having a claim of right thereto, is not criminal trespass, though it may amount to unlawful assembly or rioting, if a sufficient number of persons are concerned. *Ramchandra v. Ratho*.

9 Cr. L. J. 561 :
2 I. C. 240 : 5 N. L. R. 69.

———S. 411—*Liability—Father convicted—Son living in house, conviction of*.

A father and son were living in the same house. After the conviction of the father under S. 411, I. P. C., the son was *challaned* and convicted under the same section on

PENAL CODE ACT (XLV OF 1860)

the same grounds but there was nothing to show that he was in possession of property which he knew or had reason to believe was stolen except that he had said to the Police that there was no stolen property in the house: *Held*, that the conviction could not be sustained. *Emperor v. Farruk Hussain*.

23 Cr. L. J. 428 :
67 I. C. 588 : 24 O. C. 294.

———S. 411—*Liability*.

From mere finding of stolen property in the house, it cannot be assumed that head of the family or any member was in possession. *Ram Charan v. Emperor*.

34 Cr. L. J. 930 :
145 I. C. 130 : 1933 A. L. J. 1338 :
6 R. A. 50 : A. I. R. 1933 All. 437.

———S. 411—*Liability—Goods found in room belonging to joint family*.

Where stolen goods were found in a room which had no shutters and which was accessible to all the members of a joint family of whom the accused was one: *Held*, that it could not be held that the accused was in possession of the goods within the meaning of S. 411, Penal Code. *Ram Autar v. Emperor*.

26 Cr. L. J. 1022 :
78 I. C. 846 : 23 A. L. J. 421 :
47 All. 511 : A. I. R. 1925 All. 478.

———S. 411—*Liability*.

If the circumstances are such as to raise a presumption that two or more persons are in joint possession of stolen property, both of them may be convicted. *Emperor v. Diwan Singh*.

34 Cr. L. J. 604 (a) :
143 I. C. 463 : 34 P. L. R. 576 :
I. R. 1933 Lah. 354 :
A. I. R. 1933 Lah. 148 (a).

———S. 411—*Liability—Joint Hindu family—Liability of head of the family or managing member*.

Stolen property consisting of a considerable quantity of cloth weighing about five maunds was discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family: *Held*, that under the above circumstances, the conviction of the managing member of the family under S. 411, Penal Code, was a proper conviction. *Emperor v. Budh Lal*.

6 Cr. L. J. 23 :
27 A. W. N. 187 : I. L. R. 29 All. 598.

———S. 411—*Liability—Property found in shed in joint possession of several persons and in charge of servant*.

Some stolen articles were recovered from a cattle-shed which belonged to three brothers, of whom accused was the youngest, and

PENAL CODE ACT (XLV OF 1860)

which was in the immediate charge of a servant. Accused lived at a place three miles distant from the shed and visited it occasionally: *Held*, that, under the circumstances, it could not be said that the stolen articles were recovered from the possession of the accused and he could not be convicted of an offence under S. 411, Penal Code. *Ganeshi Lal v. Emperor*.

24 Cr. L. J. 767 :
74 I. C. 271 : 4 L. L. J. 484.

———S. 411—*Liability—Stolen property recovered from house of joint family—Managing member, responsibility of.*

The presumption of possession which ordinarily attaches to the managing member of a family, and for which he is *prima facie* responsible, may be rebutted by the facts and circumstances of a particular case, and where it is not so rebutted, and stolen properties are recovered from a house, the conviction of the managing member for the offence of being in possession of such properties is sustainable. Although different persons charged with separately retaining different articles of stolen property, which are the proceeds of the same theft, cannot be tried together, yet where the possession of different properties is under the joint control of all of them, or is due to concert or collusion amongst them, the joint trial of all of them is not illegal. *Musai Kamat v. Emperor*.

21 Cr. L. J. 757 :
58 I. C. 341 : 1 P. L. T. 431 :
A. I. R. 1920 Pat. 190.

———S. 411—*Offence under.*

Child finding lost currency notes on street—Notes found with accused and recovered shortly after loss—*Held*, no offence was committed under S. 411. *In re : Ramakkol*.

39 Cr. L. J. 312 :
173 I. C. 317 : 1937, 2 M. L. J. 734 :
46 L. W. 812 : 1937 M. W. N. 1321 :
10 R. M. 560 : A. I. R. 1938 Mad. 172.

———S. 411—*Offence under—Dacoity, proceeds of, possession of, whether evidence of guilt of dacoity—Receiving stolen goods.*

The mere fact that property stolen in a dacoity is found with a person is, in the absence of evidence connecting him with the dacoity, no ground for holding him guilty of dacoity or for imputing to him knowledge that the property was stolen by dacoity. Such a person is, however, guilty of the offence of dishonestly receiving or retaining stolen property punishable under S. 411, Penal Code. *Arshed Molla v. Emperor*.

20 Cr. L. J. 525 :
51 I. C. 685 : 29 C. L. J. 325 :
A. I. R. 1919 Cal. 85.

———S. 411—*Offence under—Dishonest retention and dishonest reception—Offences of, are contemporaneous.*

The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving it. A man who dishonestly receives property, if he

PENAL CODE ACT (XLV OF 1860)

retains it, must obviously continue dishonestly to retain it. It would be different, however, if the reception of the property were innocent. Then it clearly would be for the prosecution to show at what stage guilty knowledge of the Receiver supervened to make the retention dishonest. *Emperor v. Saifal*.

38 Cr. L. J. 1066 :
171 I. C. 342 : 39 P. L. R. 1 :
I. L. R. 1937 Lah. 227 : 10 R. L. 185 :
A. I. R. 1937 Lah. 700.

———S. 411—*Possession—Identity of goods.*

The recovery of stolen articles of a kind that are constantly changing hands, more than five months after the theft, does not legally make it incumbent upon the man from whose possession they are recovered to explain how he came by them. *Hari Ram v. Emperor*.

22 Cr. L. J. 595 :
62 I. C. 867 : A. I. R. 1921 Lah. 89.

———S. 411—*Possession—Possession of accused—How established.*

The accused, along with several others, was found in the house of one of them, quarrelling over the division of certain stolen property, which consisted of packages of cloth which had been cut through and were lying open in the house: *Held*, that the accused was in possession of the property for purposes of S. 411, Penal Code. *Pat Parmeshwar Dayal v. Emperor*.

27 Cr. L. J. 657 :
94 I. C. 705 : 1926 Pat. 139 :
7 P. L. T. 567 : A. I. R. 1926 Pat. 316.

———S. 411—*Possession—Possession of stolen property—Dishonest reception.*

The prosecution must prove both that the property was stolen and the accused received it or retained it dishonestly. At the same time, under certain circumstances, a Court is entitled to draw a presumption under S. 114, Evidence Act, from the fact of possession. If the possession of an article is proved, the Court may presume that the person in possession of the stolen goods soon after the theft is either guilty of theft or of receiving the goods knowing them to be stolen unless he can account for his possession. *Bharos v. Emperor*.

25 Cr. L. J. 942 :
81 I. C. 558 : 21 A. L. J. 836 :
A. I. R. 1924 All. 192.

———S. 411—*Possession—Possession of wife whether possession of husband.*

Accused with several other males and females lived in a house as a joint family. During his absence from the house, a locked box containing stolen property was found therein whose key was produced by accused's wife. Accused was convicted under S. 411, Penal Code: *Held*, that although the possession of the wife would frequently be the possession of the husband, yet this could not be presumed *per se* in every case; there must be something to connect the husband with the possession more than the mere fact that he is the husband, and that in this case, the conclusion that the husband was in possession,

PENAL CODE ACT (XLV OF 1860)

could not be justified. *Keushi Ram v. Emperor*.
23 Cr. L. J. 386 :

67 I. C. 338 : 20 A. L. J. 162 :
4 U. P. L. R. All. 14 : A. I. R. 1922 All. 83.

———S. 411—Possession—Property found in house occupied by several persons—Possession, determination of.

The mere fact that stolen property is found in a house in which the accused lived with his brothers, is not sufficient to establish that he retained such property in his possession or custody or to justify his conviction under S. 411, Penal Code. Where stolen property is found in a house occupied by several persons, it is not enough to show that the property was found in the house to convict a member of the family who may have had nothing to do with bringing or keeping it there. *Bashir Ahmad Khan v. Emperor*.

21 Cr. L. J. 40 :
54 I. C. 248 : 22 O. C. 256 :
2 U. P. L. R. (J. C.) 12 :
A. I. R. 1919 Oudh 32.

———S. 411—Possession.

Property proved to be stolen property—Person in possession unable to account for possession—Possession soon after theft—Offence is made out. *Emperor v. Shakur*.

36 Cr. L. J. 1206 :
157 I. C. 562 : 1935 O. W. N. 911 :
1935 O. L. R. 483 : 8 R. O. 23 :
A. I. R. 1935 Oudh 475.

———S. 411—Possession—Railway Receipt of goods, production of, whether establishes possession of accused.

Certain stolen goods were sent from one station to another. At the station of delivery, the accused returned the Railway Receipt to the Railway office and paid the freight. The goods had not been removed by the accused when he was arrested, as he was not able to account for the fact of his receiving the goods. He was subsequently convicted under S. 411, Penal Code, for having received stolen property: *Held*, that the production of the Railway Receipt established the possession of the accused and it was not necessary for the accused to have removed the goods from the Railway premises, and that the conviction was right. *Sewdhar Sukul v. Emperor*. 14 Cr. L. J. 318 : 19 I. C. 1006 : 40 Cal. 990.

———S. 411—Possession—Recent possession of stolen property, if material.

The complainant lost some currency notes. More than seven months after the loss, one of the notes was traced to the accused who carried on the business of a Shroff at Bombay. The explanation of the accused was that he received it from a Muhammadon whose name he did not know. The Magistrate refused to issue process against the accused: *Held*, that it could not be said that the accused was found in recent possession of property shown to be stolen and that the Magistrate was right in not issuing process against him. *Ram Charan Saha v. Haji Meah Haji Abdulla*.

14 Cr. L. J. 571 :
21 I. C. 171 : 17 C. W. N. 1129.

PENAL CODE ACT (XLV OF 1860)

———S. 411—Possession—Stolen property found in a house occupied by several persons—Exclusive possession.

Certain stolen property was found concealed in a dung heap in the courtyard of a house which was owned and occupied by four persons: *Held*, that the property could not be said to be in the exclusive possession of any of the occupants of the house and that none of them could, therefore, be convicted of any offence under S. 457 or 411, Penal Code. *Qaim Din v. Emperor*.

27 Cr. L. J. 249 :
92 I. C. 425 : 7 L. L. J. 223.

———S. 411—Possession—When to be explained.

Where a considerable time has elapsed between a theft and the discovery of the stolen property, possession of that property of itself does not require any explanation. *District Magistrate of Bellary v. Obbava*.

13 Cr. L. J. 596 :
16 I. C. 164 : 1912 M. W. N. 529.

———S. 411—Possession of stolen property, what is.

The mere fact that the accused apparently knew where the stolen property was concealed did not establish that they were in possession of stolen property. *Emperor v. Umar*.

11 Cr. L. J. 4 (a) :
4 I. C. 481 : 3 S. L. R. 136.

———S. 411—Procedure.

A Magistrate should record the evidence for the defence with the same amount of care and precision as that for the prosecution, as otherwise his opinion that the evidence is false is not easy to test. *Mahboob v. Emperor*.

21 Cr. L. J. 552 :
56 I. C. 856 : 2 U. P. L. R. All. 113 :
A. I. R. 1920 All. 85.

———S. 411—Proof.

Before a conviction can be had under S. 411, Penal Code, the possibility of the accused having obtained the goods of which he is found in possession by legitimate means, must be excluded. *Huri Ram v. Emperor*.

22 Cr. L. J. 595 :
62 I. C. 867 : A. I. R. 1921 Lah. 89.

———S. 411—Proof Burden of proof—Knowledge or belief of accused about property being stolen—Necessary suspicion or want of inquiry, whether sufficient.

In order to convict a person under S. 411, Penal Code, it is necessary for the prosecution to prove that the property subject to the charge was stolen property, and further that the accused knew or had reason to believe it to be stolen property. It is not sufficient in such a case to show that the accused was careless or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. It must be shown that the circumstances were such that the accused as a reasonable man must have felt convinced

PENAL CODE ACT (XLV OF 1860)

that the property with which he was dealing must be stolen property. *Abdur Rahim v. Emperor*. 27 Cr. L. J. 1144 :

97 I. C. 664 : A. I. R. 1927 Nag. 40.

———S. 411—Proof.

Where an accused was charged with receiving the stolen property of a particular person, but all the evidence against the accused was that he was a receiver of stolen property knowing the same to be stolen and the evidence fell short of showing that the offence of receiving was a repeated offence : *Held*, that a conviction for receiving the particular person's property could not be sustained against the accused. *Hira v. Emperor*. 13 Cr. L. J. 254 :

14 I. C. 606 : 9 A. L. J. 370.

———S. 411—Proof—Identity of stolen property, proof of.

Four months after a burglary was committed, two articles of ordinary household use and of a very common pattern were found in the house of the accused which both the complainant and the accused claimed as their property : *Held*, that in the absence of conclusive proof that the articles belonged to the complainant, the accused could not be convicted of an offence under S. 411 of the Penal Code. *Mohammad Baksh v. Emperor*. 24 Cr. L. J. 560 :

81 I. C. 48 : A. I. R. 1923 Lah. 36.

———S. 411—Proof—Knowledge of place of concealment of stolen goods—Presumption.

The mere knowledge of the place of concealment does not necessarily lead to the conclusion that the person having such knowledge actually received the stolen articles or participated in the act of concealment. *Emperor v. Buta Singh*. 18 Cr. L. J. 490 :

39 I. C. 330 : 1 P. R. 1917 Cr. : A. I. R. 1917 Lah. 48.

———S. 411—Proof—Proof of theft, if necessary.

For a conviction under S. 411, Penal Code, it is not necessary that there should be proof of theft. *Ismail v. Emperor*. 27 Cr. L. J. 1013 :

96 I. C. 869 : A. I. R. 1926 Lah. 640.

———S. 411—Proof.

In a charge under S. 411, Penal Code, it is not sufficient for the prosecution to show that the accused person was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether the same had been honestly acquired. *Mohammad Ibrahim v. Emperor*. 17 Cr. L. J. 25 :

32 I. C. 153 : A. I. R. 1916 All. 86.

———S. 411—Proof—Stolen property produced by accused from a jungle—Whether sufficient to sustain conviction.

Where an accused produced the stolen property from a nullah in a jungle, which was neither in his possession nor under his control : *Held*, that such production was insufficient to

PENAL CODE ACT (XLV OF 1860)

establish his guilt under S. 411, Penal Code. *Pir Baksh v. Emperor*. 13 Cr. L. J. 28 :

13 I. C. 220 : 46 P. L. R. 1912 : 29 P. W. R. 1912 Cr.

———S. 411—Proof.

Where in a trial for an offence under S. 411, neither the receiving nor the retention of stolen property has been established, the accused is not under any necessity to prove that he had no reason to believe that the property was stolen property. *Keshowdas Uttamchand v. Emperor*. 35 Cr. L. J. 206 :

146 I. C. 952 : 6 R. S. 100 : A. I. R. 1933 Sind 359.

———S. 411—Proof.

Where it has been proved that the thefts occurred on different dates, the presumption is that the stolen property passed from the hands of the thief to the receiver at different dates also. The burden then shifts from the Crown to the accused under S. 106 of the Evidence Act to show that although the property was stolen at different times, the accused received it at one time only. *Ghulam v. Emperor*. 27 Cr. L. J. 872 :

96 I. C. 120.

———S. 411—Property—Value of, if material—Article of small value—Burden of proof.

When the accused was convicted under S. 411, Penal Code, of having been in dishonest possession of stolen property, *viz.*, a copper vessel, which was discovered seven months after its loss : *Held*, that the conviction was bad, as the onus was on the prosecution to prove guilty knowledge, and the failure of accused to account for his possession did not relieve prosecution of the burden of proving that his possession was dishonest. *In re : Bhami Luxuman Shanbaga*. 11 Cr. L. J. 571 :

8 I. C. 145 : 8 M. L. T. 418 : 1910, 1 M. W. N. 819.

———S. 411—Property—Value of—If material.

In a case in which a person is charged with receiving or being in possession of property alleged to have been stolen, an important factor is the value of the property, and as to this, the Court should insist on having direct evidence, as the accused is entitled to have some sworn testimony of value which he can cross-examine. *Mahboob v. Emperor*. 21 Cr. L. J. 552 :

56 I. C. 856 : 2 U. P. L. R. All. 113 : A. I. R. 1920 All. 85.

———S. 411—Revision—Stolen property—Defective identification.

Where a stolen article is of ordinary make and there is nothing peculiar in it, the uncorroborated evidence of the complainant of ordinary position as to its identification is not sufficient for finding that it does not belong to the accused, specially where it has been equally contradicted by a witness on the other side. Even a unanimous finding of fact

PENAL CODE ACT (XLV OF 1860)

by the lower Courts, without due regard to the evidence on the record, is liable to be set aside on revision under S. 439, Cr. P. C., 1898. *Mani Ram v. Emperor*.

13 Cr. L. J. 555 :
15 I. C. 971 : 22 P. W. R. 1912 Cr.

—S. 411—Revision.

The Chief Court on revision set aside conviction of the accused under S. 411, Penal Code, for being in possession of stolen property knowing it to be stolen when there was no evidence on record to show that the accused either stole it or knew it to be stolen and evidence of identification of the property was very meagre. *Khuda Bakhsh v. Emperor*.

2 Cr. L. J. 128 :
6 P. L. R. 65.

—S. 411—Sentence—*Illegality of sentence of imprisonment for the period already passed in lock-up—Accused aged 18 years—Whipping not proper in the case of an accused of position.*

A sentence of imprisonment for the period passed in lock-up is illegal, but a sentence of imprisonment until the rising of the Court is good, and fulfils the requirement of the law: *Held*, also, that a sentence of whipping is not appropriate in the case of an accused person of good position in life. The record was accordingly returned to the lower Court for disposal in accordance with law either for passing proper sentence or to be dealt with under S. 562, Cr. P. C., 1898. *Bhagel Singh v. Emperor*.

5 Cr. L. J. 217 :
2 P. W. R. Cr. 21.

—S. 411—Sentence—*Offence of cattle-theft in Sind—Deterrent sentence, necessity of.*

A case of cattle-theft in Sind should not be tried summarily, as it is necessary in view of its prevalence on a large scale, that deterrent sentence should be imposed. *Emperor v. Amir Bux*.

28 Cr. L. J. 959 :
105 I. C. 671 : A. I. R. 1927 Sind 257.

—S. 411—Sentence.

Sentence of fine, amount being less than value of property stolen—Hence sentence was too light and one year's rigorous imprisonment was proper. *Emperor v. Nisar*.

36 Cr. L. J. 1138 :
157 I. C. 169 : 8 R. Pesh. 9 (1) :
A. I. R. 1935 Pesh. 100.

—S. 411—Sentence and charge—*Property received at one time—Separate charges—Offence punishable with imprisonment and fine—Fine, whether compulsory.*

Where property which is alleged to have been stolen is recovered from the possession of an accused person at one and the same time, he cannot be convicted of separate offences under S. 411 of the Penal Code, in respect of separate items of property, unless there is distinct evidence that property which forms the subject of the charge in one case was received by the accused under different circumstances and at a different time from property which is the subject of the charges in the other cases. Where the Penal Code directs that in addition

PENAL CODE ACT (XLV OF 1860)

to substantive sentence of imprisonment, there shall also be a sentence of fine, it does not mean that a fine must be tacked on to a sentence of imprisonment. The correct interpretation is that in such a case punishment of fine alone cannot be awarded, but there must be a sentence of substantive imprisonment. *Munwa v. Emperor*.

26 Cr. L. J. 1 :
83 I. C. 481 : A. I. R. 1925 Oudh 298.

—Ss. 411, 412—*Burden of proof—Onus of proof is on Crown to prove guilty knowledge.*

In cases of receiving stolen property, the onus of proof never passes to the accused. The Crown must prove guilty knowledge. Under S. 114 (a) of the Evidence Act, the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods, knowing them to be stolen unless he can account for his possession. All that he is required to do is to give an account, and if that account may reasonably be true, though nevertheless the jury may not be convinced that it is true, he must be acquitted, because the Crown have failed to satisfy the onus which always remains upon them to prove his guilty knowledge. *Daud Sheikh v. Emperor*.

37 Cr. L. J. 976 :
164 I. C. 721 : 62 C. L. J. 257 :
40 C. W. N. 159 : 9 R. C. 265.

—Ss. 411, 414—*Disposal of stolen property by thief—Offence.*

No disposal of stolen property by a person who is found at the trial to be the original thief, can be made the basis of his conviction under S. 411 or S. 414, Penal Code. *Emperor v. Balwantsingh*.

8 Cr. L. J. 11 :
4 N. L. R. 71.

—Ss. 411, 414—*Knowledge—Concealing stolen property—Knowledge or reason to believe that property was stolen, necessity of.*

The word "believe" in S. 411 of the Penal Code, is much stronger than the word "suspect" and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been dishonestly acquired. *Suraj Prasad v. Emperor*.

30 Cr. L. J. 969 :
118 I. C. 759 : 6 O. W. N. 208 :
I. R. 1929 Oudh 455 :
A. I. R. 1929 Oudh 213.

—Ss. 411, 414—*Mode of trial—Joinder of charges under, legality.*

Joinder of charges of offences under S. 411 with charges of offences under S. 414 is bad. If, however, the charges are framed in the alternative under S. 236, Cr. P. C., there would

PENAL CODE ACT (XLV OF 1860)

be no defect in the trial. *Chettu Kalwar v. Emperor*.

24 Cr. L. J. 86 :
71 I. C. 214 : 49 Cal. 555 :
A. I. R. 1922 Cal. 401.

—S. 412.

See also (i) Evidence Act, 1872, S. 114, Illus. (1).

(ii) Penal Code, 1860, Ss. 24, 26, 27, 391, 395, 410, 411.

—S. 412 — Conviction — Retention of property obtained in dacoity—Property belonging to different owners—Separate convictions.

A person found in possession of property which he knew or had reason to believe was stolen in a dacoity, and which property is identified as belonging to different owners, cannot be convicted separately in respect of the property identified by each owner unless there is evidence to prove that it was received by him at different times or from different persons. *Sheo Charan v. Emperor*.

24 Cr. L. J. 632 :
73 I. C. 520 : 21 A. L. J. 389 :
45 All. 485 : A. I. R. 1923 All. 547.

—S. 412—Conviction.

Stolen property not recovered from accused—Some of it given up by accused's step-father—No proof of property having been taken to house inhabited by accused and his step-father—Conviction under S. 412 is not legal. *Mahabir v. Emperor*.

35 Cr. L. J. 165 (1) :
146 I. C. 708 : 10 O. W. N. 842 :
6 R. O. 175 (2) : A. I. R. 1933 Oudh 423 (1).

—S. 412—Knowledge — Articles stolen at dacoity—Possession after two months—Presumption of guilty knowledge.

There can be no hard and fast rule as to time when an accused person should not be called upon to explain the possession of ordinary articles found with him after the commission of a dacoity at which they were stolen. Two and half months after a dacoity is, however, not a long time, and where two such articles as a *lota* and a shirt are recovered kept together, there is a presumption that the accused had guilty knowledge. *Jawala v. Emperor*.

28 Cr. L. J. 638 :
103 I. C. 62 : 1 Luck. Cas. 163 :
A. I. R. 1927 Oudh 277.

—S. 412—Proof—Accused must be shown to be at the material time in possession of place where they were discovered.

No man can be convicted under S. 412, I. P. C., for "receiving or retaining" stolen goods unless he is shown at the material time to have been in possession or control of the place where they were discovered or at least to have had some knowledge of their deposit there. *Emperor v. Aftab Mohammad Khan*.

41 Cr. L. J. 647 :
188 I. C. 649, 1940 A. L. J. 206 :
13 R. A. 55 : A. I. R. 1940 All. 291.

—S. 412—Sentence.

In the matter of awarding sentence, a receiver of articles of petty value stolen at a dacoity should not be treated in practi-

PENAL CODE ACT (XLV OF 1860)

cally the same manner as though he were one of the actual dacoits. *Jwala v. Emperor*.

28 Cr. L. J. 638 :
103 I. C. 62 : 1 Luck. Cas. 163 :
A. I. R. 1927 Oudh 277.

—S. 413.

See also Cr. P. C., 1898, S. 235.

—S. 414.

See also (i) Cr. P. C., 1898, Ss. 35, 226, 239.

(ii) Evidence Act, 1872, S. 25.
(iii) Penal Code, 1860, Ss. 20, 410, 411.

—S. 414—Conviction—Accused admitting commission of theft—Conviction under S. 414.

Where an accused pleads guilty and admits himself to be the thief and not merely the receiver, the conviction should obviously be under S. 414 and not under S. 411, I. P. C. *Khair Din v. Emperor*.

41 Cr. L. J. 823 :
190 I. C. 116 : 13 R. L. 136 :
A. I. R. 1940 Lah. 319.

—S. 414—Disposing of—Interpretation of.

In S. 414, Penal Code, the words 'disposing of' must be interpreted by the light of the words they are associated with, viz., 'concealing' with 'making away with', and they cannot be taken to include 'restoring to the owner.' *Nga Yan E v. Emperor*.

11 Cr. L. J. 493 :
7 I. C. 465 : U. B. R. 1910 Cr. P. C. 8.

—S. 414—Evidence.

The Bombay Police received a telegram purporting to emanate from the Chief Commissioner of Police, Nyasaland, informing the Commissioner of Police, Bombay, that certain blank drafts in duplicate belonging to the Blantyre Branch of the Standard Bank on their London Office had been stolen and it was feared that signatures would be forged and negotiation attempted in Bombay. The Bombay Police sent a telegram in reply to the Nyasaland Police making inquiries from the latter, and received a second telegram in reply, whereupon the Commissioner of Police, Bombay, circulated the information contained in the telegrams to the Banks in Bombay. Accused cashed one of the drafts mentioned in the telegrams from Nyasaland at the French Bank in Bombay and obtained payment. Next day he presented and attempted to obtain payment of another of the drafts at the Eastern Bank of Bombay. The clerk to whom the draft was presented asked the accused to wait and informed his superiors who communicated with the Police and the latter arrested the accused. The accused was put upon his trial for offences under Ss. 414 and 414-511 of the Penal Code in respect of the draft cashed by him and that attempted to be cashed: *Held*, (1) that the telegrams purporting to be sent by the Nyasaland Police were relevant to explain the conduct of the clerk of the Eastern Bank and of the Bombay Police and were, therefore, admissible in evidence under S. 9 of the Evidence Act. That

PENAL CODE ACT (XLV OF 1860)

the telegrams being admissible in evidence could be considered along with the rest of the evidence in order to determine, whether the drafts were stolen property; that for the purposes of a conviction under S. 414, Penal Code, it was not necessary to trace the ownership of the drafts and that it was sufficient if it was proved that the drafts were stolen property. *Emperor v. Abdul Gani Bahadurbhai*.

27 Cr. L. J. 114 :
91 I. C. 690 : 27 Bom. L. R. 1373 :
49 Bom. 878 : A. I. R. 1926 Bom 71.

S. 414—Ingredients.

To convict an accused under S. 414, Penal Code, it is necessary that the property which is the subject-matter of the charge should be stolen property and that the accused should have known or have had reason to believe that it was stolen property. It is not necessary to establish that the property was the subject-matter of any particular theft, but nevertheless it must be shown that it was subject-matter of some theft or other. The fact that the property dealt with is stolen property may, in some instances, be inferred indirectly from circumstantial evidence, as from the way in which it is dealt with by the party dealing with it. But the circumstances must be such as would justify the conclusion that the property is actually stolen property. *In re : Samachari*.

25 Cr. L. J. 790 :
81 I. C. 310 : 18 L. W. 743 :
45 M. L. J. 728 : 33 M. L. T. 182 :
A. I. R. 1924 Mad. 350.

S. 414—Mode of trial.

Where accused A admits commission of theft, and in his statement before the charge admitting his guilt states that he sold a part of the property to B but did not tell B that the property was stolen, A and B cannot be tried jointly. The proper course for the Magistrate in such circumstances is to separate the cases and call A as a witness in B's case in order that his exoneration of B might be tested by cross-examination and acted upon if found to be trustworthy. *Khair Din v. Emperor*.

41 Cr. L. J. 823 :
190 I. C. 116 : 13 R. L. 136 :
A. I. R. 1940 Lah. 319.

S. 414—Object and scope.

The section is intended to penalize persons who deal with stolen property in such a way that it becomes impossible to identify it or use it as evidence. The section cannot apply to a case of a man spending money stolen by another. *Amar Nath v. Emperor*.

36 Cr. L. J. 1459 :
158 I. C. 835 : 8 R. L. 309 :
A. I. R. 1935 Lah. 587.

S. 414—Offence under—Concealing stolen property—Owner of property not traced, if offence.

S. 414, Penal Code, does not impose on the prosecution the requirement to trace in all cases the owners of the property stolen. All that is needed is to show that the accused voluntarily assisted in concealing or disposing

PENAL CODE ACT (XLV OF 1860)

of property which he had reason to believe to be stolen property. The latter fact may be proved from the accused's own conduct and actions. *Emperor v. Budhankhan*.

13 Cr. L. J. 793 :
17 I. C. 537 : 14 Bom. L. R. 893.

S. 414—Proof.

For conviction under S. 414, it must be shown that the property found was stolen—Proceeds from sale of stolen property is not receipt of stolen property itself. *Balram v. Emperor*.

37 Cr. L. J. 718 :
162 I. C. 779 : 18 N. L. J. 342 :
8 R. N. 285 (2).

S. 414—Removal of property from dead body by accused—Voluntary help in disposing of it—Offence is under S. 414.

An accused misappropriated property from a dead person and voluntarily assisted in disposing of it : *Held*, that the property was stolen property and an offence under S. 414, Penal Code, was committed. *The King v. Nga Tok Hla*.

39 Cr. L. J. 490 :
174 I. C. 839 : 10 R. Rang. 437 :
A. I. R. 1938 Rang. 109.

S. 415.

See also (i) Cr. P. C., 1898, S. 4 (b), 177, 179, 225, 417.
(ii) Penal Code, 1860, Ss. 403, 511.

S. 415—Charge.

When a person is accused of having induced another to deliver property by false representation, charge need not state that complainant had suffered loss. But addition of such allegation does not vitiate the charge. *Fateh Haidar v. Emperor*.

32 Cr. L. J. 299 :
129 I. C. 298 : I. R. 1931 Lah. 186 :
A. I. R. 1930 Lah. 407.

S. 415—Cheating by personation—Obtaining health certificate by giving false name—Health certificate, whether property within S. 415.

A health certificate is property within the meaning of S. 415, Penal Code, and if a person by falsely personating another dishonestly or fraudulently induces the Health Officer to deliver to him a health certificate, he is guilty of an offence under S. 419 of the Penal Code. *In re : Packianathan*.

21 Cr. L. J. 478 :
56 I. C. 510 : 11 L. W. 368 :
A. I. R. 1920 Mad. 131.

S. 415—Cheating by personation.

Where a person induces a karkun by false representation to deliver to him a warrant of attachment in charge of the karkun, and makes on it an endorsement to his own advantage, and where it is found as a fact that but for the false representation the karkun would not have parted with the warrant, the person commits the offence of cheating under the first part of S. 415, Penal Code. *Emperor v. Harishanker Gangaram*.

1 Cr. L. J. 332 :
6 Bom. L. R. 375.

PENAL CODE ACT (XLV OF 1860)

———S. 415—Cheating explained.

The offence of cheating as defined in S. 415, Penal Code, contains two parts. First comes the main part "whoever by deceiving any person" which applies to the whole section. Then comes the first part "fraudulently any property." Then comes part 2, which is an alternative to sub-part 1, viz., "or intentionally induces mind, reputation or property." Then come the closing words "is said to cheat." The words "and which act or omission, reputation or property" form a portion of part 2 and are not applicable to part 1 at all. *Ishar Das v. Emperor.* 8 Cr. L. J. 75 : 3 P. W. R. Cr. 37.

———S. 415—Concealment of facts—*Vendor dishonestly concealing fact of encumbrance on property, if guilty.*

Held, that if a vendor at the time of selling his immovable property either makes a positive statement that the property is encumbered or dishonestly conceals the facts within his knowledge that if he stated those facts, the vendee would not buy, he can be convicted of cheating as defined in S. 415, I. P. C. *Mussammatt Begam Bibi v. Ghulam Muhammad.* 7 Cr. L. J. 272 : 3 P. W. R. Cr. 5 : 9 P. L. R. 311.

———S. 415—Deception—*Deception by conduct.*

Where an accused, after his application under Order XXI, r. 83, C. P. C., had been rejected by the executing Court, induced the complainant to advance him money on the security of his house under auction, representing that he was empowered to effect the mortgage in order to pay off the decree-holder, and paid the decree-holder out of the money which he had got from the complainant but afterwards intentionally neglected to obey the direction of the executing Court and took no steps to prevent the sale being confirmed, but on the other hand, received the sale-proceeds from the executing Court, saying that he had paid the decree-holder from his own pocket and after receiving the money from the Court, paid nothing to the complainant mortgagee : *Held*, that the facts constituted the offence of cheating. *Ram Chand v. Jai Dil.* 16 Cr. L. J. 657 : 30 I. C. 641 : 18 P. W. R. 1915 Cr. : A. I. R. 1915 Lah. 381.

———S. 415—*Deception—Mode of—Deception by conduct or implied in the nature of transaction itself.*

S. 415, I. P. C., does not, in any manner, limit the mode in which the deception may take place, nor is it necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. *Khoda Bakhsh v. Bakhya Mundari.* 2 Cr. L. J. 764 : I. L. R. 32 Cal. 941 : 9 C. W. N. 1006.

———S. 415—'Delivery'—*Meaning of.*

The delivery contemplated by S. 415, Penal Code, is delivery to any person, a phrase which

PENAL CODE ACT (XLV OF 1860)

will include even an agent for the purpose of delivery. *M. A. Kaleek v. Emperor.* 28 Cr. L. J. 452 (b) : 101 I. C. 484 : 52 M. L. J. 511 : 1927 M. W. N. 221 : A. I. R. 1927 Mad. 544.

———S. 415—Delivery of property—*Property not in one's possession but at one's order—Delivery of such property within S. 415, Penal Code, if possible.*

A man can give delivery through another of property within the meaning of S. 415, Penal Code, which is not in his possession but which is at his order. If for instance, A had an agreement with B that B will give delivery of certain goods in his possession on account of A on the receipt of delivery note from A and C by deception obtains a delivery note from A on B and thereby gets possession of goods from B, it cannot be said that he has not got delivery of property from or through A directly as a result of his deception of A. *Mohanlal Bhanlal Goela v. Emperor.* 39 Cr. L. J. 123 : 172 I. C. 374 : 10 R. S. 149 : 32 S. L. R. 87 : A. I. R. 1937 Sind 293.

———S. 415—Dishonest concealment.

When there is a concealment of fact, there is neither fraud nor dishonesty, within the meaning of criminal law, unless there is a duty imposed by law, as between the accused and the person with whom he is dealing to make that fact known. *Bishan Das v. Emperor.* 2 Cr. L. J. 218 : 2 A. L. J. 268 : 27 All. 561 : 25 A. W. N. 98.

———S. 415—Dishonest concealment of facts, if cheating.

D was the mortgagee of a plot of land on which stood some trees. He brought the land to sale under his mortgage and purchased it, but in the interim, the mortgagor had transferred the trees to another person. D knowing this, sold the trees to S without disclosing the circumstances : *Held*, that D's act amounted to a dishonest concealment of facts within the meaning of the explanation to S. 415 of the Penal Code, and that he was, therefore, guilty of the offence of cheating under S. 420 of the Code. *Dori Lal v. Emperor.* 20 Cr. L. J. 331 : 50 I. C. 667 : 17 A. L. J. 500 : 1 U. P. L. R. All. 58 : A. I. R. 1919 All. 217.

———S. 415—Dishonest concealment of facts.

The accused presented certain recruits before a Recruiting Officer, who rejected them. Subsequently the accused offered the same recruits to one M on condition that the latter would pay Rs. 50 for each recruit. It was arranged, however, that the money would only be paid if the recruits were accepted by the Recruiting Officer. Before the Recruiting Officer it was discovered that the recruits had already been rejected : *Held*, that there being only a possibility that M might suffer annoyance owing to the discovery that the recruits

PENAL CODE ACT (XLV OF 1860)

had already been rejected and to the fact that his explanation might not be believed at once by the Recruiting Officer, the accused were not guilty of cheating under S. 415, Penal Code. *Emperor v. Muhammad Shah*.

20 Cr. L. J. 77 :
48 I. C. 877 : 34 P. L. R. 1918 Cr. :
A. I. R. 1919 Lah. 473.

— — — S. 415—*Fraud—Statements true but creating false impression, if fraudulent.*

Statements which are literally true are nonetheless fraudulent if their general effect is to create, and if they are intended to create, a false impression. *Emperor v. Kaka*.

12 Cr. L. J. 553 :
22 I. C. 641 : 5 S. L. R. 95.

— — — S. 415—*Fraud and deceit—Cheating—Debt really due—Payment made in the expectation of bond securing the debt being returned—Return of another and a false bond—Fraud and deceit.*

Per *Rampini, J.*—When a person makes a false document, a bond, with the object of including another person by means of the counterfeit bond to pay him his debt, and then by means of the genuine registered bond executed by him to sue him for the money and so recover it from him twice, he is guilty of cheating. In the absence of express finding that the complainant was induced by the show of the counterfeit bond to part with his money, or any express statement in the complainant's evidence, it is sufficient to constitute the offence if the conduct of the parties or the other evidence in the case makes it clear that the complainant parted with his money on the understanding that the genuine bond would be returned. *Ramanath Kalapahar v. Emperor*.

3 Cr. L. J. 160 :
2 C. L. J. 524.

— — — S. 415—*Fraud and dishonesty.*

The offence of cheating by causing damage does not necessarily involve fraud or dishonesty. It is not necessary that the resulting damage or likelihood of damage should have been within the actual contemplation of the accused when the deceit was practised. But the person deceived must have acted under the influence of the deceit, the fact must establish damage or likelihood of damage and the damage must not be too remote. *Legal Remembrancer v. Manmatha Bhusan Chatterjee*.

26 Cr. L. J. 330 :
84 I. C. 554 : 28 C. W. N. 160 :
51 Cal. 250 : A. I. R. 1924 Cal. 495.

— — — S. 415—*Ingredients—Harm, not necessary consequence of act—Offence, whether committed.*

In order to constitute the offence defined in the second part of S. 415 of the Penal Code : (1) there must be deception practised upon a person ; (2) by that deception the person must be induced to do or omit to do something which he would not have done or omitted to do, had he not been so deceived ; (3) such act or omission must

PENAL CODE ACT (XLV OF 1860)

cause, or be likely to cause, to the person deceived damage or harm in body, mind, reputation or property. *Emperor v. Muhammad Shah*.

20 Cr. L. J. 77 :
48 I. C. 877 : 34 P. R. 1918 Cr. :
A. I. R. 1919 Lah. 473.

— — — S. 415—*Ingredients.*

In order to constitute the offence of cheating under S. 415, Penal Code, there must be active deception, by which the accused must (a) fraudulently or dishonestly induce the person to deliver property, etc., or (b) intentionally induce him to do or omit to do something which causes damage, etc., to him, or there must be a dishonest concealment of facts, with the like results. The word "defraud" is not defined in the Code, but connotes generally an intention to deceive, coupled with the possibility of doing injury. *Chartered Bank of India, Australia & China v. Imperial Bank of India*.

149 I. C. 903 : 60 Cal. 262 : 6 R. C. 652 :
A. I. R. 1933 Cal. 366.

— — — S. 415—*Ingredients.*

When the section says "which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property" it clearly means—which act or omission in itself causes or is likely to cause damage or harm to that person in body, mind, reputation or property and that if that damage or harm is dependent upon the future act of some other person, then such damage or harm is too remote to be within the provisions of the section; which contemplates that the act done is in itself likely to cause damage or harm and which is not dependent for damage or harm upon the entirely problematical action of some other person. To use a trite phrase, the act done or omitted to be done must be the *causa causans* of the harm caused or likely to be caused. *Ayodhya Prasad Sital Prasad v. Emperor*.

40 Cr. L. J. 61 :
178 I. C. 226 : 11 R. S. 84 :
1939 Kar. 165 : A. I. R. 1938 Sind 193.

— — — S. 415—*Injury—Injury to complainant—Trivial injury—Civil injury—Remedies, if material.*

The offence of cheating, as defined in S. 415, Penal Code, requires that the person made to deliver property, &c., or to do or omit to do anything which causes or is likely to cause him damage in body, mind, reputation or property and which he would not otherwise have done, should be the person who has been deceived. The offence is not committed if a third party on whom no deception has been practised sustains pecuniary loss in consequence of the accused's act. Every civil wrong is not criminally indictable. *Sundar Singh v. Emperor*.

2 Cr. L. J. 126 :
6 P. L. R. 62.

— — — S. 415—*Injury.*

To constitute the offence of cheating under S. 415, Penal Code, the damage or harm caused or likely to be caused to the person deceived in mind, body, reputation or pro-

PENAL CODE ACT (XLV OF 1860)

erty must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. *Emperor v. Muhammad Shah.*

20 Cr. L. J. 77 :
48 I. C. 877 : 34 P. R. 1918 Cr. :
A. I. R. 1919 Lah. 473.

-----S. 415—Injury.

Under S. 415, Penal Code, the damage or harm caused or likely to be caused must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom. But the law does not take into account remote possibilities that may flow from the act. The proximate and natural result only of the act is to be judged and not any vague and contingent injury that may possibly arise. *Harendra Nath Das v. Jotish Chandra Dutt.*

26 Cr. L. J. 545 :
85 I. C. 641 : 40 C. L. J. 283 :
52 Cal. 188 : A. I. R. 1925 Cal. 100.

-----S. 415—Injury—Wrongful gain or loss, if material.

S. 415, Penal Code, does not require, and does not say, that to constitute the offence of cheating, the wrongful gain must be made out of the person deceived. It simply provides that there may be either wrongful loss to the person deceived or wrongful gain to the person who deceives. *In re: Vengopal Mudalay.*

16 Cr. L. J. 753 :
31 I. C. 353 : A. I. R. 1916 Mad. 1098.

-----S. 415—Intention.

Accused sub-letting garden to complainant—Accused allowing complainant to pay rent and sell produce—Subsequent payment of rent and sale of produce by accused—Finding that accused was trying to get out of a bad bargain—Intention to defraud, is not made out. *Reasuddin v. Emperor.*

35 Cr. L. J. 45 (1) :
147 I. C. 674 (2) : 6 R. P. 366 :
A. I. R. 1934 Pat. 231.

-----S. 415—Intention.

F sent an application for employment on the Burmah Railways to the Locomotive and Carriage Superintendent of those Railways. On the paper on which the application was written appeared the following words: "Copies of Certificates." North Western Railway. Certificate of character. (Form A) No. 21. Certified that Fazal Din was employed as driver from the 1st July 1900 to the 15th April 1903, when he resigned. Character good. *F* was convicted on a charge under Ss. 417, 511 or Ss. 408, 109, I. P. C., in the alternative but he was acquitted by the Appellate Court. On appeal to the Chief Court on behalf of the Government: *Held*, that *F* did not make a false document within the terms of S. 464, I. P. C., or abet such making, but was guilty under S. 415, I. P. C., and he attempted to cheat. His intention was doubtless fraudulent to deceive the Loco Superintendent and thereby obtain employment in capacity in which he would probably have

PENAL CODE ACT (XLV OF 1860)

not been employed but for this deception, which was likely to cause damage or harm to the said Superintendent or to the Railway authorities, whose Agent he was in the matter of appointment. *Emperor v. Fazal Din.*

4 Cr. L. J. 355 :
1 P. W. R. 9 Cr.

-----S. 415—Intention.

In a case of cheating, the Court has got to see the intention of the accused at the time of the offence and to judge all the consequences of the act or omission itself. *Harendra Nath Das v. Jotish Chandra Dutt.*

26 Cr. L. J. 545 :
85 I. C. 641 : 40 C. L. J. 283 :
52 Cal. 188 : A. I. R. 1925 Cal. 100.

-----S. 415—Intention.

Where the *karta* or Manager of a joint Hindu family on applying to the Collector for payment to him as such *karta*, a sum of money due to him and to the other members of the family including some minors, was directed to produce a Power of Attorney from the others or to cause them to appear and admit his authority to sign on their behalf, and thereafter some persons were produced who personated the minors and he signed the receipt for the money and so obtained the money, he having been authorized to receive the money for the family: *Held*, that there was no intent to defraud the Collector and that the act not having been done dishonestly or fraudulently, no offence of cheating as defined in the first part of S. 415, Penal Code, was committed: *Held further*, that the act done, in this case, the payment of the money, did not cause nor was it likely to cause damage or harm to the Collector, in body, mind or reputation, for he was legally bound (though he was entitled to insist upon the authority being proved) to hand over the money to the person or persons authorised to receive it, and that, therefore, no offence of cheating by personation was committed. *Baburam Rai v. Emperor.*

2 Cr. L. J. 388 :
1 C. L. J. 469 : I. L. R. 32 Cal. 775 :
9 C. W. N. 807.

-----S. 415—Interpretation—Cause—Meaning of.

The word "cause" in S. 415, Penal Code, excludes damage occurring as a mere fortuitous sequence, unconnected with the act induced by the deceit; on the other hand, the definition, as it stands, is wide enough to include all damage resulting or likely to result, as a natural consequence of the induced act. *Legal Remembrancer v. Manmatha Bhusan Chatterjee.*

26 Cr. L. J. 330 :
84 I. C. 554 : 28 C. W. N. 160 :
51 Cal. 250 : A. I. R. 1924 Cal. 495.

-----S. 415—Interpretation—"Delivery of property," meaning of.

Property is delivered when something in the ownership or possession of one man is delivered into the ownership or possession of another. Wagons taken for a colliery siding

PENAL CODE ACT (XLV OF 1860)

in order that they may be loaded by the colliery with coal, do not go out of the possession and control of the Railway Company and cannot be said to be delivered to the colliery within the meaning of S. 415, Penal Code. *Legal Remembrancer v. Manmatha Bhushan Chatterjee*.

26 Cr. L. J. 330 :
84 I. C. 554 : 28 C. W. N. 160 :
51 Cal. 250 : A. I. R. 1924 Cal. 495.

———S. 415—*Interpretation*—"Fraudulently" and "dishonestly," distinction between.

Whenever the words "fraud" or "with intent to defraud" or "fraudulently" occur in the definition of a crime, two elements at least are essential to the commission of a crime, viz., (1) deceit or an intention to deceive or, in some cases, mere secrecy, and (2) either actual injury or possible injury, or an intention to expose some person either to actual injury or a risk of possible injury, by means of that deceit or secrecy. A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this; Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent in loss, or risk of loss, to some one else, and if so, there was fraud. In practice, people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent. *Ba Shcin v. Emperor*.

22 Cr. L. J. 721 :
64 I. C. 33 : 10 L. B. R. 366 :
13 Bur. L. T. 239 : A. I. R. 1922 L. Bur. 10.

———S. 415—*Interpretation*—"Fraudulently,"—"Dishonestly," if used in the same sense—"Defraud," meaning of—*Inducement by trick or lie, if amounts to defrauding—Damage or harm.*

The definition of the word *fraudulently* in S. 25, Penal Code, is imperfect as it leaves undetermined the word *defraud*. The word *fraudulently* used in S. 415, Penal Code, together with the word *dishonestly* means something different from *dishonestly*. The word *fraudulently* is not confined to transactions in which there is wrongful gain on the one hand or wrongful loss on the other, either actual or intended; and the word *defraud* which is not defined in the Code may or may not imply deprivation, actual or intended. The word *defraud* should be taken or read in the general or ordinary acceptance of the word and an inducement by trick or a lie acted upon does not amount to *defrauding*. *Bobu Rai v. Emperor*.

2 Cr. L. J. 388 :
1 C. L. J. 469 : I. L. R. 32 Cal. 775 :
9 C. W. N. 807.

———S. 415—*Interpretation*—"Fraudulently," meaning of.

The accused, by giving a false name and address, succeeded in purchasing at a Government opium shop a certain quantity of opium which would not have been sold to him if he had not practised that deceit; *Held*, (*Irwin, C. J., dissenting*) that he committed

PENAL CODE ACT (XLV OF 1860)

the offence of cheating as defined in S. 415 of the I. P. C. Meaning of the word "fraudulently" discussed. *Emperor v. Tha Byaw*.

9 Cr. L. J. 15 :
4 L. B. R. 315.

———S. 415—*Interpretation*—*Mere concealment and non-disclosure—Distinction.*

There is a difference between mere concealment or non-disclosure and a false representation, and while there is no legal duty placed upon the vendor of immovable property to disclose any charge or encumbrance, yet if a false representation is made and acted upon, and as a result, money passes then though the false representation relates to immovable property, the offence of cheating may have been committed. *Shivnath Sahibram Kaul v. Moorijmal Jethanand Bhagnari*.

38 Cr. L. J. 510 :
167 I. C. 873 : 9 R. S. 206 :
A. I. R. 1937 Sind 56.

———S. 415—*Offence under.*

Accused advertising *Gupta Mantra*—Advertisement giving out that no efforts required for its effects—Cash prize offered in case of failure—*Mantra* with instruction, hard to follow—Accused held guilty of cheating. *Akhil Krishora Ram v. Emperor*.

39 Cr. L. J. 442 :
174 I. C. 635 : 19 P. L. T. 375 :
10 R. P. 541 : 4 B. R. 466 :
A. I. R. 1938 Pat. 185.

———S. 415—*Offence under—Cheating by personation—Inducing Mubarrir of a fair to write false name in certificate of sale—Mubarrir deceived—Evidence—Thumb impression—Expert opinion, value of.*

Two persons A and L persuaded a *muharrir* at a fair to write in a certificate of sale of a mare that L was the purchaser and one S the seller. A affixed his thumb mark for S. It was found that (i) the mare was not stolen property, but (ii) it was come by in some doubtful fashion and that (iii) the *muharrir* was deceived; *Held*, that for whatever reasons L and A did deceive the *muharrir* and did induce him to write a false certificate, they were guilty of cheating by personation. *Ahmada v. Emperor*.

16 Cr. L. J. 139 :
27 I. C. 203 : 9 P. R. 1914 Cr. :
204 P. L. R. 1915 : A. I. R. 1914 Lah. 558.

———S. 415—*Offence under—Cheating—Disposing of woman by misrepresenting caste and obtaining money, if offence.*

To palm off a woman as belonging to a caste different to the one to which she really belongs with the object of obtaining money, amounts to the offence of cheating as defined in S. 415 of the Penal Code. *Emperor v. Jnanda Singh*.

19 Cr. L. J. 335 :
44 I. C. 351 : 6 P. R. 1918 Cr. :
16 P. W. R. 1918 Cr. : 61 P. L. R. 1918 :
A. I. R. 1918 Lah. 377.

PENAL CODE ACT (XLV OF 1860)

—S. 415—*Offence under—Complainant induced to deliver property on the representation that payment would be made the same day, if deceit.*

To constitute the offence of cheating by taking delivery of property, there should be deceit at the time when delivery is taken and the seller should be fraudulently and dishonestly induced to deliver the property in consequence of such deceit. The accused induced the complainant to part with 98 bags of gram on the distinct representation that the price of the gram would be paid later in the course of the day and that he would stay at the complainant's shop until the money arrived. But he decamped at the first opportunity and kept away till he was arrested several days later: *Held*, that when the accused took delivery of the gram he had no intention of paying and that he induced the complainant to deliver the gram by fraudulent and deceitful means. *Nga Mya v. Emperor*. 12 Cr. L. J. 84: 9 I. C. 458: 4 Bur. L. T. 14.

—S. 415—*Offence under—Despatch of insured cover purporting to contain notes, but in fact empty, whether cheating.*

Accused sent an insured cover to complainant through the Post Office purporting to contain a number of Government Currency Notes. On receipt, the cover was found to contain only a letter advising the despatch of the notes and some bits of waste paper: *Held*, that the conduct of the accused did not amount to cheating inasmuch as the complainant was not subjected to any of the consequences detailed in S. 415, Penal Code. *Raman Bchari Roy v. Emperor*.

24 Cr. L. J. 684:
73 I. C. 780: 50 Cal. 849: 28 C. W. N. 252:
A. I. R. 1924 Cal. 215.

—S. 415—*Offence under—Judgment-debtor issuing cheque to decree-holder and obtaining time for settlement—Cheque dishonoured, if offence in absence of dishonest intention.*

The accused against whom certain decrees had been obtained, approached the decree-holder for an amicable settlement and issued a crossed cheque to the decree-holder upon a Bank. At the same time they applied to the Executive Court for one week's time for settlement and time was granted with the consent of the decree-holder. The cheque was dishonoured and the decree-holder renewed the execution of his decree and instituted criminal proceedings against the accused for cheating. *Held*, (1) that the element of fraud or dishonesty was absent, and there was no delivery of property and consequently the first part of S. 415, Penal Code, was not applicable to the case; (2) that the second part of S. 415 was also inapplicable inasmuch as no damage or harm to the complainant in body, mind, reputation or property was caused by the accused's act. *Sheo Saran Vaish v. Jitendra Nath Daw*.

29 Cr. L. J. 657:
110 I. C. 209: 5 O. W. N. 357:
A. I. R. 1928 Oudh 292.

PENAL CODE ACT (XLV OF 1860)

—S. 415—*Offence under—Loss, likelihood of, if material.*

The petitioner, a Book-maker of the Calcutta Royal Turf Club, allowed the opposite party to take bets on credit. In respect of debts due to the petitioner on account of bets the opposite party gave the petitioner a cheque and the petitioner relying on the assurance of the opposite party that there would be no difficulty in getting the cheque cashed, allowed him to take further bets on credit and the opposite party became further indebted to the petitioner. Thereafter, the petitioner presented the cheque for payment and it was dishonoured. Then he applied to the Magistrate for process under S. 417, Penal Code: *Held*, that it could not be said that the act which the petitioner was induced to do by reason of the deception caused or was likely to cause loss or damage to him as it did not follow that had the petitioner refused to take bets on credit, the opposite party would have made the same wagers in cash. *H. K. Bhedwar v. C. S. R. Rao*.

24 Cr. L. J. 748:
74 I. C. 76: 27 C. W. N. 919:
A. I. R. 1924 Cal. 111.

—S. 415—*Offence under—Post-dated cheque—Payment not made—Whether criminal offence.*

In the offence of cheating, there are two elements—deception and dishonest inducement to do or omit to do something. Mere dishonesty is not a criminal offence. Moreover, to establish the offence of cheating, the complainant would have to show not only that he was induced to do or omit to do a certain act but that this induced omission on his part caused or was likely to cause him some harm or damage in body, mind, reputation or property—which are presumed to be the four cardinal assets of humanity. A post-dated cheque in payment of goods already received is a mere promise to pay on a future date. And a broken promise is not a criminal offence, though it may amount in certain business relations discreditable behaviour. *M. M. S. T. Chidambaram Chettiar v. Shanmugham Pillai*.

39 Cr. L. J. 261:
173 I. C. 14: 1937 M. W. N. 999:
46 L. W. 629: 1937, 2 M. L. J. 878:
10 R. M. 512: A. I. R. 1938 Mad. 129.

—S. 415—*Offence under.*

Property burdened with charge—Loan advanced on property—Representation that property was free—Questions regarding property falsely answered—Charge not registered—Offence, is one of cheating. *Shionath Sahibram Kaul v. Jethanand Moorijmal Bhagnari*.

38 Cr. L. J. 510:
167 I. C. 873: 9 R. S. 206:
A. I. R. 1937 Sind 56.

—S. 415—*Offence under.*

When amounts to cheating—Giving post-dated cheque by person having no funds in Bank—Dispute held of civil nature. *R. S. Ratra v. Ganesh Dass*.

41 Cr. L. J. 394:
187 I. C. 123: 41 P. L. R. 869:
12 R. L. 445: A. I. R. 1940 Lah. 93.

PENAL CODE ACT (XLV OF 1860)

—S. 415—Procedure.

Offence of cheating held established, but charge being defective by reason of Magistrate's failure to set out particular consequences by virtue of which the deception became offence, and the defect being material irregularity not curable under S. 225, Cr. P. C., the conviction should be set aside. *Gian Singh v. Emperor*.

40 Cr. L. J. 371 :
180 I. C. 485 : 11 R. L. 689 :
A. I. R. 1938 Lah. 828.

—S. 415—Proof.

Goods ordered on credit—Mere fact that the accused was in embarrassed circumstances is not sufficient to make out a case of cheating. *Emperor v. Mohsinbhai Fatehali*.

33 Cr. L. J. 401 :
137 I. C. 142 : 34 Bom. L. R. 313 :
I. R. 1932 Bom. 224 : A. I. R. 1932 Bom. 273.

—S. 415—Proof.

Loan of jewels to a person on the representation that they were to be worn at a marriage and would be returned in a few days—Nothing to show that the first representation was fraudulent and not sufficient to show that the person at the time of obtaining the jewels had no intention of returning them—The transaction was a loan—There was no criminal offence committed. *Juggadama v. Emperor*.

7 Cr. L. J. 242 :
13 Bur. L. R. 268.

—S. 415—What constitutes offence—Debtor sending insured letter to creditor containing waste paper—If cheating.

Accused who owed a debt to the complainant, sent an insured letter to the latter containing certain valueless papers. The latter was received by the complainant and on discovering that instead of containing money it contained papers which had no value at all, he charged the accused with an offence under S. 417, read with S. 511 of the Penal Code : *Held*, that the act of the accused did not fall within the definition contained in S. 415, Penal Code, and he was not, therefore, guilty of the offence with which he was charged. *Tula Ram v. Emperor*.

26 Cr. L. J. 209 :
83 I. C. 993 : 21 A. L. J. 865 :
A. I. R. 1924 All. 205.

—S. 415—Dishonest concealment of facts—Explanation—False representation of title, not inducing bargain, effect of.

No concealment is dishonest within the meaning of S. 415, Penal Code, unless there is a legal obligation to disclose it. Defects in title being defects in the property under S. 55, (1) (a) of the Transfer of Property Act, there is no duty on the seller to disclose them unless the buyer could not, with ordinary care, discover them. A, one of the several members of a joint Hindu family, sold certain land to a Municipality without disclosing that the land was mortgaged or that the other members of the family had a share therein. A received the price and executed sale-deed containing the usual covenant about title and

PENAL CODE ACT (XLV OF 1860)

indemnity in case of any defect of title. A was prosecuted for cheating : *Held*, that A was not guilty of any dishonest concealment of facts within the meaning of the Explanation to S. 415, I. P. C., as there was no legal obligation upon A to disclose the mortgage or the fact of his being a member of a joint family, the Municipality knowing that he was a Hindu. *Karachi Municipality v. Bhojraj*.

16 Cr. L. J. 706 :
30 I. C. 994 : 9 S. L. R. 97 :
A. I. R. 1915 Sind. 21.

—S. 415, Illus. (F)—Concealment of facts—Borrowing money by false representation as to age—Plea of minority set up in civil suit allowed—Conviction under section, legality of.

Where a person by representing that he is a major, obtains a loan of money from another, and in answer to a suit for recovery of the sum so borrowed, sets up the defence that he was a minor at the time he borrowed the money, with the result that the suit against him is dismissed, he is liable to conviction for an offence under S. 415, illustration (f) of the Penal Code, as his intention from the outset was dishonest. *Sada Ram v. Emperor*.

21 Cr. L. J. 749 :
58 I. C. 253 : 18 A. L. J. 408 :
A. I. R. 1920 All. 289.

—Ss. 415, 417, 511—Proof—Facts found not sufficient—Effect of.

On a certain date, the petitioner, at the *daroga's* request consented to act as Municipal member at the out-post in respect of goods brought there to be passed through. Among other goods brought to the out-post were some cart loads of goods belonging to the petitioner's firm. In the application, the goods were entered as 460 bags of linseed. As a matter of fact, however, only 230 bags were brought. The application was not signed by the petitioner himself, but his name was written by a *gomashita*. The petitioner, who was a big merchant, assured the *daroga* that he would make good the deficiency on the following day, and on that assurance the *daroga* made out a *chalan* for the full number of bags specified in the application. The *moharir* did not sign the *chalan* and the petitioner did not make any attempt to induce him to sign it, nor did he try to obtain a receipt for 500 bags as representing the number actually passed through the out-post. On the next day, the petitioner tried to send goods to the Railway Station to make up the deficiency, but some of his carts were intercepted and prevented from reaching the station by the Municipal authorities : *Held*, that the evidence fell short of the evidence required to prove a dishonest mind or dishonest purpose on the part of the petitioner and that he could not be convicted of an attempt to cheat under S. 417 and 511, Penal Code. *Brijraj Marwari v. Emperor*.

14 Cr. L. J. 120 :
18 I. C. 680 : 17 C. W. N. 294.

—Ss. 415, 419—Cheating by personation.

Where the accused was found to have

PENAL CODE ACT (XLV OF 1860)

knowingly represented one *Mst. Jasoda* to be *Mst. Bitia*, the mother of a sepoy named *Kapur Singh*, who had been killed in action, and thereby induced the military authorities to grant a pension to *Mst. Jasoda* to which she was not entitled, it was held that the accused had committed the offence of cheating, punishable under S. 419 of the I. P. C. *Emperor v. Kirat Singh*. 6 Cr. L. J. 426 : 27 A. W. N. 291 : 3 M. L. T. 61.

———Ss. 415, 470—*Charge*. —

The charge framed in a case ran as follows : "That you on or about the 19th September 1928, in Calcutta deceived Mr. E. J. Pithia of Birla Jute Manufacturing Co., Ltd., by inducing him to accept a Bought Note signed by your firm as brokers on behalf of Santoke Chand-Manik Chand, who, you represented, were a respectable firm of jute dealers carrying on business at 65, Noormull Lohia Lane, Calcutta, knowing that such representation was false, and further, by inducing the said Mr. E. J. Pithia by means of such representations to give a receipt for the said Bought Note, and you thereby committed an offence punishable under S. 420, I. P. C." : *Held*, that the charge did not disclose an offence either under S. 420 or under S. 415, Penal Code. *Harendra Nath Das v. Jotish Chandra Dutt*. 26 Cr. L. J. 545 : 85 I. C. 641 : 40 C. L. J. 283 : 52 Cal. 188 : A. I. R. 1925 Cal. 100.

———Ss. 415, 420 — *Intention — Contract — Breach — Intention to perform when contract entered into, absence of — Dishonest intention*.

Complainant's firm had advanced money to the accused on the understanding that the accused would purchase rice from the outlying *hats* and ship and deliver the same at the firm's place of business, where it would be sold, the profits on the sale going to the accused, and the accused being liable to pay to the complainant's firm the capital advance with interest, and a commission of one anna per maund of rice sold. The accused failed to deliver the rice within the stipulated time and was charged with cheating. The representations made by the accused to the complainant's firm when getting the advance were not entirely false, and it appeared that the accused had, to some extent, endeavoured to carry out the terms of the agreement, though he was also found to have converted a small portion of the money to his own use in paying off his own debts : *Held*, that the case was really one of breach of contract. The important question to be considered was whether the accused, when he took over the money from the complainant's firm, had any intention of performing the contract. *Dy. Legal Remembrancer v. Iqbalulla Kazi*. 4 Cr. L. J. 154 : 10 C. W. N. 1005.

———Ss. 415, 420—*Property, what is*.

Whether an article is or is not "property" within the meaning of S. 420, Penal Code, does not depend upon its possessing a money or market value. If it has some special value

PENAL CODE ACT (XLV OF 1860)

for the person or persons concerned, it is, "property," even though its value cannot be measured in money. A certificate for having passed an examination is "property" within the meaning of S. 415, Penal Code. *Local Government v. Gangaram*. 23 Cr. L. J. 443 : 67 I. C. 319 : 18 N. L. R. 52 : A. I. R. 1922 Nag. 229.

———S. 416.

See also Penal Code, 1860, S. 415.

———S. 416 — *Cheating by personation — Muhammadan representing himself as Hindu to obtain service*.

A Muhammadan who represents himself to be an orthodox Hindu for the purpose of obtaining service with a Hindu who would not employ him if it were known to him that he was a Muhammadan, commits an offence punishable under S. 418 of the Penal Code. *Sherbaz v. Emperor*. 25 Cr. L. J. 789 : 81 I. C. 309 : 18 S. L. R. 59 : A. I. R. 1925 Sind 57.

———Ss. 416, 417, 418, 419—*Cheating by personation — Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect*.

The three accused who were known to the complainant, represented to him that one *Fakiria*, whom he did not know, was a rich Seth and would fall an easy prey if the complainant gambled with him. *Fakiria* was no Seth. He was a notorious and practised gambler, well skilled in all the tricks of gambling. He had a borrowed watch and clothes on him and pretended to be a rich Seth. The complainant who was no match for him at play gambled with him and was done out of his property by his (*Fakiria's*) tricks : *Held*, that the three accused committed the offence of cheating under S. 417, I. P. C., or of abetment of cheating by personation under S. 419, I. P. C., while *Fakiria* committed the offence of abetment of cheating under Ss. 417 and 419, I. P. C. : *Held further*, that the case of no accused fell under S. 418, I. P. C. *Jahana v. Emperor*. 2 Cr. L. J. 38 : 4 P. R. Cr. 1905 : 6 P. L. R. 452.

———S. 416—*Cheating by personation*.

Accused appearing for examination for another candidate and answering for such candidate : *Held*, guilty both of forgery and cheating. *Aswini Kumar Gupta v. Emperor*. 37 Cr. L. J. 1156 (b) : 165 I. C. 505 : 40 C. W. N. 956 : 9 R. C. 413 : A. I. R. 1936 Cal. 403.

———S. 417.

See also (i) Cr. P. C., 1898, Ss. 4 (b), 117, 179, 208, 345.

(ii) Penal Code, 1860, Ss. 34, 103, 192, 196, 379, 403, 406, 415, 417, 511.

(iii) Railways Act, 1890, S. 68.

———S. 417—*Concealment of facts — Execution of mortgage concealing previous farzi sale, whether amounts to cheating*.

A executed a mortgage to *B* representing

PENAL CODE ACT (XLV OF 1860)

that there was no prior encumbrance or dispute as to title. It was subsequently discovered that A had executed a *farzi* deed of sale in respect of the property in favour of another before executing the mortgage. A was charged with the offence of cheating: *Held*, that inasmuch as it was admitted by the complainant that the deed of sale was *farzi*, A could not be convicted of cheating. *Ramdayal Mahto v. Emperor*.

29 Cr. L. J. 700 :
110 I. C. 332 : 9 P. L. T. 303 :
A. I. R. 1928 Pat. 337.

—S. 417—Conviction—Conspiracy to cheat—Conspiracy not established—Cheating proved—Punishment for cheating only.

The accused were charged with cheating in pursuance of a conspiracy which was not proved, and the evidence showed that the offence of cheating was committed without conspiracy: *Held*, that the accused could be punished for cheating only. *Emperor v. Abdul Rahman Akramdin*.

37 Cr. L. J. 753 :
162 I. C. 950 : 38 Bom. L. R. 153 :
8 R. B. 437 : 60 Bom. 485 :
A. I. R. 1936 Bom. 193.

—S. 417 - Dishonesty.

In order to constitute the offence of cheating, it is necessary that the intention to deceive and thereby dishonestly obtain delivery of property should exist at the time such delivery is sought. If no such intention existed, and the possession was obtained innocently, the offence will, in the absence of a fiduciary relation between the parties, be one of criminal misappropriation. *Subbegowda v. Manjamma Heggadathe*.

9 Cr. L. J. 312 :
12 M. C. C. R. 55.

—S. 417—Intention.

Where the proceedings do not show that the accused had any intention of causing damage or harm by his act, nor can it be shown that his act was even likely to cause damage or harm, a prosecution for cheating is entirely misconceived. *Abdul Hamid v. Emperor*.

36 Cr. L. J. 1136 :
157 I. C. 241 : 8 R. Rang. 93.

—S. 417—Jurisdiction—Offence committed at one place—Loss caused at another place—Jurisdiction.

Loss is not a necessary element of the offence of cheating. There must be intention to cause wrongful loss or wrongful gain, but it is not essential that loss should be caused. Therefore, it is the Court within whose jurisdiction the offence is committed, and not the one within whose jurisdiction loss is caused, that is competent to try a case under S. 417, Penal Code. *Roghbir Saran v. Kurakshetar Motor Service Company, Thanesar*.

23 Cr. L. J. 447 :
67 I. C. 623 : A. I. R. 1923 Lah. 90.

—S. 417 - Offence under—Accused receiving money for three bonds but returning only two, if guilty.

Where admittedly the sum of Rs. 170 was due on three bonds, but the story for the prosecution was that the creditor accepted Rs. 116

PENAL CODE ACT (XLV OF 1860)

in full payment of all these bonds and after receiving the amount, he returned only two bonds and not the 3rd, which the accused denied: *Held*, that the dispute was one of a civil nature. *Mansa Ram v. Emperor*.

14 Cr. L. J. 524 :
20 I. C. 1004 : 25 P. W. R. 1913 Cr. :
327 P. L. R. 1913.

—S. 417—Offence under—Debtor inducing creditor fraudulently to grant time for payment, if cheating.

Accused owed a sum of money to the complainant. The complainant served the accused with a notice requiring immediate payment. Accused thereupon approached the complainant and induced him to grant 15 days' time to pay up. During the time granted, the accused removed their goods from their shop with the intention of escaping the payment of their debt to the complainant. Complainant prosecuted the accused for the offence of cheating and the accused were convicted: *Held*, (1) that on the finding arrived at by the Sessions Judge, there was a clear case of cheating. *Rameshwar v. Gobind Prasad*.

26 Cr. L. J. 970 :
87 I. C. 426 : 23 A. L. J. 433 :
A. I. R. 1925 All. 473.

—S. 417—Offence under—Giving cheque with knowledge that it would not be met, when amounts to cheating.

The 1st accused borrowed Rs. 500, from the complainant promising to repay it on the next day. On the next day the 2nd and 3rd accused who were partners of the 1st accused came to the complainant and offered him a cheque signed by the 3rd accused for Rs. 2,000, and took from the complainant a cheque for Rs. 1,500. The complainant's cheque was cashed on the same day but the accused's was dishonoured. The facts showed that the complainant expected to be paid and the accused had no expectation that it would be met on the next day: *Held*, (i) that 2nd and 3rd accused were guilty of cheating under, S. 417, Penal Code: (ii) that as the three accused had acted in concert, the dishonest intention arising from knowledge that the cheque would not be met must be imputed to all of them and the first accused was also guilty. *Keshavji Madhavji v. Emperor*.

31 Cr. L. J. 1096 :
126 I. C. 868 : 32 Bom. L. R. 562 :
A. I. R. 1930 Bom. 179.

—S. 417—Offence under—Married man representing himself as bachelor and obtaining permission of complainant to court his daughter, if offence.

Accused, a married man, represented himself as a bachelor to the complainant and proposed for the hand of his daughter. The complainant accepted him as his future son-in-law and admitted him to his house. Shortly afterwards the complainant found out that the accused was a married man. He thereupon asked his daughter to give up the accused, but the daughter, instead of doing so, left the house and went

PENAL CODE ACT (XLV OF 1860)

to the accused, by whom she was alleged to have been seduced. The accused was tried for and convicted of an offence under S. 417, Penal Code. It was alleged that the seduction had caused harm to the complainant in mind and reputation: *Held*, that the seduction having taken place after the deception practised by the accused had been cleared up, it could not be said to be the natural consequence of the deception and that, therefore, the accused was not guilty of cheating. *Millon v. Sherman*.

19 Cr. L. J. 781 (b) :
46 I. C. 701 : 22 C. W. N. 1001 :
28 C. L. J. 485 : A. I. R. 1919 Cal. 1088.

———S. 417—Offence under—Money paid to creditor—Creditor, refusal of, to return bond, if offence.

In order to constitute the offence of cheating, it is essential, in the first place, that the person who delivers property should have been deceived before he makes delivery and, in the second place, that he should have been induced to do so fraudulently or dishonestly. The deception may be by words or by conduct. Accused lent a sum of money to the complainant and got the latter to execute a bond. He also gave the complainant a *kamiali parcha* in respect of his homestead land: After some years the complainant paid the money back to the accused but the latter refused to return the bond until the *kamiali parcha* was returned to him: *Held*, that the accused could not be convicted of the offence of cheating under S. 417 of the Penal Code. *Deodhari Mahilo v. Emperor*.

22 Cr. L. J. 169 :
59 I. C. 921 : 1921 Pat. 12 :
2 P. L. T. 211 : A. I. R. 1921 Pat. 80.

———S. 417—Offence under—Taking thumb impression is in itself not offence.

Mere taking of thumb impression on a blank piece of paper may be a preparation to cheat but unless something is written on it, it cannot amount to cheating or an attempt to cheat. *Sheo Prasad v. Emperor*.

27 Cr. L. J. 609 :
94 I. C. 353 : 1926 Pat. 110 :
7 P. L. T. 772 : A. I. R. 1926 Pat. 267.

———S. 417—Offence under—Untrue praise of goods in advertisement, whether criminal.

Accused advertised in a newspaper that he was willing to sell an almost new *jazz set*. The complainant answered the advertisement, and after some correspondence, paid the price agreed upon between the parties. On receipt of the goods, however, he found that they were not of the quality he expected, and also that certain articles mentioned in the list had not been sent to him: *Held*, that these facts were not sufficient to justify the prosecution of the accused for the offence of cheating under S. 417 of the Penal Code, inasmuch as the giving of untrue praise of the goods did not come within the Penal Law, and it was impossible for the complainant to prove that the accused did not intend to send all the articles mentioned

PENAL CODE ACT (XLV OF 1860)

in the list at the time when he made the promise. *G. W. H. Da Costa v. J. P. Deesholls*.
26 Cr. L. J. 921 (a) :
86 I. C. 985 : 29 C. W. N. 362 :
A. I. R. 1925 Cal. 605.

———S. 417—Offence under.

Where debtor sends blank sheets in insured cover for money due and creditor signs the acknowledgment, offence of cheating is committed; commission of offence is not postponed until creditor attempts to use acknowledgment as proof of payment. *Bajinath Sahay v. Emperor*.

34 Cr. L. J. 1020 :
145 I. C. 671 : 14 P. L. T. 48 :
6 R. P. 198 : A. I. R. 1933 Pat. 183.

———S. 417—Revision.

In a proceeding under S. 107, Cr. P. C., the Pleader of the 1st party having agreed to persuade his client to give an undertaking for the protection of the property in dispute in that proceeding, the opposite party withdrew from the property. The Pleader's client was willing to give the requisite undertaking but the opposite party did not accept it and filed a complaint against the Pleader under S. 417, Penal Code. The Magistrate issued process against the Pleader: *Held*, that no *prima facie* case of cheating was made out against the Pleader, and the proceedings against him should be quashed. *Nrishintha Kumar Mukherjee v. Kumudendu Mukherjee*.

18 Cr. L. J. 50 :
37 I. C. 34 : 20 C. W. N. 1112 :
A. I. R. 1917 Cal. 194.

———Ss. 417, 420—Concealment of facts—Failure to disclose existence of mortgage subsequent to purchase.

The vendee defendant in a suit for pre-emption compromised the suit, the plaintiff agreeing to pay a certain sum in cash and to discharge certain encumbrances on the property in suit. It was subsequently discovered that the vendee had, after his purchase but before suit, mortgaged the property which was the subject of the suit for pre-emption: *Held*, that the vendee could not, on account merely of his omission to disclose the existence of this subsequent mortgage be held guilty of the offence of cheating. *Gendan Lal Abdul v. Aziz Khan*.

1 Cr. L. J. 1044 :
24 A. W. N. 265 : I. L. R. 27 All. 302.

———Ss. 417, 420—Conviction, alteration of—Conviction under S. 417—Offence disclosed under S. 420—Magistrate, 2nd Class, jurisdiction of, to try case.

Complainant while under the influence of liquor administered to him by the accused, was induced to sign a document purporting to be a bond evidencing a loan of money but which, in reality, was a deed divorcing his wife. Accused were convicted by a Magistrate of the Second Class of an offence under S. 417 of the Penal Code. On revision: *Held*, that the offence charged fell within the purview of S. 420 and not S. 417 of the Penal Code, and

PENAL CODE ACT (XLV OF 1860)

consequently the trying Magistrate had no jurisdiction to enquire into or try the case. *Bakhtawar Singh v. Emperor*.

23 Cr. L. J. 428 :
67 I. C. 588 : 3 L. L. J. 233.

—Ss. 417, 420, *distinction between*.

S. 417, Penal Code, contains a general provision which prescribes punishment for the offence of cheating generally, while S. 420 of the same Code punishes that species of cheating which is accompanied with a transfer of property. The latter kind of cheating is an offence of an aggravated character and the culprit is consequently liable to a severe punishment. *Sher Singh v. Emperor*.

30 Cr. L. J. 480 :
115 I. C. 471 : 10 Lah. 513 :
30 P. L. R. 514 : I. R. 1929 Lah. 391 :
A. I. R. 1928 Lah. 935.

—Ss. 417, 420—*Miscellaneous—Civil and criminal proceedings together—Stay of criminal proceedings*.

Where civil proceedings are started along with criminal proceedings under Ss. 417 and 420, Penal Code, the criminal proceedings should be stayed till the civil cases are finally terminated. *Paras Ram v. Emperor*.

12 Cr. L. J. 615 :
12 I. C. 991 : 44 P. W. R. 1911 Cr.

—Ss. 417, 420—*Scope, distinction between*.

S. 417, Penal Code, deals with cheating generally, but S. 420 deals with that aggravated species of cheating which involves delivery of property or destruction of valuable security. *Setti Rangayya v. Somappa*.

25 Cr. L. J. 1193 :
82 I. C. 57 : 20 L. W. 919 :
A. I. R. 1925 Mad. 367.

—Ss. 417, 465, 468, 511—*Evidence—Forgery—Attempt to cheat—Evidence*.

Where conviction, under Ss. 465, 468, 417/511, Penal Code, was based on the following allegations :—On the 25th Jaista, B presented for payment a bill to the accused, who took it from B, saying : "I will pay the money," and endorsed on its back : "17th Jaista, through B, Rs. 501." Upon this B, snatching the bill from the accused, asked the accused for payment of the amount entered on its back, but was told : "Go away—I have paid." Held generally on facts, that there was no evidence to go to the Jury either of forgery or of an attempt to cheat. Held with respect to the forgery charge, that there was no evidence from which it might reasonably have been inferred that the accused intended it to be believed that the endorsement on the bill was made on the 17th Jaista, and not, as in fact was the case, on the 25th Jaista. Held further, that in the charge of attempting to cheat the silence as to the person upon whom the alleged attempt to cheat was made, and also as to the manner in which it was intended by the accused to influence the conduct of that person, was a serious defect, and placed the accused at a considerable disadvantage in the conduct of

PENAL CODE ACT (XLV OF 1860)

his defence, though these omissions had been remedied at the close of the case for the prosecution. *Hurjee Mull v. Imam Ali Sircar*.

1 Cr. L. J. 124 :
8 C. W. N. 278.

—Ss. 417, 511—*Attempt at cheating*.

Where the evidence established the fact that the accused informed an Octroi Superintendent that there were 16 maunds of an article in a cart, whereas there were only 6, and by this act he induced the Superintendent to grant him a refund of the duty on 16 maunds of the article instead of 6 maunds, and where this was discovered before any money was paid to the accused : Held, that the accused was guilty of an attempt at cheating under S. 417 read with S. 511, Penal Code. *Bhagwan Das v. Emperor*.

2 Cr. L. J. 788 :
2 A. L. J. 718.

—Ss. 417, 511—*Offence under—Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation*.

Where A falsely representing himself to be a member of the firm of B, which firm were client of a pleader C, went to the pleader and instructed him to write a letter on behalf of B, cancelling a certain contract and where C, wrote the letter but instead of despatching it to the addressee sent it to B's shop where the fraud was discovered : Held, the despatch of the letter would have caused injury to the pleader in mind and reputation, he would certainly have been likely to lose reputation, and perhaps business, if it appeared that he had been negligent and had been readily deceived. Held, therefore, that A was rightly convicted of attempt at cheating. *Mahadeo Lal v. Emperor*.

7 Cr. L. J. 342 :
7 C. L. J. 375 ; 12 C. W. N. 750.

—S. 418.

See also Penal Code, 1860, S. 417.

—S. 418—*Concealment of facts*.

Wilful concealment by vendor of circumstances amounts to cheating even though the sale-deed contains a provision entitling the vendee to recover further moneys by suit. *Lal Bahadur v. Emperor*.

33 Cr. L. J. 884 :
140 I. C. 97 (2) : I. R. 1932 All. 600 (1) :
A. I. R. 1933 All. 42.

—S. 419.

See also (i) Cr. P. C. 1898, S. 195.

(ii) Penal Code, 1860, Ss. 75,
379, 415, 417, 419, 420.

(iii) Railways Act, 1890,
S. 112 (a).

—Ss. 419, 411—*Attempt at cheating—Railways Act (IX of 1890), S. 112 (a)—Travelling by a forged pass—Cheating by personation—Attempt*.

The accused travelled from Tichinopoly to Podanur without a ticket. On arrival at Podanur, he presented a forged Railway pass in the name of the servant of the Assistant Auditor, a description which never applied to him. He was convicted under

PENAL CODE ACT (XLV OF 1860)

S. 419, Penal Code, and S. 112 (a) of Indian Railways Act: *Held*, that an attempt to cheat by personation not being successful, the conviction ought to be changed to one under Ss. 419 and 511, Penal Code. *In re: Govindaswami Naidu*. 12 Cr. L. J. 406; 11 I. C. 590 : 21 M. L. J. 748.

— — — — Ss. 419 and 511—*Injury—Representation by false certificate—To get reinstated into office—No damage or harm to the officer.*

Where a person attempted to get himself reinstated in the post of the *Karnam* by the production of a certificate of having passed a certain examination and representing that the certificate referred to him, while in fact it referred to another: *Held*, that where it is not shown that such representation caused damage or harm to the officer to whom the representation was made, a prosecution under Ss. 419 and 511, Penal Code, could not be maintained, but a prosecution under S. 182, I. P. C., might lie. *In re: Manikka Pillai*. 8 Cr. L. J. 421; 4 M. L. T. 324.

— — — — S. 420.

See also (i) Bombay Local Boards Act, 1923, S. 136.

(ii) Contract Act, 1872, S. 178.

(iii) Cr. P. C. 1898, Ss. 177, 179, 223, 345 (2) (1) (7), 347, 437, 439, 517, 562.

(iv) Evidence Act, 1872, Ss. 14, 15.

(v) Penal Code, 1860, Ss. 24, 30, 120-B, 230, 366, 379, 403, 415, 417.

(vi) Post Office Act, 1898, Ss. 64, 72.

(vii) Railways Act, 1890, Ss. 68, 112 (a).

— — — — S. 420—*Attempt at cheating—What constitutes—Person attempted to cheat forewarned and not cheated—Offence of attempt to cheat, if committed.*

A man may be guilty of an attempt to cheat, although the person he attempts to cheat is forewarned and is, therefore, not cheated. *Government of Bengal v. Umesh Chunder Mitter* (4) and 110 I. C. 812 (5). *relied on. Emperor v. Raghunath*.

41 Cr. L. J. 881 :

190 I. C. 259 : 1940 O. W. N. 819 :

1940 O. L. R. 561 : 13 R. O. 143 :

A. I. R. 1940 Oudh 3.

— — — — S. 420—*Burden of proof.*

In a case under S. 420 of the Penal Code, it is for the prosecution to show that the accused deceived the complainant by making a false and dishonest representation, and not for the accused to prove that he did not act dishonestly. *Khairati v. Emperor*.

19 Cr. L. J. 45 :

42 I. C. 1005 : 15 A. L. J. 807 :

A. I. R. 1918 All. 403.

PENAL CODE ACT (XLV OF 1860)

— — — — S. 420—*Charge.*

But where the charge against the accused is that he cheated the Government of India by dishonestly inducing the Government to deliver a cheque, the property of Government, in payment of fraudulent bills and thereby committed an offence under S. 420, Penal Code, an omission to mention therein the person or persons alleged to have been deceived and induced to issue the cheque, is not a fatal defect in the charge, if the accused is not misled and there is no failure of justice by reason of the omission. *Billingham v. Emperor*. 25 Cr. L. J. 1313 (b) :

82 I. C. 545 : 27 C. W. N. 821 :

A. I. R. 1924 Cal. 18.

— — — — S. 420—*Charge—Correct way of framing charge.*

In framing a charge under S. 420, Penal Code, it is necessary to set out not merely the fact that the accused had obtained goods by dishonest means, but also the deception which has been practised. It is necessary that the representation should be mentioned in the charge, so that the accused may have an opportunity of saying either that he never made such representation, or that representation was not in fact false, or that it was not in consequence of this representation that the goods were obtained. The act of drawing a cheque is held to imply at least three statements as to the state of affairs existing at the time when the cheque is drawn: first, that the drawer has an account with the bank in question; secondly, that he has authority to draw on it for the amount shown on the cheque; and thirdly, that the cheque, as drawn, is a valid order for the payment of that amount, or that the present state of affairs is such that in the ordinary course of events, the cheque will, on future presentment, be honoured. His payment by cheque, cannot be held to have implied that he already had funds in the bank sufficient to cover the amount shown on the cheque. *Kanwar Sain v. Emperor*.

40 Cr. L. J. 494 :

181 I. C. 95 : I. L. R. 1938 Lah. 662 :

41 P. L. R. 214 : 11 R. L. 754 :

A. I. R. 1939 Lah. 95.

— — — — S. 420—*Cheating by personation.*

Where a person by representing himself to be another, obtains from an Inspector of Schools a certificate testifying to his having passed a certain examination, when in fact, he had not passed that examination, he commits the offence of cheating punishable under S. 420, Penal Code. *Local Government v. Ganga Ram*. 23 Cr. L. J. 443 :

67 I. C. 319 : 18 N. L. R. 52 :

A. I. R. 1922 Nag. 229.

— — — — S. 420—*Cheating—Essential of.*

In the case of an offence of cheating by sending fraudulent value-payable articles through the Post Office, posting the article is an essential part of the offence. *Emperor v. Gafur Karimullah Pathan*. 31 Cr. L. J. 1155 :

127 I. C. 177 : 32 Bom. L. R. 785 :

A. I. R. 1930 Bom. 358.

PENAL CODE ACT (XLV OF 1860)

———S. 420—Civil remedy.

Complainant making over cow and calf to accused as security for money lent—Complainant demanding return of cattle—Accused demanding Rs. 50, for their return—Money paid—Accused pocketing money and demanding balance of debt: *Held*, that act appeared like sharp practice, but proper remedy lay in Civil Court and not in Criminal Court. *Ram Rup Panday v. Emperor*.

34 Cr. L. J. 1197 :
146 I. C. 41 : 6 R. Rang. 71 :
A. I. R. 1933 Rang. 215.

———S. 420—Cognisance — Complaint by person other than person cheated—Effect of.

It is absurd to expect a Court to take any notice of a complaint of cheating except when it is put in by the person actually defrauded. *Kapur Chand v. Ugar Sain*.

22 Cr. L. J. 672 :
63 I. C. 464.

———S. 420—Concealment of facts when amounts to offence.

A concealment of facts cannot be said to be dishonest so as to constitute the offence of cheating, if the person who is charged with concealing is not under a duty to disclose the facts. *In re: Paruchury Venkalappayya*.

18 Cr. L. J. 40 :
36 I. C. 872 : A. I. R. 1917 Mad. 732.

———S. 420—Conviction—Dispute of civil nature—Conviction, legality of.

Where the dispute between the parties is of a civil nature, a conviction for cheating is unsustainable. *Thakur Das v. Emperor*.

28 Cr. L. J. 834 :
104 I. C. 450 : A. I. R. 1928 Pat. 13.

———S. 420—Conviction.

Mercantile agent—Consent to sell obtained—Pledge with third party—How consent was obtained is immaterial to third party—Conviction of agent under S. 420—Pledgee's position, if affected. *Ah San v. Maung Ba Thi*.

38 Cr. L. J. 711 :
169 I. C. 221 : 9 R. Rang. 387 :
A. I. R. 1937 Rang. 146.

———S. 420 — Deception — Nature of—Innocent agent, deception by—Deception implied from conduct.

Deception may be practised by representation made through an innocent agent and more so through a co-conspirator. It is not necessary that deception should be by express words and it may be by conduct or implied in the nature of the transaction itself. *Haji Samo v. Emperor*.

28 Cr. L. J. 426 :
101 I. C. 458 : A. I. R. 1927 Sind 161.

———S. 420 — Deception — Proof of—Mere speculative nature of scheme, if in itself evidence of deception.

The mere fact that a scheme is of a highly speculative nature is not in itself evidence that it is a scheme put before the public to

PENAL CODE ACT (XLV OF 1860)

deceive. There must be evidence of some deception. *Parsram v. Emperor*.

38 Cr. L. J. 651 :
168 I. C. 827 : 9 R. S. 248 :
A. I. R. 1937 Sind 58.

———S. 420—Dishonest concealment of facts.

A dishonest concealment of facts amounts to deception within the meaning of S. 420 of the Penal Code. *Martindale v. Emperor*.

26 Cr. L. J. 401 :
84 I. C. 1041 : 40 C. L. J. 256 :
29 C. W. N. 447 : 52 Cal 347 :
A. I. R. 1925 Cal. 14.

———S. 420 — Evidence — Evidence of previous fraud, whether admissible.

In a case under S. 420, Penal Code, the question of the guilt or innocence of the accused depends upon proof of actual facts and not upon the state of the accused's mind. Therefore, evidence as to any previous act of fraud committed by the accused is not admissible against him under any provision of the law. *Gokul Khatik v. Emperor*.

26 Cr. L. J. 906 :
86 I. C. 970 : 29 C. W. N. 483 :
A. I. R. 1925 Cal. 674.

———S. 420—Evidence—Previous and subsequent conduct of accused.

In a case of cheating, it is open to the prosecution to show that the acts charged against the accused were parts of a series of similar acts committed by him, or in which he was concerned, at or about the time in question. Evidence of such other acts, whether previous or subsequent to the frauds charged against the accused, is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. Evidence merely to prove that the accused person's character is such that he is likely to commit the act with which he is charged, is not admissible. *Girdhari Lal v. Emperor*.

11 Cr. L. J. 428 :
6 I. C. 964 : 26 P. W. R. 1910 Cr.

———S. 420—Evidence, the only reliable witness contradicting himself in material particular—Conviction is bad.

Where the only witness of the complainant on whom any reliance could be placed had contradicted himself on a very material particular: *Held*, that it would be most unsafe to convict the accused of the offence charged against him, especially when there was previous enmity between the accused and the complainant. *Sardul Singh alias Pohlo v. Emperor*.

28 P. L. R. 461 :
A. I. R. 1927 Lah. 797.

———S. 420—False representation—Test of criminality.

Where the accused obtained complainant's money by a false promise, which he knew he could not fulfil, the accused was guilty of cheating; and the fact that long afterwards, under pressure, the accused paid back a portion of the money he had received cannot, in any way, affect his criminality.

PENAL CODE ACT (XLV OF 1860)

The test of the accused's criminality is not what he did months afterwards under pressure, but what was in his mind at the time when, and under what circumstances, the money was given to him by the complainant and whether he then intended to repay the same. *Emperor v. Debendra Prosad*.

10 Cr. L. J. 487 :
41 C. 65 : 13 C. W. N. 728 :
9 C. L. J. 605.

———S. 420—Fraud—Proper.

Where fraud is alleged, it is absolutely essential that there should be clear evidence of intention to defraud or to cheat. *Pushupati Banerji v. Nripendra Narayan Singh*.

32 Cr. L. J. 1133 :
134 I. C. 309 : 53 C. L. J. 457 :
I. R. 1931 Cal. 805 :
A. I. R. 1931 Cal. 452.

———S. 420—Fraud and dishonesty—Proof, if necessary.

Charge of dishonestly running a lottery—Essentials to be proved—Organizers of certain loan company charged and convicted under S. 420, for dishonestly running lottery—Evidence showing that people purchased tickets with knowledge that they were taking part in lottery and application for loan was mere camouflage—Conviction held was unsustainable. *Maung Ba Thwin v. The King*.

40 Cr. L. J. 20 :
178 I. C. 113 : 11 R. Rang. 200 :
A. I. R. 1938 Rang. 301.

———S. 420—Fraudulent intention—Tests of.

A practically conclusive test of the fraudulent character of a deception for criminal purposes is this. Did the author of the deceit derive any advantage from it which could not have been had if the truth had been known? *Local Government v. Ganga Ram*.

23 Cr. L. J. 443 :
67 I. C. 319 : 18 N. L. R. 52 :
A. I. R. 1922 Nag. 229.

———S. 420—Ingredients.

A charge under S. 420, Penal Code, should contain an allegation of the person or persons alleged to have been deceived and induced to part with property as the result of that deceit. *Billinghurst v. Emperor*.

25 Cr. L. J. 1313 (b) :
82 I. C. 545 : 27 C. W. N. 821 :
A. I. R. 1924 Cal. 18.

———S. 420—Ingredients—Cheating, necessary ingredients of—Introducing cheat to complainant—Offence.

To sustain a conviction under S. 420, Penal Code, it is necessary for the prosecution to establish that the accused acted dishonestly and fraudulently. The accused introduced a man who wanted to sell ornaments to the complainant who purchased them on the assurance that they were of gold. The ornaments turned out to be spurious: *Held*, that the accused could not be convicted of cheating in the absence of evidence to show

PENAL CODE ACT (XLV OF 1860)

that he knew or had reason to believe that the ornaments were not made of gold. *Muhammad Jan v. Emperor*.

28 Cr. L. J. 585 :
102 I. C. 553 : 28 P. L. R. 171.

———S. 420—Ingredients.

If in the course of a transaction between two persons different false and fraudulent bills are presented for realization at different dates, that does not make them matters for so many different offences under S. 420, Penal Code, inasmuch as an offence in relation to any one of them is not complete until the money is paid or the cheque is issued, and if one cheque is obtained through the inducement of all such bills, there is only one offence and not so many different offences of cheating. *Billinghurst v. Emperor*. 25 Cr. L. J. 1313 (b) :
82 I. C. 545 : 27 C. W. N. 821 :
A. I. R. 1924 Cal. 18.

———S. 420—Ingredients.

In order to establish an offence under S. 420 of the Penal Code, it is necessary to show that deception has been practised, and that by that deception, a person has been fraudulently or dishonestly induced to part with property. *Mohan v. Emperor*.

23 Cr. L. J. 664 :
69 I. C. 152 : 8 O. L. J. 583 :
A. I. R. 1924 Oudh 113.

———S. 420—Ingredients.

In order to prove the offence of cheating it is necessary to establish : (1) that some one was deceived ; (2) fraudulently or dishonestly, or intentionally ; and (3) by means of such deceit he was induced to change his position either by parting with property or by doing something to his own injury. Accused made a mixture of saccharine and bicarbonate of soda and sold off the mixture to the complainant through a broker as pure saccharine and received the price : *Held*, that the accused was guilty of cheating under S. 420 of the Penal Code. *Emperor v. Bholasingh Amersingh*.

25 Cr. L. J. 1102 :
81 I. C. 926 : 26 Bom. L. R. 211 :
A. I. R. 1924 Bom. 303.

———S. 420—Ingredients.

In order to sustain a conviction of cheating under S. 420 of the Penal Code, the prosecution must prove that the person cheated was dishonestly induced to do something which he would not have done unless he had been deceived, and that the act done was likely to cause damage to that person in property, and the damage must be proved by evidence as much as any other part of the offence. *Hanuman v. Emperor*.

21 Cr. L. J. 583 :
57 I. C. 103 : 2 U. P. L. R. All. 179 :
A. I. R. 1920 All. 13.

———S. 420—Ingredients—Intention is gist of offence.

Criminal intent at the time of the alleged bargain must be established for conviction under S. 420, Penal Code. The mere fact that the accused deny the transaction at the trial and refuse to return the money does not necessarily

PENAL CODE ACT (XLV OF 1860)

show that they had a criminal intent from the beginning and their denial may merely amount to the usual mistaken attempt to protect themselves from the result of the prosecution.

Harnam Singh v. Emperor. 38 Cr. L. J. 845 :
169 I. C. 1007 : 39 P. L. R. 300 :
10 R. L. 66.

—S. 420—*Ingredients*—No proof of falsity of statement or intention to deceive, effect of.

A Club called the Royal Sports Club, existed for the purpose of receiving from clients bets on horse races, and employing agents on the race courses to put their clients' money on the horses and for paying to the winning clients the sums, less commission, which they had won. The complainants amongst others became members of the Club by a small payment and became then entitled to the above services. They put in applications to the Secretary stating the horses they wished to back and paying up the amounts of their bets. In a prosecution against the Secretary and Manager of the Club for cheating on the ground that the complainants paid sums as bets to run horses at a particular race and that the accused neither placed the bets nor returned the money : *Held*, that the accused were not guilty of the offence of cheating. *Chellam Chetty v. Emperor.* 29 Cr. L. J. 633 :

109 I. C. 905 : 39 M. L. T. 596 :
A. I. R. 1928 Mad. 224.

—S. 420—*Intention.*

Company floated for lending money at cheap rates of interest—Mere fact of scheme being speculative is not punishable when it is not dishonest or fraudulent. *Durga Das Radha Kisan v. Emperor.* 35 Cr. L. J. 644 :

148 I. C. 271 : 6 R. B. 286 :
35 Bom. L. R. 1181 :
A. I. R. 1934 Bom. 48.

—S. 420—*Intention—Dishonest intention, proof of.*

In cases under S. 420, Penal Code, the evidence must establish the existence of a fraudulent or dishonest intention at the time of the commission of the act in respect of which the cheating is alleged. *Jafar Ayub v. Emperor.* 23 Cr. L. J. 589 :

68 I. C. 621 : A. I. R. 1922 Nag. 195.

—S. 420—*Intention—Honest belief in the representation, if material.*

Where it was found that an unknown person representing himself to be a *Fakir* and alleging to possess the powers of an alchemist came to live in the vicinity of the accused and performed experiments of transforming copper into gold, at which both the complainant and the accused were present, and during the first few experiments, produced a metal which was found on testing to be pure gold and on the last occasion he produced a metal which was purchased by the complainant for Rs. 22,000, out of which Rs. 12,000 were paid to the *Fakir*, and Rs. 10,000 were to be credited to the accused in payment of his debts due to the complainant, and that if the metal so

PENAL CODE ACT (XLV OF 1860)

purchased prove to be real gold, it was fully worth Rs. 38,000 or 34,000 but it was afterwards found to be mere brass : *Held*, that the accused could not be convicted of cheating under S. 420, Penal Code, as there was evidence to show that the accused may himself have been duped by the preliminary experiments of the *Fakir*, and with a hope of getting his debt wiped off, became a zealous tool of the *Fakir* and that he had received no gain whatever, except worthless book entries. *The Crown v. Fazul Muhamad.*

9 Cr. L. J. 261 :
1 S. L. R. 29.

—S. 420—*Intention—Intention—Proof of.*

Accused, who was the broker of the complainant Company and had a long series of transactions with them, obtained an advance from the Company by representing that he had a certain amount of paddy ready for delivery to the Company, and wanted the advance to complete the payments. Thereafter, he delivered a small amount of paddy to the Company and failed to deliver the rest. It was found that although his representation to the Company was not altogether true, it was not entirely false and he had made *bona fide* efforts to carry out his engagement with the Company but had failed : *Held*, that from the circumstances of the case he was not guilty of the offence of cheating. *Maung Po Lu v. Emperor.* 25 Cr. L. J. 236 :

76 I. C. 700 : 2 Bur. L. J. 139 :
1 Rang. 397 : A. I. R. 1924 Rang. 31.

—S. 420—*Intention.*

Where a person issues a cheque to another and it is dishonoured, and it appears that the failure to meet payment is not accidental, the presumption is that the drawer knew that the cheque would be dishonoured and he is guilty of cheating under S. 420. *Kunwar Sen v. Emperor.* 34 Cr. L. J. 124 :

141 I. C. 192 : 9 O. W. N. 1136 :
I. R. 1933 Oudh 33 :
A. I. R. 1933 Oudh 86.

—S. 420—*Interpretation—Property includes money.*

The word "property" in S. 420, Penal Code, includes money. *Birendra Lal Bhaduri v. Emperor.* 1 Cr. L. J. 794 :

8 C. W. N. 784 : 32 Cal. 22.

—S. 420—*Interpretation*—"Wrongful gain"—"Wrongful loss"—*What is.*

The accused falsely representing himself to be an employee in the Accounts Department of the Calcutta Municipal Corporation, and as authorised to collect subscriptions towards a charitable fund, produced before Dr. Pearse, the Health Officer of the Corporation, a subscription book containing the names of respectable subscribers, and solicited some subscription for the fund. The Doctor subscribed ten rupees which were duly made over by the accused to the intended charity. Upon these facts he was prosecuted for cheating and sentenced to rigorous imprisonment and fine under S. 420, I. P. C. : *Held*,

PENAL CODE ACT (XLV OF 1860)

that the accused was not guilty of cheating. The money went where the donor intended it to go. There was no "wrongful loss" to the donor, nor any "wrongful gain" to the accused or the charitable society, and that the misrepresentation of the accused as to his being an employee of the Corporation had not in any way induced or deceived the donor to subscribe. *Ashutosh Mallik v. Emperor*.

3 Cr. L. J. 244 :
I. L. R. 32 Cal. 50.

—S. 420—Jurisdiction.

A second class Magistrate has no jurisdiction to try an offence under S. 420, Penal Code, though one under S. 417 is triable by him. *Setti Rangayya v. Somappa*.

25 Cr. L. J. 1193 :
82 I. C. 57 : 20 L. W. 919 :
A. I. R. 1925 Mad. 367.

—S. 420—Liability — Confidence Man—Liability of.

In a case of cheating, it must be shown that the man who plays the part of the Confidence Man is putting forward what he knows to be untrue, and in most cases, is sharing the proceeds. *Jodha Singh v. Emperor*.

25 Cr. L. J. 592 :
81 I. C. 80 : A. I. R. 1923 All. 285.

—S. 420—Miscellaneous.

To determine whether or not a series of acts would form parts of the same transaction, the most important points to be considered are whether there was a common purpose and design and continuity of action. *Ali Hussain v. Emperor*.

34 Cr. L. J. 530 :
143 I. C. 120 : 56 C. L. J. 73 :
I. R. 1933 Cal. 343 :
A. I. R. 1933 Cal. 308.

—S. 420—Misrepresentation—Proof of—Prosecution under S. 420, Penal Code (Act XLV of 1860)—Exact words used by accused should be given.

In a prosecution under S. 420, if misrepresentation has to be proved, it would be better to get the exact words used by the accused. *Chandra Narain Jha v. Emperor*.

41 Cr. L. J. 523 :
187 I. C. 862 : 6 B. R. 564 :
12 P. R. 662 : A. I. R. 1940 Pat. 603.

—S. 420—Offence of cheating—When constituted.

Where the Directors of a Bank were charged under S. 420, Penal Code, with having, by means of a false balance-sheet and a false Directors' report, induced depositors to make deposits in the Bank, which was really insolvent, and the trying Judge amended the charge by adding the words "and by intentionally keeping the Bank open as a going concern after it had ceased to be solvent": *Held*, (1) that the amendment of the charge was not bad in law and that the accused were not thereby prejudiced in their defence; (2) that it was open to the prosecution to prove such subsequent events and the accused's knowledge of them as part of the deceit practised and also as showing

PENAL CODE ACT (XLV OF 1860)

the continuance of dishonest intention on their part. *G. S. Olifford v. Emperor*.

15 Cr. L. J. 80 :
22 I. C. 432 : 6 Bur. L. T. 201 :
7 L. B. R. 143 : A. I. R. 1914 L. Bur. 65.

—S. 420—Offence under.

A decree-holder in a certain suit in consideration of the judgment-debtor executing two bonds, promised to get a postponement of the sale and the judgment-debtor accordingly executed the bonds which, to the knowledge of both, were for fictitious amounts. The decree-holder failed to obtain the postponement and retained the bonds in his possession. He was charged by the judgment-debtor with the offence of cheating under S. 420, I. P. C.: *Held*, that the offence of cheating was not made out as the failure to get a postponement of the sale was only a breach of contract for which the decree-holder was liable in damages for any loss proved to have been caused to the judgment-debtor and the retention of the bonds was not an offence by itself. *Meghraj v. Emperor*.

18 Cr. L. J. 131 :
37 I. C. 483 : A. I. R. 1917 All. 108.

—S. 420—Offence under.

Cheating—Accused receiving money for bribing public servant—Prosecution for cheating in respect of the money can be maintained. *Yacoob v. Emperor*.

34 Cr. L. J. 1255 :
146 I. C. 240 : 6 R. Rang 85 :
A. I. R. 1933 Rang. 199.

—S. 420—Offence under—Creditor receiving payment of debt—Subsequent denial, if offence.

Accused received from the complainant, his debtor, cash and cattle in payment of the debt due by the latter. Subsequently he gave the complainant notice calling upon him to pay the debt and denied the receipt of the cash and cattle: *Held*, that, in the absence of proof that the accused received payment of the debt with the preconceived intention of denying it later on, he could not be held to have committed an offence under S. 420, Penal Code. *Ram Saran v. Emperor*.

25 Cr. L. J. 1311 :
82 I. C. 479 : A. I. R. 1923 Lah. 621.

—S. 420—Offence under.

Decree-holder receiving money from complainants under promise that no further liability under decree would attach to them—Subsequent application for execution claiming relief against them—Absence of evidence of dishonest intention to cheat: *Held*, offence under S. 420, not committed. *Ram Bharose Singh v. Emperor*.

37 Cr. L. J. 907 (b) :
164 I. C. 144 : 1936 O. L. R. 431 :
9 R. O. 54 : 1936 O. W. N 754 :
A. I. R. 1936 Oudh 372.

—S. 420—Offence under—During course of void transaction, if offence.

The mere fact that a transaction does not

PENAL CODE ACT (XLV OF 1860)

amount to a legal contract because its object is unlawful and opposed to public policy, is no warrant for holding that no criminal offence can be committed in the course of the transaction. A woman of the Rajput caste was represented by the accused to be a Kunbin, and the complainant, who wanted a wife, was induced to pay a sum of money to the accused for her and marry her: *Held*, that the accused were guilty of the offence of cheating under S. 420 of the Penal Code. *Local Government v. Jham Singh*.

21 Cr. L. J. 820 :

58 I. C. 820 : A. I. R. 1920 Nag. 261.

———S. 420—Offence under—Goods paid for in currency notes—Shopkeeper, refusal of, to give face value of notes, if offence—Guilty, plea of.

Where a customer paid for goods in currency notes and a dispute arose as to the amount of change due to him, the shopkeeper stating that the notes were not worth their face value, and in consequence, gave less change than was due: *Held*, that the shopkeeper did not commit the offence of cheating. *Murariji Raghunath Gujarathi v. Emperor*.

20 Cr. L. J. 684 (b) :

52 I. C. 604 : 21 Bom. L. R. 763 :

43 Bom. 842 : A. I. R. 1919 Bom. 160.

———S. 420—Offence under—Hundi negotiated with knowledge that it will be dishonoured, if offence.

Accused negotiated a hundi payable at sight and drawn on a firm which he knew would not pay the hundi. The hundi when presented, was dishonoured. The accused spent the money obtained by him on speculative transactions and took no step to have the hundi honoured or to repay the amount obtained by him: *Held*, that the accused was guilty of cheating. *Emperor v. Uttamlal Narottamdas*.

22 Cr. L. J. 305 :

60 I. C. 993 : 23 Bom. L. R. 340.

———S. 420—Offence under—Immoral and illegal contract—Advance on such contract by false representation—If offence.

A agreed to let her daughter on hire to B for concubinage for a period of one year in consideration of B paying her Rs. 70. B paid A Rs. 35 in advance. Subsequently, A refused to deliver her daughter to B or to return the sum of Rs. 35 advanced by him on these facts. A was convicted of cheating: *Held*, that the conviction should be set aside, as a party should not be allowed to prosecute on a charge of cheating when he would not be entitled to obtain from a Civil Court any relief for breach of the contract. *Emperor v. Jani Hira*.

13 Cr. L. J. 521 :

15 I. C. 793 : 14 Bom. L. R. 503.

———S. 420—Offence under.

In order to convict a person for cheating, it is necessary to show that there is an approximate connection between the deception practised on the complainant and his being induced to part with some property. If the

PENAL CODE ACT (XLV OF 1860)

connection is too remote or very indirect, the offence of cheating would not be complete. *Sarda Saran v. Emperor*.

26 Cr. L. J. 213 :

83 I. C. 997 : 23 A. L. J. 873 :

A. I. R. 1924 All. 209.

———S. 420—Offence under—Introducing complainant to cheater without himself receiving share of money, whether guilty of—Intention.

The offence of cheating under S. 420, I. P. C., is complete where money is obtained on the false pretence that the complainant would be married to a woman, and a person is guilty of abetment under Ss. 109 and 114 of the Code who introduces the complainant to the cheater, knowing full well that the offence is going to be committed, is present at the time when the agreement and the payment are made but remains silent and while taking no share of the money, takes no steps to inform the complainant of what is going to happen with him. *Maradi v. Emperor*.

18 Cr. L. J. 827 :

41 I. C. 651 : 6 P. W. R. 1917 Cr. :

A. I. R. 1917 Lah. 291.

———S. 420—Offence under, if depends on successful inducement of person cheated.

The question whether an offence has been committed under S. 420, Penal Code, does not depend upon the accused's success in swindling, of the amount of time that he has managed to obtain property by cheating, but depends in each individual case, on the successful inducement of the person cheated: *Held*, on facts that there was no infringement of the provisions of S. 234, Cr. P. C. *Girdhari Lal v. Emperor*.

38 Cr. L. J. 4 :

165 I. C. 817 : 9 R. C. 459 :

A. I. R. 1936 Cal. 678.

———S. 420—Offence under—Partnership—Collection of debt by partner after dissolution and withholding from co-partner—If cheating.

The accused, one of two partners in a commission business, by a deed of dissolution of the partnership undertook not to interfere with the business of the company without his co-partner's knowledge. He, however, collected a debt from a debtor of the firm and did not pay it over to his partner. Accounts had not been settled: *Held*, that accused could not be charged with cheating under S. 420, Penal Code. *In re : Paruchury Venkatappayya*.

18 Cr. L. J. 40 :

36 I. C. 872 : A. I. R. 1917 Mad. 732.

———S. 420—Offence under.

Post-dated cheque subsequently given for goods already delivered—Cheque dishonoured and receipt obtained: *Held*, receipt was not a valuable security and cheating was not proved. *H. K. Shaw v. Suresh Chandra Miller*.

37 Cr. L. J. 828 :

163 I. C. 232 : 39 C. W. N. 1182 :

62 C. L. J. 119 : 8 R. C. 730 (2) :

A. I. R. 1936 Cal. 324.

PENAL CODE ACT (XLV OF 1860)

—S. 420—Offence under—Sale of property—Consideration money, balance of, not paid, if offence.

Where the complainant's case is that it was agreed between him and the accused that the consideration money for the sale of property was to be paid by the accused after execution of sale-deed and had got it registered but that the accused refused to pay the money, the dispute is purely of a civil nature and no offence under S. 420, Penal Code, is made out. *Ram Chandra De v. Gajendra Nath Das*. 27 Cr. L. J. 588 : 94 I. C. 204 : 43 C. L. J. 287.

—S. 420—Offence under—Sharp practice—Amount, fraud.

The accused resorted to a trick whereby he obtained the possession and use of the complainant's moneys, and to the injury of the complainant, secured for himself the position of advantage properly belonging to the complainant: *Held*, that sharp practice of this sort constituted fraud and made the accused liable to conviction under S. 420, Penal Code. *Aswini Kumar Chatterjee v. Emperor*. 23 Cr. L. J. 221 : 65 I. C. 1005 : 25 C. W. N. 618.

—S. 420—Offence under—Taking articles on credit by falsely representing to be pensioned Subedar—Offence.

Where an accused by falsely pretending to be a pensioned Subedar intentionally deceived the complainant and dishonestly induced him to let him have on credit certain articles for which he did not intend to pay: *Held*, that he must be held guilty of an offence under S. 420 and not merely of an offence under S. 417, Penal Code. *Sher Singh v. Emperor*. 30 Cr. L. J. 480 : 115 I. C. 471 : I. R. 1929 Lah. 391 : 10 Lah. 513 : 30 P. L. R. 514 : A. I. R. 1928 Lah. 935.

—S. 420—Offence under—Transfer of student's ticket—Obtaining pass on certificate given to another student—Accused entitled to transfer at reduced rate—If offence of cheating.

The accused, who was entitled to travel by rail at reduced rate as a student, presented a certificate issued to another student and after it was endorsed: "tickets may be issued," received a pass. There was no rule prohibiting the transfer of student's tickets. The accused was prosecuted by the Railway Company for cheating and convicted: *Held*, reversing the conviction, that on the above facts, no offence of cheating was made out. *In re: James Fletcher*. 11 Cr. L. J. 339 : 5 I. C. 973 : 7 M. L. T. 201.

—S. 420—Offence under—What constitutes.

Agreement to give his girl in marriage to another and receiving money in advance—Refusal to give girl in marriage and marrying her to third person—Mere breach of contract—No cheating. *Jamadar Rai v. Emperor*. 32 Cr. L. J. 2 : 127 I. C. 563 : I. R. 1930 Pat. 707 : A. I. R. 1930 Pat. 504.

PENAL CODE ACT (XLV OF 1860)

—S. 420—Offence under—What constitutes—Cheating—Judgment-debtor raising money on the mortgage of his house already sold in execution of decree—If offence.

A, a judgment-debtor in an execution case, applied under O. XXI, r. 83 of the C. P. C., 1908, for permission to raise the amount of the decree by a private transfer of his house which had already been sold in auction. The application was rejected by the Court and yet he induced a person to advance him money on a mortgage of the house in question on the representation that he was empowered to effect the mortgage in order to pay off the decretal amount due to the decree-holder. A received a portion of the money himself and induced the mortgagee to pay the rest to the decree-holder, but allowed the sale to be confirmed by the Court and subsequently received from the executing Court the sale-proceeds stating that he had paid the decree-holder out of his own pocket: *Held*, that a *prima facie* case of the offence of cheating under S. 420, Penal Code, existed against A. *Ram Chand v. Jai Dial*. 13 Cr. L. J. 456 : 15 I. C. 88 : 10 P. W. R. 1912 Cr. : 114 P. L. R. 1912.

—S. 420—Offence under—What constitutes—Prosecution for cheating, if can be based upon illegal contract.

The view that a criminal prosecution for cheating must fail if it is based upon a contract which could not be enforced in a civil Court is wrong. *Emperor v. Raghunath*. 41 Cr. L. J. 881 : 190 I. C. 259 : 1940 O. W. N. 819 : 1940 O. L. R. 561 : 13 R. O. 143 : A. I. R. 1941 Oudh 3.

—S. 420—Offence under—What constitutes—Selling of bottles of liquor with false labels representing them to be genuine—If cheating within meaning of S. 420.

A person selling bottles of liquor with false labels representing the liquor to be genuine, is guilty of cheating within the meaning of S. 420, I. P. C. Whether there has been, or is likely to be, a re-sale at a profit by the purchaser is wholly irrelevant to the question of cheating: the cheating is complete as soon as the sale to him on a false representation is complete and the price paid. *J. E. Gubbay v. Emperor*. 41 Cr. L. J. 556 : 188 I. C. 267 : 12 R. C. 668 : A. I. R. 1940 Cal. 205.

—S. 420—Offence under—What constitutes.

The accused contracted to deliver 200 *dokras* of fully good machine-ginned cotton. In fulfilment of this contract, the accused delivered 200 *dokras* largely composed of cotton seed, *kapas* and rubbish, carefully packed into the middle of the *dokras*, while all around the sides was placed good ginned cotton. The admixture of inferior stuff was found in all the *dokras* and varied from 6 to 15 per cent against a quantity $\frac{1}{2}$ or 1 per cent which might be expected to be found in honest *dokras*. The fraud of adulterating

PENAL CODE ACT (XLV OF 1860)

cotton was perpetrated at a ginning factory where the accused was present to watch the process and where the precise instruments designed to effect this fraud were found: *Held*, that the accused was guilty of the offence of cheating under S. 420, Penal Code. *Emperor v. Kanji Shiviji*. 13 Cr. L. J. 285 : 14 I. C. 669 : 14 Bom. L. R. 137.

-----S. 420—Offence under.

When a Court passes a decree, it does not deliver any property within the meaning of S. 415, Penal Code, inasmuch as, the original decree remains in Court, and the term "valuable security", even if it included a decree, would only apply to the original document and not to any copy of the decree which may be supplied, on application, to the parties. A person, therefore, who induces a Court to pass a decree on a false claim and to put it into execution cannot be said to have committed an offence under S. 420, Penal Code. *Charu Chandra v. Emperor*. 25 Cr. L. J. 1034 : 81 I. C. 810 : 39 C. L. J. 122 : 28 C. W. N. 414 : A. I. R. 1924 Cal. 502.

-----S. 420—Offence under—When complete.

Offence under S. 420 is complete as soon as delivery is obtained by cheating and without the further act of misappropriation, there can be no breach of trust. *Emperor v. John McIver*. (F. B.) 37 Cr. L. J. 637 : 162 I. C. 592 (2) : 1936 M. W. N. 281 : 43 L. W. 548 : 70 M. L. J. 635 : 8 R. M. 1000 : A. I. R. 1936 Mad. 353.

-----S. 420—Proof—Cheating by false representation as to future event—Proof.

Where a person is charged of cheating by false representation, and that representation is in respect of a certain future event and not as to an existing fact, the prosecution must prove that the representation was false to the knowledge of the accused at the time it was made. It is but little to the purpose that in fact that representation has turned out to be true. *Ebrahimji v. Emperor*. 14 Cr. L. J. 232 : 19 I. C. 328 : 15 Bom. L. R. 297.

-----S. 420—Proof.

To constitute the offence of cheating under S. 420, Penal Code, the prosecution must prove that there was an act of cheating on the part of the accused, that by that act the person cheated was induced to deliver property, and that by that act there was dishonesty which induced the person cheated to deliver property. *Mata Prasad v. Emperor*. 21 Cr. L. J. 362 : 55 I. C. 730 : 18 A. L. J. 371 : A. I. R. 1920 All. 66.

-----S. 420—Railways Act (IX of 1890), Ss. 68, 112 (a)—Railway employee obtaining pass for relative—Pass handed over to stranger, if cheating.

Accused who was a Railway employee obtained a free pass for his wife and mother and handed it over to a woman who was neither his wife nor his mother and the

PENAL CODE ACT (XLV OF 1860)

latter used the pass : *Held*, that the accused was guilty of an offence under S. 420 of the Penal Code and not of an offence under S. 112 (a), Railways Act. *Ram Dayal v. Emperor*. 26 Cr. L. J. 1164 : 88 I. C. 524 : 2 O. W. N. 510 : 12 O. L. J. 508 : A. I. R. 1925 Oudh 479.

-----S. 420—Scope.

Swindling does not necessarily amount to the offence of cheating within the meaning of S. 420 of the Penal Code. *Kedar Nath Chakrawarti v. Emperor*. 26 Cr. L. J. 849 : 86 I. C. 705 : 29 C. W. N. 408 : 41 C. L. J. 172 : A. I. R. 1925 Cal. 603.

-----S. 420—Sentence.

A person, who extracts subscriptions from the public for a charitable institution and pockets the proceeds himself, does not deserve any consideration in the matter of reduction of the sentence imposed on him. *Kedarnath Sahay v. Emperor*. 35 Cr. L. J. 1167 : 150 I. C. 927 (b) : 15 P. L. T. 318 : 7 R. P. 39 : A. I. R. 1934 Pat. 114.

-----S. 420—Sentence.

Accused, leader of Bar, writing to another, letter containing false statement with a view to get valuable security from such person—Such person parting with security and putting it under control of the accused—Deception in letter not the only cause—Accused held guilty of attempt to cheat : *Held*, that sentence of three months was enough. *N. N. Burjorjee v. Emperor*. 37 Cr. L. J. 217 : 159 I. C. 1065 : 8 R. Rang. 321 : A. I. R. 1935 Rang. 456.

-----S. 420—Sentence—Cheating involving use of forged document—No separate charge for fabricating false document—Making false document, whether should be taken into account in awarding sentence.

An accused was charged with cheating which involved the use of forged documents under S. 420, Penal Code, for importing goods in port of Karachi by deceiving the Custom Authorities. The accused before this fraud, had visited another port and tried to come to an arrangement with the Customs there with a similar object but had failed. Though he was not charged for forging the documents, the lower Court passed a severe sentence in view of the fabrication : *Held*, that in determining the sentence, the making or fabrication of false documents should not be taken into account : *Held*, also that in prosecution for cheating the Customs at Karachi, the evidence of the closely connected visits of the accused at two places, could be admitted under S. 8 or S. 9, Evidence Act. *Mohanlal Bhanlal Goela v. Emperor*. 39 Cr. L. J. 123 : 172 I. C. 374 : 10 R. S. 149 : 32 S. L. R. 87 : A. I. R. 1937 Sind 293.

PENAL CODE ACT (XLV OF 1860)

———S. 420—Sentence - Sentence of fine alone, legality of.

When a person is convicted of cheating, the Court is bound to pass a sentence of imprisonment. A sentence of fine alone is not a sentence in accordance with law. *Emperor v. Durg.*

30 Cr. L. J. 340 :
114 I. C. 733 : 1929 A. L. J. 400 :
I. R. 1929 All. 269 :
A. I. R. 1929 All. 260.

———S. 420—What constitutes offence.

An offence under S. 420 does not consist merely in a fraudulent or dishonest representation but also requires the delivery of property by the victim. *Abdur Rahim v. Emperor.*

32 Cr. L. J. 611 :
130 I. C. 796 : 12 P. L. T. 12 :
I. R. 1931 Pat. 204 :
A. I. R. 1931 Pat. 102.

———S. 420.

Accused pawned six rings which he said were of gold. Subsequently it was discovered that the rings were of silver gilt. Accused was charged with an offence under S. 420 of the Penal Code: *Held*, that the burden of proving that the accused knew that the rings were not what he suggested them to be, was on the prosecution. *Mata Prasad v. Emperor.*

20 Cr. L. J. 769 (a) :
53 I. C. 589 : A. I. R. 1919 All. 373.

———Ss. 420, 114—Abetment of cheating—Conduct of accused.

A charge of conspiracy may be established by evidence of the conduct of the accused and the surrounding circumstances, both before and after the commission of the offence without proving any overt acts by the accused. Where a person charged with abetment of cheating was proved to have been in the company of the principal offender at the commission of the offence and both before and after and during trial, made a false defence and denied the said association: *Held*, that he was liable to conviction for an offence under Ss. 420 and 114, Penal Code. *Jumo Allarakkio v. Emperor.*

17 Cr. L. J. 233 :
34 I. C. 671 : 10 S. L. R. 45 :
A. I. R. 1916 Sind 72.

———Ss. 420, 120-B—Conspiracy to cheat—What constitutes.

Grant of false transfer certificate of export quota rights, by clerk of Tea Licensing Committee. Transferor under certificate making transfer of quota far in excess of what was due to his credit—Both clerk and transferor held guilty under Ss. 420 and 120-B. *In re : J. S. Dhas.*

41 Cr. L. J. 388 :
187 I. C. 33 : 1939 M. W. N. 1125 :
12 R. M. 690 : A. I. R. 1940 Mad. 155.

———Ss. 420, 120-B—Offence under.

Company—Scheme of giving loan—Scheme of "Snow ball" nature—Rules mentioned in memoranda of association: *Held*, though speculative, the scheme was not dishonest or fraudulent—Misrepresentation by agents—

PENAL CODE ACT (XLV OF 1860)

Agents held guilty—Directors to be held responsible, if they themselves induce others to pay deposits by false representation. *Jatindra Nath Sircar v. Emperor.*

38 Cr. L. J. 209 :
166 I. C. 412 : 9 R. C. 519 :
A. I. R. 1936 Cal. 440.

———Ss. 420, 415—Ingredients.

In order to bring a case within the four corners of S. 420, Penal Code, it must be ascertained, in the first instance, whether the ingredients required by S. 415 of the Code are present in the facts alleged against the accused. These ingredients are: 1. Deception on any person; 2. (a) Fraudulently or dishonestly inducing that person; (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. *Charu Chandra v. Emperor.*

25 Cr. L. J. 1034 :
81 I. C. 810 : 39 C. L. J. 122 :
28 C. W. N. 414 : A. I. R. 1924 Cal. 502.

———Ss. 420, 417—Offence under—Despatch of registered insured packets with blank sheets to a creditor—Creation of evidence in discharge of debt, if offence.

The accused, who owed the complainant Rs. 650, filled a registered envelope with blank sheets of paper and posted it to the complainant after insuring it for Rs. 650, in order to create evidence of discharge of the debt. He was convicted for cheating under S. 420, Penal Code: *Held*, (1) that as the acknowledgment of receipt of the insured parcel was not a valuable security, the conviction under S. 420, Penal Code, was bad in law; (2) that, as the offence of attempting to cheat was made out, the accused should have been convicted under Ss. 417 and 511, Penal Code. *Sadho Lal v. Emperor.*

17 Cr. L. J. 272 :
34 I. C. 992 : 1 P. L. J. 391 :
A. I. R. 1917 Pat. 699.

———Ss. 420, 417, 511—Sentence, reduction of, when justified.

A sentence of one year's rigorous imprisonment and a fine with further rigorous imprisonment for four months in default of payment of it, though legal under S. 420, Penal Code, is illegal, if the finding is altered in the Appellate Court to a conviction of attempting to cheat, punishable under Ss. 417 and 511 read together, under which the longest term of imprisonment that could be imposed substantively is six months and the longest that could be imposed in default of payment of fine is a month and a half. A Court is not bound to reduce a sentence unless it appears to be heavier than the facts proved against the accused warrant, especially when the Courts below express the opinion that it is not so, even though the facts constitute a different offence for which the sentence passed is not a legal one. *Narsinghdas Marwari v. Emperor.*

29 Cr. L. J. 86 :
106 I. C. 678 : A. I. R. 1928 Nag. 113.

PENAL CODE ACT (XLV OF 1860)

—Ss. 420, 419—*Cheating by personation.*

A *Brahmin* girl, aged about 16 years, was abducted from the custody of her mother-in-law by one *B*, who, she alleged, professed to be taking her to her husband in Kohat. *B* took her to a village to one *R*, who brought her where his sister lived and sold her to a woman *K*. Afterwards *K* brought the girl to her own husband *D* who sold her to a person representing her as a *Kirari* girl. *K* was convicted of offences under Ss. 366, 372 and 419-109, I. P. C., and her husband *D* of offences under Ss. 372 and 419, I. P. C. The Magistrate found that the girl was under 16 years of age. On appeal to the Chief Court: *Held*, further, that *D* was not guilty of an offence under S. 419, Penal Code, for there was not cheating by personation, to describe a *Brahmin* woman as a *Kirari* is not personation. But *D*'s offence properly fell under S. 420, Penal Code, for he had obtained money by misrepresenting the case of the girl. *Durga Das v. Emperor*.

1 Cr. L. J. 949 :

5 P. L. R. 410 : 13 P. R. Cr. of 1904.

—Ss. 420, 467—*Disposal of property on conviction—Current coin, title to—Proceeds of cheating paid in satisfaction of debt—Right of creditors to retain money.*

Title to money which is current coin of the realm, passes by mere delivery to a person who receives it in satisfaction of a lawful debt due to him. Where, therefore, during the Police investigation of a case under Ss. 420 and 467, Penal Code, it appeared that the accused had delivered over a sum of Rs. 1,168 to his creditors, this money being part of the proceeds of cheating, and the Police recovered it from the creditors: *Held*, that the creditors were entitled to the money and that it must be returned to them. *Emperor v. Baij Nath*.

16 Cr. L. J. 460 :

29 I. C. 92 : 1 L. R. 1915 Cr. :

165 P. L. R. 1915 : A. I. R. 1914 Lah. 567.

—Ss. 420, 477—*Story of Criminal trial pending Civil suit—Valuable security—Document presented to Sub-Registrar by executant but taken back before registration and destroyed—Civil suit filed—Criminal trial, whether advisable.*

The petitioner executed a *kabala* in favour of the complainant and presented it for registration, but took it back from the Registrar before registration on the pretext that he could not understand whether it was a mortgage or a *kabala*, and having thus obtained possession of the document, tore it to pieces. The complainant preferred a complaint and also instituted a civil suit for specific performance of the contract. The Sub-Registrar did not complain. On the contrary, when asked by the trying Magistrate to report on the case, he reported in favour of the petitioner: *Held*, that in the circumstances of the case, it was inadvisable that a charge under S. 420 or S. 477, Penal Code, should be enquired into by a Criminal Court. *Hira Lal Ghose v. Makhan Lal Daw*.

21 Cr. L. J. 16 :

54 I. C. 64 : 30 C. L. J. 175 :

A. I. R. 1920 Cal. 47.

PENAL CODE ACT (XLV OF 1860)

—Ss. 420, 511—*Attempt at cheating—"Attempt", definition of—Attempt on person forewarned—Application to currency office for recovery of money upon halves of currency notes, if attempt to cheat.*

S. 511, Penal Code, uses the word 'attempt' in a very large sense, making punishable any one act of a series of acts conducive to the commission of an offence and excluding the notion that the final act, short of actual commission, is alone punishable. A man may attempt to cheat although the person whom he attempts to cheat is forewarned and is, therefore, not cheated. An application by a person to a Currency Office for recovery of the money value of certain notes upon the halves of those notes on the allegation that the other halves have been lost by him is an attempt to cheat where, in fact, the halves of the notes do not belong to him. The definition of what is punishable as an 'attempt' under the Penal Code is different from what is a criminal attempt according to the accepted English doctrine. *Emperor v. Shib Charan*.

29 Cr. L. J. 780 :

110 I. C. 812 : 10 Lah. 253 :

30 P. L. R. 405 : A. I. R. 1928 Lah. 551.

—Ss. 420, 511—*Attempt at cheating—Cheating—Preparation—Attempt.*

The accused contracted with Ralli Brothers to deliver a certain quantity of good cotton; instead of this, he delivered for acceptance by Ralli's Agent 30 *dokras* of bad cotton, *i.e.*, cotton heavily adulterated with rubbish and adulterated in such a manner that the fraud would be likely to escape the usual inspection which is had on such occasions. Ralli's Agent, to whom delivery was offered, suspected the character of the goods, and declined to accept them; *Held*, that there was a complete case of an attempt to cheat, because the accused had done all he could do to perfect his offence. *Emperor v. Mansingh Daji Patil*.

14 Cr. L. J. 433 :

20 I. C. 593 : 15 Bom. L. R. 568.

—Ss. 420, 511—*Attempt at cheating—Delivery of property—Attempt, whether possible.*

It cannot be laid down as a proposition that there can never be an attempt to commit the offence described in S. 420, Penal Code. *Samuel Ilqanah v. Emperor*.

25 Cr. L. J. 475 :

77 I. C. 827 : A. I. R. 1924 Nag. 120.

—Ss. 420, 511—*Attempt at cheating—Offence requiring performance of series of acts—Commencement of series—Attempt—Preparation.*

Where the commission of an offence requires the performance of a series of acts and a person commences this series with a view to carry it out to its completion, he has, in the language of S. 511, Penal Code, done an act towards the commission of the offence in the attempt to commit the offence. *Shamji v. Emperor*.

23 Cr. L. J. 210 :

65 I. C. 994 : A. I. R. 1922 Nag. 40.

PENAL CODE ACT (XLV OF 1860)

———Ss. 420, 511 — *Attempt at cheating—Spurious trinkets—False representation.*

A manufactured spurious trinkets, and took them to N saying they were of gold, and that they were stolen property and that he (A) did not like to sell them in bazar and asked him to buy. N did not buy, but A was arrested. It was argued that no attempt to cheat had been proved, because more had to be done by A, such as, weighing the articles, etc., etc., before wrongful loss would fall upon N: *Held*, that the Act of A amounted to an attempt at cheating, punishable under Ss. 420-511. Penal Code. *Abdullah v. Emperor*.

15 Cr. L. J. 265 :

23 I. C. 473 : 14 P. R. 1914 Cr. :

13 P. W. R. 1914 Cr. :

A. I. R. 1914 Lah. 315.

———Ss. 420, 511 — *Attempt at cheating—What constitutes.*

A Sub-Inspector of Police named T on receiving information that the accused gave out that he could double Government currency notes, visited the accused in the guise of a Seth and arranged to bring notes on the following night for doubling them. T then took some notes to the accused after arranging that other Police Officers should also come to the place within call. After some hours the accused took up the packet and untied it. While he was so engaged, however, he managed to substitute another packet for the packet of notes and concealed the latter packet under his buttocks. The Sub-Inspector detected what had been done, caught hold of accused's hands and shouted to the Police Officers to come up: *Held*, that although an offence of cheating was not actually committed, there was an attempt to deceive and the mere fact that the Sub-Inspector did not hand over the notes because he was deceived but merely because he wanted to secure the accused's conviction, did not change the legal position in regard to the accused's guilt. It is not necessary that the accused should complete every stage in the actual offence except the final stage. In these circumstances, the accused could be convicted under S. 420, read with S. 511 of the I. P. C. *Emperor v. Raghunath*.

41 Cr. L. J. 881 :

190 I. C. 259 : 1940 O. W. N. 819 :

1940 O. L. R. 561 : 13 R. O. 143 :

A. I. R. 1941 Oudh 3.

———Ss. 420, 511—*Attempt at cheating.*

Where some overt acts are committed by the accused, which but for an interruption independent of the will of the accused would have led to the completion of the offence under S. 420 of the Penal Code including the delivery of property, the offence falls under Ss. 420 and 511 of the Penal Code. *Sanwaldas v. Emperor*.

18 Cr. L. J. 990 :

42 I. C. 606 : 11 S. L. R. 67 :

A. I. R. 1917 Sind 89.

———Ss. 420, 511—*Attempt to cheat and preparation, distinction between.*

PENAL CODE ACT (XLV OF 1860)

A clerk employed to weigh the carts of sugar-canes upon a machine and enter the (1) Gross, (2) Tare, and (3) Net weights in a register, weighed a cart of sugar-cane and entered its gross weight as 16 maunds, 80 seers, but soon after the cart was re-weighed by a superior officer and found to be only 14 maunds, 20 seers. The clerk had not filled up the other columns fixing the liability absolutely upon the Company when he was intercepted and charged for cheating and convicted: *Held*, that the writing of the false figure in the register had not passed from the stage of preparation into that of an attempt to commit the offence of cheating and that, therefore, the conviction under S. 420, Penal Code, was wrong. There is a wide difference between the preparation and an attempt to commit an offence. The preparation consists in devising or arranging means necessary for the commission of an offence; an attempt is the direct movement towards the commission after preparations are made. *Lakshmi Prasad v. Emperor*.

23 Cr. L. J. 108 :

65 I. C. 492 : A. I. R. 1923 Pat. 307.

———Ss. 420, 511—*Interpretation — 'And thereby'—Meaning of.*

In S. 420 of the Penal Code, the words 'and thereby' after the words "whoever cheats" do not imply that some further act of delivery is necessary after the offence of cheating is completed, but are designed to introduce a description of a particular sort of cheating, that is, when the effect of cheating is to induce the delivery of the property or the making, alteration or destruction of a valuable security. *Sanwaldas v. Emperor*.

18 Cr. L. J. 990 :

42 I. C. 606 : 11 S. L. R. 67 :

A. I. R. 1917 Sind 89.

———Ss. 420, 511—*Offence under—Receipt for insured parcel, not valuable security—Despatching insured envelope containing waste paper with intention of furnishing evidence of payment of debt—Attempt to cheat.*

The petitioner, who was indebted to the complainant, despatched to the latter an envelope insured for Rs. 530, containing two pieces of waste paper, intending to use the receipt for the same as evidence of payment of Rs. 530, towards the liquidation of his debt to the complainant: *Held*, that the petitioner was guilty of an attempt to cheat and should be convicted under Ss. 417/511 of the Penal Code, and not under S. 420. *Arura v. Emperor*.

14 Cr. L. J. 436 :

20 I. C. 596 : 10 P. R. 1913 Cr. :

30 P. W. R. 1913 Cr. : 299 P. L. R. 1913.

———Ss. 420, 511—*Post Office Act (VI of 1898), Ss. 64, 72—Sending blank paper in insured cover—Making false claim against Post Office—Conviction for attempt to cheat, legality of.*

The accused sent blank papers in a cover insured for Rs. 900, and on delivery of the cover, stated that the cover contained currency notes for Rs. 900 and made a claim against

PENAL CODE ACT (XLV OF 1860)

the Post Office for Rs. 900. The accused was subsequently charged with attempt to cheat under Ss. 420 and 511, Penal Code, and under S. 64 of the Post Office Act and convicted of the former offence: *Held*, (1) that the conviction for the major offence and acquittal for the minor offence under S. 64, Post Office Act, was not illegal: (2) that the Court was not competent to take cognisance of the offence under S. 64, Post Office Act, as there was no complaint by the postal authorities. *Suchil Raut v. Emperor*.

31 Cr. L. J. 934 :
125 I. C. 770 : 11 P. L. T. 223 :
9 Pat. 126 : A. I. R. 1930 Pat. 622.

—S. 421.

See also Cr. P. C., 1898, S. 195 (b).

—S. 421—Jurisdiction — Inconsistency with special Act—Magistrate's jurisdiction to try the offence—Presidency Towns Insolvency Act, S. 17.

A creditor instituted against a debtor a prosecution under S. 421, Penal Code, after an order of adjudication had been made under Act III of 1909 in respect of the debtor. The leave of the Insolvency Court was not obtained to institute these Criminal Proceedings: *Held*, that the Magistrate's jurisdiction to try an adjudged insolvent under S. 421, Penal Code, was not taken away by the Presidency Towns Insolvency Act III of 1909. The general expression, or other legal proceeding, in S. 17 of the Act (III of 1909), coming after 'suit' a word of more limited application, must be construed on the principle of *ejusdem generis*, and hence, it could not be intended to include criminal proceedings. *Emperor v. Mulshankar Harinand Bhat*.

11 Cr. L. J. 548 :
7 I. C. 963 : 12 Bom. L. R. 750.

—S. 421—Offence, nature of—Shopkeeper with stock of goods obtaining credit and selling goods without making payment to his creditors—Whether offence under S. 421.

It cannot be held without further proof that a shopkeeper who has stocked his shop with goods obtained on credit and who sells these goods without making any payment to his creditors, has committed an offence punishable under S. 421, Penal Code. In selling these goods, which are his own in spite of the fact that he has not yet paid for them, he is not causing wrongful gain to himself; neither is he causing wrongful loss to anybody, because unless the creditors have obtained some legal right over the property, he is not by his action depriving them to any right of theirs. *Ismail Peer Mohamed v. The King*.

39 Cr. L. J. 767 :
176 I. C. 667 : 11 R. Rang. 70.
A. I. R. 1938 Rang. 242.

—S. 421—Offence under.

Movable property of insolvent in Foreign State—Fraudulent disposition of it to prevent distribution among creditors is an offence

PENAL CODE ACT (XLV OF 1860)

under S. 421. *Mancherha Ardeshir Devierwala v. Ismail Ibrahim Patel*.

37 Cr. L. J. 577 :
162 I. C. 310 : 38 Bom. L. R. 168 :
60 Bom. 706 : 8 R. B. 412 :
A. I. R. 1936 Bom. 167.

—S. 421—'Property', definition and scope of.

The definition in S. 22 of 'movable property' is an inclusive definition and the word "property" in S. 421 is wide enough to include a chose in action. *Manchersha Ardeshir Devierwala v. Ismail Ibrahim Patel*.

37 Cr. L. J. 577 :
162 I. C. 310 : 38 Bom. L. R. 168 :
60 Bom. 706 : 8 R. B. 412 :
A. I. R. 1936 Bom. 167.

—S. 421—Scope of.

Where the Insolvency Act creates an offence, it is the Insolvency Court which has jurisdiction as to it; as to offences under the Penal Code, the ordinary jurisdiction of the Criminal Courts cannot be held to be excluded unless expressly or by necessary implication the Act repeals the Code for the purposes of those offences. S. 103, Insolvency Act, does not substantially interfere with S. 421, Penal Code. As its essential ingredients show, it is more or less a new offence created by the Act in addition to the offence under the Code. One Statute may be impliedly repealed by a subsequent statute necessarily inconsistent with it, but then the inconsistency must be so great that they cannot both be, to their full extent, obeyed. *Emperor v. Mulshankar Harinand Bhat*. 11 Cr. L. J. 548 : 7 I. C. 963 : 12 Bom. L. R. 750.

—Ss. 421, 424—Jurisdiction—Presidency Towns Insolvency Act, S. 103—Trial of insolvent independently of Insolvency Act.

There is nothing in the Presidency Towns Insolvency Act which takes away a Magistrate's jurisdiction to try an insolvent for an offence under S. 421 or S. 424, Penal Code. *U Mo Gaung v. U Po Sin*.

30 Cr. L. J. 345 :
114 I. C. 681 : 6 Rang. 634 :
I. R. 1929 Rang. 73 :
A. I. R. 1929 Rang. 14.

—Ss. 421, 424—Power of District Court to grant sanction to prosecute—Provincial Insolvency Act, S. 43—Permission granted to Official Receiver to prosecute insolvent, whether sanction—Report of Official Receiver, value of—Offence falling under Penal Code and Insolvency Act, prosecution for.

It is open to a District Court to grant permission to the Official Receiver to prosecute an insolvent for an offence under Ss. 421 and 424, Penal Code upon the strength of the Receiver's report, which is sufficient material for that purpose though it may not be evidence on which a conviction can be legally based. Such permission does not amount to a sanction under S. 195 or to an

PENAL CODE ACT (XLV OF 1860)

order under S. 476, Cr. P. C. *Segu Baliah v. N. Ramasamiah*.

18 Cr. L. J. 992 :
42 I. C. 608 : 6 L. W. 283 :
A. I. R. 1918 Mad. 460.

————S. 422 — False representation—
Advancer obtained on false representation.

The accused obtained an advance from the complainants through a broker on the representation that he had two boat-loads of paddy in the creek and that he would bring them to the mill and would sell them to the complainants. The accused and the broker jointly executed a promissory note for the advance in favour of the complainants. The promissory-note contained no statement of the representation made by the accused. Subsequently the accused absconded; and it appeared he had no boat-loads of paddy. The complainants thereupon preferred a charge of cheating against him; *Held* (1) that it was not sufficient to prove that the accused promised to bring paddy to the mill at some time or other and failed to do so; the prosecution must show that the representation made by the accused was false, that is, at the time of making it he had no intention of carrying out the promise; (2) that the facts warranted the inference that the accused's representation was false. *Nga Po Yon v. Mohr Brothers & Co., Ltd.*

13 Cr. L. J. 50 :
13 I. C. 386 : 4 Bur. L. T. 279 :
6 L. B. R. 38.

————S. 422—Transfer, if fraudulent.

In order to secure a debt, A hypothecated a house and got the deed duly registered. A year afterwards, he sold the house to another person: *Held*, that A was not guilty of an offence under S. 422, Penal Code. *Musai Lal v. Kashi Prasad*.

14 Cr. L. J. 149 :
18 I. C. 883.

————S. 423—Execution of fictitious sale-deed dishonestly or fraudulently.

The execution of a fictitious sale-deed in order to defeat the claim of a pre-emptor amounts to a dishonest and fraudulent execution of a deed within the meaning of S. 423, Penal Code. *Lachhman Das v. Emperor*.

6 Cr. L. J. 111 :
2 P. W. R. Cr. 119 : 16 P. R. Cr. 1907 :
54 P. L. R. 1908.

————S. 423—False consideration in sale-deed, effect of—*Fraud—Property not subject to right of pre-emption.*

Making a false statement in a sale-deed as to the consideration of the sale, is not indictable under S. 423, Penal Code, if the vendible property is not subject to the right of pre-emption. *Chhaji v. Emperor*.

9 Cr. L. J. 486 :
16 P. R. Cr. 1908 : 3 P. W. R. Cr. 93.

————S. 423—False statement—*Consideration,*

PENAL CODE ACT (XLV OF 1860)

Where the accused knowing that half the portion of certain land had already been sold validly for Rs. 75, sold the whole of it for Rs. 120, stating falsely in the sale-deed that the whole of the land was in the possession and enjoyment on its date and that the sale price was Rs. 120: *Held*, that he did not commit an offence under S. 423, Penal Code. The law does not make every false statement contained in an instrument of transfer punishable. It must be a statement relating to the consideration or to the person to be benefited thereby. Consideration must not be confused with value, nor with the property which is the subject of the sale. *In re : Mania Goundan*.

12 Cr. L. J. 547 :
12 I. C. 523 : 10 M. L. T. 383 :
1911, 2 M. W. N. 413.

————S. 423 — Interpretation “fraud,”
“fraudulently,” meaning of.

The words “fraud,” “fraudulently” and “to defraud” in S. 423, Penal Code, are not confined to connote deprivation of property and the deception of the person so deprived. It is not essential that the person deceived or to be deceived and the person injured or intended to be injured should be one and the same. *Legal Remembrancer v. Ahilal Mandal*.

23 Cr. L. J. 340 :
66 I. C. 996 : 48 Cal. 911 :
A. I. R. 1921 Cal. 226.

————S. 423—Kabuliyat, whether document,
within the meaning of S. 423.

It is doubtful whether the language of S. 423, Penal Code, could be so interpreted as to include a *kabuliyat* within its scope. *Mohammad Kajim Ali v. Jarabdi Nashkar*.

20 Cr. L. J. 574 :
52 I. C. 62 : 29 C. L. J. 522 :
46 Cal. 986 : A. I. R. 1919 Cal. 430.

————S. 423—Mischief.

Judgment-debtors executing document with false recital as to consent of decree-holder—Intention to support a case of satisfaction of decree at later stage—Case comes within mischief of S. 423. *Amiri Singh v. Emperor*.

34 Cr. L. J. 846 :
144 I. C. 791 : 6 R. P. 16 :
A. I. R. 1933 Pat. 495.

————S. 424.

See also (i) Cr. P. C., 1898, S. 236.
(ii) Penal Code, 1860, S. 22.
(iii) Practice.

————S. 424—Absence of dishonesty, effect of—*Burden of proof—Question of title—Civil dispute—Procedure.*

Parties should not be encouraged to resort to the Criminal Courts in cases in which the point at issue between them, is one which

PENAL CODE ACT (XLV OF 1860)

can more appropriately be decided by a Civil Court. Unless dishonesty is proved, a conviction under S. 424 cannot be sustained. On the death of a person a dispute arose between his two widows as to the succession to his property and both of them put padlocks on the shop in which the property was. Some of it was subsequently removed from the shop by the accused at the instance of one of the widows, the other widow brought a suit to establish her title to the property: *Held*, that the accused could not be convicted of an offence under S. 424, Penal Code, as, in the absence of a clear finding as to the respective titles of the widows, it could not be said that his removal of the property was dishonest. *Khushi Ram v. Emperor*.

22 Cr. L. J. 142 :
59 I. C. 654 : 6 P. W. R. 1921 Cr. :
A. I. R. 1921 Lah. 185.

———S. 424—Bona fide claim of title—*Mischief—Landlord and tenant—Tenant cutting and removing trees—Custom—Burden of proof.*

Accused was prosecuted under S. 424, Penal Code, for having dishonestly removed branches of certain trees, a share of which belonged to the landlord, the complainant. He admitted having cut and removed the trees, but pleaded that the complainant was not entitled to any share in trees cut by tenants for domestic use, but only to those which were cut and sold. The Court held that the complainant was entitled to a share in trees cut not only for sale but also for agricultural or domestic purposes, and accordingly, convicted the accused under S. 424, Penal Code, which conviction was upheld on appeal. In revision to the High Court it was contended that the accused was entitled to an acquittal inasmuch as he had raised a *bona fide* claim of title to the trees, basing the contention upon the plea that by custom the tenants were entitled to appropriate the trees without any participation by the landlord, when cut for agricultural or domestic purposes: *Held*, that as the accused, on whom the onus lay, had failed to prove the custom alleged by him, the plea of *bona fide* claim of title was not available to him. *Panchi Mandar v. Emperor*.

21 Cr. L. J. 609 :
57 I. C. 273 : 1 P. L. T. 318 :
A. I. R. 1920 Pat. 663.

———S. 424—Bona fide grievance.

Where a cultivator removed himself and his belongings in order to obtain from a Civil Court an impartial scrutiny of his *Talukdar's* accounts in which he had been fairly dealt, *held* that as he had a *bona fide* grievance which could never be redressed while he remained under the *Talukdar's* revenue jurisdiction, he could not be convicted under S. 424, I. P. C. *In re : Patel Thakarsi Jiwa*.

1 Cr. L. J. 491.

———S. 424—Conviction, maintainability of—Attachment of crops in execution of decree against A—Removal of crops by B whether offence—Conviction of B without determining whether he is owner of crops, legality of—Dishonest or fraudulent intention, necessity of.

PENAL CODE ACT (XLV OF 1860)

In execution of a decree against A, certain crops were attached. B, alleging that the crops belonged to him, forcibly removed the crops. The Magistrate convicted B under S. 424, Penal Code, without determining whether B was the owner: *Held*, that the conviction could not be maintained as the crucial question for determination was whether the removal was dishonest or fraudulent and if B was the owner of the crops, his conduct could not be dishonest or fraudulent. *Ghasi v.*

31 Cr. L. J. 711 :
124 I. C. 716 : 52 All. 214 :
A. I. R. 1930 All. 329.

———S. 424—Dishonest intention—Concealment of property to avoid attachment—Offence.

Concealment of property by the debtor or its removal by others with a view that it may not be attached, if done with a dishonest intention, would fall under S. 424, Penal Code. *Pinnamraju Rajamraju v. Potturi Tirupatiraju*.

31 Cr. L. J. 1086 :
126 I. C. 601 : 32 L. W. 23 :
1930 M. W. N. 347 :
A. I. R. 1930 Mad. 670.

———S. 424—Dishonest intention—Judgment-debtor knowing that his crop is attached, removing it—If guilty under S. 424.

Where a judgment-debtor knowing that his crop was attached or even was going to be attached in execution of a decree, removes the crop with the object of preventing the decree-holder from obtaining his money, his action is dishonest because it is intended to cause wrongful loss to the decree-holder and he is, therefore, guilty under S. 424, Penal Code. *Tara Singh v. Emperor*.

39 Cr. L. J. 840 :
176 I. C. 960 : 1938 A. L. J. 528 :
11 R. A. 158 : 1938 A. W. R. 361 :
A. I. R. 1938 All. 449.

———S. 424—Dishonest intention—Proof—Conviction, legality of.

When a particular kind of intention is an important ingredient of an offence, a person cannot be convicted of that offence unless there is clear evidence to show that the accused acted with that particular intention. A conviction of an accused person for an offence under S. 424, Penal Code, cannot be upheld in the absence of evidence establishing that the accused acted dishonestly in the sense in which that word is used in the Penal Code. *Sohan Mundari v. Emperor*.

31 Cr. L. J. 435 :
122 I. C. 578 : A. I. R. 1929 Pat. 520.

———S. 424—Dishonest removal of crops—Landlord and tenant—Conviction—Bengal Tenancy Act, S. 71 (4).

The object of S. 71, Sub-s. (4), Bengal Tenancy Act, is to provide the Courts with a definite rule as to the value of crops which have been wrongly removed by a tenant. If the tenant acts dishonestly in removing them, he is also

PENAL CODE ACT (XLV OF 1860)

liable to be convicted under S. 424, Penal Code. *Kuldip Pandey v. Ramnath Singh*.

17 Cr. L. J. 315 :
35 I. C. 491 : 1 P. L. J. 353 :
A. I. R. 1916 Pat. 232.

—S. 424—Dishonestly, meaning of.

A person cannot be said to do anything dishonestly within the meaning of the word as defined in the Penal Code if he has merely an intention to cause wrongful loss to some one, when he cannot or does not in fact cause any such wrongful loss. *Wali Muhammad v. Emperor*.

37 Cr. L. J. 485 :
161 I. C. 553 : 29 S. L. R. 190 :
8 R. S. 157 : A. I. R. 1936 Sind 20.

—S. 424—Essentials of.

One of the necessary elements of S. 424, Penal Code, is that some dishonesty or fraud should be made out against the accused. Where the judgment-debtor transfers his property to his wife by gift before attachment, and the property is attached without making the wife of the judgment-debtor party to the execution proceedings and the wife has obtained mutation of names in her favour, she is not bound by the order rejecting the objection by the judgment-debtor that he had no interest in the property, on the ground that he having gifted away the property, had no *locus standi*. *Emperor v. Halim-un-Nissa*. 37 Cr. L. J. 1037 :

164 I. C. 995 : 1935 O. W. N. 879 :
1936 O. L. R. 557 : A. I. R. 1936 Oudh 195.

—S. 424—Notice.

Where attachment has been ordered without issue of notice to the judgment-debtor, it is all the more necessary that at his residence notice of the attachment of his crops should have been given as required by law. Not giving such notice, is a fatal defect. *Wali Muhammad v. Emperor*.

37 Cr. L. J. 485 :
161 I. C. 553 : 29 S. L. R. 190 :
8 R. S. 157 : A. I. R. 1936 Sind 20.

—S. 424—Object.

Similarly S. 424 is intended to punish fraudulent debtors and their accomplices and is not intended to punish persons who claim as heirs of a deceased man and deal with the property. *In re : Karri Mangadu*.

15 Cr. L. J. 602 :
25 I. C. 514 : 1914 M. W. N. 791 :
A. I. R. 1914 Mad. 506.

—S. 424—Proof — Removal of attached property—Legality of attachment, necessity of.

To base a conviction under S. 424, Penal Code, for removal of property attached, it must be proved that the attachment was legal and that the provisions of law regarding attachment were duly complied with. *Mya Gyok v. Emperor*.

30 Cr. L. J. 748 :
117 I. C. 243 : I. R. 1929 Rang. 179 :
A. I. R. 1928 Rang. 285.

—S. 424—Proof of intention.

A judgment-debtor is entitled to remove his crops which have not been validly attached, and the mere fact that he has

PENAL CODE ACT (XLV OF 1860)

removed the crops, does not prove that he has done so dishonestly. Intention has got to be proved. A dishonest intention may be presumed only if an unlawful act is done or if a lawful act is done by unlawful means. *Wali Muhammad v. Emperor*.

37 Cr. L. J. 485 :
161 I. C. 553 : 29 S. L. R. 190 :
8 R. S. 157 : A. I. R. 1936 Sind 20.

—S. 424—Scope of—If applies where property is openly seized by person in exercise of alleged right.

The removal referred to in S. 424, Penal Code, is *ejusdem generis* with concealment which precedes it. S. 424 is designed to meet a special class of cases, and has no application to a case where property is openly seized by a person in the exercise of an alleged right. *Nand Kishore v. Emperor*.

41 Cr. L. J. 111 :
185 I. C. 151 : 1939 A. L. J. 941 :
12 R. A. 304 : 1939 A. W. R. 661 :
A. I. R. 1939 All. 710.

—Ss. 424, 409—Fraudulent intention.

The Magistrate convicted appellant of criminal breach of trust under S. 409; Penal Code: *Held*, that, though the conviction under S. 409 was unsustainable, it was very clear that, on facts proved, appellant could have been convicted of dishonestly or fraudulently concealing or removing his property, an offence punishable under S. 424: *Held*, also, that the evidence that appellant concealed or removed his account books and promissory notes to the value of three lakhs of rupees, was conclusive and that considering the circumstances of the case, namely the fact that he was largely indebted to his creditors and that he absconded on that account, it was as conclusive that he removed or concealed that property dishonestly, *i. e.*, with the intention of causing wrongful loss to his creditors. *Ko Set Shwin v. Emperor*.

1 Cr. L. J. 385 :
1 Bur. L. R. 110.

—Ss. 424, 409 — Power of Appellate Court to alter charge.

If the prosecution establishes certain acts constituting an offence, and the Court misapplies the law by charging and convicting an accused person for an offence other than that for which he should have been properly charged, and if notwithstanding such error the accused has, by his defence, endeavoured to meet the accusation or the commission of those acts, then the Appellate Court may alter the charge or finding and convict him for an offence which those acts properly constituted, provided that the accused be not prejudiced in the finding. *Ko Set Shwin v. Emperor*.

1 Cr. L. J. 385 :
10 Bur. L. R. 110.

—Ss. 424, 409—Wrong charge.

It was urged that this Court would exercise a wrong discretion in altering the finding to one under S. 424, Penal Code, that appellant had no opportunity of defence to a charge

PENAL CODE ACT (XLV OF 1860)

under that section, and that the proper course was to acquit the appellant on the charge under S. 409 and leave it to the prosecution to bring a further charge under S. 424 in a new trial, if considered desirable : *Held*, that appellant had to meet the accusation of the commission of exactly the same acts, whether he was charged under Ss. 409 or 424, and had not been in any way prejudiced but that a trust created by the agreement, Exhibit A, and had consequently charged the appellant under the wrong section. There can be no criminal breach of trust unless a person is entrusted with the property or the dominion over the property of another. *Ko Set Shwin v. Emperor*.

1 Cr. L. J. 385 :
10 Bur. L. R. 110.

—S. 425.

See also (i) Penal Code, 1860, S. 378.
(ii) Trespass.

—S. 425—Absence of intention, effect of—*Mischief—Intention to cause wrongful loss—Knowledge that wrongful loss likely to be caused—Necessity for—Belief on part of accused that in cutting down crops they were acting within their own rights.*

The accused cut down crops planted by the complainant on land to which he had no right whatever. The Appellate Magistrate considered that it was probable that the accused believed that they were acting within their rights in doing what they did : *Held*, that the accused were not guilty of the offence of mischief, for there could have been no intention to cause wrongful loss, or knowledge that they were likely to cause wrongful loss, or damage. The complainant could have no possible right to the crops. The ownership of the plants went with the ownership of the land. *Nga Si v. Crown*.

1 Cr. L. J. 668 :
10 Bur. L. R. 126.

—S. 425—Bona fide belief, effect of—*Mens rea is essential.*

What is compendiously referred to as *mens rea*, is one of the essential ingredients of the offence of mischief and if the accused honestly believed in good faith that they had the right to do what he did even if he did not, in law, have that right, he cannot be said to have had the necessary intention or knowledge that he was likely to cause wrongful loss or damage. *Jambulingam Pillai v. Ponnuswami Pillai*.

40 Cr. L. J. 656 :
182 I. C. 327 : 1939, 1 M. L. J. 321 :
49 L. W. 332 : 1939 M. W. N. 315 :
12 R. M. 51 : A. I. R. 1939 Mad. 400.

—S. 425—Cutting and removing dead tree, if offence.

The cutting and removal of a dead jack fruit tree do not amount to its destruction or to such a change in a property or its situation as destroys or diminishes its value or utility or affects it injuriously, and do not, therefore,

PENAL CODE ACT (XLV OF 1860)

amount to an offence under S. 425 of the Penal Code. *Sarat Chandra Sen v. Yaqub*.

26 Cr. L. J. 194 :
83 I. C. 898 : 28 C. W. N. 736 :
A. I. R. 1924 Cal. 805.

—S. 425—Ingredients of offence under —*Mischief—Necessary ingredients of offence—Wrongful loss, what is.*

To bring a case within S. 420, Penal Code, it is necessary to establish in the first instance that the accused's act amounted to mischief and in order to constitute an act, an act of mischief, it is necessary, under S. 425 to show that in doing the act he had an intention to cause, or knew that he was likely to cause wrongful loss or damage to any person. Further, it must be shown that the loss was wrongful, that is to say, that the act amounted to an infringement of some right resting in the person to whom the loss was caused. *In re : Budda Reddi*.

23 Cr. L. J. 655 :
69 I. C. 95 : 16 L. W. 793 :
31 M. L. T. 421 : 44 M. L. J. 234 :
1922 M. W. N. 839 :
A. I. R. 1923 Mad. 141.

—S. 425—Intention—*Knowingly taking risk of causing damage—Damage caused, whether intentional.*

A person who causes damage to a neighbour's tree by knowingly letting his own tree fall in the direction in which the neighbour's tree is standing, though his object in doing so is to protect his own trees standing in the other directions, is guilty of 'intentionally' causing damage to his neighbour's property. *Khobhari Singh v. Emperor*.

27 Cr. L. J. 1285 :
98 I. C. 181.

—S. 425—Intention or knowledge—*Mischief—Act diminishing supply of water for agricultural purposes does not of itself constitute—Intent to cause wrongful loss or damage to the public or persons—Knowledge that such wrongful loss or damage likely to result—Necessity for.*

The doing of an act which diminishes the supply of water for agricultural purposes does not of itself constitute mischief. In order to constitute such offence, the act must have been done with intent to cause wrongful loss or damage to the public, or to any person or persons, or with knowledge on the part of the person who does the act, that by it he is likely to cause such wrongful loss or damage. *Emperor v. Nga Myat Aung*.

1 Cr. L. J. 663 :
10 Bur. L. R. 122.

—S. 425—Mischief, ingredients of.

The principal ingredient of an offence under S. 425, Penal Code, is that there must be an intention to cause wrongful loss or damage to the public or to any person, that is to say, the mischief must be done to the property belonging to another. If a person wishing to eject a trespasser, sets fire to his own house, he cannot be said to cause wrongful loss to any person or to the public,

PENAL CODE ACT (XLV OF 1860)

and therefore, cannot be convicted of an offence under S. 425. *Ram Krishna Singh v. Emperor.*

23 Cr. L. J. 321 :
66 I. C. 817 : 3 P. L. T. 335 :
A. I. R. 1922 Pat. 197.

———S. 425—*Mischief—Making breach in bank of field—Intention—Damage.*

Accused, fearing that the water in his tank would overflow, caused a breach in the bank of the complainant's field with the result that the surplus water from the tank overflowed into the field. It was found that there were no crops in the field, so that apart from the damage done to the bank, no other damage was caused to the complainant : *Held*, that the accused was guilty of the offence of mischief. *Satlogopal Sah v. Jago Chamar.*

20 Cr. L. J. 237 :
49 I. C. 861 : A. I. R. 1919 Pat. 138.

———S. 425—*Mischief to property.*

Therefore where a person by digging his own land causes injury to the wall of his neighbour provided the latter has not acquired by prescription the right to lateral support from that land, his action, however malicious, does not amount to mischief within the true construction of S. 425, Penal Code. *In re : Athi Iyer.*

23 Cr. L. J. 607 :
68 I. C. 831 : 14 L. W. 728 :
A. I. R. 1921 Mad. 322.

———S. 425—*Mischief, what amounts to—Cutting of branches of trees—Knowledge of likelihood of loss—Offence.*

The cutting of the branches of a tree belonging to another with the knowledge that the cutting is likely to cause wrongful loss or damage to the owner, amounts to mischief punishable under S. 426, Penal Code. *Muhammad Hasan v. Emperor.*

29 Cr. L. J. 275 :
107 I. C. 691 : A. I. R. 1927 All. 610.

———S. 425—*Mischief, what amounts to—Trespasser—Destruction of trespasser's property by owner found on his premises.*

Where the owner of land finds a trespasser on his land using the owner's tools, the owner would commit no mischief in destroying or removing these tools, even though by doing so, he might deprive the trespasser of the means benefiting by his trespass. But the owner of the land would have no right, merely because of the trespass, to destroy whatever property of the trespasser he found upon the premises, such an act of his would amount to mischief. *Emperor v. Dinkar Chintaman Patkar.*

2 Cr. L. J. 55 :
7 Bom. L. R. 86.

———S. 425—*Offence under.*

Mischief—Intention to cause damage, need not be made out—Accused cutting away branches of tree overhanging his house—Offence is committed. *Kastur Chand v. Emperor.*

35 Cr. L. J. 1304 :
150 I. C. 1033 : 15 P. L. T. 107 :
7 R. P. 70 : A. I. R. 1934 Pat. 221.

PENAL CODE ACT (XLV OF 1860)

———S. 425—*Right of tenant—Landlord and tenant—Bhaoli danabandi tenant, right of, to remove crop.*

A bhaoli danabandi tenant can remove the crop either to the threshing floor or to his house, provided he does so in due course of husbandry. But before he cuts his crop, he must give the landlord reasonable opportunity of appraising it. *Emperor v. Lalu Gope.*

18 Cr. L. J. 687 :
40 I. C. 335 : 1 P. L. W. 691 :
A. I. R. 1917 Pat. 522.

———S. 425—*Scope.*

If the owner of land over which another or a body of others have a right either of passage or other use, throws earth upon that land, so that the use becomes either disadvantageous or impossible, his act does not amount to mischief within S. 425. *Rudraraju Ramaraju v. Emperor.*

32 Cr. L. J. 225 :
129 I. C. 77 : 1930 M. W. N. 909 :
I. R. 1931 Mad. 221 :
A. I. R. 1930 Mad. 973.

———S. 425—*Scope of—Mischief—Allowing goats to graze in private property, whether amounts to mischief.*

Allowing goats to graze in the private forests of another person does not necessarily cause such damage by destruction, etc., as will constitute the offence of mischief. The expressions "destruction of any property" and "such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously," in S. 425, Penal Code, carry the implication that something should be done to the property contrary to its natural use and serviceableness. *T. S. Raghupathi Iyer v. Narayana Goundan.*

30 Cr. L. J. 315 :
114 I. C. 559 : 28 L. W. 759 :
55 M. L. J. 767 : I. R. 1929 Mad. 303 ;
52 Mad. 151 : A. I. R. 1929 Mad. 5.

———S. 425—*Scope of—Mischief—Blocking up a channel—Civil rights—Tort.*

Where the accused blocked up a channel, the result of which was that the surplus water flowed direct on to the complainant's land and damaged his crop, and the site of the channel was the common property of all the accused : *Held*, that the act of the accused did not constitute the offence of mischief and that complainant's remedy for any damage he had sustained lay in an action in the Civil Courts. *In re : Kondi Chetti.*

11 Cr. L. J. 566 (a) :
8 I. C. 128 : 8 M. L. T. 385.

———S. 425—*Scope of—Mischief—Cutting down trees without impairing their value.*

A permanent tenure-holder is entitled to cut down trees situate within his tenure. He can only be prevented from doing so by the landlord showing a custom contrary to the right of the tenure-holder. Where there is a dispute between the parties as to the ownership of a tree and one of them cuts it down, the case is beyond the cognizance of a Criminal

PENAL CODE ACT (XLV OF 1860)

Court and outside the scope of S. 425, Penal Code. *Sardar Singh v. Emperor*.

19 Cr. L. J. 339 :
44 I. C. 451 : 4 P. L. W. 291 :
A. I. R. 1918 Pat. 323.

————S. 425—Wrongful loss or damage.

There is nothing unlawful in the accused installing an oil-engine in his own property and working it although if his working causes damage to a neighbour's property, the accused would be liable to a civil suit for damages and the accused is not liable to be convicted for mischief. *Punjabi Bapuji Bagul v. Emperor*.

36 Cr. L. J. 940 :
156 I. C. 459 : 37 Bom. L. R. 96 :
59 Bom. 177 : 7 R. B. 514 :
A. I. R. 1935 Bom. 164.

————Ss. 425, 97—Mischief, what constitutes—
Intention to cause injury, whether necessary—
Private defence of property, right of, extent of.

To constitute the offence of mischief, it suffices if the person who caused the injury knew that he was likely by his act to cause damage to any person. Accused drove out a cow which had entered his master's field, and after it had reached the boundary, threw two stones at it, one of which fractured its leg: *Held*, (1) that the accused was guilty of mischief within the meaning of S. 425, Penal Code; (2) that any right of private defence of property which the accused had under S. 97, Penal Code, ceased when the cow left the field. *Mahadeo v. Emperor*.

18 Cr. L. J. 286 :
38 I. C. 318 : 12 N. L. R. 188 :
A. I. R. 1916 Nag. 14.

————Ss. 425, 288—Scope of Negligence,
public nuisance and mischief—Tort—When
revisional Court to interfere in a case pending.

Where a wall of a house collapsed and caused injury to the complainant's property by its fall into his compound: *Held*, that S. 288 could not apply, as it referred to negligence in pulling down or repairing a building, that this was not a public nuisance, the danger caused being not a public one or one to people in general residing in the vicinity, but a danger to certain individuals, that the case would not also come under mischief, as when the word 'cause' was used in the Penal Code, the immediate cause was generally intended, and that the case was clearly one of tort to be decided in a Civil Court: *Held*, also, that in an exceptional case like this, a Court of revision would interfere while it was pending. *Shah Jey Chand Gopalji v. Thakar Bawa Virji*.

1 Cr. L. J. 488.

————Ss. 425, 426—Intention or knowledge—
Mischief—Cattle trespass.

Where in the absence of an owner of cattle, his cattle trespassed upon the Government garden: *Held*, that the fact of trespass would

PENAL CODE ACT (XLV OF 1860)

not constitute the offence of mischief within the meaning of S. 425, Penal Code, unless the wrongful loss or damage was caused with intent to cause it or with the knowledge that it would likely be caused. *Emperor v. Ghazi*.

1 Cr. L. J. 1097 :
23 P. R. Cr. of 1904.

————Ss. 425, 426—Scope of—Definition—
Mischief—Act (Local) No. 1 of 1900 (N. W. P.
and Oudh Municipalities Act), S. 167.

Certain cattle belonging to one M. H, upon various occasions when in charge of a servant of M. H, strayed, or were driven into the Government gardens at Saharanpur and there caused damage: *Held*, that M. H, could not, on these facts, be convicted of the offence of mischief: *Held*, also, that S. 167, Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. *Emperor v. Mehdi Hasan*.

6 Cr. L. J. 13 :
27 A. W. N. 170 : I. L. R. 29 All. 565.

————Ss. 425 to 429—Scope of—Mischief—
Intention to cause wrongful loss or damage, or
knowledge that such loss or damage is likely
to be caused an essential element in the offence
—Maiming.

The word "maiming" as used in Ss. 428, 429, I. P. C., means the privation of the use of a limb or member, and implies a permanent injury. To bring a case under S. 426, the intention or knowledge requisite to constitute the offence should be proved. An injury caused by a small stick, usually used in driving cattle, cannot be presumed to have been caused with such intention or knowledge. *Narain Singh v. Emperor*.

3 Cr. L. J. 107 :
U. B. R. Cr. 1905.

————Ss. 425, 430—Bona fide belief of right,
effect of—Mischief, what constitutes—Cutting
bund and causing diminution of water supply.

The accused was charged with causing diminution of water supply to the complainant, by destroying a bund at a particular place. It was proved, however, that the accused was in the habit of taking the water from this opening to his fields under a permit, and that on this occasion, he cut open the bund anticipating the grant of the permit: *Held*, that accused could not be convicted of mischief, inasmuch as (1) he acted in the bona fide belief, that he would get the permit; (2) by the mere diminution of water supply there was no destruction or diminution in value or utility of the property on which the injurious act was committed, *Kullappa Naicker v. Palantammall*.

21 Cr. L. J. 137 :
54 I. C. 617 : 11 L. W. 148 :
1920 M. W. N. 131 : 27 M. L. T. 214.
A. I. R. 1920 Mad. 119.

PENAL CODE ACT (XLV OF 1860)

—Ss. 425, 430—*Intention or knowledge, absence of—Mischief—Injury to work of irrigation—Cutting of a dam—Act done to save property—Wrongful loss or damage.*

Where a dam erected by the complainant was cut by the accused to save their own crops, and their act did not cause any diminution of the supply of water for agricultural purposes, and they did not know that it was likely to cause such diminution in future: *Held*, that the important element of intention or knowledge necessary to constitute the offence of mischief being absent, the accused could not be convicted under S. 430, Penal Code. *Nafar Chandra Bhattacharjee v. Helaluddin Mondal.*

1 Cr. L. J. 245 :
8 C. W. N. 370.

—Ss. 425, 430—*Mischief, ingredients of—Knowledge of causing wrongful loss to others—Insufficiency of evidence—Conviction.*

In order to convict a person of criminal mischief, it must be proved that the accused did the particular acts in question with the knowledge that they were likely to cause wrongful loss or damage to other persons. Where the intention was not to cause loss to anybody but to protect the accused's own property which was in danger of injury, the mere fact that the accused by cutting through a bund and permitting a portion of the water of a *tal* to escape, caused thereby a diminution in the supply of water for agricultural purposes, is not sufficient to base a conviction, under S. 430, Penal Code, unless it be proved that wrongful loss or damage resulted to some person from such diminution in the supply of water. The mere diminution in water supply does not lead to the presumption that loss or damage was thereby caused to some person. *Mohammad v. Emperor.*

11 Cr. L. J. 168 :
5 I. C. 560.

—Ss. 425, 430—*Mischief, what constitutes—Mischief, a condition precedent to a conviction under S. 430.*

A condition precedent to a conviction under S. 430, Penal Code, is that the accused has committed mischief as defined in S. 425, and it must be proved that he caused the destruction of some property or some such change in any property or in the situation thereof, as destroyed or diminished its value or utility or affected it injuriously. *Emperor v. Fateh Din.*

11 Cr. L. J. 65 :
4 I. C. 863 : 14 P. R. 1909 Cr. :
34 P. W. R. 1909 Cr.

—S. 426.

See also (i) Chota Nagpur Tenancy Act, 1908, S. 72 (4).

(ii) Cr. P. C., 1898, S. 106,

(iii) Penal Code, 1860, Ss. 148, 186, 447.

PENAL CODE ACT (XLV OF 1860)

—S. 426—*Absence of intention—Mischief—Grazing cattle in a forest under resettlement.*

A person grazing cattle in a Government forest land which is under resettlement, cannot be convicted of an offence under S. 426, Penal Code, in the absence of intention to cause wrongful loss or damage. *Emperor v. Joti Babu.*

4 Cr. L. J. 93 :
8 Bom. L. R. 549.

—S. 426—*Bona fide belief—Mischief—Cutting of ripe crop in full time—Offence.*

Where accused, acting in good faith and under a *bona fide* belief that he was entitled to the possession of certain land delivered to him by the Court in consequence of his purchase at an auction sale, cut away a ripe crop growing on the land in its full time: *Held*, that he was not guilty of the offence of mischief under S. 426, Penal Code. *Talebar v. Emperor.*

18 Cr. L. J. 750 :
40 I. C. 750 : 2 P. L. W. 49 :
A. I. R. 1917 Pat. 336.

—S. 426—*Bona fide claim of right—Mischief—Landlord and tenant—Offence.*

A tenant who cuts and appropriates a tree standing on his holding under a *bona fide* claim of right, is not guilty of mischief under S. 426, Penal Code, and it is immaterial whether his motive in cutting the tree was *mala fide* or dishonest. *Sham Lal Lohar v. Emperor.*

19 Cr. L. J. 729 :
46 I. C. 409 : 5 P. L. W. 114 :
A. I. R. 1918 Pat. 667.

—S. 426—*Bona fide claim of right—Wrongful loss not intended—Mischief, whether committed.*

Where a tenant in the *bona fide* assertion of a customary right, without intending to cause wrongful loss to the zamindar or knowing it to be likely to do so, cuts down an ancient tree admittedly standing on his holding, he cannot be convicted of the offence of mischief punishable under S. 426 of the Penal Code. *Pi'am Singh v. Emperor.*

21 Cr. L. J. 828 :
58 I. C. 828 : A. I. R. 1920 All. 215.

—S. 426—*Conviction, if justified—Mischief—Removal of earth by tenant in exercise of bona fide right—Dispute of civil nature—Criminal Courts, duty of.*

Criminal Courts are not meant to decide questions which are of a civil nature between a landlord and his tenants. Accused removed some earth from a plot of land belonging to his landlord in the exercise of an alleged customary right under which all residents of the village were entitled to remove earth when they wanted it. He was convicted under S. 426, Penal Code: *Held*, that the dispute, if any, between

PENAL CODE ACT (XLV OF 1860)

the accused and his landlord was of a civil nature and the conviction of the accused was not, therefore, justified. *Hukum Chand v. Emperor.* 24 Cr. L. J. 693 : 73 I. C. 805 : A. I. R. 1923 All. 544.

———S. 426—Conviction, if legal—Conflicting claims to property in respect of which alleged offence committed—No finding on the point—Procedure.

Where in a prosecution under S. 426, Penal Code, each of the contending parties claims ownership of the property in respect of which the offence is alleged to have been committed, the conviction of the accused, in the absence of a finding as to ownership, cannot be sustained. In such a case, it would be proper for the Trying Magistrate to hold that the accused person was acting in the exercise of a bona fide claim of right. *Girish Chandra Roy v. Akhay Kumar Sardar.*

22 Cr. L. J. 507 (b) : 62 I. C. 331 : A. I. R. 1922 Lah. 314.

———S. 426—Conviction, illegality of—Mischief—Ploughing bona fide on widowed daughter's husband's land—Criminal intent presumed but not based on evidence—No injury to anybody proved.

Where the father of a widowed daughter ploughed on land belonging to her husband and he was prosecuted by the deceased's brother and convicted on the presumption of criminal intent: *Held*, that the conviction was bad as there was no evidence that the entry on the land was with intent to commit an offence or to intimidate, insult or annoy any person. *Manikka Veera v. Emperor.*

11 Cr. L. J. 623 : 8 I. C. 318 : 8 M. L. T. 246.

———S. 426—Conviction under, legality of—Passage with kachcha drain—Accused having right of way over it—Accused's right of way not impaired—Accused demolishing pucca drain—If guilty under S. 426.

The rights of private parties to abate the nuisance relating to the obstruction of an easement are never allowed unless the obstruction has actually become a nuisance. On the west side of the complainant's plot, there was a passage on a part of which there was a kachcha drain which served as an out-let for the excess water of the complainant's house. The accused had a right of way over this passage for the purpose of reaching their huts. The complainant made the entire drain pucca and connected it with the Municipal drain. And there was no evidence on the record to show that it was impossible for the accused to exercise their right of way after the drain had been constructed. The accused demolished the pucca drain: *Held*, that in the circumstances, the obstruction, even assuming it to be one, did not amount to a nuisance, and did not justify the accused in removing the structure by taking the law in their own hands. The accused, therefore, could

PENAL CODE ACT (XLV OF 1860)

not escape conviction under S. 426, Penal Code. *Haribilash Show v. Naraindas Agarwalla.* 40 Cr. L. J. 10 : 177 I. C. 1000 : I. L. R. 1938, 1 Cal. 680 : 11 R. C. 313 : A. I. R. 1938 Cal. 669.

———S. 426—Duty of complainant—Mischief—Removing fruit from tree—Essential to be established.

In order to invest a Magistrate with jurisdiction to summon a person charged with having committed the offence of mischief under S. 426, Penal Code, by removing the fruits of certain trees, it is essential for the complainant to make out a *prima facie* case in his petition of complaint or, in his statement on oath, of any deterioration caused by the accused in the value or utility of the fruit, and unless such deterioration is made out, there can be no conviction for the offence of mischief. *Gainu Panday v. Emperor.* 23 Cr. L. J. 504 : 68 I. C. 40 : 2 P. L. T. 394.

———S. 426—Essentials of—Essentials for offence under S. 426.

To constitute mischief within the meaning of S. 425, it is necessary not only that wrongful loss or damage to the public or to any person he intended or be likely but also that any property should either be destroyed or any such change should occur in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously. In such a case, it cannot be said that the accused were guilty under S. 426 because they destroyed the fruits of the complainant's labour in making the ditch. *Ram Roop v. King-Emperor.*

40 Cr. L. J. 138 : 178 I. C. 665 : 1938 O. W. N. 1127 : 1938 O. L. R. 509 : 11 R. C. 121 : A. I. R. 1939 Oudh 38.

———S. 426—Intention—Mischief—Damage of one's own property by himself—Intention.

The accused, a *peadah*, acting solely in the interest of his master R, removed or damaged certain hamhoos belonging to R, which were in the possession of the Court of Wards. He was convicted of criminal trespass and mischief: *Held*, that the conviction of criminal trespass was wrong, as the accused entered upon property in the possession of his master without intending to commit an offence or to intimidate, insult or annoy the Court of Wards: *Held*, also, that the conviction of the accused of mischief was unsustainable. Although a man may commit mischief by damaging his own property provided he does so in order to cause wrongful loss, it can hardly be said that a man who damages his own estate—though he has at present a qualified interest—damages the trustees in possession, whose only object is to preserve the estate for the benefit of the owner. *Parmeshwar Singh v. Emperor.*

11 Cr. L. J. 532 : 7 I. C. 812 : 15 C. W. N. 224.

PENAL CODE ACT (XLV OF 1860)

———S. 426—Jurisdiction.

A Magistrate has no jurisdiction to take cognizance of a case of mischief where there is a *bona fide* dispute between the contending parties with regard to right in and possession of the property, the subject-matter of the charge. *Gainu Panday v. Emperor*.

23 Cr. L. J. 504 :
68 I. C. 40 : 2 P. L. T. 394.

———S. 426—'Mere neglect or carelessness', effect of—Mischief—Spread of fire.

The accused set fire to a heap of rubbish in his field which was close to a protected forest. The wind carried the flames to the forest and destroyed a part of it: *Held*, the accused could not be convicted of the offence of mischief punishable under S. 426 for the facts did not at the outside show more than "mere neglect or carelessness" on the part of the accused to keep the fire from straying into the Government forest. *Emperor v. Nandayappagowda*.

4 Cr. L. J. 446 :
8 Bom. L. R. 851 : 1 M. L. T. 444.

———S. 426—Miscellaneous.

Accused charged with offence under S. 430, tried by Bench Magistrates for offence under S. 426 for which they have jurisdiction—proceedings are not void. When accused are not prejudiced, there will be no interference in revision. *Pieha Kudumban v. Servaikara Thevan*.

32 Cr. L. J. 971 :
133 I. C. 4 : 1930 M. W. N. 770 :
I. R. 1931 Mad. 692 : A. I. R. 1931 Mad. 494.

———S. 426—Mischief—Definition—Fishery—Draining of water from a river to the detriment of the fishing rights therein.

D, as lessee of Government, held rights of fishery in a particular stretch of river. O, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing, he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature: *Held*, that when O, deliberately changed the course and condition of the river in the manner described to the detriment of D, he was guilty of the offence of mischief mentioned in S. 426, Penal Code. *Emperor v. Chanda*.

2 Cr. L. J. 801 :
25 A. W. N. 255 : 2 A. L. J. 826.

———S. 426—Mischief, ingredients of—Intention to cause wrongful loss, finding as to, necessity of.

In order to sustain a conviction under S. 426, Penal Code, it is essentially necessary to find that the accused had the intention of causing wrongful loss to the complainant or that he had knowledge that he was likely to cause such loss. A mere finding that wrongful loss was caused is not sufficient. *Packiriya Pillai v. Muthukrishna Iyer*.

21 Cr. L. J. 450 :
56 I. C. 434 : A. I. R. 1920 Mad. 660.

———S. 426—Mischief, ingredients of—Physical change in composition or form, whether

PENAL CODE ACT (XLV OF 1860)

necessary—Change in value, effect of—Omission to switch on electric lights, whether amounts to mischief.

Mere omission to give light to a house by failing to switch on the light, does not constitute the offence of mischief under S. 426, Penal Code. The "change" referred to in S. 426, Penal Code, means physical change in composition or form; a change in value is not sufficient to constitute mischief. *Abdul Rahman v. Emperor*.

28 Cr. L. J. 960 :
105 I. C. 672 : A. I. R. 1928 Sind 49.

———S. 426—Mischief, what amounts to—Removal of earth from Odai—No right to remove.

Removal of earth from an *Odai* in such a manner as to cause the destruction of the complainant's *bund* without any right to do so amounted to mischief. *In re : Bappu Reddi*.

7 Cr. L. J. 133 :
3 M. L. T. 147.

———S. 426—Offence under—Easements Act, S. 36—Easement—Obstruction by servient owner—Removal of obstruction by dominant owner.

The accused had a right of way over certain fields. The owners of the fields erected a dam which obstructed the accused's right of way. The accused obtained an injunction from the Mamlatdar's Court restraining the owners from obstructing his right of way. The latter not having complied with the injunction, the accused demolished the dam: *Held*, that the accused was guilty of the offence of mischief under S. 426, Penal Code. A dominant owner cannot, in view of the provisions of S. 36, Easements Act, himself abate a wrongful obstruction to an easement. *Zipru Tanaji Patil v. Emperor*.

28 Cr. L. J. 476 :
101 I. C. 604 : 29 Bom. L. R. 484 :
51 Bom. 487 : A. I. R. 1927 Bom. 363.

———S. 426—Offence under—Mischief—Doorway in wall belonging to another, widening of—Offence.

Over the *chabutra* of a mosque, there was an image of a Hindu god. It was surrounded by a wall. The wall belonged to the Muhammadan community. Accused, a Hindu, widened the doorway in the wall by demolishing a portion of it on either side of the door: *Held*, the accused was guilty of an offence under S. 426, Penal Code. *Mahadco Singh v. Emperor*.

27 Cr. L. J. 898 :
96 I. C. 210 : A. I. R. 1926 All. 704.

———S. 426—Procedure—Mischief—Trees cut by tenant—Bona fide claim of right.

Accused, a tenant, was charged with an offence under S. 426, Penal Code, on the allegation that he had cut certain trees which belonged to the *zemindar* and which he had no right to cut. It was found that the title to the trees was a matter of *bona fide* contest on the part of the accused: *Held*, that the matter was one of the Civil Court to determine and could not form the basis of a criminal charge. *Kalka v. Emperor*.

26 Cr. L. J. 660 :
86 I. C. 36 : A. I. R. 1925 All. 291.

PENAL CODE ACT (XLV OF 1860)

———S. 426—'Property,' meaning of.

The property in S. 425 means tangible property capable of being forcibly destroyed and does not include a right like an easement, etc. *Ram Roop v. King-Emperor*.

40 Cr. L. J. 138 :
178 I. C. 665 : 1938 O. W. N. 1127 :
1938 O. L. R. 509 : 11 R. C. 121 :
A. I. R. 1939 Oudh 38.

———S. 426—Scope of—Removal of obstruction from property believed by accused to be his own—Offence.

The removal of an obstruction from property which is believed to be one's own, does not constitute an offence under S. 426, Penal Code. *Ishar Das v. Emperor*.

28 Cr. L. J. 158 :
99 I. C. 414 : A. I. R. 1927 Lah. 145.

———S. 426—Scope of—Wrongful loss—Mortgagee cutting trees to repair house, whether guilty.

A mortgagee openly cutting a few trees on the land mortgaged to him in order to repair another part of the mortgaged premises, is not guilty of mischief. *In re : O. M. Ramasami*.

15 Cr. L. J. 290 :
23 I. C. 498 : 1 L. W. 274 :
A. I. R. 1914 Mad. 379.

———S. 426—What constitutes offence.

Accused tearing off receipt given for the registered article is rightly convicted under S. 426, Penal Code, as it caused damage to Post Office, i.e., wrongful loss to it. *Emperor v. Sukha Singh*.

2 Cr. L. J. 242 :
6 P. L. R. 265 : 24 P. R. Cr. 1905.

———S. 426—'Wrong loss', what is—Person obstructing right of watercourse belonging to another—Owner destroying obstruction and causing loss to person obstructing—Whether wrongful loss.

A person obstructing a right of watercourse belonging to another, commits an act of trespass and the loss caused to him by the persons entitled to the right when they destroy that obstruction in order to exercise their own right of watercourse cannot be considered to be wrongful loss within the meaning of S. 426, Penal Code. *Deocharan Singh v. Ramsunder Sahu*.

40 Cr. L. J. 89 :
178 I. C. 502 : 19 P. L. T. 703 :
5 B. R. 112 : 11 R. P. 269 :
A. I. R. 1938 Pat. 538.

———Ss. 426, 352—Alteration of conviction, legality of—Accused charged under S. 426 only and convicted under it—Conviction, whether can be altered into one under S. 352, in appeal—Criminal trial.

The accused was summoned to answer a charge under S. 426, Penal Code only, and was convicted and sentenced under that section by the trial Magistrate. There was nothing to show that he was ever informed by the Magistrate that he had to defend himself against the offence of assault as well : *Held*, that the alteration of the conviction into

PENAL CODE ACT (XLV OF 1860)

one under S. 352, in appeal, could not be maintained. *Ramdhani Mahton v. Emperor*.

37 Cr. L. J. 1156 (a) :
165 I. C. 600 : 17 P. L. T. 572 :
9 R. P. 197 : 3 B. R. 62 :
A. I. R. 1936 Pat. 536.

———Ss. 426, 427—Sentence—Mischief of graver kind, whether triable by Magistrate of Third Class.

The law makes a distinction between mischief of a minor kind and mischief of the graver sort. S. 426, Penal Code, makes an ordinary case of mischief punishable with imprisonment to the extent of three months and with fine, but where the amount of damage or loss caused is Rs. 50 or upwards, the maximum punishment awardable under S. 427 of the Code is two years' imprisonment and fine. A case of the graver kind of mischief is not triable by a Magistrate of the Third Class. *Raghnandan Prasad v. Emperor*.

26 Cr. L. J. 586 :
85 I. C. 730 : 47 All. 64 :
A. I. R. 1925 All. 290.

———Ss. 426, 430—Mischief—Unlawfully taking water from canal.

The applicants, who wanted water for the purpose of sowing their field, stole it by breaking through the wall of a canal : *Held*, that they were guilty of having committed mischief under S. 426, Penal Code. *Bansi v. Emperor*.

13 Cr. L. J. 141 (a) :
13 I. C. 829 : 34 All. 210 :
9 A. L. J. 162.

———Ss. 426, 447—Absence of criminal intention or hurt—Injury to complainant.

Complainant had a brick kiln for which he got water from the Railway Station close by, which water used to flow through the land of accused K, which he had taken on lease. On the termination of the lease, K also started a kiln in company with accused B, and took the supply of water from the Railway Authorities who did not extend the monopoly hitherto enjoyed by the complainant. Thereupon the present complaint was lodged under Ss. 426 and 447, Penal Code, on the allegation that the accused had destroyed the watercourse through which water used to flow to the complainant's kiln : *Held*, that as the Railway were no longer supplying him with water, the stoppage or the removal of the watercourse did not injure the complainant in any way and no criminal intention to annoy the complainant or to harm him having been shown, it was not a fit case for prosecution on the criminal side. *Banarsi Das v. Emperor*.

25 Cr. L. J. 525 :
77 I. C. 989 : 53 P. L. R. 1922 :
4 L. L. J. 482 : A. I. R. 1923 Lah. 92.

———Ss. 426, 447—Removal of obstruction, if offence—Mischief—Trespass—Trespasser's entry, whether gives him judicial possession—Pathway.

A mere trespasser cannot obtain what is known in law as possession by the act of entry, or by the continuance of that act, so long as

PENAL CODE ACT (XLV OF 1860)

the act is disputed and resisted. Therefore, if a person takes possession of the site of a public road and builds upon it to the obstruction of the public, it is no offence for a member of the public to pull down that obstruction and exercise his right of way. *In re : Dharmalinga Mudali*. 15 Cr. L. J. 723 : 26 I. C. 171 : 1 L. W. 911 : A. I. R. 1915 Mad. 73.

———Ss. 426, 451—*Bona fide claim of right—Criminal trespass and mischief—Common party wall—Pulling down addition—Intention.*

In the course of a dispute over what was alleged by the accused to be a party wall belonging to himself and the complainant, the latter in spite of a notice to the contrary proceeded to erect an addition to this wall. The accused pulled down this addition and the complainant filed a complaint for criminal trespass and mischief the next day : *Held*, that as there was a *bona fide* claim of a right by the accused and as he did not enter the house of the complainant at a time when he was there, he had no intention to intimidate insult or annoy the complainant. *Balkrishna Narhar v. Emperor*. 26 Cr. L. J. 254 : 84 I. C. 254 : 26 Bom. L. R. 978 : A. I. R. 1924 Bom. 486.

———S. 427.

*See also (i) Criminal trial.
(ii) Penal Code, 1860, Ss. 148, 409.*

———S. 427—*Destruction of property, what is.*

Mortgagee decree-holder purchased the mortgaged property consisting of land and buildings containing vats for manufacturing indigo in execution. Before the confirmation of the sale, the mortgagors demolished the building and removed the vats and materials. They were acquitted of an offence under S. 427, Penal Code. The Magistrate thought that as manufacture of indigo had been discontinued for some years and the vats had been standing idle, it was not an offence or mischief to destroy them. He was also influenced by the fact that the sale had not yet been confirmed and become final : *Held*, that the sale proclamation showed that along with the land and the bungalow, the outhouses and vats were also sold, and it was not clear how any one could imagine that the vats were not property and that demolition and removal of the vats was not destruction of the property within S. 427. *Basudeo Lal v. Bindeshri Prasad*.

39 Cr. L. J. 78 :
172 I. C. 175 : 10 R. P. 301 :
4 B. R. 117 : A. I. R. 1937 Pat. 646.

———S. 427—*Ingredients.*

The causing of wrongful loss or damage and intent to cause wrongful loss or damage is essential for the offence of mischief. *U Ka Doe v. Emperor*.

31 Cr. L. J. 799 :
125 I. C. 271 : 8 Rang. 13 :
A. I. R. 1930 Rang. 158.

PENAL CODE ACT (XLV OF 1860)

———S. 427—*Intention—Cattle Trespass Act (I. of 1871), S. 26—Mischief—Cattle straying and causing damage—Negligence—Intention—Offence.*

Where it is established that an owner of cattle habitually and intentionally permits his cattle to stray in order that they might graze on the crops of others, then any given instance of such straying cannot be regarded merely as a case of negligence and the owner is, in such a case, guilty of offences under S. 427, Penal Code, and S. 26, Cattle Trespass Act. *Emperor v. Punja Goda*.

20 Cr. L. J. 387 :
50 I. C. 995 : 21 Bom. L. R. 247 :
A. I. R. 1919 Bom. 59.

———S. 427—*Liability of owner—Mischief—Employer, whether liable for employee's negligence.*

The accused who lived in Calcutta wishing to re-build his house in Benares, gave the contract to a contractor, and building operations were started in accordance with his instructions. In digging up the foundations, the contractor did not prop up the next door neighbour's wall and failed to take the ordinary precautions which a builder ought to have taken, with the result that the neighbour's wall sank and cracked and a fair amount of damage was done : *Held*, that the damage being the result of the contractor's negligence in omitting to prop up the wall and not being due to any negligence or malice on the part of the accused, the latter was not criminally liable for it. *Srish Chandra v. Emperor*.

20 Cr. L. J. 299 :
50 I. C. 347 : 17 A. L. J. 343 :
1 U. P. L. R. All. 147 :
A. I. R. 1919 All. 385.

———S. 427—*Mischief and riot.*

Construction encroaching on public street—Demolition by accused—Offence of rioting is made out, as also of mischief as they gathered further with the common object of causing wrongful loss to owner. *Gujjula Narasimhulu v. Nagur Sahib*.

35 Cr. L. J. 437 :
147 I. C. 553 : 1933 M. W. N. 905 :
66 M. L. J. 31 : 38 L. W. 996 :
57 Mad. 351 : 6 R. M. 376 :
A. I. R. 1934 Mad. 95.

———S. 427—*Negligence, effect of—Mischief—Act done negligently.*

Where the accused is only guilty of negligence, he is not liable to be convicted of mischief, for that offence imports that the act was done wilfully. *Emperor v. Akidullah*.

13 Cr. L. J. 536 :
15 I. C. 808 : 5 S. L. R. 263.

———S. 427—*Proof of title—Mischief—Complainant, whether bound to prove his title.*

A person accused of having committed mischief, cannot be allowed to put the complainant who is admittedly in possession of the thing in respect of which mischief was committed to proof of his title. *Sripal Narain Singh v. Gahbar Rai*.

29 Cr. L. J. 88 :
106 I. C. 680 : 25 A. L. J. 1010 :
A. I. R. 1927 All. 724.

PENAL CODE ACT (XLV OF 1860)

———S. 427—Scope of.

Rain water retained in complainant's land and damage to his building by accused constructing building in his plot—No right of easement—Action of accused does not fall under S. 427. *Faqir Chand Sao v. Emperor*.

35 Cr. L. J. 430 (2) :
147 I. C. 538 : 6 R. P. 360 (1) :
A. I. R. 1934 Pat. 199 (2).

———S. 428—Maiming, what amounts to—Cutting off ears—Offence.

Where the accused cut the ears of two asses clean off at their base so as to affect the hearing of the animal: *Held*, that they were guilty of "maiming" the animals within the meaning of S. 428, Penal Code. *In re : Rangasami Goundan*.

18 Cr. L. J. 620 :
39 I. C. 988 : 22 M. L. T. 68 :
A. I. R. 1918 Mad. 638.

———S. 429.

See also Penal Code, 1860, S. 370.

———S. 429—Maiming, what amounts to—Cutting off a horse's ears.

Cutting off the ears of a horse amounts to "maiming" within the meaning of S. 429, Penal Code. *Marogowdhia v. Srinivasa Rangachar*.

12 Cr. L. J. 482 :
12 I. C. 90 : 10 M. L. T. 192 :
21 M. L. J. 843 : 1911, 2 M. W. N. 141.

———S. 429—Maiming, what amounts to—Privation of use of limb or member—Permanent injury.

The word 'maiming' in S. 429, Penal Code, involves the notion of the privation of the use of some limb or member involving permanent injury and not a mere disfigurement. Where nearly one-half of one ear of an animal is cut off without impairing its sense of hearing, the injury does not amount to 'maiming' within the meaning of the section. *Anna Laxman Bhintade v. Emperor*.

17 Cr. L. J. 253 :
34 I. C. 973 : 18 Bom. L. R. 289 :
A. I. R. 1916 Bom. 220.

———S. 429—Offence under—Bull branded at time of shraddh of complainant's father and kept and fed by him—Whether ceases to be his property—Killing of such bull—Offence.

A bull branded as bull on the occasion of the shraddh of the complainant's deceased father and which used to be fed and kept at the complainant's own place, does not cease to be the property of the complainant and a person killing it, is guilty of the offence under S. 429, Penal Code. *Sulaiman Shah v. Emperor*.

38 Cr. L. J. 407 :
167 I. C. 511 : 3 B. R. 299 :
9 R. P. 408 : 18 P. L. T. 329 :
A. I. R. 1937 Pat. 406.

———S. 430.

See also (i) Cr. P. C., 1898, Ss. 286, 287, 289 (d), 408.
(ii) Penal Code, 1860, S. 425.

PENAL CODE ACT (XLV OF 1860)

———S. 430—Acquittal.

Accused charged for mischief by cutting river *bandh* causing diminution of water supply—Charge under Ss. 143 and 144 also against them—Acquittal under S. 430—Accused are entitled to acquittal under Ss. 143 and 144. *Dodraj Mahlon v. Emperor*.

36 Cr. L. J. 416 :
153 I. C. 767 : 7 R. P. 383 :
A. I. R. 1934 Pat. 505.

———S. 430—Applicability of—Accused not damaging canal but only continuing to take water after the end of their turn—Conviction under S. 430, legality of.

In order to make S. 430, Penal Code, applicable, mischief within the meaning of S. 425, must be committed by a person before he can be convicted under S. 430. Where the accused persons have not caused destruction of any property by damaging the canal or any of its banks or openings in any manner but only continued to take water from the canal even after the end of their turn, no offence under S. 430 is committed and the accused are only liable to be dealt with under the provisions of the Canal Act. *Mohammad Raja v. Emperor*.

38 Cr. L. J. 430 :
167 I. C. 560 : 38 P. L. R. 1035 :
9 R. L. 519 (1) : A. I. R. 1937 Lah. 196 (1).

———S. 430—Bona fide claim, absence of, effect of—Theft of water running through an artificial channel—Mischief by causing a diminution of the supply of water for agricultural purposes.

Where the accused took water that was running freely from a river through a *pyne* made and maintained by another for irrigation purposes and it was found that the accused were not acting under a *bona fide* claim of right and their act caused a diminution of the supply of water for agricultural purposes: *Held*, that the accused committed an offence under S. 430, I. P. C., even though there was no evidence to prove that the accused knew at the time they took the water that any lands were being actually irrigated with the water of the *pyne*: *Held*, further that under the circumstances of the case and having regard to the history of the *pyne*, the accused were not under a *bona fide* belief that they were entitled to take the water. *Emperor v. Sheikh Ariff*.

7 Cr. L. J. 367 :
12 C. W. N. 534 : 35 Cal. 437.

———S. 430—Bona fide claim of right, effect of.

There cannot be a conviction under S. 430 where there is a right or a *bona fide* claim of right. *Deputy Legal Remembrancer, Bihar and Orissa v. Matukdhart Singh*.

17 Cr. L. J. 9 :
32 I. C. 137 : 20 C. W. N. 128 :
A. I. R. 1917 Cal. 687.

PENAL CODE ACT (XLV OF 1860)

———S. 430 — Conviction, *illegality of* —
Mischief—Evidence necessary for conviction—
Northern India Canal and Drainage Act, S. 70—
Interfering with banks of canal — Offence.

Where a person interfered with the banks of a canal and the prosecution could not prove by the evidence of respectable persons that the act had caused or must have been known to be likely to cause a diminution of the supply of water for agricultural purposes: *Held*, that a conviction under S. 430, Penal Code, was improper and that a conviction under S. 70, Northern India Canals and Drainage Act, was more appropriate. *Har Narain v. Emperor.*

20 Cr. L. J. 425 :

51 I. C. 201 : 17 A. L. J. 686 :

41 All. 599 : A. I. R. 1919 All. 184.

———S. 430—Conviction under, *legality of* —
Mischief—Intention to cause wrongful loss,
necessity of — Cutting of bunds.

Where the landlords made up their minds to fish in certain *khals* in a special manner by cutting the *bunds* of the *khals* so as to let out a considerable amount of water and emptied out all the *khals* for the purpose of fishing in that manner with the result that the tenants suffered from scarcity of water and the tenants filed a complaint under S. 430, Penal Code, against the landlord's servants who had cut the *bunds*: *Held*, that before the landlords or their agents can be convicted under S. 430, Penal Code, it must be made absolutely clear that the landlords did not have a right to do what they did with reference to these *khals*. *Ashutosh Ghose v. Emperor.*

31 Cr. L. J. 940 :

125 I. C. 849 : 34 C. W. N. 86 :

50 C. L. J. 589 : 57 Cal. 897 :

A. I. R. 1930 Cal. 318.

———S. 430—Conviction, *when bad—Mischief* —
Absence of finding that property does not
belong to accused, effect of.

A conviction under S. 430, Penal Code, in the absence of a finding based upon evidence that the property belonged to any one other than the accused himself is bad in law, and cannot be sustained, because no person can commit mischief in respect of property which belongs exclusively to himself. *Kesho Singh v. Emperor.*

24 Cr. L. J. 467 (a) :

72 I. C. 883 : A. I. R. 1924 Oudh 132.

———S. 430—Conviction, *when improper* —
Mischief — Diversion of water — Bona fide
dispute as to right to use water—Conviction,
legality of.

The conviction of a person for an offence under S. 430, Penal Code, is not proper where there is a dispute regarding the right to use water which is pre-eminently a matter for the Civil Courts to decide. *Gulab Singh v. Emperor.*

27 Cr. L. J. 1354 :

98 I. C. 474 : A. I. R. 1927 All. 112.

———S. 430—Duty of prosecution—*Mischief by injury to works of irrigation—Finding*
sufficient for conviction—Burden of proof.

PENAL CODE ACT (XLV OF 1860)

In order to substantiate an offence under S. 430, Penal Code, the prosecution must prove that there has been unlawful and intentional interference on the part of the accused with the admitted or proved rights of the complainant. *Banwari Karmakar v. Gosto Behari Karmakar.* 22 Cr. L. J. 415 : 61 I. C. 655 : 32 C. L. J. 476 : A. I. R. 1920 Cal. 835.

———S. 430—Essentials of—*Diminishing*
supply of water used for agriculture—Prevention
of waste and storage of water for sale, whether
mischief—Cutting bund erected on channel.

An offence under S. 430 is committed when a person without any sort of right takes water to which another is entitled, whereby the latter is deprived of the full supply that he has a right to claim. Such taking, in the absence of a *bona fide* claim of right evidences an intention to cause wrongful loss. Neither the prevention of the water from running waste, nor the storing of it with the intention of selling it to other landowners makes the act of taking any the less an offence when deprivation is caused to the person legally entitled to the water. The cutting of a *bund* erected on a channel, whereby a person is wrongfully deprived of the use of water, constitutes an offence under S. 430, Penal Code. *Chidambaram Pillai v. Mohamad Khan Sahib.*

19 Cr. L. J. 356 :

44 I. C. 580 : 34 M. L. J. 206 :

23 M. L. T. 248 : A. I. R. 1918 Mad. 72.

———S. 430—Intention—*Intention to cause*
wrongful loss essential—Sessions Judge dismissing
appeal on reasons given in a theft case—
Irregularity.

Where an accused is charged with an offence punishable under S. 430, Penal Code, his intention to cause wrongful loss is the essential element to be considered. Where the Sessions Judge dismissed an appeal against a conviction under S. 430 by referring to the reasons given in the judgment in a connected case, in which the accused's conviction was upheld under S. 379: *Held*, that the Sessions Judge had acted irregularly in not taking into consideration the intention requisite for constituting an offence under S. 430. *Indra Talavar v. Narasima Rao.*

16 Cr. L. J. 542 :

29 I. C. 670 : A. I. R. 1916 Mad. 629.

———S. 430—Intention—*Mischief—Damming*
water channel and diverting water—Wrongful
loss—Offence—Revision—New point, whether can
be taken.

Accused, without any sort of right, dammed up the water of a supply channel, and opened a diverting channel and were convicted of an offence under S. 430, Penal Code: *Held*, that the act of the accused showed an intention to cause wrongful loss, and that they had been rightly convicted: A point not urged in the lower Court, and not taken in the grounds of an application for revision, cannot be raised at the hearing of

PENAL CODE ACT (XLV OF 1860)

the application. *Athimoolam Pillai v. Palaniandi Ambalam*. 22 Cr. L. J. 270 :

60 I. C. 670 : 13 L. W. 266 :

A. I. R. 1921 Mad. 536.

———S. 430—Knowledge — Mischief—
Guilty knowledge, whether necessary.

Guilty knowledge is essential to a conviction for the offence of mischief, and, in the absence of any consideration of discussion of the circumstances and the reasonableness or otherwise of the act of an accused person, it is impossible to uphold a conviction for that offence. *Hari Singh v. Kanchan Mahto*.

20 Cr. L. J. 612 :

52 I. C. 276 : A. I. R. 1919 Pat. 519.

———S. 430—Mischief—Act No. VIII of 1873 (Canal Act), S. 70.

Certain persons having been found to have cut through the bank of a canal distributary and irrigated their own fields therefrom, it was held that they would be more properly convicted of an offence under S. 70 of the Act No. VIII of 1873 than of an offence under S. 430, Penal Code, in the absence of evidence that by the act done a diminution of the supply of water for agricultural purposes had been caused. *Emperor v. Taj-ud-Din*.

7 Cr. L. J. 296 :

28 A. W. N. 55 : 5 A. L. J. 159.

———S. 430—Mischief by wrongfully diverting water—When constitutes.

Where drainage water from higher grounds and other Government tanks flows in a defined channel above an embankment, the overflow from which flowed without diminution also in a defined channel below and the bed of the channel was *poramboke*, the owner of the embankment has no right to raise the same to intercept the flow for irrigating his own lands. Where the surface water of the upper land has once fallen into the defined channel, nobody has a right to obstruct the flow of the same as usual over the embankment into the lower channel. *Kanda Kamarla Venkata Reddi v. Kumari Rao*.

14 Cr. L. J. 209 :

19 I. C. 805 : 1913 M. W. N. 179.

———S. 430—Mischief, what amounts to—
Interference with distribution of water—Duty of Court.

Where the *Amin* had opened the middle sluice of a tank to irrigate certain lands registered as wet and it was closed by the accused, unless it can be said that the opening of the middle sluice was according to custom, it cannot be said that the closing of it was with the intention of causing any wrongful loss or wrongful gain. Where the closure was animated by the object of protecting the lands of the accused themselves which had been jeopardized by the opening of the middle sluice, it can hardly be said that the act of closing the middle sluice was "mischief" as defined in the I. P. C. *Kovvada Sanyasi Naidu v. Emperor*.

41 Cr. L. J. 930 :

190 I. C. 515 : 13 R. M. 411 :

A. I. R. 1940 Mad. 306.

PENAL CODE ACT (XLV OF 1860)

———S. 430—Mischief, what amounts to—
Partition—Right to carry water through channel existing on joint lands, whether transferred—
Channel filled up—Wrongful loss.

On a partition between the complainants and the accused who were members of a joint family, certain fields fell to the share of the former and other fields fell to the share of the latter. On the lands allotted to the accused, there had existed a channel for a long number of years which was used for carrying water to the fields which had been allotted to the complainants. Some years after the partition, the accused filled up the channel with the result that water could not be carried to the lands of the complainants for purposes of irrigation; that the loss caused to the complainants by the channel being filled up was wrongful loss and the accused must be presumed to have had the knowledge that their act in filling up the channel was likely to cause such wrongful loss to the complainants and that consequently they were guilty of an offence under S. 430, Penal Code. *Krishna Aiyer v. Ayyappa Naick*.

26 Cr. L. J. 1100 :

88 I. C. 188 : 21 L. W. 641 :

1925 M. W. N. 45 :

A. I. R. 1925 Mad. 577.

———S. 430—Mischief, what constitutes—
"Diminution of the supply of water for agricultural purposes," meaning of.

Every person has a perfect right to do a particular act upon his own land and no one can complain of it until some injurious consequence follows from it. As soon as such a consequence follows, the injury and not the original act becomes a cause of action in a charge under S. 430, Penal Code. The words "diminution of the supply of water for agricultural purposes" in S. 430, Penal Code, refer to actual utilization of the particular water by particular persons who are deprived of it by the mischief complained of and not to the use to which such water is put by the accused. A diversion of water by an accused for purposes of his own though in some cases of a like nature for which it was intended, falls within S. 430, Penal Code, and similarity of use of water does not make it fall under S. 426, Penal Code. *Emperor v. Lukman*.

27 Cr. L. J. 1233 :

98 I. C. 49 : A. I. R. 1927 Sind 39.

———S. 430—Mischief, what constitutes—
Obstruction of channel by putting up dam or raising existing one—Preventing cutting down of bund—Offence.

Where a supply channel is filled up or is obstructed by putting up a dam or by raising a dam already existing, there is change made in the channel which diminishes its value or utility and which, if done, with the intention to cause, or with knowledge that it is likely to cause, wrongful loss to any person would constitute the offence of mischief. If the act so done causes a diminution of the supply of water, an offence is committed under S. 430, Penal Code. Preventing a person from cutting down a *bund* does not constitute an offence of

PENAL CODE ACT (XLV OF 1860)

mischief. *Dcenabhandhu Rajaguru v. Visharaswarayi Luchanni Dora.*

24 Cr. L. J. 830 :
74 I. C. 862 : 1923 M. W. N. 634 :
A. I. R. 1924 Mad. 176.

—S. 430—Offence under—*Mischief by causing diminution of water supply.*

Where petitioners had taken more water than they were entitled to, in violation of an order as to turn issued by the *Tahsildar*, so as to cause a diminution of water supply to other *ryots*: *Held*, that they were rightly convicted of the offence of mischief under S. 430. *Chengama Naidu v. Emperor.*

12 Cr. L. J. 551 :
12 I. C. 527 : 1911, 2 M. W. N. 349.

—S. 430—Offence under, what amounts to—*Riparian owners—Mischief by diverting river.*

The act of wrongfully diverting water of a river into other channels by cutting a *bund* and thus depriving the riparian owners lower down the stream of their right to take water for irrigation purposes, amounts to an offence under S. 430, Penal Code. *Basdeo Singh v. Emperor.*

26 Cr. L. J. 258 :
84 I. C. 322 : 2 Pat L. R. 194 Cr. :
A. I. R. 1924 Pat. 704.

—S. 430—Proof of mischief.

In order to prove an offence under S. 430, it is necessary to prove mischief as defined in S. 425, and it is also necessary to prove that the act committed is likely to cause a diminution of the supply of water for the various purposes enumerated in the section. *Mewa Ram v. Emperor.*

35 Cr. L. J. 1250 :
150 I. C. 1048 : 3 A. W. R. 585 :
7 R. A. 96 : A. I. R. 1934 All 687 (2).

—S. 430—Right to complain—*Causing diminution of water supply—Nature of offence—Person using water openly, whether entitled to make complaint.*

A person who proves that he has been openly in enjoyment of the water of a tank is entitled to make a complaint under S. 430, Penal Code, against another who takes water from that tank without any right to do so. If the evidence is that a person has the occupation of lands and has been taking water to irrigate his lands through a channel from this tank, that is good evidence that he has some right so to do. The offence under S. 430, Penal Code, is a grave form of the offence of committing mischief as defined in S. 425. *Ismail Biswas v. Emperor.*

31 Cr. L. J. 751 :
124 I. C. 829 : A. I. R. 1930 Cal. 289.

—S. 430—Scope of—*For offence under S. 430, act of accused need not be of wanton waste—Accused held guilty under S. 430.*

It is no part of the definition of the offence of causing a diminution of water supply for agricultural purposes that the act of the accused should be an act of wanton waste. It is sufficient for the purposes of S. 430, Penal Code, that the supply of water available for a particular person or

PENAL CODE ACT (XLV OF 1860)

class of persons should be diminished by the act of the accused: *Held*, that the accused did commit mischief by putting a *bund* across the channel which resulted in diminishing the supply of water which would otherwise have been available to the complainant for agricultural purposes and that all the requirements of the offence under S. 430, Penal Code, were present. *Vadavalli Narasimha Rao v. V. Ayyanna Rao.*

41 Cr. L. J. 88 :
184 I. C. 654 : 1939 M. W. N. 121 :
49 L. W. 298 : 1939, 1 M. L. J. 445 :
12 R. M. 476 (2) : A. I. R. 1939 Mad. 794.

—S. 430—Scope of—*Mischief—Wrongful loss—Closing of watercourses—Diminution of supply of water for agricultural purposes—Use of water.*

A closed a watercourse without obtaining any permission to do so, and thereby diminished the supply of water received by certain fields belonging to B lower down the watercourse. He was convicted of mischief under S. 430, Penal Code. *Held*, that as there was nothing on the record to show that B had any legal right to the water intercepted by A, it was not proved that B's loss was wrongful and the offence was, therefore, not established. *Tun Aung v. Emperor.*

7 Cr. L. J. 448 :
4 L. B. R. 140.

—S. 430—Scope of—*Preventing person from opening sluice closed some days before, if offence.*

Preventing a person from opening a sluice which had been closed some days before the date of occurrence would not amount to an offence under S. 430, I. P. C. *In re : Kasireddi Appanna.*

41 Cr. L. J. 558 :
188 I. C. 195 : 1939 M. W. N. 1224 (1) :
13 R. M. 8 : A. I. R. 1940 Mad. 144.

—S. 434.

See also Cr. P. C., 1898, S. 145.

—S. 436.

See also (i) Cr. P. C., 1898, S. 536.

(ii) Penal Code, 1860, S. 304.

—S. 436—Evidence—*Previous fires in the locality, evidence of—Conviction on evidence partly inadmissible.*

Where the Sessions Judge convicted the accused of arson and in summing up his conclusion observed: "On these facts I believe the evidence of the Sub-Registrar and his servant Asdu, supported as it is by the previous chain of events", and the previous chain of events consisted of fires which had occurred in the village with which, however, the accused was not shown to have been connected in any shape or form: *Held*, that it would not be safe to allow the conviction to stand, as the Judge had laid a very considerable stress upon the previous chain of events, which was not admissible in evidence. *Todan Mir v. Emperor.*

17 Cr. L. J. 421 :
35 I. C. 981 : 20 C. W. N. 1267 :
A. I. R. 1917 Cal. 807.

PENAL CODE ACT (XLV OF 1860)

—S. 436—Offence under—Proof.

It is absolutely necessary in order to convict under S. 436, Penal Code, to prove that the building which the accused destroyed came within one of the three clauses mentioned in the section, and the words "ordinarily used" do not mean that other buildings are from time to time used for purposes such as those stated in the section but they mean that that particular building is itself used. *Khanjan v. Emperor*. 25 Cr. L. J. 1190 : 82 I. C. 54 : A. I. R. 1924 All. 781.

—S. 436 — Procedure — Offence under, whether triable by Jury—Offence tried with aid of assessors—No objection—Defect held cured under S. 536 (2), Cr. P. C.

Offence under S. 436, Penal Code, is, according to column 8 of Sch. II, Cr. P. C., triable in the Court of Session. As the offence is punishable with transportation for life or imprisonment up to 10 years, it is, according to the schedule appended to para. 10 of Criminal Circular No. 1-25, triable by Jury. It is true that if it is not combined with the offences under S. 307, Penal Code, it would be disposed of by a Magistrate with S. 80 powers under Criminal Circular No. 1-4 (6); but where it had been committed to Sessions, the trial ought to be entirely by Jury. Where, however, no objection was taken to the procedure adopted, the legality of the trial is saved by S. 536 (2) of the Cr. P. C. *Sakhawat v. Emperor*. 38 Cr. L. J. 330 : 167 I. C. 61 : 19 N. L. J. 320 : 9 R. N. 163 : I. L. R. 1937 Nag. 277 : A. I. R. 1937 Nag. 50.

—S. 436—Sentence.

Arson in an Indian village is a very serious offence and should be severely punished. It is right to pass a substantial sentence of imprisonment in such cases. *Ghafoor Khan v. Emperor*. 32 Cr. L. J. 694 : 131 I. C. 436 : 8 O. W. N. 101 : I. R. 1931 Oudh 196 : A. I. R. 1931 Oudh 116.

—S. 436—Sentence of flogging, legality of.

Where a man is charged and convicted under S. 436, Penal Code, a sentence of flogging passed on him is not justified and legal. *Jagannath v. Emperor*. 29 Cr. L. J. 666 : 110 I. C. 218 : 1 Luck. Cas. 668 : A. I. R. 1928 Oudh 111.

—Ss. 436, 149—Conviction—Proof, charges under, facts necessary to substantiate.

In order to substantiate a charge of arson under S. 436, read with S. 149 of the Penal Code, it is necessary to find that either from the inception or at any stage of the occurrence the accused were actuated by the common motive to set fire to a house, or that they knew that such an offence would be committed in prosecution of the common object. Their mere presence, unless they did something to aid and assist the principal culprit, would not make them guilty. *Hardeo Singh v. Emperor*. 22 Cr. L. J. 267 : 60 I. C. 667 : A. I. R. 1920 Pat. 795.

PENAL CODE ACT (XLV OF 1860)

—S. 441.

See also (i) Agra Tenancy Act, 1926, Ss. 94, 95.

(ii) Cr. P. C., 1898, Ss. 190, 522.

(iii) Frontier Crimes Regulation, 1901, S. 88.

(iv) Penal Code, 1860, Ss. 40, 143, 378, 880, 447, 454, 456, 458.

—S. 441—Cognizance.

Magistrate should not readily accept as complaints of criminal trespass what are at most civil trespasses arising out of disputes regarding the right to possession of agricultural land. *Maung Chan Tha v. Emperor*. 37 Cr. L. J. 527 : 161 I. C. 993 : 8 R. Rang. 533 : A. I. R. 1936 Rang. 116.

—S. 441—Continuing offence.

The offence of criminal trespass is complete as soon as there is unlawful entry. It is a continuing offence only when the entry is lawful and the subsequent possession becomes unlawful, where the original entry is unlawful, the possession must be presumed to have commenced with the unlawful entry. There is, therefore, no fresh act of criminal trespass on a subsequent date. The conviction of the person in possession of the offence under S. 447, I. P. C. is, therefore, bad. *Anantram v. Emperor*. 41 Cr. L. J. 315 : 186 I. C. 469 : 1939 N. L. J. 564 : 12 R. N. 227.

—S. 441—Criminal trespass — What amounts to.

A person who unlawfully enters upon the property of another with the intention specified in S. 441, Penal Code, can be convicted of the offence of criminal trespass even though he enters with the permission of another trespasser who has already unlawfully entered and occupied the property, where the owner has not acquiesced in the possession of the latter. *Emperor v. Bandhu Singh*. 29 Cr. L. J. 99 : 106 I. C. 691 : 6 Pat. 794 : A. I. R. 1928 Pat. 124.

—S. 441—Defence.

Where a person accused of lurking house-trespass by night pleads in his defence that he had some specific intention in entering the house, and that the intention in question was neither to commit an offence nor to intimidate, insult or annoy any person in possession of the house, the provisions of S. 106 of the Evidence Act, come into play and the burden of establishing the particular intent is upon the accused. In a case where an accused person forcibly or clandestinely enters a house which he knows to have been definitely closed and barred against him by the owner thereof, it is not a sufficient answer to a charge of criminal trespass for the accused to say that he personally hoped that the owner would remain in ignorance of

PENAL CODE ACT (XLV OF 1860)

the fact of his entry. The Court may find on the facts that the intention to insult or annoy, under such circumstances, was so clearly inherent in the acts of the accused as to form an essential part of the purpose with which entry into the house was effected. *Chhote Lal v. Emperor*.

20 Cr. L. J. 119 :

49 I. C. 103 : 16 A. L. J. 153 :

40 All. 221 : A. I. R. 1919 All. 249.

————S. 441—Duty of Magistrate.

In dealing with cases of trespass, Magistrates should not overlook the existence of S. 509 of the I. P. C., when they are considering the allegation on the part of the prosecution that the entry by the accused into the premises in question, must presumably have been with intent to commit some offence. *Chhote Lal v. Emperor*.

20 Cr. L. J. 119 :

49 I. C. 103 : 16 A. L. J. 153 :

40 All. 221 : A. I. R. 1919 All. 249.

————S. 441—Entry—Entry by accused, himself whether necessary.

In order to constitute criminal trespass, it is not necessary that the entry on the land should be personally effected by the accused. It might well be an entry by an agent of his under his orders. A person who gets people to build on land belonging to another, even if he does not personally set foot on that land, is guilty of criminal trespass within the meaning of S. 441, Penal Code. *Ghasi v. Emperor*.

19 Cr. L. J. 46 (b) :

42 I. C. 1006 : 15 A. L. J. 793 :

39 All. 722 : A. I. R. 1918 All. 378.

————S. 441—Ingredients — Criminal trespass—Parents entering house to remove daughter, if offence.

In order to constitute an offence under S. 448, Penal Code, it must be proved that the accused made an entry into or remained in a building, tent or vessel in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such building, etc. The essence of the offence is the intent in committing the trespass and merely to trespass is not ordinarily an offence. It must be proved that some criminal intent was present in the mind of the accused and it does not at all follow that because an act is unlawful and is one that the Civil Law will restrain or for which it will compensate the injured party in damages, it is necessarily criminal. *Rehana v. Emperor*.

25 Cr. L. J. 815 :

81 I. C. 351 : 5 Lah. 20 :

A. I. R. 1924 Lah. 449.

————S. 441—Ingredients — Intention, an essential ingredient.

In order to constitute criminal trespass, it is necessary for the prosecution to prove that the accused either unlawfully entered upon property of another or having lawfully entered thereon continued to remain unlawfully with intent thereby to intimidate, insult or annoy the person in possession of such property or

PENAL CODE ACT (XLV OF 1860)

with intent to commit an offence. Unlike several sections of the Penal Code, where *mens rea* consists in intention or knowledge, under S. 441, it is not sufficient to prove mere knowledge on the part of an accused person that he was likely to cause annoyance unless the evidence of such knowledge coupled with other facts is such as to lead the Court to infer therefrom the requisite intent. *Khursetji Nanabhoy v. Emperor*.

28 Cr. L. J. 349 :

100 I. C. 829 : A. I. R. 1927 Sind 159.

————S. 441—Ingredients.

To constitute criminal trespass as defined in S. 441, there must either be entry upon property in the possession of another or unlawful continuance thereon after a lawful entry. *Saibaj v. Gaffoor*.

33 Cr. L. J. 861 :

139 I. C. 609 : 28 N. L. R. 57 :

I. R. 1932 Nag. 114 (2) :

A. I. R. 1932 Nag. 112.

————S. 441—Intention.

Accused entering at night in complainant's house with intent to have intercourse with his *sui juris* daughter by invitation—Case does not fall under S. 441. *Abdul Majid v. Emperor*. (F. B.)

39 Cr. L. J. 756 :

176 I. C. 497 : 40 P. L. R. 806 :

11 R. L. 213 : A. I. R. 1938 Lah. 534.

————S. 441—Intention—Bona fide assertion of right—Effect of.

The essence of the offence of criminal trespass is a criminal intention. An entry upon land which a man believes to be his own, will not constitute criminal trespass though the land is in the possession of another, if the object of the entry is really to assert a right over the land and not to intimidate, insult or annoy the person in possession, unless under circumstances, which amount to an unlawful assembly. *Rajaram v. Govinda*.

25 Cr. L. J. 1064 :

81 I. C. 888 : A. I. R. 1925 Nag. 36.

————S. 441—Intention—Bona fide claim of right—Effect of.

In order to constitute criminal trespass, there must be an intent to commit an offence or to intimidate, insult or annoy any person in possession of property. An entry into a house under a *bona fide* claim of right does not constitute an offence under S. 448 of the Penal Code. *Devi Dayal v. Emperor*.

25 Cr. L. J. 1047 :

81 I. C. 823 : A. I. R. 1925 Pat. 167.

————S. 441 — Intention—Criminal trespass — Entry effected without intention to annoy, but with knowledge that annoyance would be caused—Offence—'Intent to annoy,' meaning of.

Per Wallis, C. J. and Kumaraswami Sastri, J. —A person who enters into property in possession of another with an intent other than to intimidate, insult or annoy him or to commit any offence, but with the knowledge that his act is likely or certain to cause annoyance or insult to the person in possession, is not guilty of an offence under S. 448, Penal Code.

PENAL CODE ACT (XLV OF 1860)

Per *Wallis, C. J.*—The word "intent" in S. 441, I. P. C., is distinct from a 'knowledge of likelihood' and the Legislature intended that a trespass with a specified intent alone should be made punishable and not with a knowledge of its consequences. A man who forces his way into another's house against his will, commits a civil trespass for which he may be made answerable in substantial damages, and the owner of the house in obstructing, the entry may use reasonable force to remove the trespasser without committing the offence of wrongful restraint. It must be a question of fact in each case whether the intention was to annoy or not. *Vullappa v. Bheemmaroy*. (F. B.) 19 Cr. L. J. 162 :

43 I. C. 578 : 6 L. W. 794 :

33 M. L. J. 729 : 1918 M. W. N. 81 :

41 Mad. 156 : A. I. R. 1918 Mad. 136.

————S. 441—*Intention—Entry on land in exercise of bona fide right, if intention to annoy.*

If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right but without any intention to intimidate, insult or annoy the person in possession or to commit an offence, his act does not amount to criminal trespass although the accused may have no right to the land. *Imperator v. Abdul Latif*. 13 Cr. L. J. 27 :

13 I. C. 219 : 5 S. L. R. 135.

————S. 441—*Intention.*

Holding condolence meeting in defiance of orders in a particular place does not show intention to intimidate, insult or annoy. *Sundar Lal Gupta v. Emperor*.

38 Cr. L. J. 188 :

166 I. C. 291 : 1937 O. W. N. 30 :

1937 O. L. R. 2 : 9 R. O. 304 :

A. I. R. 1937 Oudh 273.

————S. 441—*Intention—House trespass—Intent to cause annoyance—Presumption—Entry to carry on intrigue with woman in house.*

To constitute criminal trespass, there must be entry into or upon property in the possession of another person with one of the intents mentioned in S. 441, Penal Code. If an accused person succeeds in showing that his presence in the house was in consequence of an invitation from, or by the connivance of, a woman living in the house with whom he was carrying on an intrigue, and that he desired that his presence there should not be known to the person in possession, he cannot be convicted of criminal trespass. *Asa Ram v. Emperor*.

25 Cr. L. J. 751 :

81 I. C. 239 : 1 L. C. 340 :

A. I. R. 1925 Lah. 23.

————S. 441—*Intention—How determined.*

Held, by the Full Bench (Rattigan J., dissenting) that there may be an "intent to annoy" within the meaning of S. 441, I. P. C., without any primary desire to annoy. Per *Clark, C. J.*—What constitutes an intent to annoy should be determined in each case on all the facts of the case. But generally speaking, where a person claiming a title to property, whether his title be good or bad,

PENAL CODE ACT (XLV OF 1860)

enters without any legal justification upon property in the established possession of another, he intends to annoy that other person. A man is presumed to intend the natural consequences of his acts, and if annoyance must inevitably attend his acts, and he does those acts without any reasonable justification, he must be held to annoy, even though he has no desire to do so, and his only desire is to obtain some advantages for himself. *Ram Saran v. Emperor*.

4 Cr. L. J. 293 :

12 P. R. Cr. 1906.

————S. 441—*Intention—How determined.*

S. 441 is not to be construed in the sense that although there is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so, still it must be presumed that when a man voluntarily does an act, knowing at the time that in the natural course of events, a certain result will follow, he intends to bring about that result. *Mrs. S. D. Cunha v. Emperor*.

37 Cr. L. J. 309 (2) :

160 I. C. 515 : 37 Bom. L. R. 880 :

59 Bom. 738 : 8 R. B. 263 :

A. I. R. 1936 Bom. 15.

————S. 441—*Intention—Illegal dispossession—Intention to annoy—Presumption.*

Trespass is an offence under S. 441, Penal Code, only if it is committed with one of the intents specified in the section and proof that a trespass committed with some other object was known to the accused to be likely or certain to cause insult or annoyance, is sufficient to sustain a conviction under S. 448, Penal Code. Intention is in every case a question of fact. Where the servant of a landlord illegally takes possession of the tenant's land, with the main object of ejecting the tenant, the fact taken by itself, is not sufficient to raise a presumption of an intention to annoy within the meaning of S. 441 of the Penal Code. *Abdul Shakur v. Emperor*.

25 Cr. L. J. 313 :

76 I. C. 1033 : A. I. R. 1924 Oudh 342.

————S. 441—*Intention.*

In order to make out an offence under S. 441, the actual intention to commit an offence or to intimidate must be shown, and the mere fact that the act was likely to cause annoyance is not sufficient. *T. H. Bird v. Emperor*.

35 Cr. L. J. 1421 :

151 I. C. 844 : 13 Pat. 268 :

15 P. L. T. 392 : 7 R. P. 128 :

A. I. R. 1934 Pat. 158.

————S. 441—*Intention—Inference of intention from actual result.*

S. 441, Penal Code, contemplates an entering upon property with a certain intention which is expressed in the section and the mere fact that the action of the accused was likely to cause annoyance would not be sufficient to say that that was the intention of the party. Therefore, entry upon property with the intention of obtaining forcible possession of the same will not constitute criminal trespass

PENAL CODE ACT (XLV OF 1860)

even though the act may actually result in causing annoyance to the person in possession. *Ramzan Mistry v. Emperor.*

30 Cr. L. J. 684 :
116 I. C. 783 : 11 P. L. T. 80 :
I. R. 1929 Pat. 351 :
A. I. R. 1929 Pat. 111.

———S. 441—*Intention—Intent of accused, proof of.*

An unlawful entry upon property does not amount to criminal trespass unless one of the intents mentioned in S. 441, Penal Code, is made out by the prosecution or found by the Magistrate. *Pirbax v. Mst. Baji.*

21 Cr. L. J. 140 :
54 I. C. 620 : A. I. R. 1920 Nag. 71.

———S. 441—*Intention—Intent to annoy, when can be inferred.*

Where the evidence shows that a man has been found lurking at night inside the house of another person, a perfect stranger to him, or a person in whose house he has no apparent business, the prosecution will be entitled to ask the Court to infer from these facts that there was a guilty intention on the part of the accused sufficient to bring his action within the purview of S. 441, Penal Code. *Ohhote Lal v. Emperor.*

20 Cr. L. J. 119 :
49 I. C. 103 : 16 A. L. J. 153 :
40 All. 221 : A. I. R. 1919 All. 249.

———S. 441—*Intention—Intent to annoy, whether existence of any other intent negatives.*

An intent to annoy, essential to constitute an offence under S. 441, I. P. C., is not necessarily negated by the existence of some other intention. A person breaking open a house which has been delivered through Court to the complainant must be presumed to know that serious mental annoyance will be caused by his act and is guilty of an offence under S. 441, Penal Code. *In re : Sumadurai Mudaliar.*

19 Cr. L. J. 117 :
43 I. C. 405 : A. I. R. 1918 Mad. 424.

———S. 441—*Intention—Intention of accused, proof of.*

For a conviction of an offence of criminal trespass under S. 448, Penal Code, there must be a clear finding as to the intention of the accused. The antecedent circumstances as also the conduct of the parties must be considered in such a case. Where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance to the owner of the property, it is open to the Court to infer an intent to insult or annoy. *Bhagwantrao v. Champal Rao.*

25 Cr. L. J. 1004 :
81 I. C. 716 : A. I. R. 1925 Nag. 50.

———S. 441—*Intention.*

Intention to cause intimidation must be proved—Knowledge that act must cause annoyance is not enough: *Held* on facts

PENAL CODE ACT (XLV OF 1860)

that conviction under S. 447, should not be interfered with. *Ramzan v. Emperor.*

37 Cr. L. J. 106 :
159 I. C. 466 : 8 R. S. 85 :
A. I. R. 1935 Sind 203.

———S. 441—*Intention—Intention to annoy—Placing haystacks and manure on another man's land—Annoyance in law.*

The placing of haystacks and manure on another man's land need not necessarily amount to annoyance. It is not annoyance in law. It may be annoyance in fact. To convict an accused of criminal trespass, it must be clearly found that he intended to cause annoyance. The distinction between civil and criminal trespass should not be lost sight of. *Meajan v. Sharafatullah Khan.*

13 Cr. L. J. 783 :
17 I. C. 415 : 16 C. W. N. 1007.

———S. 441—*Intention—Intention to cause annoyance.*

Where, with a view to attach the property of his judgment-debtor, a decree-holder enters the premises of a third person without having any right to do so, his act amounts to an invasion of the privacy of that person which would necessarily cause great annoyance, and comes within the definition of S. 441 of the Penal Code even though his primary object may not have been to cause annoyance, as he should be deemed to have intended the natural consequences of his act. *Lakshmi Das v. Emperor.*

24 Cr. L. J. 639 :
73 I. C. 527 : 4 L. L. J. 532.

———S. 441—*Intention—Intention to insult or annoy—Accused concealing his presence—Such intention, if can be presumed.*

Where insult or annoyance is the inevitable consequence of the trespass committed by an accused, then he must be presumed to have intended to insult or annoy, but where the insult or annoyance is only a remote consequence of the trespass and the accused has done everything in his power to avoid his presence being known to the person in possession, it cannot be said that he had an intention to insult or annoy the person in possession. *Mohtasham Aslam v. Emperor.*

39 Cr. L. J. 35 :
171 I. C. 346 : 10 R. Pesh. 32 :
A. I. R. 1937 Pesh. 92.

———S. 441—*Intention.*

Lessee believing in good faith that he had right of entering land and ploughing it: *Held*, there was no criminal trespass. *Emperor v. U Kyaw Zan.*

38 Cr. L. J. 759 :
169 I. C. 250 : 9 R. Rang. 391 :
A. I. R. 1937 Rang. 132.

———S. 441—*Intention—Mala fides, proof of—Absence of criminal intent, effect of.*

Complainant, a *zemindar*, brought a suit in the Revenue Court to eject the accused from a holding. The accused pleaded that they were occupancy tenants of the holding, but their plea was overruled and a decree of ejectment was passed against them. Formal

PENAL CODE ACT (XLV OF 1860)

possession of the holding was delivered to the complainant under the decree. The accused appealed, and during the pendency of their appeal, they entered on the holding and ploughed up the land for cultivation. Subsequently, it was held in the appeal that one of the accused was entitled to occupancy rights in the holding: *Held*, that under the circumstances, it could not be said that the accused intended to commit an offence or to intimidate, insult or annoy the *zamindar* decree-holder, when they entered on the land which formed their occupancy holding for the purpose of ploughing and cultivating it. *Bhagwan Din v. Emperor*.

19 Cr. L. J. 704 :
46 I. C. 160 : 16 A. L. J. 501 :
A. I. R. 1918 All. 365.

———S. 441—Intention.

Per *Walsh, J.*—Where in answer to a charge of lurking house-trespass by night, the accused sets up the plea that he entered the house in order to carry on an intrigue with one of the women of the house and establishes that there was an invitation of complicity by the woman combined with an intention to preserve strict secrecy, then it is difficult to say that there was any intention to annoy a third person, but if that third person had expressly prohibited the accused from entering the house, then his act becomes a direct defiance of an express order, and an intention to annoy the author of the order can be inferred from it. *Chhote Lal v. Emperor*.

20 Cr. L. J. 119 :
49 I. C. 103 : 16 A. L. J. 153 :
40 All. 221 : A. I. R. 1919 All. 249.

———S. 441—Intention.

Person merely entering on land of another under orders of employer and doing nothing, cannot be convicted of criminal trespass. *Maung Po Thei v. Emperor*.

38 Cr. L. J. 776 :
169 I. C. 415 : 10 R. Rang. 1 :
A. I. R. 1937 Rang. 201.

———S. 441 — Intention — Presumption of intention to annoy.

In consequence of the decree in a civil suit, A, the defendant, was evicted from a house and the land on which it stood, and B, the plaintiff, was put in possession. Two days later A, whose defence in the suit had been barred on a legal point, re-entered the land and lived in the house. He was allowed to remain for 19 months, at the end of which time, A prosecuted B for criminal trespass by the re-entry: *Held*, that the circumstances did not justify a presumption that B's intention was to annoy A; and as no other criminal intention was even suggested, that the offence of criminal trespass had not been committed. *Po Lu v. Shwe Kyo*.

8 Cr. L. J. 60 :
4 L. B. R. 242.

———S. 441—Intention.

Taking land for grazing purposes and subsequently continuing on it for cultivation

PENAL CODE ACT (XLV OF 1860)

purposes is not an offence for there is no intention to annoy. *Safar Ali v. Emperor*.

32 Cr. L. J. 568 :
130 I. C. 500 : A. I. R. 1931 Cal. 264.

———S. 441—Intention—There must be criminal intent.

No offence of criminal trespass as defined in S. 441, Penal Code, takes place unless there is a criminal intent or *mens rea*. *Sundarlal Gupta v. Emperor*.

38 Cr. L. J. 188 :
166 I. C. 291 : 1937 O. W. N. 30 :
1937 O. L. R. 2 : 9 R. O. 304 :
A. I. R. 1937 Oudh 273.

———S. 441—Intention—Trespass to establish title—Intention to annoy or intimidate—Inference of intention from acts.

Where the accused broke open into a house during the owner's absence, assaulted his servants and took forcible possession of it with the object of establishing their title to the house: *Held*, (Per *Benson, J.*) that the accused must be deemed to have intended that their act was likely to annoy the complainant, and that they were rightly convicted under S. 457, Penal Code. When an act is done with a knowledge amounting to a practical certainty that a certain result will follow, the doer of the act must be deemed to have intended to cause that result. Per *Sankaran Nair, J.* Though the offence cannot be said to have been committed with intent to annoy the complainant, the conviction was right, as the act was done with intent to commit the offence of using criminal force to the servant. *Sellamuthu v. Pallamithu*.

12 Cr. L. J. 30 :
9 I. C. 152 : 21 M. L. J. 161 :
9 M. L. T. 283.

———S. 441—Intention.

Where a person must have known that he would constantly cause annoyance by seizing a part of a land by force, he can be held to have committed the offence of criminal trespass. *Mata Dayal v. Salig Ram*.

35 Cr. L. J. 124 :
146 I. C. 630 (1) : 10 O. W. N. 1078 :
6 R. O. 152 : A. I. R. 1933 Oudh 469.

———S. 441—Intention—Zamindar dispossessing his own tenant under a false pretext to annoy, intent.

A *zamindar* had quarrelled with his occupancy tenant. And when the tenant was temporarily absent from the village by reason of ill-health, the *zamindar* induced the *Palwari* to record that the tenant had left the village and abandoned his holding, and thereupon took possession of it: *Held*, that the *zamindar's* intention possibly was to obtain possession contrary to law, but this of itself would not constitute criminal trespass. Proof of an intention to commit an offence or to intimidate, insult or annoy was necessary. *Emperor v. Jangi Singh*.

1 Cr. L. J. 362 :
I. L. R. 26 All. 194 :
1903 A. W. N. 230.

PENAL CODE ACT (XLV OF 1860)

———S. 441 — Interpretation — Possession, meaning of.

'Possession' within the meaning of S. 441, Penal Code, must be actual possession. *Kunji Lal v. Emperor*.

14 Cr. L. J. 631 :
21 I. C. 681 : 12 A. L. J. 151.

———S. 441—Liability — Unlawful remaining—Remaining on another's property after conviction for trespass—Liability.

The accused, after having been convicted of criminal trespass committed by entering on certain land, were again prosecuted for a further trespass by remaining on the land in spite of the previous conviction: Held, that the accused were not liable to be again convicted. *Ma Hla Ya v. Emperor*.

8 Cr. L. J. 474 :
4 L. B. R. 276.

———S. 441—Offence, relating to public property—Court, duty of—Thandika property, whether public property.

Thandika property is public property, and any investigation of the question of title may be one of considerable complexity. Consequently, cases involving criminal offences in relation to such property ought not to be tried summarily. Before issuing a process in such a case, the complaint and complainant should be closely examined in order to ascertain whether it is a proper case of a Criminal Court, and still more so before convicting an accused. *Maung Shwe Ku v. Emperor*.

24 Cr. L. J. 929 (b) :
75 I. C. 353 : 2 Bur. L. J. 55 :
A. I. R. 1923 Rang. 157.

———S. 441—Offence under.

Accused entering house of woman with deadly weapon to commit cognisable offence—Woman not known to be of low character—Any person can arrest accused and cause death, if necessary—Right of private defence, not available to accused. *Mohd Asham Aslam v. Emperor*.

39 Cr. L. J. 35 :
171 I. C. 346 : 10 R. Pesh. 32 :
A. I. R. 1937 Pesh. 92.

———S. 441—Offence under.

Accused one night passing through courtyard of one house to commit adultery in another—Trespass in respect of former house—Case comes under first alternative. *Mohammad Yar v. Emperor*. (F. B.)

39 Cr. L. J. 734 :
176 I. C. 410 : 40 P. L. R. 813 :
I. L. R. 1938 Lah. 462 : 11 R. L. 210 :
A. I. R. 1938 Lah. 514.

———S. 441—Offence under—Criminal trespass—Property trespassed not in complainant's possession, if material.

To constitute criminal trespass, it is not necessary that the land trespassed upon should be in the actual possession of the complainant at the time of the trespass. In a prosecution for criminal trespass, the plea of a *bona fide* claim only arises in cases when the trespass is not of an aggravated kind and is supported by at least a plausible show of

PENAL CODE ACT (XLV OF 1860)

title or by such circumstances as would justify an inference that the accused's intention was not to commit an offence or to insult, intimidate or annoy the person in possession, but merely to vindicate what he conceived to be his legal right. *In re : Daga Bhika Kunbi*.

29 Cr. L. J. 977 :
112 I. C. 97 : 30 Bom. L. R. 631 :
A. I. R. 1928 Bom. 221.

———S. 441—Offence under—Decree for ejectment—Execution of decree before time prescribed by law—Re-entry by tenant—Tenant, whether guilty of criminal trespass.

An illegal ejectment of a tenant by the *zamindar*, does not give the *zamindar* any right of re-entry. A decree for ejectment of a tenant was passed on 16th of April, 1926, and was executed before the time prescribed for execution of such decrees by S. 94 of the Agra Tenancy Act. The tenant re-entered upon the land and was convicted of an offence under S. 447, Penal Code, read with S. 95 of the Agra Tenancy Act: Held, that as the ejectment was illegal, the tenant must be considered to have been legally in possession of the land, and he was not guilty of criminal trespass either under S. 95 of the Agra Tenancy Act or under the general provisions of S. 441, Penal Code. *Nand Lal v. Emperor*.

29 Cr. L. 1096 :
112 I. C. 680 : 1929 A. L. J. 92.

———S. 441—Offence under—Exercising right of entry without permission, if offence.

A person who has a right of entry into a building, cannot be held to be a trespasser by reason of his failure to obtain the consent or permission of the party in occupation, or by reason of anything which he does in such building, unless it is shown that the thing so done was an offence, or was otherwise of such a nature as to bring the entire proceedings within the definition of criminal trespass in S. 441 of the Penal Code. *Maung Shwe Kee v. Emperor*.

24 Cr. L. J. 929 (b) :
75 I. C. 353 : 2 Bur. L. J. 55 :
A. I. R. 1923 Rang. 157.

———S. 441 — Offence under — Intention—Possession taken of empty house with intent to assert title, if offence.

Intimidation, insult or annoyance within the meaning of S. 441 of the Penal Code can, in most cases, arise only if the premises are in fact in the actual physical possession of somebody; as for instance, the actual owner, his wife, agent, licensee or other person. These results much more naturally follow when premises are occupied than when they are vacant. A person who takes possession of a house which is absolutely empty at the time and is not in the actual physical possession of anybody, cannot be held to be guilty of an offence under S. 448, Penal Code. A conviction under S. 448 of the Penal Code cannot follow merely because the Court can pronounce with certainty that the accused must have known that his act would as one of its inevitable incidents, cause annoyance.

PENAL CODE ACT (XLV OF 1860)

There must, in order to sustain a conviction under that section, be found an intent to cause intimidation, insult, or annoyance. A person who takes possession of a house with the intention of asserting his title to the house and of gaining and holding possession of it as against a rival claimant, cannot be convicted of an offence under S. 448 of the Penal Code, inasmuch as it cannot be said that his intention was to cause intimidation, insult or annoyance to the person in possession. *Motilal v. Emperor*. 26 Cr. L. J. 1273 : 88 I. C. 1049 : 23 A. L. J. 679 : 47 All. 855 : A. I. R. 1925 All. 540.

———S. 441—Offence under—Occupation by zamindars of house left by deceased tenant, if offence.

A tenant of village S who owned a house there but was temporarily residing in a neighbouring village, died, and on his death, the zamindars of S took possession of the house in S adversely to tenant's widow, alleging that they were entitled to it : *Held*, that the action of the zamindars could not be taken as amounting to criminal trespass within the meaning of S. 441, Penal Code. *Emperor v. Bazid*. 1 Cr. L. J. 919 : 24 A. W. N. 235 : I. L. R. 27 All. 298.

———S. 441—Offence under—Tenant holding over—Ejection by force by landlord—Criminal trespass.

A landlord who forcibly enters on land in the possession of a tenant after the expiry of the lease and dispossesses him, is guilty of an offence under S. 447, Penal Code, even where the lease gives him the right of re-entry on its termination. *Dawarka Singh v. Ram Kishun Singh*. 18 Cr. L. J. 402 : 38 I. C. 962 : A. I. R. 1917 Pat. 542.

———S. 441—Possession.

Constructive possession is included in the word 'possession' in S. 441, and a trespasser cannot be heard to say he could not have caused annoyance merely because the party in possession of the trespassed premises was absent at the time of the trespass. *Hyder Sahib v. Sabjan Sahib*. 33 Cr. L. J. 145 (1) : 135 I. C. 542 : 1931 M. W. N. 328 : 34 L. W. 527 : I. R. 1932 Mad. 126 : A. I. R. 1931 Mad. 560.

———S. 441—Possession—Joint owner taking possession by force, if offence.

A joint owner of property is entitled to have joint possession restored to him in a Civil Court : but he is not justified to take the law into his own hands to recover the possession, and if he does so, he becomes liable for criminal trespass. *Emperor v. Gopalrao Venkatesh*. 7 Cr. L. J. 309 : 10 Bom. L. R. 285.

———S. 441—Possession, nature of.

The possession contemplated under S. 441, Penal Code, is actual physical possession and not merely a power of control such as a trust scheme vests in a trustee. Where property is held in actual physical possession by one person and in juridical possession by

PENAL CODE ACT (XLV OF 1860)

another, it is the person in actual physical possession whose feelings have to be considered under S. 441, Penal Code. Failure to obey a notice of ejection does not of itself constitute criminal trespass. *Tok Gyi v. Emperor*. 17 Cr. L. J. 378 : 35 I. C. 810 : 8 L. B. R. 425 : A. I. R. 1917 L. Bur. 155.

———S. 441—Trespass—What is.

A joint owner of land who enters upon the land with the intention or knowledge that he is about to do an act which is wrongful to his fellow owner, commits trespass. *Ram Prasad v. Emperor*. 12 Cr. L. J. 532 : 12 I. C. 300 : 8 A. L. J. 927 : 33 All. 773.

———S. 441—Unlawful continuance of occupation after unlawful entry, whether punishable.

The continuance in possession of the trespasser is a recurring wrong and constitutes a new entry every time that the true owner goes upon the land or is near to it as he dares to make a claim to it. *Emperor v. Bandhu Singh*. 29 Cr. L. J. 99 : 106 I. C. 691 : 6 Pat. 794 : A. I. R. 1928 Pat. 124.

———S. 441—What constitutes offence—Complainant not in actual possession, if material.

There is no provision of law in the Penal Code or the Cr. P. C., which restricts the right of a person not in possession to make a complaint to a Magistrate in respect of the offence of trespass, even though that offence is alleged to have been committed against a third person, nor does the definition of criminal trespass contained in S. 441, Penal Code, restrict the offence to cases in which the person in actual physical possession is insulted, intimidated or annoyed. *Nga Po Tok v. Emperor*. 20 Cr. L. J. 115 : 49 I. C. 99 : 3 U. B. R. 1918, III : A. I. R. 1920 U. Bur. 62.

———Ss. 441, 447—Intention—Re-entry upon land after ejection in due course of law.

Where a tenant who had been duly ejected by process of law, re-entered upon the land and cultivated it without the consent of the ejector : *Held*, that the tenant is not guilty of criminal trespass in the absence of proof that his intention was to commit an offence, insult or annoy the person in possession of land. In order to constitute an offence of criminal trespass, it must be proved that some criminal intent was present in the mind of the accused. The mere fact that an act is unlawful in itself does not render it necessarily criminal. *Shah Muhammad v. Ganesh Das*. 2 Cr. L. J. 83 : 13 P. R. 1905 Cr. : 6 P. L. R. 308.

———Ss. 441, 448—Offence under.

An entry into a cattle-pen to prosecute an intrigue with a woman is not an offence under Ss. 441/448, Cr. P. C. *Emperor v. Ramsan*. 2 Cr. L. J. 420 : 28 P. R. 1905 Cr. : 6 P. L. R. 441.

PENAL CODE ACT (XLV OF 1860)

—Ss. 441, 448—*What constitutes offence—Complaint by owner of house—Annoyance caused to tenant—Conviction, whether legal.*

The owner of a tenanted house filed a complaint against the accused under S. 448, Penal Code. It was established that the accused, with intent to annoy the tenant, entered a room in his occupation and did, in fact, cause him annoyance, and was accordingly convicted. In revision to the High Court, it was objected that the conviction ought to be set aside because the house owner was the complainant, and not the tenant, the person to whom annoyance was caused: *Held*, that, inasmuch as the expression "any person in possession" in S. 441, Penal Code, did not mean only "a complainant in possession" the fact that the house owner and not the tenant was, in this case the complainant, did not vitiate the conviction. *Prayag Singh v. Mrs. Morgan.* 22 Cr. L. J. 494 :

62 I. C. 190 : 33 C. L. J. 118 :
25 C. W. N. 425 : A. I. R. 1921 Cal. 627.

—S. 442.

See also Penal Code, 1860, Ss. 48, 103,
105, 308, 441.

—S. 442—Building.

A "building" includes a structure whether covered or not and made of any materials whatsoever. A courtyard attached to the living rooms walled in on all sides and provided with a door leading to the street is a "building" within the meaning of S. 442 of the Penal Code. *Wali Mahomed v. Emperor.* 29 Cr. L. J. 875 :

111 I. C. 459 : 22 S. L. R. 466 :
A. I. R. 1929 Sind 17.

—S. 442—Building—'Building,' meaning of—*Thatch hut, whether a building.*

A thatch-hut built for the purpose of residence is a "building used as a human dwelling" within the meaning of the expression as used in S. 442, Penal Code. *Salig Ram v. Emperor.* 17 Cr. L. J. 536 :

36 I. C. 584 : 3 O. L. J. 493 :
A. I. R. 1916 Oudh 109.

—S. 442—Building—Courtyard enclosed on three sides by low walls, whether "building."

A courtyard enclosed on three sides by low walls meant to serve as *purdah* is not a "building" within the meaning of S. 442, Penal Code. *Mul Chand v. Emperor.*

26 Cr. L. J. 383 (a) :
84 I. C. 863 : 6 L. L. J. 578 :
A. I. R. 1925 Lah. 279.

—S. 442—Building—Courtyard, whether building.

A courtyard partly surrounded on the front by a mud wall with no roof over it nor any door or gateway, is not a building or house within the purview of S. 442, Penal Code. *Sunder v. Emperor.* 20 Cr. L. J. 240 :

49 I. C. 864 : 11 P. W. R. 1919 Cr. :
56 P. L. R. 1919 : A. I. R. 1919 Lah. 333.

PENAL CODE ACT (XLV OF 1860)

—S. 442—Building—Erection of awning over shop, if constitutes its building.

Erection of an awning over a shop does not constitute the shop a building within the meaning of S. 442, Penal Code. *Emperor v. Shankar Dayal.* 39 Cr. L. J. 937 :
177 I. C. 616 : 1938 O. W. N. 960 :
1938 O. L. R. 432 : 11 R. O. 59 :
A. I. R. 1938 Oudh 263.

—S. 442—Building—Walled courtyard, without door, whether building.

A walled courtyard which is not provided with a door is not a building within the meaning of S. 442 of the Penal Code. *Buta v. Emperor.* 25 Cr. L. J. 457 :

77 I. C. 809 : 6 L. L. J. 571 :
A. I. R. 1924 Lah. 623.

—S. 442—Entry — House-breaking — Entry, actual, not effected, if offence.

Accused having made a hole in the wall of complainant's shop found that their way was blocked by the presence of beams on the other side of the wall and they could not, therefore, enter the shop: *Held*, that as there was no entry into the shop within the meaning of S. 442, Penal Code, accused were guilty not of house-breaking but merely of an attempt to commit house-breaking. *Ghulam v. Emperor.* 25 Cr. L. J. 398 :

77 I. C. 446 : 4 Lah. 399 :
A. I. R. 1923 All. 509.

—S. 442—House-trespass.

The Constable was not engaged in the execution of his duty as a public servant when he entered upon the premises of the accused at midnight, and was not acting in good faith under colour of his office. He could watch his movements by lawful means, and not by trespassing upon his premises, or by having recourse to other unlawful means. He was technically guilty of house-trespass under S. 442, Penal Code, as the course adopted by him was calculated to cause annoyance to the inmates of the house, and was also insulting to the accused who was justified under S. 104, Penal Code, in voluntarily causing to him the slight harm which he inflicted on him. *Dorasamy Pillay v. Emperor.* 1 Cr. L. J. 274 :

I. L. R. 27 Mad. 52.

—S. 442—Offence under—Entering open space under a house or entering an unwallled compound, if offence.

Neither the act of going under a house, where the space under it is not in any way enclosed, nor the act of entering an unwallled compound such as ordinarily surrounds a house in Burma, can be held to constitute house-trespass as defined in S. 442, Penal Code. *Po Thet v. Emperor.* 6 Cr. L. J. 134 :
4 L. B. R. 24.

—S. 442—Offence under—Nature of.

Offence under S. 442 is more serious than that under S. 441; Court cannot substitute

PENAL CODE ACT (XLV OF 1860)

conviction under S. 442, for one under S. 441.
Dhananjay Dhara v. Proval Chandra Biswas.

35 Cr. L. J. 949 :
149 I. C. 431 ; 38 C. W. N. 665 :
6 R. C. 590 : A. I. R. 1934 Cal. 480.

———S. 445— Interpretation —“ Fastened,”
meaning of.

The word “fastened,” as used in S. 445, Penal Code, implies something more than being closed, such as chaining the shutters or tying them with a rope or bolting them or locking the door. An entry of an accused into a house by merely pushing in shutters of the door does not constitute the offence of house-breaking as it does not come under any of the six clauses of S. 445 of the Penal Code, but constitutes an offence of house-trespass under S. 457 with intent to commit an offence. *Ledga v. Emperor.*

23 Cr. L. J. 278 (b) :
66 I. C. 422 : A. I. R. 1922 Nag. 26.

———Ss. 445, 459 — Offence under, when complete—Grievous hurt caused after effecting entry, whether punishable under S. 459, Penal Code.

The offence of house-breaking is complete when entry into the house is effected and any grievous hurt subsequently caused by the person breaking into the house, cannot be said to be grievous hurt caused while they were committing house-breaking within the meaning of S. 459, Penal Code. *Said Ahmad v. Emperor.*

28 Cr. L. J. 554 :
102 I. C. 490 : 25 A. L. J. 515 :
49 All. 864 : A. I. R. 1927 All. 536.

———S. 447.

See also (i) Acquittal.

(ii) C. P. Municipalities Act,
1922, S. 140 (a).

(iii) Court Fees Act, 1870, S. 31.

(iv) Cr. P. C., 1898, Ss. 106, 144,
517.

(v) Criminal Trespass.

(vi) Criminal trial.

(vii) Penal Code, 1860, Ss. 40,
99, 352, 379, 441, 442,
458.

(viii) Rangoon Port Act, 1905,
Ss. 65, 4 (12).

———S. 447—Costs.

Under paragraph 664 of the Burma Lower Courts Manual, a complaint of a cognisable offence need not be stamped, and under paragraph 870 (18) (b) (2) of the Manual, no fees should be levied for the issue of process in such a case. No order under S. 31 of the Court Fees Act, can, therefore, be made in a case arising out of a complaint of a cognisable offence. *Maung San Myin v. Emperor.*

25 Cr. L. J. 699 :
81 I. C. 187 : 2 Bur. L. J. 37 :
A. I. R. 1923 Rang. 245.

———S. 447—Criminal Trespass.

If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right without intention to intimidate, insult or annoy the person in possession or to commit

PENAL CODE ACT (XLV OF 1860)

an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass. *Akshoy Singh v. Rameshwar Bagdi.*

17 Cr. L. J. 339 :
35 I. C. 515 : 20 C. W. N. 1071 :
43 Cal. 1143 : A. I. R. 1917 Cal. 705.

———S. 447—Defence—Ejectment in execution—Maintenance of possession.

Where in answer to a complaint of trespass, the plea of accused amounts to the bare defence : “I am in possession of the land. I have not given up and I will not give up actual possession though I have been legally ejected from the land in execution of a decree,” it is tantamount to and should be treated as a plea of guilty. The maintenance or attempted maintenance of his physical possession of the land by the accused in such a case is wholly illegal. *Gobind Ram v. Naubat.*

26 Cr. L. J. 159 :
83 I. C. 719 : A. I. R. 1924 All. 762.

———S. 447—Entry—Oral sale followed by possession—Subsequent sale by registered document—Entry by third party.

The complainant purchased a vacant piece of land from its owner for a sum less than Rs. 100 and obtained possession of the land but did not get a registered sale-deed. The owner then resold the property to another person under a registered sale-deed. While the land was in the possession of the complainant, the accused entered upon the land and put up a water pandal for the benefit of persons going to a temple, for whose benefit the second vendee was alleged to have purchased the property. On a prosecution for criminal trespass ; *Held*, (1) that the subsequent registered sale-deed prevailed against the earlier unregistered sale-deed even though the latter was accompanied by possession ; (2) that in the absence of any evidence to show that the accused went on the land for the purpose of annoying any one or for committing any offence, no offence had been committed, and the accused were entitled to an acquittal. *In re : Jambulinga Chetty.*

26 Cr. L. J. 219 :
83 I. C. 1003 : 1924 M. W. N. 576 :
47 M. L. J. 437 : A. I. R. 1924 Mad. 862.

———S. 447—Evidence — Previous order under S. 144, Cr. P. O.—Whether can be considered to test the bona fides of person prosecuted under S. 447.

Where by an order under S. 144, Cr. P. C., a person was restrained for doing a particular act on a particular land, it is relevant to consider that order in a trial under S. 447, Penal Code, for an offence alleged to have been committed by that person, for the purpose of testing *bona fides* of the person against whom that order was made, although that order may not be taken into consideration for establishing the possession of the complainant. *Ramkrishun Agarwalla v. Emperor.*

39 Cr. L. J. 361 :
173 I. C. 747 : 10 R. P. 434 :
4 B. R. 330 : A. I. R. 1938 Pat. 131.

PENAL CODE ACT (XLV OF 1860)

————S. 447—*Evidence—State of facts unsupported by evidence.*

It often happens that the Court may consider that the story told by the prosecution in a case of rioting is false in some of the details but is nevertheless sufficient to prove the guilt of the accused; but a conviction cannot be justified upon a state of facts quite unsupported by evidence and where it was never put forward by the prosecution, and was never suggested to the accused that that was a case which they had to answer. *Banga Hadua v. Emperor.*

11 Cr. L. J. 245 :
5 I. C. 771 : 11 C. L. J. 270.

————S. 447—*Ingredients.*

In criminal trespass, criminal force may be used as a matter of fact, but the use of criminal force is not an essential part of the offence. *Ibrahim Khan v. Emperor.*

11 Cr. L. J. 594 :
8 I. C. 219.

————S. 447—*Ingredients—Intention is gist of offence.*

The main ingredient of an offence under S. 447, Penal Code, is that the trespass must be with the intention of annoying or insulting some one or must be with the intention of committing an offence and where there is nothing in the order of a Magistrate convicting an accused for criminal trespass which would show the intention of the accused, the conviction cannot be sustained. *Damodar Das v. Emperor.*

23 Cr. L. J. 94 :
65 I. C. 446 : 3 P. L. T. 499 :
A. I. R. 1923 Pat. 56.

————S. 447—*Ingredients—Property not in the possession of complainant, if material.*

In order to establish an offence under S. 447 of the Penal Code, it must be shown that the trespass was committed on property which belonged to the complainant, and that the intention of the accused was to commit an offence or to intimidate, insult or annoy any person. *Bishen Singh v. Emperor.*

24 Cr. L. J. 790 :
74 I. C. 534 : A. I. R. 1924 Lah. 252.

————S. 447—*Intent to annoy.*

Where a slaughter house has been abolished, slaughtering animals therein without the permission of the Municipality, is an offence, and when the accused act with intent to annoy the Municipal Committee, they are punishable under S. 447. *Amir v. Emperor.*

34 Cr. L. J. 224 (2) :
141 I. C. 543 (1) : 15 N. L. J. 89 :
I. R. 1933 Nag. 73.

————S. 447—*Intention.*

A person re-entering land from which he has been ejected in due course of law by order of Court, is not guilty of criminal trespass when there is no evidence to prove that his intention was to commit an offence, or to intimidate, insult or annoy the person in possession of the land. *Emperor v. Jan Mohammad.*

2 Cr. L. J. 675 :
6 P. L. R. 461.

PENAL CODE ACT (XLV OF 1860)

————S. 447—*Intention.*

Accused lawfully ejected from plot but still retaining physical possession—His possession is illegal—Rightful owner taking possession when plot found empty—Accused forcibly ousting him is guilty under S. 447—Primary intent in such a case is to intimidate, and secondary object to enforce possession. *Bans Gopal v. Emperor.*

40 Cr. L. J. 183 :
179 I. C. 269 : 1938 O. W. N. 1361 :
11 R. O. 156 : 1939 O. L. R. 19 :
14 Luck. 360 : A. I. R. 1939 Oudh 45.

————S. 447—*Intention—Criminal trespass, essentials of—Intention to annoy.*

To constitute an offence under S. 447, Penal Code, it must be found that the accused intended to commit an offence, or to intimidate, insult or annoy the complainant. The fact that the accused's act caused annoyance will not render it an offence, unless the intention of the accused was to annoy. *In re : Venkataramanuja Reddi.*

10 Cr. L. J. 384 :
3 I. C. 828 : 6 M. L. T. 262.

————S. 447—*Intention—Entry by person claiming title, without legal justification, whether trespass—Intention to annoy, presumption of.*

When a person claiming a title to property, whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have had an intention to annoy the person in possession within the meaning of S. 441, Penal Code, even though he had no primary desire to annoy, and his only object was to obtain possession for himself. A person who had purchased a square of land from the Government, alienated the land for consideration and delivered possession to the alienees. The alienation was subsequently declared void by the Government and he proceeded to take possession of the land by force from the possession of the vendees : *Held*, that the vendor had no legal justification for taking possession of the land by force and he was, therefore, guilty of criminal trespass. *Premam v. Emperor.*

31 Cr. L. J. 878 :
125 I. C. 612 : 11 Lah. 238 :
31 P. L. R. 499 : A. I. R. 1930 Lah. 666.

————S. 447—*Intention—Entry in order to assert a right on land—Intention to intimidate, etc., must be found.*

An entry on land in another man's possession, solely in order to assert a right in the land, does not constitute 'criminal trespass' within S. 447, Penal Code. The intention to intimidate, insult or annoy, or to commit an offence, must be distinctly found. *Amavasaya China Krishna Reddy v. Marri Poliah.*

13 Cr. L. J. 477 :
15 I. C. 317 : 1912 M. W. N. 395.

————S. 447—*Intention—Intention to insult, annoy, etc., necessity of.*

An intention to commit an offence or to intimidate insult or annoy is an essential ingredient of the offence under S. 447, Penal

PENAL CODE ACT (XLV OF 1860)

Code. Mere forcible dispossessing would not constitute criminal trespass in the absence of such intention. *Mathura Rai v. Emperor*.

29 Cr. L. J. 570 :
109 I. C. 506 : 26 A. L. J. 421 :
50 All. 637 : A. I. R. 1928 All. 671.

———S. 447—*Intention—Offence under—Intention—Question of inference—Court, duty of—Summary trial—Clear finding, necessity of.*

The essence of an offence under S. 447, Penal Code, lies in the intent of accused to commit an offence or to intimidate, insult, or annoy any person in possession of the property with reference to which the trespass is made. A man is presumed to intend the natural consequences of his acts, and if any annoyance must inevitably attend his acts and he does those acts without any reasonable justification, he must be held to intend to annoy, even though he had no desire to do so, and his only desire is to obtain some advantage for himself. The question whether a man should be presumed to have intended the natural consequences of his acts when the intention impelling the commission of the act is stated to be one by the prosecution and another by the accused, is a question of inference to be drawn from all the circumstances of the case, and to do that, is the primary duty of the Trial Court. *Emperor v. Jagmohan Das*.

24 Cr. L. J. 916 :
75 I. C. 292 : A. I. R. 1924 Oudh 297.

———S. 447—*Intention—The intention of accused was not to intimidate, insult or annoy.*

Held, that the act of the accused by remaining standing on the *chabutra* with a view to prevent the Congress flag from falling down, was not actuated with an intent to insult, intimidate or annoy the Chairman of the Municipal Board who had come there to dig up the *chabutra*. The feelings of the Chairman may have been hurt by the refusal of the accused to leave the spot, but the intention of the accused was not to hurt the feelings of the Chairman of the Municipal Board, but merely to preserve their flag from falling down. *Ram Bali v. Emperor*.

38 Cr. L. J. 147 :
166 I. C. 219 : 1936 O. L. R. 727 :
9 R. O. 293 : 1937 O. W. N. 34 :
A. I. R. 1937 Oudh 207.

———S. 447—*Intention.*

The intention of the accused must be present before a conviction under S. 447 can follow. The mere fact that an accused might have the knowledge that his act would annoy, insult or intimidate the person in possession, would not be sufficient. *Mahadeo v. Emperor*.

36 Cr. L. J. 328 :
153 I. C. 407 : 1934 A. L. J. 1061 :
7 R. A. 489 : 4 A. W. R. 794 :
A. I. R. 1934 All. 1025.

———S. 447—*Miscellaneous—Cases under—Doubt expressed as to such cases being tried by Bench Courts.*

It is doubtful if disposal of cases coming under S. 447, Penal Code, can be entrusted

PENAL CODE ACT (XLV OF 1860)

to Bench Courts as there is difficulty felt by Bench Courts in distinguishing between cases of civil trespass and cases of criminal trespass. *Dakkamarri Kannayya v. Vadali Venkatesan*.

38 Cr. L. J. 581 (a) :
168 I. C. 703 : 1937 M. W. N. 323 :
45 L. W. 471 : 9 R. M. 620 :
A. I. R. 1937 Mad. 480.

———S. 447—*Offence under—Bona fide belief in title, effect of.*

If a person entertained a belief in good faith that he was entitled to the possession of the land, on which he is accused of having trespassed, his entry would constitute a trespass on the land, for which, if he failed to prove his title, he would be answerable in a civil suit, but he would not be liable to be convicted of the offence of criminal trespass under S. 447 of the Penal Code. But if the circumstances are such that he could not have entertained a belief in good faith that he was entitled to the possession of the land, the obvious inference is that he intended either to insult, annoy or intimidate the occupant, and he would be guilty of criminal trespass. *Habib Musalman v. Emperor*.

28 Cr. L. J. 952 :
105 I. C. 664 : A. I. R. 1928 Nag. 79.

———S. 447—*Offence under.*

Delivery of formal possession to another puts an end to possession. After such delivery, decree-holder may have possession, interference with which is an offence. *Sitaram Khapre v. Tilokchand*.

34 Cr. L. J. 145 :
141 I. C. 273 : 28 N. L. R. 298 :
I. R. 1933 Nag. 55 :
A. I. R. 1933 Nag. 36.

———S. 447—*Offence under—Driving cart over Government waste land—Municipality putting up notices prohibiting cart traffic—Intention necessary to constitute criminal trespass.*

The accused drove a cart over Government waste land in respect to which the Municipality had put up notices prohibiting cart traffic. The accused was convicted of criminal trespass on the complaint of the Municipal Secretary : *Held*, that the conviction was bad and illegal. The ground was not a street, as defined in S. 2 of the Municipal Act, and was not vested in the Municipal Committee as such under S. 78 (g) of the Act, and it did not appear that the Government had transferred the land to the Committee for local public purposes under S. 78 (f). Consequently trespassing on the land in defiance of the Municipal notices did not involve any of the intentions necessary to constitute the offence of criminal trespass. If the Government itself had issued such notices, the intention to commit the offence of disobeying the orders would presumably be inferred. If the notices were good, the accused could hardly be held to have had the necessary criminal intent, unless it was proved that he was aware of the prohibition. *Emperor v. Nga U Thil*.

11 Cr. L. J. 57 :
4 I. C. 826 :
U. B. R. 1907-09, 11 P. C. p. 25.

PENAL CODE ACT (XLV OF 1860)

———S. 447 — Offence under—*Exercising claim of right, if offence—Magistrate—Judgment, supplement to.*

Where the accused acts on a belief of his own right, he cannot be held guilty of criminal trespass. *Jurakhan Singh v. Emperor.*

7 Cr. L. J. 312 :
7 C. L. J. 238.

———S. 447—Offence under — *Land transferred from one district to another—Failure to pass order of suspension at the time of transfer.*

The petitioners were convicted of an offence under S. 447, Penal Code. They were in possession of certain land formerly included in the Gujrat District but transferred under the operation of S. 101-A of the Punjab Land Revenue Act, to Gujranwala District. The land was fit for cultivation and it appeared that the Collector apparently at the time of transferring the area, failed to pass an order of suspension under S. 101-B of the Act, though such an order appeared to have been passed at a much later date: *Held*, that the petitioners were entitled to be acquitted, for the transfer did not affect their proprietary rights and the transfer would not have justified their ejection otherwise than in the manner prescribed by law. *Wir Singh v. Emperor.*

16 Cr. L. J. 631 :
30 I. C. 455 : 170 P. L. R. 1915 :
31 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 239.

———S. 447—Offence under—*Landlord and tenant—Landlord entering upon land before determination of tenancy, if guilty.*

A landlord is not entitled to re-enter upon land which has been let to a tenant, unless he can show that the tenancy has been determined in accordance with law. Otherwise his entry might amount to an offence under S. 447, Penal Code. *Maung San Myin v. Emperor.*

25 Cr. L. J. 699 :
81 I. C. 187 : 2 Bur. L. J. 37 :
A. I. R. 1923 Rang. 245.

———S. 447—Offence under — *One co-sharer building upon common waste land after refusal of permission by others, if offence.*

A co-sharer who builds a house on the common land despite refusal of permission by other co-sharers, is not guilty of an offence under S. 447, Penal Code. The mere fact that a co-sharer asked another co-sharer to consent to his appropriating to his own use a portion of a plot of waste land, would not necessarily imply that the co-sharer whose consent he asked was admitted by him to be the sole owner of the plot in question. *Ram Sarup v. Emperor.*

15 Cr. L. J. 584 :
25 I. C. 336 : 12 C. L. J. 790 :
36 All. 474 : A. I. R. 1914 All. 202.

———S. 447 — Offence under — *Possession of property by complainant, whether material.*

In a prosecution for criminal trespass, it is necessary to determine in whose possession the property was at the date of the alleged

PENAL CODE ACT (XLV OF 1860)

trespass. *In re : Mantripragada Venkatarama Rao.*

18 Cr. L. J. 761 :
41 I. C. 137 : A. I. R. 1918 Mad. 574.

———S. 447—Offence under—*Public road, exposing goods for sale on, if offence.*

The exposure of goods for sale on a public road belonging to a District Board, the collection of the tolls leviable on which is leased to another, is not an offence under S. 447, Penal Code. *Barfi Lal v. Emperor.*

21 Cr. L. J. 353 (b) :
55 I. C. 721 : A. I. R. 1920 All. 20.

———S. 447—Offence under — *Scaling roof in order to commit theft, if offence.*

Accused was detected on the roof of a bazaar with an open elasp knife in his hands and two gunny bags. It was found that he had come there with the intention of committing theft: *Held*, that the matter not having proceeded beyond the stage of preparation, the accused could not be convicted of an offence under Ss. 457 and 511, Penal Code, but that he was guilty of an offence under S. 447 of the Code. *Batwa Khan v. Emperor.*

20 Cr. L. J. 571 :
52 I. C. 59 : 12 Bur. L. T. 222 :
10 L. B. R. 51 : A. I. R. 1919 L. Bur. 38.

———S. 447—Offence under—*Servant acting in course of employment — Servant, whether liable.*

The servants of one T trespassed upon the property of S in the course of their employment, and under the orders of their master; *Held*, that they could not be convicted under S. 447, Penal Code. *Mg. Shwe Kyi v. Emperor.*

25 Cr. L. J. 684 :
81 I. C. 172 : A. I. R. 1923 Rang. 135.

———S. 447 — Offence under — *Warrant for delivery of land by Civil Court—Refusal of Amin to inspect documents showing rights in derogation of delivery warrant, if offence.*

An Amin of a Civil Court cannot be charged with criminal trespass for delivering property to a person covered by a delivery warrant of Court, although a portion of the property is claimed by a different person whose documents of title the Amin refuses to inspect or act upon. It is not for the Amin to determine whether his superior officer might not have committed a mistake in issuing the warrant. A person assisting an Amin in doing his duty, cannot be held guilty of criminal trespass. *Nallaya Naick v. Emperor.*

20 Cr. L. J. 559 (a) :
51 I. C. 847 : 10 L. W. 12 :
A. I. R. 1919 Mad. 542.

———S. 447—Possession—*Criminal trespass, whether can be committed against person not in actual possession.*

The offence of criminal trespass can only be committed against a person who is in actual physical possession of the land in question. *Bismillah v. Emperor.*

29 Cr. L. J. 745 :
110 I. C. 681 : 5 O. W. N. 598 :
3 Luck. 651.

PENAL CODE ACT (XLV OF 1860)

———S. 447—*Possession—Possession, finding as to.*

S. 447, Penal Code, requires it to be affirmatively and positively held that the complainant was in possession of the land in dispute with respect to which the criminal trespass is said to have been committed. *Parmeswar Lal Miller v. Emperor.*

23 Cr. L. J. 440 :
67 I. C. 616 : 3 P. L. T. 347 :
A. I. R. 1922 Pat. 296.

———S. 447—*Possession — Possession necessary to be determined.*

For a conviction under S. 447, Penal Code, the finding on the point as to who was in possession of the land in dispute is necessary. Where a person enters upon land, not with the object of intimidating, annoying or insulting the complainant, but in the *bona fide* assertion of his own right to remain on the land till he is ejected therefrom in accordance with law, he is not guilty of an offence under S. 447, Penal Code. *Jagan Dubey v. Emperor.*

19 Cr. L. J. 629 :
45 I. C. 677 : A. I. R. 1918 Pat. 639.

———S. 447—*Possession — Possession, what is.*

A forcible entry upon land, which had been sold in execution of a money decree and of which actual possession had been given to the purchaser under S. 318 of the C. P. C., without resistance or opposition and over which the purchaser had thereafter exercised acts of possession, by sub-tenants claiming under a lease of an antecedent date from the judgment-debtor, constitutes criminal trespass. *Kailash Ghose v. Jugal Lohar.*

2 Cr. L. J. 161 :
1 C. L. J. 104.

———S. 447—*Power of Criminal Court—Limit of—Dispute of a civil nature.*

Where it was found that the complainant was all along in possession of a plot of land which he had sowed with paddy and the accused had failed in certain previous proceedings before the Assistant Superintendent of the Survey to get this plot included in his holding : *Held*, that the accused's going upon the land with a body of men and ploughing up the paddy seedlings in spite of the remonstrances of the complainant's servants, constituted offences under Ss. 447 and 426, I. P. C., even though he did so under a claim of title to the land. That, under the circumstances, the fact that the accused set up a title to the land did not make the case against him one of a civil nature, and take it outside the jurisdiction of a Criminal Court. *Ohhakoo Mandal v. Emperor.*

5 Cr. L. J. 278 :
11 C. W. N. 467.

———S. 447—*Power of Criminal Court—Limit of—Trespass upon land used as a pathway—Question of title to the land.*

In a case brought against the accused for trespass upon land used by the complainant

PENAL CODE ACT (XLV OF 1860)

as a pathway, when a question of title to the land is raised between the parties, the accused cannot be convicted under S. 447, Cr. P. C., merely on the finding that the complainant has been using the pathway for more than six months, the question of title being left undecided. *Rabi Lochan v. Purna Chandra Dey.*

5 Cr. L. J. 14 :
11 C. W. N. 171.

———S. 447 - Scope of—*Conviction for two charges—Acquittal on one—Sentence unaltered, effect of—Enhancement of sentence—Criminal trespass, offence of, when complete—Charge under S. 447, essentials for.*

When a Subordinate Magistrate convicts an accused of two charges, and the Magistrate on appeal, reverses the conviction on one and confirms that on the other, without at the same time reducing the sentence, it is in effect an enhancement of the sentence and the conviction should, on that ground, be set aside. A charge of criminal trespass will not stand unless the Court finds that that trespass was committed with intent to commit a criminal offence, etc. Mere entry upon the land by an accused with a view to remove crops planted by him does not amount to an offence under S. 447. *In re : Appanda Natha Nainar.*

16 Cr. L. J. 271 :
28 I. C. 159 : 1915 M. W. N. 275 :
A. I. R. 1916 Mad. 622.

———S. 447—*Who can complain—Land in possession of tenant—Complaint by landlord—Legality of.*

Where a person enters upon property in the possession of tenant with intent to commit an offence or to intimidate, insult or annoy that tenant, he is guilty of the offence of criminal trespass, and a complaint by the landlord is sufficient to set the law in motion just as much as a complaint by the tenant. *Fakir Chand v. Fakir.*

23 Cr. L. J. 699 :
69 I. C. 379 : A. I. R. 1924 Lah. 286 (1).

———Ss. 447, 147 — *Sentence — Accused entering upon land for cutting crops—Separate convictions and sentences under Ss. 147 and 447, legality.*

Where accused have entered upon the land with the object of cutting the crop standing on it, their conviction both under Ss. 447 and 147 and passing of separate sentences is illegal as the common object for rioting and intention for criminal trespass are substantially the same. *Bhup Singh v. Emperor.*

1 Cr. L. J. 139 :
8 C. W. N. 305.

———Ss. 447, 448 *Offence under—Entry into house at invitation of wife of owner with intent to commit adultery, if offence.*

During the temporary absence of the complainant from his house, his wife invited the accused to the house, who entered it with the intent to commit adultery : *Held*, (1) that the complainant could not be said to have ceased to be in possession of his house

PENAL CODE ACT (XLV OF 1860)

because of his temporary absence: (2) that the accused, having entered the house with the intent to commit an offence, was guilty of house trespass. *Chatter Singh Damai v. Emperor*. 21 Cr. L. J. 435 :

56 I. C. 227 : 3 U. B. R. 1919, 194 :
A. I. R. 1920 U. Bur. 50.

———Ss. 447, 448, 451 — *Offence under—Trespass on sahan of building, whether house trespass.*

A *sahan* attached to a building used as a house was enclosed by walls on all sides and had a number of *kothas* opening into it. Access to it from outside was had by means of three doors, all of which had door frames but only one of which had shutters. The accused entered this *sahan* with the intention of committing adultery with the wife of the occupant of the house: *Held*, that the accused had entered a 'building used as a human dwelling' within the meaning of S. 442, Penal Code, and was guilty of house trespass. The determining factor as to whether a place is part of building used as a human dwelling or not, is not the existence of shutters, or the fact that the door was shut or open, at the time of entry by the accused, but the nature of the structure as a whole and the purpose for which it was intended to be and was being used. *Bhag v. Emperor*.

31 Cr. L. J. 268 :
124 I. C. 427 : A. I. R. 1930 Lah. 414.

———Ss. 447, 458—*Criminal trespass—When constituted—Entering cattle-pound and rescuing cow lawfully impounded—Criminal trespass.*

A cow belonging to the accused which was found grazing in a wheat crop was lawfully seized by another and impounded in a cattle-pound. The accused proceeded to the cattle-pound, opened the lock, entered the pound and drove off his cow after inflicting slight injuries on the *chaukidar* who attempted to obstruct him: *Held*, that the accused was guilty of criminal trespass under S. 447, Penal Code, inasmuch as he entered upon property in the possession of another with intent to commit an act which was an offence under the Cattle Trespass Act, and to intimidate the person in charge of the pound, but that he was not guilty of an offence under S. 458 of the Code. *Emperor v. Bhola*.

28 Cr. L. J. 665 :
103 I. C. 201 : 8 Lah. 331 :
28 P. L. R. 519 : 9 L. L. J. 354 :
A. I. R. 1927 Lah. 495.

———Ss. 447, 497, 571—*Cognisance—Criminal trespass with intent to commit adultery—Complaint by husband, whether necessary.*

Where the object of a trespass is to commit an offence, such offence must be possible on the part of the person to be convicted of the trespass. Where an offender enters the premises of his neighbour on his way to the private apartments occupied by that neighbour's wife with intent to commit adultery, the offence of criminal trespass is complete long before the stage of an attempt to commit the adultery is reached. There-

PENAL CODE ACT (XLV OF 1860)

fore, the complaint of the husband is not necessary for proceedings in respect of house-trespass to commit adultery. *Emperor v. Dhantua Lodhi*. 19 Cr. L. J. 881 :
47 I. C. 77 : A. I. R. 1917 Nag. 90.

———S. 448.

See also Cr. P. C., 1898, Ss. 227, 323,
441, 522, 526.

———S. 448—*Intention.*

A person who enters into the house of another secretly, in order to carry on an intrigue with a widow in the house, is not guilty of criminal trespass, as his intention was not to commit an offence punishable under the Penal Code, nor to cause insult or annoyance to the inmates of the house. *Ambika Charan Sarkar v. Emperor*.

4 Cr. L. J. 144 :
4 C. L. J. 169.

———S. 448—*Intention.*

Accused found in complainant's room at night—Allegation of mistake—Absence of evidence of intent to commit offence: *Held*, that the offence under S. 448 was not established. *Nepal Nonia v. Emperor*.

36 Cr. L. J. 1351 :
158 I. C. 279 : 1 B. L. R. 870 : 8 R. P. 186 :
A. I. R. 1935 Pat. 523.

———S. 448—*Intention—Annoyance, causing of—Intention.*

A person who has no intention of causing annoyance to any one and takes measures to avoid it, cannot be convicted of an offence under S. 448 of the Penal Code, even though a feeling of annoyance be the inevitable consequence of his being found out. A house was occupied only by the owner and his concubine who had an intimacy with the accused. The accused entered the house at her invitation in the absence of the owner and took measures to conceal himself as soon as the owner arrived, who, however, arrested him: *Held*, that the accused was not guilty of an offence under S. 448, Penal Code. *Emperor v. Rupa*.

20 Cr. L. J. 610 :
52 I. C. 274 : 22 O. C. 121 :
A. I. R. 1919 Oudh 402.

———S. 448—*Intention—Criminal intent—Bona fides.*

The offence of house trespass is not complete unless there is an intent to commit an offence or to intimidate, insult or annoy some one in possession of property. It is not enough that the accused should know that his act is likely to have such an effect. When the action of an accused is open to two constructions, one criminal and the other honest, the Court should not assume that it was criminal. On information that the complainant had a pot of toddy in his house in excess of the quantity which one individual may possess without licence, the accused, a village *taliari*, went inside the house, brought out the pot and placed it on

PENAL CODE ACT (XLV OF 1860)

the verandah and remained guarding it till the Police, to whom he sent a message about the commission of the offence, arrived. On revision against conviction for house trespass : *Held*, that although the accused as a *taliari* had no authority to seize and detain liquor which he believed was liable to confiscation under the Abkari Act, his conduct in entering the house was *bona fide* and without any criminal intent, and his conviction could not stand. *In re : Narayana*. 25 Cr. L. J. 1221 : 82 I. C. 149 : 20 L. W. 239 : A. I. R. 1924 Mad. 816.

———S. 448—*Intention*.

Criminal trespass—Accused put in possession of shop after riot—Complainant's possession ending before possession of accused : *Held*, offence of criminal trespass not made out—Intention to annoy, cannot be inferred. *Ganauri Mia v. Emperor*. 37 Cr. L. J. 513 : 162 I. C. 22 : 2 B. R. 402 : 16 P. L. T. 847 : 8 R. P. 534 (1) : A. I. R. 1936 Pat. 248.

———S. 448—*Intention* — *House trespass* — *Entry with intent to have illicit intercourse*.

Entering into the house of another with the object of committing illicit intercourse with his sister is an offence falling under S. 448, I. P. C. : *Held*, also, that a person is said to do a thing intentionally, if it is the inevitable consequence of his acts. *Jiwan Singh v. Emperor*. 8 Cr. L. J. 488 : 17 P. R. 1908 Cr. : 3 P. W. R. 89 Cr.

———S. 448—*Intention*—*Intention is the chief ingredient*.

For an offence under S. 448, intention is one of the most important ingredients, and in order to determine the intent, it is necessary to consider the circumstances under which the act was done by the accused as also the *bona fide* nature or otherwise of the claim which the accused may have in respect of the property itself. *Shama Charan Das v. Ashutosh Das*.

A. I. R. 1928 Cal. 263.

———S. 448—*Intention*—*Intention to cause annoyance, etc., necessity of*.

In order to sustain a conviction under S. 448, Penal Code, there must be an express finding with regard to the intention of the accused. *Charag Din v. Emperor*. 28 Cr. L. J. 425 : 101 I. C. 457.

———S. 448—*Intention*—*Intention to cause wrongful loss or wrongful gain—Offence*.

Where a treasure-trove is found in a field in a village, and the owner of the village, on receiving information, searches the house of villagers who shared the treasure-trove to find out the coins, using force under a claim of right, and then has the discovery reported to the Police, he is not guilty of an offence under S. 380, but under S. 448, Penal Code only, as his act does not show an intention to cause wrongful loss or wrongful gain to anybody. *Thakur Prasad Singh v. Emperor*.

26 Cr. L. J. 282 :

84 I. C. 346 : 2 Pat. L. R. 205 Cr. :

A. I. R. 1924 Pat. 665.

PENAL CODE ACT (XLV OF 1860)

———S. 448 — *Intention* — *Person entering house in dispute and taking possession in absence of person in possession of such house—Intention to "annoy", if can be presumed*.

A person who enters a house about which there is a dispute, in the absence of a person who is in possession of the house and takes possession of it in assertion of his claim, must be deemed to have known that his conduct was bound to annoy the person in possession and legally he must be presumed to have the intention to 'annoy' at any rate. *Ghulam Ahmed v. Emperor*. 40 Cr. L. J. 180 :

178 I. C. 911 : 40 P. L. R. 757 :

11 R. L. 522 : A. I. R. 1938 Lah. 848.

———S. 448 — *Intention to annoy* — *Entry in order to carry on an intrigue with woman in the house* — *Intent to cause annoyance*.

Where a person enters a house in order to carry on an intrigue with a woman in the house, after taking every precaution to avoid discovery, it cannot be said that he intends to cause annoyance to the persons in occupation of the house, and he is not, therefore, guilty of an offence under S. 448, Penal Code. *Suleman v. Emperor*. 27 Cr. L. J. 1015 :

96 I. C. 871 : 2 Lah. Cas. 235 :

27 P. L. R. 385 : A. I. R. 1926 Lah. 600.

———S. 448 — *Intention to annoy* — *Act causing annoyance—Finding as to intent to cause annoyance necessary*.

The accused entered a house belonging to the complainant without permission and continued in it though asked to vacate. The lower Court convicted him under S. 448, I. P. C., holding that his acts were annoying. There was, however, no express finding that the accused intended to cause annoyance : *Held*, that though intent to cause annoyance may be inferred from the circumstances of the case, the conviction was unsustainable in the absence of an express finding that the accused had any criminal intention. *Tharu v. Emperor*. 12 Cr. L. J. 148 :

9 I. C. 895 : 5 S. L. R. 29.

———S. 448—*Miscellaneous—Civil trespass* — *Cr. P. C., S. 522, applicability of*.

When during the absence of the complainant, the accused took possession of the house in her occupation and established there a boy alleged to be the adopted son of the complainant's father : *Held*, that the accused could not be convicted of an offence under S. 448, I. P. C., as the house trespass which they committed was not a criminal, but a civil trespass : *Held also*, that no order could be passed by the trying Magistrate under S. 522, Cr. P. C., for the delivery of possession of the house to the complainant as the accused had not been convicted by the Magistrate of any offence attended by criminal force and that the house should be restored to the accused who were found in possession of it. *Saita Biswal v. Doohi Stri*. 7 Cr. L. J. 108 : 12 C. W. N. 269 : 7 C. L. J. 175.

PENAL CODE ACT (XLV OF 1860)

————S. 448—Offence under—Bona fide claimant guarding property, if offence.

The essence of an offence under S. 448 of the Penal Code is that there should be an intention to insult, annoy or intimidate the owner of the property or such person as is acting on behalf of the owner. Where a person who is a rival claimant to some property, comes on the premises in good faith with the intention of guarding the property, he is not guilty of criminal trespass. *Mewa Lal v. Emperor*.

19 Cr. L. J. 249 :
44 I. C. 41 : 1917 Pat. 363 :
3 P. L. J. 147 : 4 P. L. W. 359 :
A. I. R. 1918 Pat. 197.

————S. 448—Offence under—Bona fides, if material.

Accused taking forcible possession of complainant's house during his absence—Primary intention of accused to secure possession—Annoyance and insult to complainant—Belief of accused in good faith that they had title does not exonerate them. *Baldco Prosad v. Emperor*.

35 Cr. L. J. 964 :
149 I. C. 368 : 11 O. W. N. 733 :
6 R. O. 561 : A. I. R. 1934 Oudh 281.

————S. 448—Offence under—Building not in possession of complainant, if material.

Complainant started a school in a building erected by public subscription. On another school being started, his pupils all left him and he closed down and went away. In his absence, the accused took possession of the building on behalf of the rival school and started to hold certain classes in it: *Held*, (1) that the complainant was not the owner of the building, nor had it been entrusted to him, and that it was impossible to say that the accused intended to insult or annoy him; (2) that, therefore, the accused were not guilty of an offence under S. 448, Penal Code. *Narain Das v. Emperor*.

20 Cr. L. J. 463 :
51 I. C. 351 : 17 A. L. J. 334 :
A. I. R. 1919 All. 300.

————S. 448—Offence under—Decree-holder attaching property of judgment-debtor in third person's house, if offence.

A decree-holder took out process for execution of the decree and attached certain cattle belonging to the judgment-debtor in the house of a third person: *Held*, that the decree-holder was not guilty of any offence. *Bhikam Singh v. Emperor*.

19 Cr. L. J. 46 (a) :
42 I. C. 1006 : 15 A. L. J. 808 :
A. I. R. 1918 All. 374 (2).

————S. 448—Offence under—Formal possession delivered in execution of decree—Actual possession remaining with accused, effect of.

Where formal possession of a house is delivered to a decree-holder under a *dakhal-nama*, the judgment-debtor remaining in actual physical possession of the house, the latter cannot be said to be guilty of an offence under S. 448, Penal Code. *Kewal v. Tufail Ahmad*.

26 Cr. L. J. 1125 :
88 I. C. 357 : A. I. R. 1925 All. 592.

PENAL CODE ACT (XLV OF 1860)

————S. 448—Offence under—House trespass with intention to assault.

Accused entered the verandah of the complainant's house and dragged him out and assaulted him. It was found that the purpose of the accused in committing the trespass was to assault the complainant: *Held*, that the accused were guilty of an offence under S. 448, Penal Code, but a conviction under S. 452 of the Code could not be sustained as there was no preparation to cause hurt. *Pakir Chandra v. Emperor*.

25 Cr. L. J. 168 :
76 I. C. 392 : 38 C. L. J. 161 :
A. I. R. 1921 Cal. 556.

————S. 448—Offence under—Mortgagee putting lock on premises, whether offence.

Two brothers *R* and *M* owned a house. *R* mortgaged it with possession to the accused, while *M* leased it to the complainant and put him in possession. During the temporary absence of the complainant, the accused, who wanted to get possession of the house as mortgagee, put a lock on the house: *Held*, that he was not guilty of criminal trespass and that the matter was one for the Civil Courts to deal with. *Shadi Ram v. Emperor*.

20 Cr. L. J. 354 (a) :
50 I. C. 834 : A. I. R. 1919 Lah. 134.

————S. 448—Offence under—Search carried out by Sub-Inspector without warrant—Reasons not recorded, if criminal trespass.

An offence under S. 448 of the Penal Code, requires an intention either to commit an offence or to intimidate or annoy the person in possession. The mere fact that an Excise Sub-Inspector omits to record his reasons as required by S. 53 of the U. P. Excise Act, for not first obtaining a search warrant from a Magistrate, does not render him guilty of an offence under S. 448 of the Penal Code, if he proceeds to carry out the search. *Syed Ali Abbas v. Subba Singh*.

26 Cr. L. J. 1205 :
88 I. C. 725 : 2 O. W. N. 463 :
A. I. R. 1925 Oudh 505.

————S. 448—Offence under—Trespass after decree for possession under S. 9 of the Specific Relief Act—Bona fide claim, if material.

On the complaint of *Rani Bhagwan Kaur*, widow of *Sardar Dayal Singh*, Majithia, Mrs. Gill, who alleged herself to be also widow of the *Sardar*, and her son were convicted of an offence under S. 448, Penal Code, for having forcibly taken possession of a house in the occupancy of the complainant, on the 12th November 1903. On the 12th June 1902, *Rani Bhagwan Kaur* had obtained a decree for possession of the house in suit against Mrs. Gill under S. 9 of the Specific Relief Act. On the 25th June, 1902, she had applied for execution by an order for possession against the tenant who was in actual possession of the house. On the 8th July 1902, a notice under S. 204, C. P. C., was served on the tenant. Mrs. Gill, took over possession after the tenant vacated the house by breaking the locks put on at the instance of the

PENAL CODE ACT (XLV OF 1860)

complainant. The executors to the Will of the *Sardar* brought a civil suit for possession of the house among other property. It was contended for the accused in revision that as the complainant's right to the house was still in dispute, and Mrs. Gill *bona fide* claimed title to it, the conviction was bad in law: *Held*, that the conviction was right and the contention was not valid. The suit of the executors did not affect the question. *Emperor v. Mrs. Gill and Mr. Clevent Gill*.

1 Cr. L. J. 1068 :
5 P. L. R. 484.

—S. 448—Proof—Intention to commit specific offence—Proof of such intention.

To sustain a conviction under S. 448, Penal Code, of house trespass with intent to commit an offence, etc., it is not necessary to decide which of several offences the accused intended to commit. It is sufficient if the evidence leaves no room for reasonable doubt that the accused intended to commit an offence. *In re : Kurnam Seshayya*.

12 Cr. L. J. 453 :
11 I. C. 797 : 21 M. L. J. 781 :
10 M. L. T. 118 : 1911, 2 M. W. N. 71.

—S. 448—Sentence—Accused found guilty under S. 297, whether can be convicted under S. 448 as well.

Quære.—It is very doubtful whether those accused who are guilty of an offence under S. 297, can be convicted under S. 448 as well, and awarded a separate sentence on a charge of trespass so framed. *Amir Hassan v. Emperor*.

41 Cr. L. J. 810 :
189 I. C. 867 : 21 P. L. T. 121 :
6 B. R. 874 : 13 R. P. 174 :
A. I. R. 1940 Pat. 414.

—S. 448—Village headman holding trial in private house—Accused ordered to withdraw—Failure to obey order—Trespass.

Complainant, a village headman, was holding a trial in his private house. Accused who was interested in one of the parties came to watch the trial. Complainant ordered him to withdraw and had to repeat the order four times and employ some force before it could be carried out. Accused was, on these facts, convicted of an offence under S. 448, Penal Code: *Held*, that as there was no allegation that the accused had said or done anything from which an intent to intimidate, insult or annoy might be inferred, the accused could not be convicted of an offence under S. 448 of the Penal Code. *Quære*:—Where the Presiding Officer of a Court is in "possession" of the room where he is holding a trial. *Nga Po Ya v. Emperor*.

25 Cr. L. J. 653 :
81 I. C. 141 : 2 Bur. L. J. 17 :
A. I. R. 1923 Rang. 145.

—Ss. 448, 341—Conviction—Alteration of—Accused convicted under S. 448—Accused putting forward every fact required for conviction under S. 341—Alteration of conviction to one under S. 341—Legality of.

Where the accused was convicted under S. 448, Penal Code, but in his own defence, the

PENAL CODE ACT (XLV OF 1860)

accused put forward every fact which would be required for a conviction under S. 341; he put forward the fact that he and the complainant were joint owners of the property, he admitted that he put the padlock on the door and locked it: *Held*, that if the charge were altered from one under S. 448 to one under S. 341, Penal Code, the accused could not be prejudiced. *Rati Ram v. Emperor*.

38 Cr. L. J. 989 :
170 I. C. 909 : 10 R. Rang. 115 :
A. I. R. 1937 Rang. 250.

—Ss. 448, 511—Charge—Attempt to commit criminal trespass—Charge, amendment of.

Entry on a verandah may not amount to house-trespass, but such entry coupled with an attempt to push open the door does amount to an attempt to commit the offence. Those who accompany the accused but remain looking on without entering on the complainant's property are not guilty of criminal trespass even if they abuse. When a Magistrate amends the charge, he should not write over the original charge but should leave it on the file for reference, if necessary, and should write the new charge separately, and correctly date it. *Nga Pan Hlaing v. Emperor*.

16 Cr. L. J. 2 :
28 I. C. 306 : 8 Bur. L. T. 17 :
A. I. R. 1915 L. Bur. 102.

—S. 451.

See also (i) Cr. P. C., 1898, S. 106.

(ii) Penal Code, 1860, Ss. 27, 40, 457.

—S. 451—Charge under—Maintainability—House-trespass with intent to commit adultery—Husband's possession of house essential—Connivance or consent of husband, effect of.

If the entry in a house is made with the consent of the owner and possessor of the house, no offence under S. 451, Penal Code, can be deemed to have been committed. Where in a case under S. 451, Penal Code, the husband appeared neither as a complainant nor as a witness, and there was nothing to show that the house was in his possession or that he had not consented to or connived at the entry of the accused: *Held*, that the charge under S. 451, Penal Code, could not be sustained. *Jaggannath v. Emperor*.

15 Cr. L. J. 351 :
23 I. C. 703 : 1 O. L. J. 48 :
A. I. R. 1914 Oudh 182.

—S. 451—Conviction under, illegality of—Absence of evidence of house-trespass—Conjectural reasons rejected.

Where the complainant suggested that the accused person entered his house with the intention of committing theft but the Magistrate convicted him under S. 451, Penal Code, finding that he entered therein for the purpose of committing adultery, of which there was no evidence on the record: *Held*, as there was no proof on the record of house

PENAL CODE ACT (XLV OF 1860)

trespass, the accused was wrongly convicted under S. 451, Penal Code. *Dad v. Emperor*.

7 Cr. L. J. 230 :
3 P. W. R. Cr. 88.

————S. 451—House-trespass for committing adultery—Consent or connivance of husband—Presumption.

A man who enters the house of another at night with intent to commit adultery with his wife, is guilty of an offence under S. 451, Penal Code, and if in such a case, it is shown that the husband was at the time of the occurrence absent from the house in the legitimate pursuit of his occupation, it may safely be presumed that he neither consented to, nor connived at, any adultery or immorality on the part of his wife. *Khanon Ram v. Emperor*. 22 Cr. L. J. 266 : 60 I. C. 666 : A. I. R. 1920 Lah. 62.

————S. 451—House trespass with intention to commit offence—Possession of wife on account of husband, nature of—Entry into house with wife's consent with intent to commit adultery with her, whether offence.

Where, in K's absence from home, the accused entered his house with his wife's consent in order to commit adultery with her : *Held*, (1), that the accused was guilty of the offence specified in S. 451, I. P. C. ; (2) that the house being in the wife's possession on account of her husband, it was in his possession within the meaning of S. 27, Penal Code, and the consent of the wife to the entry of the accused could not save him. *Anant Ram v. Emperor*. 22 Cr. L. J. 118 : 59 I. C. 550 : 8 P. W. R. 1921 Cr. : A. I. R. 1920 Lah. 464.

————S. 451—Ingredients.

In order to constitute an offence under S. 451, Penal Code, all the facts necessary to constitute the offence of simple house-trespass, punishable under S. 448, Penal Code, must first be established and it must further be shown that the house-trespass was committed in order to commit an offence punishable with imprisonment, such as theft, mischief, etc. Where such proof is wanting, a conviction under S. 451 of the Code is bad in law. *Mansoor Husain v. Emperor*.

20 Cr. L. J. 347 :
50 I. C. 827 : 1 U. P. L. R. 45 All. 45 :
17 A. L. J. 800 : 41 All. 587 :
A. I. R. 1919 All. 258.

————S. 451—Ingredients—Offence which accused intended to commit, is a substantial ingredient of offence under S. 451.

The complainant charged the accused with house-trespass with the intention of committing theft. The Magistrate disbelieved the allegation as to theft, and found that the accused entered the complainant's house but not with the intention of committing theft. It was also found that the complainant had detected the accused lying concealed in a half-undressed condition under the eot of the complainant's wife. The Magistrate convicted the accused under S. 451 of the Penal Code,

PENAL CODE ACT (XLV OF 1860)

stating that it was not necessary to specify exactly what offence the accused intended to commit : *Held*, (1) that the conviction under S. 451 cannot be maintained unless there is an express finding as to the nature of the offence which the accused intended to commit, as the latter is a substantial ingredient of an offence under S. 451 ; (2) that the conviction can be supported for the minor offence under S. 448, for under that section, it is not necessary to specify precisely the intention of the accused. It is sufficient if the prosecution show that the intention was a criminal one. This intention may be inferred from the circumstances of the case ; (3) that owing to the conduct of the complainant in fabricating false evidence in support of a false charge of theft, it was in the discretion of the Magistrate to discharge the accused and to decline to enquire into the minor offence. Such conduct is also a good reason for substantially reducing the sentence. *Emperor v. Henczie*. 10 Cr. L. J. 410 : 3 I. C. 895 : 3 S. L. R. 86.

————S. 451—"Offence," meaning of.

For the purpose of S. 451, an offence punishable under the Penal Code is an 'offence' even though it is not punishable with imprisonment for more than six months. It is only an offence which is punishable under a special or a local law that must be punishable with imprisonment of six months or more before it can be considered to be an offence within the meaning of S. 451. *Harkishan Lal v. Emperor*.

32 Cr. L. J. 732 (b) :
131 I. C. 381 : I. R. 1931 Lah. 477 :
A. I. R. 1931 Lah. 405.

————S. 451—Trespass for committing adultery—Husband, consent of—Absence of husband, effect of.

A man who enters the house of another with intent to commit adultery with a married woman staying in the house, is guilty of an offence under S. 451, Penal Code. In such a case, if it is shown that the husband of the woman with whom the adultery was committed was at the time of the occurrence absent from the house, it may be presumed that he neither consented to, nor connived at, any adultery or immorality on the part of his wife. *Kala Ram v. Emperor*. 26 Cr. L. J. 1343 : 89 I. C. 319 : 1 Lah. Cas. 69 : A. I. R. 1925 Lah. 635.

————Ss. 451, 457—Lurking house-trespass, essentials of—House-trespass by night.

In order to constitute lurking house-trespass, the offender must take some active means to conceal his presence from some one who has a right to exclude him. The mere fact that a house-trespass was committed by night does not make the offence one of lurking house-trespass. Where, therefore, the accused had entered the courtyard of a *haveli* through the *deorhi* but the *deorhi* itself had no door attached to it, and was caught red-handed in the act of stealing cattle : *Held*, that he was guilty of the offence of house-trespass. *Budha v. Emperor*.

17 Cr. L. J. 304 :
35 I. C. 176 : 21 P. R. 1916 Cr. :
123 P. L. R. 1916 : 44 P. W. R. 1915 :
A. I. R. 1916 Lah. 425.

PENAL CODE ACT (XLV OF 1860)

—S. 452.

See also Cr. P. C., 1898, Ss. 106, 526.

—S. 452 — 'Building,' meaning of—
Placed enclosed by thorny bushes, whether
'building' — Conviction under S. 452, when
legal.

A place which is more or less enclosed by thorny bushes without any door or gateway even of thorn which has to be opened before. making an entry, is not a 'building' within the meaning of S. 452, Penal Code, and a person who enters such an enclosure and assaults another person sitting in the enclosure, cannot be convicted under the said section. *Munshi v. Emperor.*

29 Cr. L. J. 766 :
110 I. C. 798 : 26 A. L. J. 855 :
A. I. R. 1928 All. 607.

—S. 452—Sentence.

An interference with religion by preventing a person from employing another as his priest by forcibly entering the former's house to overawe him, is not to be treated lightly. A fine of Rs. 50 is not excessive. *Ganga Singh v. Emperor.*

36 Cr. L. J. 763 :
155 I. C. 541 : 1935 A. L. J. 423 :
1935 A. W. R. 333 : 7 R. A. 937 :
A. I. R. 1935 All. 647.

—S. 454.

See also (i) Cr. P. C., 1898, S. 233.

(ii) Penal Code, 1860, Ss. 378,
379, 380, 441, 447, 454.

—S. 456—Burden of proof — *Lurking house-trespass by night—Intention.*

In a prosecution for lurking house-trespass by night under S. 456, Penal Code, the burden of proving what his intent was lies upon the accused. *Ishri v. Emperor.*

4 Cr. L. J. 291 :
3 A. L. J. 652 : 26 A. W. N. 279 :
29 All. 46.

—S. 456—Burden of proof — *Lurking house-trespass—Criminal intent.*

The accused, who was a complete stranger, was found inside the complainant's house at 2 a. m. in the morning, having entered the house by a door which the complainant had taken care to secure at night. When arrested, the accused said that he had gone inside the house in connection with an illegal intimacy with the complainant's aunt, who was a widow: *Held*, that the accused was guilty under S. 456, Penal Code: *Held*, further, that as the intent with which he went inside was a matter within the knowledge of the accused, the burden of proving that his intention was an honest intention lay on him. *Mulla v. Emperor.*

16 Cr. L. J. 435 :
29 I. C. 67 : 13 A. L. J. 625 :
37 All. 395 : A. I. R. 1915 All. 178.

—S. 456—Conviction under, *legality of—Charge under Ss. 457, 380—Conviction under S. 456—Cr. P. C., S. 238—Intention, whether should be specified in charge under S. 456, Penal Code.*

To sustain a conviction under S. 456, it is not necessary to specify the criminal intention in

PENAL CODE ACT (XLV OF 1860)

the charge, it is sufficient if a guilty intention, such as is contemplated by S. 441, is proved either from direct evidence or from conduct and other circumstances. *Karati Prasad Guru v. Emperor.*

17 Cr. L. J. 424 :
35 I. C. 984 : 20 C. W. N. 1075 :
A. I. R. 1917 Cal. 824.

—S. 456—Intention — *Lurking house-trespass—Intention—Offence—Illicit intercourse with widow, if offence.*

Where the accused entered the complainant's house with a view to carry on an intrigue with his widowed sister who was of age, and was discovered: *Held*, that his entering the house could not be said to have caused such annoyance or insult as is contemplated by S. 456, Penal Code, and that the accused committed no offence, inasmuch as to have criminal intimacy with a widow of age, is no offence. *Gaya Bhar v. Emperor.*

17 Cr. L. J. 419 :
35 I. C. 979 : 14 A. L. J. 719 :
38 All. 517 : A. I. R. 1916 All. 152.

—S. 456—Offence under—*House-breaking—Trespass with intention to force illicit intrigue on woman.*

Accused broke the lock of a room in which certain women of the family of the complainant were sleeping and introduced his head into the room. The object of the accused was found to be to force an intrigue upon one of the women sleeping in the room: *Held*, that the accused was guilty of an offence under S. 456, Penal Code. *Mohammad Nasruddin v. Emperor.*

26 Cr. L. J. 954 :
87 I. C. 106 : 4 Pat. 459 :
6 P. L. T. 588 : A. I. R. 1925 Pat. 713.

—S. 456—Scope of — *Lurking house-trespass—House-breaking.*

A charge under S. 456, Penal Code, of entering a house with an object not specified but which is presumed to be criminal, cannot be sustained when the person is being tried upon a specific charge of theft in a dwelling house and house-breaking with intent to commit theft. Although it is not necessary under S. 456 to specify any particular offence, when such particular offence is specified under S. 457, it is incompetent to convict of house-breaking with some other intent. *Jharu Sheikh v. Emperor.*

13 Cr. L. J. 224 :
14 I. C. 320 : 16 C. W. N. 696.

—Ss. 456, 441—*Presumption as to intention—House-breaking by night—Intention not specified in charge.*

The petitioner broke into a house, where women were living, at a late hour of the night in the absence of the owner of the house. No specific purpose or intention with which the trespass was committed by him was established by prosecution. His own explanation also was utterly absurd: *Held*, that the circumstances negated the supposition that the petitioner acted innocently and with no criminal purpose. The entry must have been for some criminal purpose, and in all probability, the purpose

PENAL CODE ACT (XLV OF 1860)

was to insult the modesty of the women. A conviction under S. 456, Penal Code, would not be bad for want of specification of the intention in the charge. *Ram Rang v. Emperor*.

2 Cr. L. J. 279 :
18 P. R. Cr. 1905 : 6 P. L. R. 456.

———S. 457.

See also (i) Cr. P. C., 1898, Ss. 35, 233, 230 (c), 565.

(ii) Evidence Act, 1872, S. 114, Illus. (a).

(iii) Penal Code, 1860, Ss. 75, 395, 411, 442, 457.

———S. 457—Acquittal—Burglary—Accused found along with others in possession of stolen property—Benefit of doubt.

The accused was charged with an offence under S. 457, Penal Code. The evidence showed that two burglaries were committed in village B, that tracks of four men were followed from a place near the village, but later on they changed into the tracks of a mare and two men. A short distance further on the mare's track, went off in one direction and the men's tracks were followed to village D, when the accused was arrested along with certain others in possession of certain bundles which were found to contain the stolen property: *Held*, that the mere fact that the accused was with the party in village D did not prove that he was one of the burglars and that the case against him being doubtful, he was entitled to an acquittal. *Mewa Singh v. Emperor*.

18 Cr. L. J. 657 :
40 I. C. 305 : 27 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 159.

———S. 457—Conviction, if proper—Doubt as to whether accused had guilty knowledge that property was in house occupied by him and others.

It is wrong to say that in no circumstances can a man be convicted of being in possession of stolen property if there are inmates of the house other than himself. The law is that no person can be convicted if it is doubtful whether he or some other person had guilty knowledge that the property was in the house occupied by him and others. *Habib v. Emperor*.

37 Cr. L. J. 813 :
162 I. C. 964 : 1936 A. L. J. 511 :
8 R. A. 924 (1) : 1936 A. W. R. 383 :
A. I. R. 1936 All. 386.

———S. 457—Conviction, impropriety of—House-breaking by night—Intention—Proof.

Accused, who was a goldsmith, was caught in the house of the complainant before sunrise and was found to have on his person a large sum of money which belonged to himself and certain gold ornaments. It appeared that the entrance to the house was shut up on the previous night and there was no evidence that any door was broken open or that any hole had been made through the wall. The explanation given by the accused of his presence in the house was not an unlikely one: *Held*, that under the circum-

PENAL CODE ACT (XLV OF 1860)

stances, the accused could not be convicted of an offence under S. 457, Penal Code. *Dhannun v. Emperor*. 26 Cr. L. J. 716 (a) :
86 I. C. 156 : 26 P. L. R. 31 :
A. I. R. 1925 Lah. 459.

———S. 457—Conviction, legality of.

Information by accused leading to discovery of stolen property—Absence of any other incriminating circumstance against accused—Conviction, is not legal. *Mangalya Ragho Mahar v. Emperor*. 35 Cr. L. J. 581 :
147 I. C. 1188 : 16 N. L. R. 246 :
6 R. N. 164 : A. I. R. 1934 Nag. 54.

———S. 457—Conviction, legality of—Lurking house-trespass—Accused must have taken active means to conceal his presence.

It cannot be said that the mere fact that a house trespass was committed by night, makes the offence one of lurking house-trespass. In order to constitute lurking house-trespass, the offender must take some active means to conceal his presence: *Held*, on facts that the accused could not be convicted under S. 457 but only under S. 451, Penal Code. *Chhadami v. Emperor*.

41 Cr. L. J. 623 :
188 I. C. 542 : 1940 A. L. J. 77 :
I. L. R. 1940 All. 175 : 13 R. A. 44 :
A. I. R. 1940 All. 259.

———S. 457—Conviction under, legality of—No evidence of any precaution to conceal presence.

Where there is no evidence of any precaution taken by the accused to conceal his presence, the conviction under S. 457, Penal Code, cannot be supported and the verdict must be treated as one of house-trespass under S. 451. *Mosaheb Dome v. Emperor*.

40 Cr. L. J. 833 (b) :
183 I. C. 660 : 5 B. R. 978 :
12 R. P. 177 : 20 P. L. T. 879 :
A. I. R. 1940 Pat. 14.

———S. 457—Conviction under.

The accused committed lurking house-trespass and also grievous hurt in a courtyard but it was not proved that the courtyard was a part of the house: *Held*, that he could be convicted only under S. 457, and not under S. 459. *Enayet Ali v. Emperor*.

36 Cr. L. J. 619 :
154 I. C. 981 : 38 C. W. N. 446 :
7 R. C. 546 : A. I. R. 1934 Cal. 557.

———S. 457—Conviction under—Two brothers living in same house admitting stolen property to be in their house and not claiming it—No explanation as to how it got there—Offence, if made out.

Where two brothers living in the same house being charged under S. 457, Penal Code, admit that stolen property was found in their house and do not claim it to be theirs, but do not explain how it got there, and the fact that the house in which the property was found was occupied by both of them is established, they can be convicted under S. 457 especially when they were seen with another

PENAL CODE ACT (XLV OF 1860)

person accused of the same offence on the evening before commission of the crime. *Habib v. Emperor*.

37 Cr. L. J. 813 :

162 I. C. 964 : 1936 A. L. J. 511 :

8 R. A. 924 (1) : 1936 A. W. N. 383 :

A. I. R. 1936 All. 386.

———S. 457—Conviction under, when sustains—House trespass for theft, charge of—Conviction for house trespass with other object—Charge, amendment of—Prejudice to accused.

Although it cannot be laid down as a general rule that in all cases a prosecution for house-trespass with the alleged object of theft must fail if that object is not proved, yet when a charge has been definitely framed in which theft is alleged, the accused cannot be convicted of house-trespass with some other object without an amendment of the original charge, unless the Court is satisfied that he has not in any way been prejudiced in his defence by the omission to amend the charge. *Hajari Sonar v. Emperor*.

24 Cr. L. J. 119 :

71 I. C. 247 : 26 C. W. N. 344.

———S. 457—House-breaking. what amounts to—Age of accused, consideration of—Breaking open cattle shed—Offence.

The breaking open of a cattle shed in which agricultural implements are kept, amounts to house-breaking and is punishable under S. 457, Penal Code. S. 502, Cr. P. C., does not apply to convictions for house-breaking. The age of the accused is probably immaterial on the question whether the Court is entitled to act under the section. *In re : Pullabholia Chinniah*.

18 Cr. L. J. 469 (b) :

39 I. C. 309 : A. I. R. 1918 Mad. 709.

———S. 457—House trespass to commit adultery—Husband's consent or connivance, proof of.

The Court has got to be satisfied before convicting a person of an offence under S. 457, Penal Code, when the offence charged is of house-trespass with intent to commit adultery, that there was no consent or connivance by the husband. *Balaram Kundu v. Emperor*.

25 Cr. L. J. 1186 :

82 I. C. 50 : A. I. R. 1925 Cal. 160.

———S. 457—Illegality of conviction—Evidence Act, S. 30—Confession by persons jointly tried for same offence.

A conviction under S. 457, Penal Code, based on the confession of a co-accused who was being tried along with the prisoner under S. 411, Penal Code, is unsound and must be set aside. *Nga Po Tok v. Emperor*.

14 Cr. L. J. 376 :

18 I. C. 136 : U. B. R. 1912, 158.

———S. 457—Insufficient evidence—Burglary—Conviction based on production of non-identifiable articles, legality of.

Complainant's shop was broken into and a quantity of cotton and some pieces of cloth were stolen, but complainant did not furnish the Police with a list of the articles which had been stolen. Accused was seen next

PENAL CODE ACT (XLV OF 1860)

morning in the village carrying bundles of cloth. He was subsequently arrested and produced a bag of cotton and certain pieces of cloth of an ordinary character which any cloth merchant might be expected to stock and sell, but which were claimed by the complainant as belonging to him: *Held*, that the evidence against the accused was of an inconclusive character and was not sufficient to support a conviction under S. 457, Penal Code. *Wasal v. Emperor*.

27 Cr. L. J. 299 :

92 I. C. 587 : 7 L. L. J. 277 :

A. I. R. 1925 Lah. 495.

———S. 457—Scope of—Mere recovery of complainant's shirt from person of accused—If sufficient for conviction under S. 457—Criminal trial.

The mere recovery of a shirt alleged to belong to one of the complainants, from the person of the accused charged under S. 457, Penal Code, is not sufficient for his conviction under S. 457. *Singha Khobi v. Emperor*.

39 Cr. L. J. 491 :

174 I. C. 849 (1) : 40 P. L. R. 58 :

10 R. L. 619 : A. I. R. 1938 Lah. 252.

———S. 457—Scope of—Separate sentences, legality of.

A prisoner convicted of house-breaking followed immediately by theft, can be punished under S. 457 only. *Makhru Dausadh v. Emperor*.

27 Cr. L. J. 976 :

96 I. C. 528 : 5 Pat. 464 :

7 P. L. T. 794 : A. I. R. 1926 Pat. 367.

———S. 457—Sentence—House-breaking by night—Sentence—Status of person robbed, whether can be taken into consideration.

The fact that the particular individual, who happens to be a Collector, has his house burgled, cannot be taken as justification for awarding a sentence severer than that which would otherwise be inflicted. *Dungar v. Emperor*.

27 Cr. L. J. 858 :

95 I. C. 938 : A. I. R. 1926 All. 603.

———Ss. 457, 380—Accused, if guilty—Criminal Tribes Act (III of 1911), S. 23—Lurking house-trespass—Theft—Walking into open house and stealing articles therefrom.

Accused, who was a member of a criminal tribe and had been twice previously convicted of dacoity, finding the door of a house open, walked in and proceeded to steal certain articles therefrom. He removed some of the articles preparatory to taking them away, but before he actually got away the alarm was given and he was caught: *Held*, that the accused was not guilty of lurking house-trespass under S. 457, Penal Code, so as to be liable to enhanced punishment under S. 23, Criminal Tribes Act. *Bhagwanu v. Emperor*.

19 Cr. L. J. 609 :

45 I. C. 515 : 16 A. L. J. 383 :

A. I. R. 1918 All. 130.

———Ss. 457, 380—Offences under—Separate sentences.

Under S. 35, Cr. P. C., as amended, the

PENAL CODE ACT (XLV OF 1860)

Court can pass separate sentences for offences under Ss. 457 and 380. *Idris v. Emperor*.

40 Cr. L. J. 751 :
183 I. C. 217 : 12 R. P. 121 :
5 B. R. 907 : 20 P. L. T. 736 :
A. I. R. 1939 Pat. 349.

———Ss. 457, 380, 411—*Charge of house-breaking and theft—No evidence of house-breaking—Surrender of stolen articles by accused—Possession unexplained—Offence—Previous convictions, proof of, necessity of, before conviction.*

The accused were charged at a Sessions trial with house-breaking and theft under Ss. 457 and 380, Penal Code. There was no direct evidence of the accused breaking into the house or actually removing the articles but four days after the occurrence, the accused gave up the alleged stolen articles, and were not able to satisfactorily account for their possession of them: *Held*, that the accused were guilty of an offence under S. 411, Penal Code, and not of offence under Ss. 457 and 380, Penal Code. It is necessary that, if there are previous convictions against accused persons, they should be properly proved before sentences are passed on them. *In re: Turimella Kurmanna*.

17 Cr. L. J. 179 :
33 I. C. 819 : A. I. R. 1917 Mad. 186.

———S. 457, 460—*Scope of—Theft, if essential ingredient of offences under Ss. 457 and 460.*

Theft frequently follows an offence under S. 457, Penal Code, but it cannot be said that it is an essential ingredient of that offence. All that is required to complete the offence under S. 457 is that the burglar or house-breaker by night should have an intention to commit theft. It matters not for the purpose of that offence whether a burglar or house-breaker by night does actually carry out his intention and commit theft. Theft or an intention to commit theft is in no way a necessary or essential ingredient in either of these offences. It frequently happens that lurking house-trespass or house-breaking by night is followed by theft, but the offence can be committed without theft or any intention to commit it. That being so, an offence under S. 460 is not an offence which includes theft though it may frequently form part of a transaction which also includes theft. *Emperor v. Mathuri*.

37 Cr. L. J. 794 :
163 I. C. 253 : 1936 A. L. J. 518 :
8 R. A. 928 (2) : 58 All. 695 :
1936 A. W. R. 1 : A. I. R. 1936 All. 337.

———Ss. 457, 511—*Attempt to commit house-breaking—Preparation.*

If the actual transaction has commenced which would have ended in the crime, if not interrupted, there is an attempt to commit the crime. Two persons dug a hole in the wall of another's dwelling house with intent to complete that hole in order to make their entry into the house through it, and having so entered, to commit theft in the house. In fact, the hole was not

PENAL CODE ACT (XLV OF 1860)

completed, that is to say, it did not completely penetrate from one side of the wall to the other as the culprits were interrupted before they could complete it: *Held*, that there was not a mere preparation but an attempt to commit house-breaking. *Emperor v. Chandkha Salobatkha*.

14 Cr. L. J. 451 (b) :
20 I. C. 611 : 15 Bom. L. R. 564 :
37 Bom. 553.

———Ss. 457, 511—*Offence under—Entry on the roof of a building with a stick and sandheva—Attempt to commit house-breaking by night.*

The accused, who had mounted upon the roof of the complainant's house armed with a stick and a *sandheva*, was convicted of an attempt at house-breaking by night under Ss. 457, 511, Penal Code: *Held*, that he was not guilty of the offence charged as mere presence on the roof of the house could not be construed into an attempt to commit an offence under S. 511, but that he was guilty of criminal trespass punishable under S. 447 of the Penal Code. *Walidad v. Emperor*.

6 Cr. L. J. 444 :
15 P. R 1907 Cr. : 2 P. W. R. Cr. 121 :
56 P. L. R. 1908.

———Ss. 457, 511, 109—*Conviction, setting aside of—House-breaking by night—Attempt—Abetment.*

Where a person was charged and convicted of attempting as well as abetting the same offence, the High Court set aside the conviction and sentence on one of the counts. *Emperor v. Fatekhan*.

4 Cr. L. J. 450 :
8 Bom. L. R. 855.

———S. 458.

See also (i) Cr. P. C., 1898, S. 238.
(ii) Penal Code, 1860, Ss. 40, 390, 441, 447, 458.

———S. 458—*Applicability.*

S. 458, Penal Code, applies only to the house-breaker who has actually himself made preparation for causing hurt to any person or for assaulting any person or for wrongfully restraining any person, etc., and not to his companions. *Ghulam v. Emperor*.

25 Cr. L. J. 398 :
77 I. C. 446 : 4 Lah. 399 :
A. I. R. 1923 Lah. 509.

———S. 458—*Wrongful restraint, what is—Theft after locking up room in which watchmen were asleep—Offence, whether robbery—Wrongful restraint, meaning of.*

Restraint implies abridgment of the liberty of a person against his will. When a person is deprived of his will power by sleep or otherwise, he cannot, while in that condition, be subjected to any restraint. Where the accused locked from outside the room in which the watchmen of a building were asleep, and committed theft: *Held*, that the accused could not be held to have caused wrongful restraint to the watchmen and could not consequently be convicted of

PENAL CODE ACT (XLV OF 1860)

dacoity under S. 391, Penal Code, though they were guilty of theft under S. 458 of the Code. *Fateh Muhammad v. Emperor*.

29 Cr. L. J. 602 :
109 I. C. 682 : 29 P. L. R. 90 :
A. I. R. 1928 Lah. 445.

—S. 459.

See also (i) Cr. P. C., 1898, S. 307.
(ii) Penal Code, 1860, Ss. 445,
459.

—S. 460.

See also Penal Code, 1860, S. 457.

—S. 460—Scope of—*Person causing death at time of committing lurking house-trespass by night—He does not escape being tried under S. 302 or S. 304.*

S. 460, I. P. C., does not provide for an offence but merely lays down a principle of constructive liability. If a person causes the death of another at the time of committing lurking house-trespass by night or house-breaking by night, it does not mean that he escapes being tried under S. 302 or S. 304, I. P. C., as the case may be, and that he can only be tried under S. 460, I. P. C. *Bahaduri v. Emperor*.

41 Cr. L. J. 779 :
189 I. C. 672 : 42 P. L. R. 229 : 13 R. L. 121 :
A. I. R. 1940 Lah. 281.

—S. 460—Scope of.

The expression "at the time of the commission of house-breaking by night" in S. 460, Penal Code, must be limited to the time during which the criminal trespass continues, which forms an element in house-trespass, which is itself essential to house-breaking, and cannot be extended so as to include any prior or subsequent time. *Muhammad v. Emperor*.

23 Cr. L. J. 164 :
65 I. C. 628 : 2 Lah. 342 :
A. I. R. 1921 Lah. 94.

—S. 463.

See also (i) Cr. P. C., 1898, Ss. 179, 195.
(ii) Penal Code, 1860, Ss. 380,
403.

—S. 463—Forgery, what constitutes—"Fraudulently", meaning of.

In order to do a thing fraudulently, it is not necessary that the person doing it should intend, or the doing of it should have the necessary consequence of causing wrongful loss to any person. It is sufficient if the doing of it is intended to defraud some one even without his ultimately acquiring unlawful gain or causing wrongful loss. In order to constitute forgery, it is not necessary that the document must be intended to support a false claim or a false title. If in order to support even a true claim or a genuine title, a false document is created, it is a forgery. Whether a document is a false document or not, does not depend upon the adjudication of the Court on the claim, of title which is intended to be proved by the false document.

PENAL CODE ACT (XLV OF 1860)

If a man intends to gain an unfair advantage by deceitful means and uses a false document for that purpose, his conduct is fraudulent. *In re : Sivananda Mudali*.

27 Cr. L. J. 994 :
96 I. C. 850 : A. I. R. 1926 Mad. 1072.

—S. 463—Forgery, what constitutes—Printed copy of certificate never given.

The making of a printed paper purporting to be a reproduction of a certificate that was never given, does not constitute forgery, unless there was an intention to cause it to be believed that the printed paper was made by the authority, express or implied, of the giver of the certificate. *Lachman Lal v. Emperor*.

20 Cr. L. J. 142 :
49 I. C. 174 : 4 P. L. J. 16 :
A. I. R. 1919 Pat. 407.

—S. 463—Forgery, what is—Abetment.

A person who is instrumental in getting a false document dishonestly or fraudulently made but who does not make, sign or execute it, cannot be convicted for the offence of forgery but is guilty of abetment of forgery. *Dile Dad v. Emperor*.

30 Cr. L. J. 52 :
113 I. C. 68 : I. R. 1929 Lah. 131 :
A. I. R. 1929 Lah. 210.

—S. 463—Intent to commit fraud.

An intent to commit fraud involves an intent to cause injury. It involves something more than mere deceiving. Where a process-server with a view to save himself trouble or possibly to hide the fact that he had neglected his duty, forges the names of certain persons, such an act does not show an intent to commit fraud. *Nga Tun Shin v. Emperor*.

36 Cr. L. J. 1025 :
156 I. C. 888 : 8 R. Rang. 55 :
A. I. R. 1935 Rang. 203.

—S. 463—'Intent to defraud', meaning of.

The expression "intent to defraud" as it occurs in S. 463, Penal Code, implies conduct coupled with intention to deceive and thereby to injure; in other words "defraud" involves two conceptions, namely, deceit and injury to the person deceived, that is, infringement of some legal right possessed by him but not necessarily deprivation of property. *Ahmad Ali v. Emperor*.

26 Cr. L. J. 1574 :
90 I. C. 534 : 42 C. L. J. 215 :
A. I. R. 1926 Cal. 224.

—S. 463—Knowledge—Pleader filing forged document—Mere suspicion as to its genuineness, whether warrants prosecution.

Mere suspicion on the part of the Pleader as to the genuineness of the receipt, would not establish his knowledge of the forgery which is the essential ingredient of the offence. A Pleader is under no higher obligation than any other agent would be, and to justify his prosecution, it should be shown that he had been a party (principal or accessory) to the concoction of the document or that he had the knowledge

PENAL CODE ACT (XLV OF 1860)

that it was concocted. The mere fact that the suspicions of a Pleader ought to have been aroused by the sight of the document is not *prima facie* evidence that he knew or had reason to believe the document to be forged. *In re : Ranchhoddas* (5), relied on. *Abdul Rahim Khan v. Emperor*.

41 Cr. L. J. 753 :
189 I. C. 579 : 1940 N. L. J. 183 :
13 R. N. 67 : A. I. R. 1940 Nag. 360.

———S. 463—Miscellaneous.

It is not conceivable that a suspected forger would deliberately imitate the forged writing and create evidence against himself. Such writing does not afford a proper standard for comparison. *Gowardhan Lal v. Emperor*.

34 Cr. L. J. 714 :
144 I. C. 301 : 34 P. L. R. 694 :
I. R. 1933 Lah. 440 :
A. I. R. 1933 Lah. 308.

———S. 463 — Offence under—*Forgery*—*Elector obtaining voting paper by personation*.

In consequence of the machinery which has been provided in the case of elections to Legislative and Municipal Bodies, a person cannot successfully personate and obtain the necessary voting paper of another elector without signing, what purports to be, his name, or affixing, what purports to be, his thumb impression, and *prima facie*, in accordance with the provisions of S. 463, Penal Code, whoever makes a false document with a paper bearing the signature, or impressed with the pretended thumb impression of the person who did not put his signature or thumb impression thereto, with intention to cause damage to the public, commits forgery. *Ram Nath v. Emperor*.

26 Cr. L. J. 94 :
83 I. C. 654 : 22 A. L. J. 497 : 46 All. 611 :
A. I. R. 1924 All. 684.

———S. 463—What constitutes offence—*False entries made to cover defalcation—Offence*.

Where an accused person makes false entries in an account with the object of covering a defalcation made by himself, his conviction for forgery is not sustainable. *Shuja-ud Din Ahmad v. Emperor*.

23 Cr. L. J. 610 :
68 I. C. 834 : 20 A. L. J. 662 :
A. I. R. 1922 All. 435.

———Ss. 463, 464—*Alterations to support bona fide claim, effect of*.

Where alterations in a document are made by a person who believes in good faith that he might use them to support a *bona fide* claim, such alterations cannot be said to have been made fraudulently or dishonestly so as to constitute the offence of forgery. Where the result of the making of alterations in a document is to exempt the maker from liability in respect of extremely reprehensible conduct, the facts must be closely scrutinized and the legitimacy of his good faith or his claim must rest on a proper basis and must be established clearly.

PENAL CODE ACT (XLV OF 1860)

Where the effect of an alteration in a document is to constitute an admission by one of the executants and the alteration is made without the latter's knowledge, the act comes within the definition of 'defraud' in S. 25, Penal Code, even though the alteration is made to support a *bona fide* claim. *Ramasami Iyer v. Emperor*.

19 Cr. L. J. 177 :
43 I. C. 593 : 41 Mad. 589 :
A. I. R. 1918 Mad. 150.

———Ss. 463, 464—*Burden of proof—Forgery—Burden of proof*.

In order to establish that a document is forged, the prosecution must give conclusive evidence to establish that the document is a false document within the meaning of S. 464, Penal Code, and further that it was forged by the accused with one of the intents mentioned in S. 463. In a charge of forgery, it is for the prosecution to prove that the document is a forged one and that the accused did forge it, and not for the defence to prove that the document is a genuine one. *Luchmi Singh v. Emperor*.

19 Cr. L. J. 344 :
44 I. C. 456 : 1918 Pat. 36 :
A. I. R. 1917 Pat. 111.

———Ss. 463, 464—*Conviction of forgery—Fabrication of false document to confirm an alleged title—Forgery for the purpose of establishing an already existing title—Offence*.

The accused were charged with and convicted of the offence of having fabricated a document purporting to have been executed by one M in their favour, while, as a fact, M had not executed it. The accused pleaded that the property comprised in the document already belonged to them by virtue of some documents executed in the name of M *benami* for them, and that the document in question was only intended to confirm their already existing title to the property: *Held*, that the accused were rightly convicted of forgery, and that it made no difference that the fabricated document was intended to confirm an already existing title. *In re : Somasundram Pillay*.

10 Cr. L. J. 367 :
3 I. C. 736.

———Ss. 463, 464—*Forgery*.

In order to obtain admission to a University Examination, the petitioner fabricated and forwarded to the Registrar of the University a certificate, purporting to be signed by the Head Master of a High School, that he was of good character and that he had completed his twentieth year; *Held*, that the petitioner had committed forgery. If it is established that a person does a thing "with intent to commit a fraud," he does it with one of the intents specified in S. 463, and he also does it "fraudulently" within the meaning of S. 464. The offence of forgery is complete if a document, false in fact, is made with intent to commit a fraud, although it may not have been made with any one of the other intents specified in S. 463. Intending to

PENAL CODE ACT (XLV OF 1860)

defraud means something more than deceiving, but an intended deprivation of property is not an essential element of an intention to defraud. If a false document is made in fact and there is an intention to defraud, the requirements of law are satisfied. The word "claim" is not limited to a claim with reference to property, or to a claim which is enforceable at law. A claim to be admitted to a University Examination is a claim within the meaning of S. 463. *Kotamraju Venkatrayadu v. Emperor*.

2 Cr. L. J. 283 :

1 Weir 538-A : I. L. R. 28 Mad. 90.

———Ss. 463, 464—*Forgery, what amounts to—Entry of excess payment in muster roll, whether amounts to forgery—Forgery in respect of part of document, ingredients of.*

The entry of an excess payment in a muster roll will not make the muster roll a forged document. Even in the case of forgery in respect of a part of a document, it is necessary for the prosecution to prove that the document was false. *Ram Ghulam Singh v. Emperor*.

30 Cr. L. J. 408 :

115 I. C. 135 : 1929 A. L. J. 592 :

I. R. 1929 All. 359 :

A. I. R. 1929 All. 396.

———Ss. 463, 464—*Forgery, what amounts to—Signing of certificates by purchaser of revolvers in false name and address, whether amounts to forgery—"Fraudulently."*

The signing by a purchaser of revolvers and ammunition of certificates, required for the identification of the purchaser, in a false name and with a false address, amounts to forgery, as the act, though not dishonest, is fraudulent. *Causley v. Emperor*.

17 Cr. L. J. 69 :

32 I. C. 661 : 43 Cal. 421 :

20 C. W. N. 326 :

A. I. R. 1916 Cal. 341.

———Ss. 463, 464—*Forgery, what constitutes.*

Whenever the words "fraud" or "intent to fraud" or "fraudulently" occur in the definition of a crime, two elements at least are essential to the commission of the crime; namely, first, deceit or an intention to deceive, or in some cases, mere secrecy; and secondly, either actual injury or possible injury, or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. Under S. 468, Penal Code, the making of a false document with any of the intents therein mentioned is forgery and S. 464 sets forth when a person is said to make a false document within the meaning of the Code. Therefore, if a person fabricates documents with the view of assisting another to bring a search on which he has been engaged to a successful issue, and intending to deceive the police officer or officers to whom they are directed into acting on them as genuine documents, he is guilty of forgery. *Ali Hasan v. Emperor*.

3 Cr. L. J. 249 :

3 A. L. J. 149 : 26 A. W. N. 48 :

I. L. R. 28 All. 358.

PENAL CODE ACT (XLV OF 1860)

———Ss. 463, 464—*Making a false document.*

A document conferring or creating rights is a valuable security, even though all the signatures which it is intended to obtain or is necessary to obtain have not been affixed. A document is 'made' within the meaning of S. 464, Penal Code, even when some only of the intended executants sign it, as the execution of it by them is complete and the document would be binding on them when it is completed by the other intending executants affixing their signatures. There is nothing in S. 464, Penal Code, which requires that a document which is altered, shall be legally effective and valid in order that the alteration should constitute the offence of making a false document. *Ramasani Iyer v. Emperor*.

19 Cr. L. J. 177 :

43 I. C. 593 : 41 Mad. 589 :

A. I. R. 1918 Mad. 150.

———Ss. 463, 464, 465—*Dishonest intention—School teacher required by Board to keep diary of work regularly—Alteration to disguise fact that it had not been kept on certain dates—Teacher held guilty under S. 465.*

It was part of the duties of a school teacher to enter in the diary the work done by him each day in accordance with a circular issued by the School Board. He altered the dates in the diary, with a view to disguising the fact that on certain dates the diary had not been kept and thus escaping the penalty which was in the form of loss of pay: *Held*, that there was, if not actual dishonesty, such an intention on the part of the teacher to obtain an advantage to himself and a corresponding disadvantage to the School Board, as would constitute fraud and that he was guilty of an offence under S. 465, Penal Code. *Mg. Ko Gyi v. Emperor*.

37 Cr. L. J. 1059 :

164 I. C. 1088 : 9 R. Rang. 178 :

A. I. R. 1936 Rang. 380.

———Ss. 463, 464, 465—*Forged document, what amounts to.*

Every false or fabricated document is not a forged document. There must be acts that constitute the document a false or fabricated one, that is to say, the case must fall within the definition of making a false document in S. 464, Penal Code, and such false document must also possess a certain character or tendency, that is to say, the character described in S. 468, Penal Code. *Badan Singh v. Emperor*.

25 Cr. L. J. 337 :

77 I. C. 225 : 3 Lah. 373 :

A. I. R. 1923 Lah. 11.

———Ss. 463, 467—*Fraud—Forgery—Fraud committed to conceal fraud.*

The concealment of an already practised fraud is a fraud. The word "fraud," as used in the Penal Code, is used in its ordinary and popular acceptations and a man, who deliberately makes a false document with false signatures in order to shield and conceal an already perpetrated fraud, himself acts with

PENAL CODE ACT (XLV OF 1860)

intent to commit fraud. For, it is fraud to take deliberate measures in order to prevent persons already defrauded from ascertaining the fraud practised on them and thus to secure the culprit, who practised the fraud, in the illieit gains which he secured by the fraud. *Emperor v. Balkrishana Vaman Kulkarni*.

14 Cr. L. J. 518 :

20 I. C. 998 : 15 Bom. L. R. 708 :

37 Bom. 666.

-----Ss. 463, 471—*False document*.

The accused in order to be eligible to sit at a competitive examination, substituted a copy of a certificate certified as a true copy along with his application. On being required to produce the original, he produced it in order to make him eligible for the examination, the date of birth in the original had been changed from the 5th January, 1901, to 15th January, 1901: *Held*, that the original was a false document and was made with intent to cause damage and injury to other candidates for the examination and to support the claim of the accused to appear in that examination. *Emperor v. Chanan Singh*.

30 Cr. L. J. 900 :

118 I. C. 385 : I. R. 1929 Lah. 737 :

10 Lah. 545 : 30 P. L. R. 724 :

A. I. R. 1929 Lah. 152.

-----S. 464.

See also Penal Code, 1860, S. 463.

-----S. 464—*Absence of fraudulent intention—Forgery—Signing plaint on another's behalf—Offence*.

Accused, a *gomashla* of one S, filed a plaint on behalf of S and verified it in the words "S ba kalam khas." S accepted the plaint, gave evidence in support of it and obtained a decree on its basis. During the suit, accused admitted that the plaint had been verified by him, but that he had authority from S. S did not deny this: *Held*, that the accused was not guilty of forgery inasmuch as he did not make the signature of S on the plaint dishonestly or fraudulently. *Ram Sarup v. Emperor*.

19 Cr. L. J. 236 :

43 I. C. 828 : A. I. R. 1918 Pat. 640.

-----S. 464—*False description—Forgery—False description with intent to put forward a claim*.

A mere false description would not make the document a forgery unless it can be shown that the accused by giving the false description intended to make out or wanted it to be believed that it was not he that was executing the document but a fictitious person. *Raman v. Adaikalammal*.

9 Cr. L. J. 85 :

1 I. C. 751 : 4 M. L. T. 463 :

32 Mad. 90 : 19 M. L. J. 78.

-----S. 464—*False document—Forgery—False kabin-nama executed by Muhammadan—Intention to make claim to woman's property*.

If a Muhammadan with the intention of making claim to a woman's property alleges marriage with her, and to support his claim, executes a false *kabin-nama* in her favour, the

PENAL CODE ACT (XLV OF 1860)

document is not a "false document" within the definition contained in S. 464, Penal Code. *Gunjar Mohammad v. Shuruz Ali*.

23 Cr. L. J. 723 :

69 I. C. 451 : A. I. R. 1924 Cal. 536.

-----S. 464—*False document, what is*.

Complainant purchased a bullock from the accused and promised to pay the price on a certain date. An entry to that effect was made in the *bahi* of the accused and was thumb-marked by the debtor. Subsequently, the accused added a clause on the credit side of the *bahi* to the effect that if the amount was not paid as agreed upon, interest at a certain rate would be charged: *Held*, that as the addition was merely an assertion by the creditor himself and did not purport to be an agreement by the debtor to pay interest, it did not operate to impose any liability on the debtor, and therefore, did not amount to a false document within the meaning of S. 464, Penal Code. *Badan Singh v. Emperor*.

25 Cr. L. J. 337 :

77 I. C. 225 : 3 Lah. 373 :

A. I. R. 1923 Lah. 11.

-----S. 464 — *Intent to defraud — "Dishonestly" and "fraudulently," meaning of—Forgery—Alteration in document*.

An intent to defraud means something more than mere deceit. The object for which the deceit is practised must be considered. The advantage intended to be secured must be something to which the party perpetrating the deceit is not entitled either legally or equitably. Where, therefore, the accused made an alteration in a document intending thereby to secure a certain plot of land to which he *bona fide* believed himself to be entitled and of which he was in possession at the time: *Held*, that his act did not constitute the offence of forgery as no wrongful result was intended or could have arisen. *Manika Asari v. Emperor*.

16 Cr. L. J. 246 :

28 I. C. 102 : 1915 M. W. N. 278 :

A. I. R. 1915 Mad. 826.

-----S. 464—*Signing bail-bond with fictitious name—Making a false document*.

Where certain persons signed a bail-bond with names which were not their own: *Held*, that they were not guilty of an offence under S. 464, I. P. C., as they had before signing the bond informed the Magistrate that their names were the names they afterwards signed to the bail-bond and that, therefore, the persons could not be held to have intended to cause the Magistrate to believe that the bail-bond was signed by any person, real or fictitious, other than the accused. *Venkaraju Venkatasami v. Emperor*.

11 Cr. L. J. 440 :

7 I. C. 176 : 1 M. W. N. 232 :

-----S. 464—*Using forged document—Offence*.

Where an insolvent uses a forged document with the intention of supporting his claim to be declared insolvent, he is liable to

PENAL CODE ACT (XLV OF 1860)

conviction under S. 404, Penal Code. *Abdul Ghafoor v. Emperor*. 22 Cr. L. J. 36 :

56 I. C. 200 : 18 A. L. J. 1137 :
2 U. P. L. R. All. 433 : 43 All. 225 :
A. I. R. 1921 All. 356.

———Ss. 464, 466—*Conviction, legality of—Forgery.*

A *Mukhtar*, who was appearing for the plaintiff in an ejectment suit before a Rent Court, in open court but without the permission of the Court, or even of the officer of the Court in whose custody the record was, took the plaint in the case and altered it so as to represent the plaintiff as claiming ejectment of the defendant from one field more in addition to those mentioned originally in the plaint. It did not appear whether the plaintiff was or was not entitled to eject the defendant from that field, but inasmuch as the alteration was made openly and the prosecution had not established that it was made fraudulently or dishonestly, it was held that upon these facts the *Mukhtar* could not properly be convicted of the offence defined in S. 404, Penal Code. *Emperor v. Bisheshar Dayal*. 2 Cr. L. J. 234 : 25 A. W. N. 93.

———Ss. 464, 467—*'Makes', meaning of—Forged Will not completed by addition of date—Offence.*

The word "makes" in S. 404, Penal Code, does not mean anything other than creates or brings into existence. A person can be convicted under S. 404, Penal Code, for forging a document which purports to be a Will even though the Will has not been completed by the addition of the date. A writing may purport to be a Will although it turns out to be technically defective. *Chatru Malik v. Emperor*. 29 Cr. L. J. 851 :

111 I. C. 435 : 10 Lah. 265 :
A. I. R. 1928 Lah. 681.

———Ss. 464, 471—*Alteration in document—Forgery—Making false documents—Interpolation of name of witness in document not required to be attested, no forgery—Document—Increasing apparent evidence of genuineness, no material alteration—Test to be applied for determination whether document has been materially altered.*

The offence of forgery is not committed by the interpolation of the name of a subscribing witness in a document which need not be attested, because the alteration effected is not material. An alteration which does not purport to affect the terms of a contract, or its identity or its validity is not an alteration in a material part thereof. An alteration to be material must be one which alters or attempts to alter the character of the instrument itself, which affects or may affect the contract which the instrument contains or of which it furnishes the evidence. An alteration in a document stating a falsehood, either expressly or by implication, by way of increasing the apparent evidence of its genuineness, is not a material alteration. The test to be applied to determine whether a document has been materially altered within the meaning of S. 404, Penal Code, is not different

PENAL CODE ACT (XLV OF 1860)

from the test to be applied to determine whether the alteration is material from the point of view of the rights of the contracting parties. *Emperor v. Surendra Nath*.

11 Cr. L. J. 505 :
7 I. C. 629 : 14 C. W. N. 1076 :
12 C. L. J. 277 : 38 Cal. 75.

———Ss. 464, 473—*Counterfeit stamp for imprinting on trees, possession of—Offence.*

The possession of a counterfeit stamp, which is intended to be used for imprinting letters upon trees in a reserved forest so as to cause it to appear that those trees have been passed by a Forest Official for removal from the forest, is an offence under S. 473, Penal Code. *Emperor v. Krishtappa Khandappa*.

26 Cr. L. J. 1014 :
87 I. C. 838 : 27 Bom. L. R. 599 :
A. I. R. 1925 Bom. 327.

———S. 465.

See also (i) Cr. P. C., 1898, Ss. 105, 105 (c).

(ii) Penal Code, 1860, Ss. 103, 304-A, 403, 477-A.

(iii) Registration Act, 1877, S. 82 (c) and (d).

———S. 465—*Dishonest intention—Accused altering date of bahi with intention to convert illegal claim into legal one—Offence—Sentence—Held, fine was enough as accused had a good claim except for technical bar of limitation.*

Where the accused realised that his claim was very likely to be an unenforceable one unless he altered the date of the *bahi*, and his intention in fact was to convert an illegal or doubtful claim into an apparently legal one, and altered the dates in the *bahi*: *Held*, his action must be held to be dishonest and he was liable to conviction for forgery: *Held*, also, that as accused had a good claim except for the technical bar of limitation, the Court should not view his action with the same severity as if he had attempted to make out a claim for which there was no basis at all and sentence of imprisonment might be remitted and fine imposed. *Kalyanmal v. Emperor*. 38 Cr. L. J. 233 :

166 I. C. 310 : 9 R. N. 123 :
I. L. R. 1937 Nag. 45 :
A. I. R. 1937 Nag. 89.

———S. 465—*Dishonest intention.*

It is sufficient for the purposes of forgery to show that there was a criminal intention to cause wrongful gain to one or wrongful loss to another. It is not necessary that the wrongful gain or wrongful loss should be actually caused. *Chunku v. Emperor*.

32 Cr. L. J. 559 :
130 I. C. 492 : 1930 A. L. J. 1451 :
I. R. 1931 All. 284 :
A. I. R. 1931 All. 258.

———S. 465—*Evidence—Forgery—Complainant need not be confined to witnesses stated in complaint.*

A complainant who alleges forgery in respect of a document by antedating, it is not obliged to confine himself to the evidence of

PENAL CODE ACT (XLV OF 1860)

the witnesses named in the petition of complaint. *Hanuman Sahay v. Emperor*.

38 Cr. L. J. 72 :
165 I. C. 564 : 3 B. R. 54 :
9 R. P. 183 : A. I. R. 1936 Pat. 531.

———S. 465 — *Forgery—Evidence of Finger Print Expert, value of—Thumb-impression of accused, whether can be taken during trial.*

Ordinarily a man should not be convicted of the offence of forgery solely upon the evidence of Finger-Print Expert relating to similarity of thumb-impressions. The thumb-impressions of an accused person should not be taken during his trial for purposes of comparison. *Jassu Ram v. Emperor*.

25 Cr. L. J. 357 :
77 I. C. 423 : 4 Lah. 246 :
A. I. R. 1923 Lah. 622.

———S. 465—*Forgery.*

The forgery of a valuable security is merely an aggravated form of forgery and whether or not particular documents alleged to have been forged are valuable securities, cannot be material in deciding as to whether a charge framed in that connection should be quashed altogether, because if it be proved that the accused forged the documents, he would be still guilty of the minor offence of forgery under S. 465. *Madhav Bhagwant v. Emperor*.

26 Cr. L. J. 1093 :
88 I. C. 181 : A. I. R. 1925 Nag. 345.

———S. 465 — *Signing telegram in another's name—No intent to injure—Forgery—Denial of fact by accused Defence inconsistent with denial.*

The mere signing a telegram in another's name where it is not shown to have been done with intent to injure him, and where it does not actually injure him, does not constitute the offence of forgery, even though the signature may have been made without the authority of such person. An accused is not bound by any statement denying any fact against him if he desires subsequently to take a further defence inconsistent with the denial. *Kali Prasad Banerjee v. Emperor*.

16 Cr. L. J. 76 :
26 I. C. 668 : A. I. R. 1915 Cal. 786.

———S. 465—*Will—Forgery—Will, scribe of, antedating it, effect of.*

The bare fact that a Will, found to have been forged, was admittedly written by the accused at a date later than that inserted in the body of it, does not, in the absence of anything showing his complicity in the fabrication of the Will, raise a presumption to that effect. *Emperor v. Durga Prasad*.

17 Cr. L. J. 540 :
36 I. C. 588 : 3 O. L. J. 417 :
A. I. R. 1916 Oudh 112.

———Ss. 465, 467 — *Conviction, maintainability of—Forgery—Proof—Similarity of handwriting, whether sufficient proof of offence.*

To convict an accused person as the forger of a document, the mere similarity of the handwriting of the forged document with the writing of the accused, without other evidence

PENAL CODE ACT (XLV OF 1860)

of complicity, is insufficient. Where a signature purports to have been forged, the strong similarity between the genuine and the forged signature is suggestive merely of a conspiracy that the genuine signature was obtained by a fraud upon the person whose signature was forged. In neither case, can a conviction for forgery be maintained. *Mohammad Kabir-ud-Din v. Emperor*.

20 Cr. L. J. 534 :
51 I. C. 774 : A. I. R. 1919 Pat. 17.

———Ss. 465, 467—*Expert evidence as to handwriting—Forgery of cheque.*

To base a conviction upon the opinion of an expert in handwriting is, as a general rule, very unsafe. When it is sought to convict a clerk employed in an office of forgery upon the supposed similarity between his handwriting and that of some fragmentary pieces of writing upon which the charge is based, the prosecution should make an attempt to show that the accused is the only man in the office who could have written the forged documents. *Srikant v. Emperor*.

2 Cr. L. J. 353 :
2 A. L. J. 444.

———Ss. 465, 467, 471—*Offence of forgery, nature of.*

The nature of the offence of forgery does not depend on the use to which the document is put. If it is used fraudulently or dishonestly, and if it purported to a valuable security, the punishment provided by S. 467 and not that provided by S. 465, Penal Code, would be that to which the accused be liable under S. 471. *Emperor v. Sagarmal*.

25 Cr. L. J. 1217 :
82 I. C. 145 : 28 C. W. N. 947 :
40 C. L. J. 135 : A. I. R. 1924 Cal. 960.

———Ss. 465, 468, 471, 511—*Forgery for cheating—Forgery—Attempt to cheat—Preparation.*

Where conviction, under Ss. 465, 468, 471, 511, Penal Code, was based on the following allegations :—On the 25th Jaista, B presented for payment a bill to the accused, who took it from B, saying : "I will pay the money," and endorsed on its back ; "17th Jaista, through B, Rs. 501." Upon this B, snatching the bill from the accused, asked the accused for payment of the amount entered on its back, but was told : "Go away—I have paid : Held, with respect to the forgery charges, that there was no evidence from which it might reasonably have been inferred that the accused intended it to be believed that the endorsement on the bill was made on the 17th Jaista, and not, as in fact was the case, on the 25th Jaista. Held, as to the charge of an attempt to cheat, it must be shown that the actual transaction had commenced which would, if not interrupted, have ended in the crime. *Hurjee Mull v. Imam Ali Sircar*.

1 Cr. L. J. 124 :
8 C. W. N. 278.

———Ss. 465, 471 — *Evidence — Forgery—Confession — Accomplice — Corroboration in material particulars—Conviction,*

In practice, a conviction based solely on the

PENAL CODE ACT (XLV OF 1860)

confession of a co-accused, is not sustained and the testimony of an accomplice, though it may have a little higher probative value than the mere confession of a co-accused, is, in most cases, treated on the same footing for all practical purposes. Where the charge against one of the accused was that he forged a bail bond and the only evidence to support it was that the forged document contained his initials at its bottom, it cannot be said that the charge of forgery has been clearly proved against him, where the body of the forged document is entirely in the handwriting of another of the accused, it is clear evidence that he forged it. *Narayana Ayyar v. Emperor*.

15 Cr. L. J. 417 :
24 I. C. 153 : 1914 M. W. N. 363 :
A. I. R. 1914 Mad. 323.

—Ss. 465, 471—*Forged certificate—Forgery—Using false document—Application for appointment to post—False statement—Dishonesty.*

Accused applied for appointment to a post in the Land Records Department, which contained a false statement, and attached a certificate to the application which was forged : *Held*, (1) that the application was made and the forged certificate was attached to it with the object of obtaining wrongful gain ; (2) that, therefore, the accused was guilty of offences under Ss. 465 and 471, Penal Code. *Nga Ba Thein v. Emperor*. 25 Cr. L. J. 129 :
76 I. C. 225 : 3 U. B. R. 1922, 174 :
A. I. R. 1925 Rang. 9.

—Ss. 455, 471—*Fraud, necessary element—'False document,' meaning of.*

Dishonesty or fraud is a necessary ingredient in the offences punishable under Ss. 465 and 471, Penal Code. A person cannot be convicted of fabricating a 'false document' where his object is simply to clear up matters and not fraudulent and no wrongful loss or gain is caused to any person thereby. *Sudarsan Bhara v. Emperor*. 27 Cr. L. J. 1263 :
98 I. C. 111 : 8 P. L. T. 104 :
A. I. R. 1927 Pat. 87.

—Ss. 465, 471, 477-A—*Miscellaneous—Forgery—Dishonestly using forged documents—Falsification of accounts.*

For each one of the offences of forgery, using a forged document as genuine, and falsification of accounts, there must be an intention to commit fraud. Where the accused altered certain accounts for the purpose of showing the receipt of a certain amount which had been criminally misappropriated : *Held*, that the real purpose was not to defraud, but to remove evidence of crime, and that he was not guilty under Ss. 465, 471 or 477-A, Penal Code. As to whether or not there is an intent to defraud in any particular case must depend on the actual circumstances of that case. *Jyotish Chandra v. Emperor*.

10 Cr. L. J. 581 :
4 I. C. 416 : 36 Cal. 955 :
14 C. W. N. 82.

PENAL CODE ACT (XLV OF 1860)

—Ss. 465, 477-A—*Jurisdiction—False entry in Postal Registers—Proceeds of V.-P. P. remitted after three months.*

The accused, a postal clerk, received the proceeds of a V.-P. P. sale and kept it himself instead of immediately remitting it to the vendor of the article. Meanwhile, he made a false entry in the Register of V.-P. P. articles received to the effect that the parcel in question had been refused by the addressee and returned to the vendor. After keeping the money for three months and when he had been transferred to another station, he remitted the money to the person entitled. He was convicted and sentenced under S. 465, I. P. C., by a Magistrate, 1st Class : *Held*, that the facts constituted an offence under S. 477-A and not one under S. 465, Penal Code. The offence was triable only by the Court of Session and the Magistrate had no jurisdiction. *Emperor v. W. C. Das*.

11 Cr. L. J. 185 (b) :
4 I. C. 1089 :

1 U. B. R. 1907—09, Penal Code 29.

—Ss. 465, 497—*Miscellaneous.*

Per Teunon, J.—The Magistrate's order acquitting such an accused of an offence under S. 465, Penal Code, is tantamount to an order discharging the accused of the graver offence in respect of the same document punishable under S. 477, Penal Code. *Abdul Hakim Khan v. Buzruk Ali Khan*.

18 Cr. L. J. 834 :
41 I. C. 658 : 26 C. L. J. 210 :
22 C. W. N. 117 :
A. I. R. 1918 Cal. 943.

—S. 466.

See also Penal Code, 1860, Ss. 114, 381, 404.

—S. 466—*Conviction under, setting aside of—Public servant making false entry in a register—Fraud.*

Where the accused, a public servant, who had committed criminal breach of trust, made a false entry in an account book and was convicted of the offences under Ss. 409 and 466, Penal Code, and it appeared that the entry was not made with intent to defraud : *Held*, that the conviction under S. 466, Penal Code, must be set aside. *Hari Chand v. Emperor*.

1 Cr. L. J. 41 :
5 P. L. R. 15.

—S. 466—*Offence under, if committed—Forgery—Railway clerk making entry in register at instance of superior officer acting bona fide.*

Certain goods were consigned to the complainant, and on arrival of the goods at their destination, the complainant was required by the Station Master to unload the goods within a certain period. After the complainant had unloaded the goods, accused, a goods clerk, entered the time of the unloading in the register. The Station Master subsequently discovered that in unloading the goods, the complainant had blocked the line on which the wagon was standing and called upon

PENAL CODE ACT (XLV OF 1860)

the complainant to clear the line. After the line had been cleared, the Station Master directed the accused to alter the time of the unloading of the goods from that previously entered in the register to that at which the line had been cleared: *Held*, that under the circumstances, even if the Station Master's view as to the correct time when the goods had been unloaded was erroneous, the accused was not guilty of an offence under S. 406, Penal Code. *Gulab Singh v. Emperor*.

26 Cr. L. J. 1233 :
88 I. C. 849 : A. I. R. 1925 All. 751.

—Ss. 466, 468—*Separate convictions—Forgery and using as genuine a forged document, convictions for, legality of—Two offences.*

If a man commits two offences, he can be convicted of them both, more especially when they are separate transactions and the commission of one does not necessarily involve the commission of the other. There is nothing to prevent a forger from being convicted both of forgery and of using as genuine the forged document. *Gajanan Sakharan v. Emperor*.

25 Cr. L. J. 473 :
77 I. C. 825 : A. I. R. 1924 Nag. 162.

—Ss. 466 and 471—*Offences under, what constitutes—Forgery of certificate purporting to be made by a public servant and used as genuine.*

Alteration of name and age in an Educational Certificate and use thereof by the person altering to obtain an official appointment, which the officer appointing would have withheld if he had known of the alterations, constitute, in the absence of satisfactory explanation, offences under Ss. 400 and 471, Penal Code. *Nga Pye v. Emperor*.

1 Cr. L. J. 1124 :
2 L. B. R. 316.

—Ss. 466, 471—*Use of forged documents—Forgery—Use of copies.*

The use of certified copies of forged originals, by a person who knows that the originals are forged, amounts to making use of forged documents within the meaning of S. 471, Penal Code. *Girdhari Lal v. Emperor*.

26 Cr. L. J. 929 :
86 I. C. 993 : 2 O. W. N. 114 :
12 O. L. J. 194 : 29 O. C. 1 :
A. I. R. 1925 Oudh 413.

—Ss. 466, 477-A—*Conviction for forgery, legality of—Public servant unlawfully buying property—Forgery of Public record and falsification of Government record.*

Where a document which had been written long after the date it bore, appeared to have been written up merely to supply an omission in certain records but not in substitution of any differently filled in document, *held* that that was not a matter for which an indictment for forgery would lie. *Emperor v. Dayashankar Jesukham*.

1 Cr. L. J. 718.

PENAL CODE ACT (XLV OF 1860)

—S. 467.

See also (i) Cr. P. C., 1898, Ss. 35, 179, 195, 195 (1), 195 (1) (c), 195 (c), 494.

(ii) Evidence Act, 1872, S. 24.

(iii) Forgery.

(iv) Penal Code, 1860, Ss. 109, 107, 405, 467, 471.

—S. 467—*Conviction at same time under Ss. 467 and 471.*

An accused can be convicted at one and the same time of forging a document and using it as forged document under Ss. 467 and 471. *Badri Prasad v. Emperor*. 13 Cr. L. J. 861 : 17 I. C. 797 : 10 A. L. J. 473 : 35 All. 63.

—S. 467—*Conviction of—When legal.*

A charge under S. 467, Penal Code, is bad if the intention is not set out. *Haidar Ali Pradhan v. Emperor*. 14 Cr. L. J. 129 : 18 I. C. 881 : 17 C. W. N. 854.

—S. 467—*Conviction of writer, legality of—Forgery—Writer of forged receipt.*

The writer of a forged receipt cannot be convicted of an offence under S. 467 in the absence of evidence that he was present at the execution of the receipt or that he helped any person to use it. *Mazhar Ahmad v. Emperor*.

25 Cr. L. J. 1253 :
82 I. C. 261 : A. I. R. 1925 Cal. 192.

—S. 467 — *Conviction under, when justified—Intrinsic good reasons in document itself, besides expert evidence, proving document to be forged—Document scribed by accused with dishonest motive.*

Where there are intrinsic good reasons in the document itself besides the expert's evidence, which prove it conclusively to be a forged document, and where there can be no doubt that the document was scribed by the accused with a dishonest motive, he can be convicted under S. 467. *Mohd. Sadiq Ali v. Emperor*.

1936 O. W. N. 1066 :
A. I. R. 1936 Oudh 381.

—S. 467 — *Essentials of forgery—Forgery.*

In trying a charge of forgery, the Court has to judge of the intention at the time when the document was made, and it is upon that intention that the criminality of the act has to be judged. The intention in such a case must be to cause it to be believed that such document was made or signed or executed by or by the authority of a person by whom or by whose authority it was not made, signed or executed. *Martindale v. Emperor*.

26 Cr. L. J. 401 :
84 I. C. 1041 : 40 C. L. J. 256 :
29 C. W. N. 447 : 52 Cal. 347 :
A. I. R. 1925 Cal. 14.

—S. 467—*Kabuliyat—Valuable security.*

A *kabuliyat* is a valuable security within the meaning of S. 467, Penal Code, because it creates a legal right, namely the right of a tenant to hold the land, and it is also an acknowledgment by the tenant that he is

PENAL CODE ACT (XLV OF 1860)

legally bound to pay the rent and to hold the land in accordance with the conditions of the *kabuliyat*. A *kabuliyat* retains the character of a valuable security, within the meaning of S. 467 of the Penal Code, even after the expiry of the period for which it has been executed. *Ismail Panju v. Emperor*. 26 Cr. L. J. 1115 : 88 I. C. 283 : A. I. R. 1925 Nag. 337.

—S. 467—Offence under—Money order—Affixing false signature and receiving money—Sentence.

H remitted a sum of money by money order to B, in order that the money be paid to P, in liquidation of a debt due to him. When the money order arrived, P represented to the postman that A was B and induced him to accept A's signature as the signature of B, and by that action, got the money. B was not informed of what had taken place : *Held*, that P and A were guilty of an offence punishable under S. 467, Penal Code, viz., of forging a valuable security, i. e., the money order receipt. *Jogidas Babu v. Emperor*.

23 Cr. L. J. 264 :
66 I. C. 328 : 24 Bom. L. R. 99 :
A. I. R. 1922 Bom. 82.

—S. 467—Presumption as to handwriting.

When the document alleged to have been forged purports to be in the handwriting of the accused and he has not denied it to be his handwriting, but has on the other hand, stated that the handwriting and the signature on the document appear to be like his handwriting and signature, and where the handwriting expert after comparing the signature of the accused with some of his admitted signatures stated definitely that the signature is that of the accused, the Court is justified in holding that the document is in the handwriting of the accused. *Mohammad Sadiq Ali v. Emperor*. 1936 O. W. N. 1066 : A. I. R. 1936 Oudh 381.

—S. 467—Procedure.

Charge under Ss. 467, 471—Absence of sanction—Trial passing stage of recording Assessors' verdict—Illegality of trial brought to notice of Court—New inquiry under Chap. 18, Cr. P. C., should be held after getting sanction of Local Government. *Hari Charan Misra v. Emperor*. 34 Cr. L. J. 938 :

145 I. C. 368 : 14 P. L. T. 281 :
12 Pat. 353 : 6 R. P. 164 :
A. I. R. 1933 Pat. 273 (2).

—S. 467—Scope of.

S. 467 provides punishment for forgery not only of a document purporting to be a valuable security, but also of any document which purports to give authority to any person "to receive or deliver any money". *Sachchidanand Prasad v. Emperor*. 34 Cr. L. J. 892 :

144 I. C. 936 : 14 P. L. T. 580 :
6 R. P. 130 : A. I. R. 1933 Pat. 488.

—S. 467—Scope of—Signature, forgery of, as attesting witness—Valuable security, forgery of.

The signature of an attesting witness does

PENAL CODE ACT (XLV OF 1860)

not fix that witness with knowledge of the contents of the document or with any liability under its terms. Therefore, a forgery of the signature of the owner of a property as an attesting witness on an instrument granting a sub-lease of that property, purporting to be executed by the forger as the owner's lessee, does not fall under the definition of the offence under S. 467, Penal Code. *Ahmed Ali v. Emperor*. 26 Cr. L. J. 1574 : 90 I. C. 534 : 42 C. L. J. 215 : A. I. R. 1926 Cal. 224.

—S. 467—Sentence—Deliberate forgery—Sentence of five years held not severe.

A sentence of five years' rigorous imprisonment is not too severe for an offence of deliberate forgery of a Will. *Mohammad Sadiq Ali v. Emperor*. 1936 O. W. N. 1066 : A. I. R. 1936 Oudh 381.

—S. 467—Sentence—Sentence of fine alone, if according to law—Attestors to forged valuable security, if can plead that they signed it believing in representation of others.

S. 467, Penal Code, requires that some imprisonment should be awarded if a person is convicted under that section. The sentence of fine alone is, therefore, not in accordance with law. There is no estoppel which bars an accused person in any case from pleading that he had no dishonest or criminal intention. Attestors to a forged valuable security can plead that they signed it believing in the representation of others, and consequently had no criminal intention. In other words, there is nothing to prevent the attestors from pleading that they were foolish and not criminal in what they did. *In re : Chinna Vira Reddy*. 41 Cr. L. J. 11 :

184 I. C. 460 : 1939 M. W. N. 514 :
12 R. M. 453 : A. I. R. 1939 Mad. 730.

—S. 467—Single charge, if sufficient.

Forging of withdrawal application from Savings Bank—Forgery on two dates of two applications—Single charge is not sufficient. *Sachchidanand Prasad v. Emperor*.

34 Cr. L. J. 892 :
144 I. C. 936 : 14 P. L. T. 580 :
6 R. P. 130 : A. I. R. 1933 Pat. 488.

—Ss. 467, 109—Expert evidence—Accused not executing document but instrumental in its execution—Offence.

The comparison of thumb impressions has become an exact science and great weight can be attached to the evidence of an expert on this subject. *Dilead v. Emperor*.

30 Cr. L. J. 52 :
113 I. C. 68 : I. R. 1929 Lah. 131 :
A. I. R. 1929 Lah. 210.

—Ss. 467, 471—Abetment and using forged document, distinction between—Charge of abetting forgery—Conviction for using forged document—Legality.

An offence of abetment of forgery is quite distinct from one of using a forged document. In a trial on a charge of abetment of forgery, an accused cannot be convicted

PENAL CODE ACT (XLV OF 1860)

for an offence of using a forged document.
Harun Rashid v. Emperor.

27 Cr. L. J. 606 :
94 I. C. 270 : 30 C. W. N. 432 :
53 Cal. 466 : A. I. R. 1926 Cal. 581.

— — — — Ss. 467, 471—*Conviction for forgery—Misappropriation—False receipt.*

Where a Bench Clerk to a Magistrate misappropriates a sum of money paid in as fine and makes a false receipt showing the deposit of the amount in the Treasury, he can be convicted of the offence of forgery in addition to that of criminal breach of trust, as the false receipt is made for the purpose of enabling him to misappropriate the money and not for the purpose of concealing a misappropriation already effected. *Nga Ba Sein v. Emperor.*

25 Cr. L. J. 1378 :
83 I. C. 338 : 3 Bur. L. J. 113 :
A. I. R. 1924 Rang. 331.

— — — — Ss. 467, 471—*Conviction of forger for use of document, legality of—Forgery—Use of forged document as genuine.*

A person, who, being the forger of a document, has used it as genuine, cannot be punished under S. 471, Penal Code, for the use of the forged document as well as for the forgery. *Digambar v. Emperor.*

26 Cr. L. J. 1275 :
88 I. C. 1051 : A. I. R. 1925 Nag. 440.

— — — — Ss. 467, 471—*Conviction under S. 471, legality of—Charge under S. 467.*

Where an accused person was charged under S. 467, Penal Code, but it appeared in evidence that he had committed an offence under S. 471, Penal Code, for which he might have been charged under S. 236, Cr. P. C.: *Held*, that although the accused was not charged with it, he could be convicted of an offence under S. 471, Penal Code. *Jagdeo Prasad v. Emperor.*

21 Cr. L. J. 410 :
56 I. C. 58 : 18 A. L. J. 442 :
A. I. R. 1920 All. 72.

— — — — Ss. 467, 471—*Duty of prosecution—Forgery—Prosecution must prove forgery and intention of accused to use documents knowing it to be forged.*

It is not sufficient for the prosecution to establish that the document is not a genuine document for the purpose of obtaining a conviction under Ss. 467, 471, Penal Code; it must be shown affirmatively that the accused either knew or had reason to believe that the document was forged. This matter of knowledge is one which may, in certain cases, follow necessarily as an inference from a finding of fact. *Radhika Prasad Singh Deo v. Emperor.*

38 Cr. L. J. 235 :
166 I. C. 531 : 3 B. R. 177 : 9 R. P. 309.

— — — — Ss. 467, 471—*Forgery, what amounts to—Dishonest intention, necessity of.*

Antedating of a document, where there is no evidence to show that the act was done with the intention of causing wrongful

PENAL CODE ACT (XLV OF 1860)

gain or loss to any one does not amount to forgery. *Emperor v. Gobind Singh.*

27 Cr. L. J. 1308 :
98 I. C. 252 : 5 Pat. 573 :
8 P. L. T. 133 : A. I. R. 1926 Pat. 535.

— — — — Ss. 467, 471—*Miscellaneous—Forgery—Using forged document as genuine—Conviction for separate offences, legality of.*

The reason for the presence of S. 471, Penal Code, on the Statute Book in the somewhat unusual language which is employed therein, is in order to provide a useful alternative charge in cases where there is uncertainty as to whether the person on trial is himself the forger of the document, or has merely used it as genuine, knowing it to be nothing of the sort. The section is directed against person other than the forger himself. A person who has been convicted under S. 467, Penal Code, of forgery of a document, cannot also be convicted under S. 471 of using it as genuine. *Ismail Panju v. Emperor.*

26 Cr. L. J. 1387 :
89 I. C. 523 : 21 N. L. R. 152 :
A. I. R. 1926 Nag. 137.

— — — — Ss. 467, 471—*Offence under S. 471—Evidence to prove charge of forgery insufficient—Knowledge that document is forged, whether sufficient to sustain conviction.*

Where a part of a document was altered and made with the intention of causing it to be believed that it was made at a time at which it was not really made, and the accused used it knowing it to be forged: *Held*, that an offence under S. 471, Penal Code was committed, although there was not sufficient evidence to prove a charge of forgery. *Public Prosecutor v. Ramarazu Venkatappayya.*

16 Cr. L. J. 701 :
30 I. C. 749 : A. I. R. 1916 Mad. 696.

— — — — Ss. 467, 471—*Power of Court—Forged document, used as genuine—Proof—Handwriting, proof of—Comparison by Judge—Expert evidence, value of.*

A Court is competent to use its own eyes for the purpose of deciding whether certain handwritings placed before it are similar or not, and the opinion of expert is only a piece of evidence, whereas the opinion of the Judge is the decision in the case. It is unsafe to base the conviction of an accused entirely upon a comparison of handwritings. *Udhab Santara v. Emperor.*

23 Cr. L. J. 74 :
65 I. C. 426.

— — — — Ss. 467, 471—*Proof of forgery—Forgery of document—Forger of document charged under S. 467, whether can be charged under S. 471.*

The fact that a person charged with an offence under S. 471, Penal Code, is himself the forger of the document is no reason why he should not be charged under S. 471, Penal Code, especially when he cannot be charged under S. 467, Penal Code, owing to the latter offence having been committed beyond the jurisdiction of the Court. The forgery must be proved in order to

PENAL CODE ACT (XLV OF 1860)

establish offence under S. 461, Penal Code, though the act itself is the subject of a charge. *In re : Bhagovatey Perumal Pillay*.

13 Cr. L. J. 862 :
17 I. C. 788.

———Ss. 467, 471—Sanction to prosecute, necessity of.

The accused presented before the Registrar a certain document for registration, the execution of which was denied by the complainant, but the Registrar directed it to be registered. Thereafter, as the result of a civil suit instituted by the complainant, the document was found by the Court to be a forged one. A complaint was then presented before the Sub-Divisional Officer under Ss. 467, 471, Penal Code, and process was issued under S. 467, Penal Code: *Held*, that the Magistrate could proceed under S. 471, Penal Code, without obtaining the sanction of the Civil Court, but that so far as the proceedings founded on the offence under S. 467, Penal Code were concerned, he could not proceed without the previous sanction of the Civil Court. *Abdul Gani v. Emperor*.

16 Cr. L. J. 617 :
30 I. C. 411 : A. I. R. 1916 Cal. 711.

———Ss. 467, 471—Separate sentences—Conviction of same person for forgery and using forged document as genuine, legality of.

Of two persons who were jointly tried, one was convicted of forgery under S. 467, Penal Code, and the other of abetment of forgery and of having used the forged document as genuine. The 1st accused assisted the 2nd accused at both stages: *Held*, (1) that their joint trial was not illegal; (2) that the offence of using a document as genuine and the offence of forgery, were separate offences, and under S. 35, Cr. P. C., separate sentences could be passed on an accused person who had been convicted at the same trial of both. *In re : T. R. Sriramalu Naidu*.

30 Cr. L. J. 983 :
119 I. C. 763 : 1929 M. W. N. 279 :
29 L. W. 559 : 52 Mad. 532 :
56 M. L. J. 554 : I. R. 1929 Mad. 895 :
A. I. R. 1929 Mad. 450.

———Ss. 467, 471—Subsequent conviction under S. 471, legality of—Conviction both for forging document and for using it as genuine, whether illegal—Entries in account books proved to be in handwriting of deceased person—Books not proved to be kept in regular course of business—Objection as to admissibility, when to be taken.

When a person is convicted under S. 467, Penal Code, for having forged a promissory note, a further conviction and sentence under S. 471, for using that note as genuine is not illegal in the course of the same trial. Where entries in certain books of account are proved to be in the handwriting of a person since deceased, any objection to their admissibility on the ground that they were not proved to have been kept in the regular course of business,

PENAL CODE ACT (XLV OF 1860)

ought to be taken at the time of the trial. *In re : Madu Chinnagi Reddi*.

17 Cr. L. J. 73 :
32 I. C. 665 : A. I. R. 1917 Mad. 147.

———Ss. 467, 471—'User', what amounts to.—Production of title-deed in answer to summons, whether amounts to "user".

A person who is cited by the plaintiff to depose as a witness and to produce his title-deed and who produces the title-deed and gives evidence with regard to it, can be prosecuted on a charge under S. 471, read with S. 467, Penal Code, on the ground that the title-deed is a forged document. The production of a forged title-deed in answer to a citation in which no particular deed is specified and giving evidence in regard to it, amounts to user within the meaning of S. 473, Penal Code. *Digambar Chakravarti v. Ram Taran Mitter*.

18 Cr. L. J. 839 :
41 I. C. 663 : A. I. R. 1917 Cal. 35.

———Ss. 467, 471, 477—Separate sentences, legality of—Forgery—Using forged document.

A person who is convicted of having forged a document should not be punished both under S. 467 and under S. 471, Penal Code, even though he made use of the document. Where the act of the accused which constitutes forgery is the same as the act which amounts to fraudulent destruction or defacement or cancellation of the document, he cannot be convicted of separate offences under Ss. 467, 471 and 477, Penal Code. *Pirbhu Dial v. Emperor*.

14 Cr. L. J. 183 :
19 I. C. 183 : 52 P. L. R. 1913 :
4 P. R. 1913 Cr.

———Ss. 467, 472—Scope of—Taking impression of old seal, whether offence—Intention—Forging document for another.

The words of S. 472, Penal Code, cover only the case of a counterfeit of an existing thing. To take the impression of an old seal on a piece of paper is not an offence unless it is proved that there was an intent to use the impression in a dishonest manner. The forgery of documents even if the person for whom they are forged, has no intention of using them, is an offence under S. 467, Penal Code. *Surat Bahadur v. Emperor*.

25 Cr. L. J. 1162 :
81 I. C. 986 : 11 O. L. J. 640 :
1 O. W. N. 362 : A. I. R. 1925 Oudh 158.

———S. 468.

See also (i) Cr. P. C., 1898, Ss. 177, 195, 195 (1) (c).

(ii) Penal Code, 1860, Ss. 415, 416, 465.

———S. 468—Offence under.

A person is guilty of forgery, under S. 468, I. P. C., if he forges a document in the name of the firm of which he is a partner, because the fraud is not against himself but against the other partners affected by the forgery. *Emperor v. Lalloo Ghella*.

1 Cr. L. J. 757 :
6 Bom. L. R. 553.

PENAL CODE ACT (XLV OF 1860)

———S. 468 — Prosecution under, if can continue—Complaint under—Search—Document found exhibited in criminal case—Document called in evidence by Civil Court in suit by accused against complainant.

On a complaint against the accused under S. 468, Penal Code, a search warrant was issued and a document was discovered in accused's house. This was made an exhibit in the criminal case. In a civil suit filed by the accused against the complainant, the Civil Court requested the Criminal Court to send the document in question, and the document was also tendered in evidence in the civil case. The contention on behalf of the accused was that as the document in question was tendered in evidence in the civil case, the accused's prosecution under S. 468, Penal Code, could not continue as the Civil Court had not filed a complaint in writing against the accused: *Held*, that the Criminal Court had taken cognizance of an offence under S. 468, Penal Code, long before the document in dispute was called for by the Civil Court. In fact, the document in question had become an exhibit in the criminal case before it was sent to the Civil Court. In these circumstances, it could not be held that the case, under S. 468, against the petitioner, could not continue, as the Civil Court which had called for the document in question had not presented a complaint in writing against the accused. *Nanak Chand v. Khwaja Mahmud*.

38 Cr. L. J. 581 (b) :

168 I. C. 740 : 38 P. L. R. 1120 :

9 R. L. 672 : A. I. R. 1937 Lah. 238.

———Ss. 468, 471—Intention to defraud—Forgery—Presumption.

A forged at the instance of B and delivered to B a letter purporting to be signed by the Governor of the Punjab to the officer in the North Western Railway recommending that B may be given certain contracts, B delivered the letter to the officer with his application for getting the contracts: *Held*, that it might be presumed under the circumstances that A wrote the letter knowing that it will be used to defraud the officer and that A was guilty of forgery under S. 468, Penal Code. *Jagan Nath v. Emperor*.

28 Cr. L. J. 461 :

101 I. C. 493 : 9 L. L. J. 103.

———Ss. 468, 471—Offences under — Forged attakshi, preparation of, by process-server to screen delay in return of process.

Where a process-server filed in Court a forged attakshi to explain the delay in returning a process: *Held*, that he was guilty of offences under Ss. 468 and 471, Penal Code. *In re : Kamatchinatha Pillai*.

20 Cr. L. J. 287 :

50 I. C. 175 : 36 M. L. J. 201 :

25 M. L. T. 345 : 42 Mad. 558 :

1919 M. W. N. 433 :

A. I. R. 1919 Mad. 654.

———S. 470—Forgery, what constitutes.

The accused, who was in financial difficulties and whose properties were sold and

PENAL CODE ACT (XLV OF 1860)

purchased in auction by his father-in-law V, entered into an agreement with the latter, whereby, on payment of a certain amount within a certain time, V was to re-convey them to the accused. It was arranged that the document was to be signed by V, the accused and the accused's father and two brothers. After V and accused had affixed their signatures and before the others had signed, accused made, among others, two alterations in the document without V's consent: (1) that accused would give up possession of the lands which were in his possession if he did not pay the amount, and (2) that V should return certain jewels and vessels belonging to the accused: *Held*, that the alterations being untrue, in fact, and liable to be used by the accused in future legal proceedings, were made fraudulently and constituted the offence of forgery: (2) that the document, as altered, was a valuable security. *Ramasami Iyer v. Emperor*.

19 Cr. L. J. 177 :

43 I. C. 593 : 41 Mad. 589 :

A. I. R. 1918 Mad. 150.

———S. 471.

See also (i) Cr. P. C., 1898, Ss. 35, 195, 195 (c), 423, 476.

(ii) Penal Code, 1860, Ss. 109, 163, 167, 182, 193, 463, 466, 467, 471.

(iii) Registration Act, 1908, S. 73.

———S. 471—Abetment of forgery.

Using as genuine forged documents—Both offences are different—Man innocent of one can be guilty of other. *Ali Ahmad v. Emperor*.

34 Cr. L. J. 39 (2) :

140 I. C. 544 : 55 C. L. J. 336 :

I. R. 1933 Cal. 11 :

A. I. R. 1932 Cal. 545.

———S. 471 — Charge under, if established.

An accused had filed a civil suit in which he was required under the provisions of O. XI, Rr. 12 and 13, C. P. C., to file an affidavit of documents which were or had been in his possession relating to some matter in question in the suit, and in the affidavit, mention was made about a certain delivery order. Nevertheless the accused did not produce it in Court, nor make any use of it. It was the defendants who, in cross-examining the accused required the production of the delivery order; and it was at their instance that it was produced. The document was alleged to be forged and the accused was charged under S. 471, Penal Code. There was no evidence that the accused used the delivery order for the purpose of cheating, and no evidence that he used the delivery order as genuine, and no evidence that he forged it: *Held*, that under the circumstances no charge under S. 471, Penal Code, could be established as the accused was forced by the defendants to refer to this document in his evidence. But for the defendants, it

PENAL CODE ACT (XLV OF 1860)

would not have been produced in Court.
Abdul Sattar Abdul Aziz v. The King.

39 Cr. L. J. 592 :
175 I. C. 488 : 10 R. Rang. 497 :
A. I. R. 1938 Rang. 194.

—S. 471—Completion of offence—
Using forged document—Offence, when complete.

The offence of using as genuine a forged document is complete once the document is produced or given in evidence. *Fazal Ilahi v. Mohan Lal.*

24 Cr. L. J. 383 :
72 I. C. 383 : 10 P. W. R. 1923 Cr. :
A. I. R. 1922 Lah. 346.

—S. 471—Conviction at same time under
Ss. 471 and 467.

An accused can be convicted at one and the same time of forging a document and using that document as forged under Ss. 471 and 467. *Badri Prasad v. Emperor.*

13 Cr. L. J. 861 :
17 I. C. 797 : 10 A. L. J. 473 :
35 All. 63.

—S. 471—Conviction under—Main-
tainability of—Using false document—Alter-
ation of date—Dishonesty or fraud, absence of,
effect of.

The accused altered the date of a document for the purpose of having the document received in evidence, but the alteration did not, in any way, help him as by altering the date he ruined his case. He was, nevertheless, convicted of an offence under S. 471, Penal Code. In appeal to the High Court: *Held*, that inasmuch as the element of "dishonesty" or "fraud" required under S. 464, Penal Code, was wanting, the conviction under S. 471 could not be maintained. *Kali Din v. Emperor.*

20 Cr. L. J. 573 :
52 I. C. 61 : 17 A. L. J. 872 :
A. I. R. 1919 All. 387.

—S. 471—Conviction under.

Where evidence is sufficient to prove that all the accused or any of them actually committed the offence of forgery, their conviction under S. 465, is had and they may be convicted under S. 471. *Chinku v. Emperor.*

32 Cr. L. J. 559 :
130 I. C. 492 : 1930 A. L. J. 1451 :
I. R. 1931 All. 284 :
A. I. R. 1931 All. 258.

—S. 471—Duty of prosecution.

It is necessary for the prosecution, when the charge is under S. 471, I. P. C., to show that the accused knew or had reason to believe the document to be forged and used it fraudulently or dishonestly. *Baij Nath Bhagat v. Emperor.*

41 Cr. L. J. 427 :
187 I. C. 256 : 21 P. L. T. 206 :
6 B. R. 440 : 12 R. P. 590 :
A. I. R. 1940 Pat. 486.

—S. 471—Expert evidence—Admissibility.

To make the evidence of a handwriting expert admissible, it is not necessary that the handwriting should be actually compared in Court but it is enough if the documents,

PENAL CODE ACT (XLV OF 1860)

admittedly in accused's handwriting, are shown to him in open Court and he expresses his opinion thereon. *In re : Sithava Naik.*

16 Cr. L. J. 703 :
30 I. C. 751 : A. I. R. 1916 Mad. 1049.

—S. 471—Evidence—Forgery—Similar
transactions of forgeries, relevancy of, in a charge
of forgery.

A series of similar transactions in which forgeries were committed, can only be used as evidence of the intention of the person accused of having forged a document, and not as evidence of the forgery. *Krishna Govinda Pal v. Emperor.*

17 Cr. L. J. 130 :
33 I. C. 306 : 20 C. W. N. 262 : 43 Cal. 783 :
A. I. R. 1917 Cal. 676.

—S. 471—False document—What is.

The copy of a document alleged to be false, does not come within the definition of a false document, and a conviction based on such copy, is bad. *In re : Gopalakrishna Heggade.*

11 Cr. L. J. 401 :
6 I. C. 776 : 7 M. L. T. 428.

—S. 471—Fraud, proof of—Forged
public records—Certified copy, use of, whether
use of forged document—Offence, essentials of.

Where public records are tampered with and a person uses certified copies of such forged records, the use of the copies is a use of the forged documents. The mere fact that a person has used a forged document, would not be sufficient to justify his conviction under S. 471, Penal Code. It is necessary also to prove that the use was fraudulent or dishonest and the person knew that the document was forged. *Mathura Prasad v. Emperor.*

27 Cr. L. J. 402 :
93 I. C. 66 : 3 O. W. N. 171 :
13 O. L. J. 391 : A. I. R. 1926 Oudh 255.

—S. 471—Fraudulent use of document,
what is.

The production of a receipt alleged to be forged after the end of the case and at the insistence of the Court cannot possibly be either a voluntary or a fraudulent or dishonest use of the document within the meaning of S. 471, Penal Code. *Kedar Nath v. Emperor.*

37 Cr. L. J. 46 :
159 I. C. 287 : 1935 A. W. N. 1453 :
8 R. A. 415 : A. I. R. 1935 All. 940.

—S. 471—Fraudulent user—Dishonestly
or fraudulently using genuine a forged document
—Dishonest or fraudulent intention—Receipt for
documents actually found.

Accused was charged with having fraudulently or dishonestly used a document which purported to be a receipt granted to him by the manager of a Ward's Estate for certain papers, and which receipt was alleged to be false. Subsequently, some of the papers mentioned in the receipt were on search found in the Estate Office, while the other papers had not been searched for: *Held*, that these facts were not sufficient to show that user of the document was fraudulent or dishonest or that the accused had committed any offence: *Held*, further, if the papers had actually been

PENAL CODE ACT (XLV OF 1860)

deposited in the office and the accused had subsequently prepared a false receipt for them, it would not be forgery. *Ram Prosad Maity v. Emperor*. 8 Cr. L. J. 418 :

8 C. L. J. 317 : 12 C. W. N. 1113.

———S. 471—Intent to defraud.

Where the execution is sought on the basis of a copy of the decree in which the dates were altered under the impression that the decree was time-barred, a sufficient intent to defraud is involved in the advantage directly aimed at by the petitioner on the basis of the altered dates, and it is immaterial that the alterations were brought about under an erroneous impression that the decree was time-barred. A fraud, it is clear, is attempted upon the Court, and in such a case, it is not necessary for the prosecution to go further and establish an intent to cause loss or risk of loss. But even if the contrary were to be held, the definition of injury in S. 44 of I. P. C., is very wide, and the threat of a decree that could not be executed by any competent authority is a threat of harm or injury within the meaning of the Code. *Baij Nath Bhagat v. Emperor*.

41 Cr. L. J. 427 :

187 I. C. 256 : 21 P. L. T. 206 :

6 B. R. 440 : 12 R. P. 590 :

A. I. R. 1940 Pat. 486.

———S. 471—Intention to defraud, *absence of, effect of* — *Forgery* — *Forging signature of plaintiff in plaint to prevent suit from becoming barred by limitation, whether forgery*.

Where the husband of a woman who had given him general permission to file papers in Court on her behalf, forged her signature in a plaint to save the suit from becoming barred by limitation, and filed it in Court on the last day of limitation : *Held*, that the husband was not guilty of forgery as there was no intention to defraud anybody, though his act was an improper one. In order to constitute in point of law, an intent to defraud, there must be a possibility of some person being defrauded by the forgery, or there must be a possibility of some person being not only deceived but injured by the forgery. *Aparti Charan Ray v. Emperor*.

31 Cr. L. J. 1126 :

126 I. C. 862 : A. I. R. 1930 Cal. 271.

———S. 471—Mitigation of punishment.

The facts that the document was produced in the course of a criminal trial in which the present accused was one of the accused, and the primary intention which he had was to get out of the difficulty which he had got into, and the circumstance that the document was not supported by perjury, may be taken into account in mitigation of punishment. *Rathi Jha v. Emperor*.

13 Cr. L. J. 201 :

14 I. C. 201 : 15 C. L. J. 509 :

16 C. W. N. 623 : 39 Cal. 463.

———S. 471—Offence under.

Application and presentation to Registrar for registration of forged document—On Registrar's impounding it, applicant causing it to be produced before Court in suit for com-

PENAL CODE ACT (XLV OF 1860)

elling registration, amounts to offence under S. 471. *Tulsi Ammal v. Danalahshmi Ammal*.

35 Cr. L. J. 780 :

148 I. C. 851 (2) : 66 M. L. J. 471 :

39 L. W. 693 : 57 Mad. 682 :

1934 M. W. N. 609 : 6 R. M. 550 :

A. I. R. 1934 Mad. 316.

———S. 471—Offence under — *Fraudulently using forged document as genuine* — *Morphia obtained under forged prescription—Offence*.

Accused obtained a prescription from a medical man for one tube of morphia and altering the words "one tube" to "four tubes" presented the prescription to a chemist and obtained four tubes of morphia from him : *Held*, that the accused was guilty of an offence under S. 471, Penal Code. *Robinson v. Emperor*.

22 Cr. L. J. 681 :

63 I. C. 617.

———S. 471—Offence under.

If a party to a suit sets up two different titles and supports one of them with a false document, he commits an offence under S. 471, Penal Code, even if it be found that the other title is good. *In re : Sivanandu Mudali*.

27 Cr. L. J. 994 :

96 I. C. 850 : A. I. R. 1926 Mad. 1072.

———S. 471—Offence under — *Producing forged copies of entries in Revenue Records in support of complaint in pursuance of order of Court*.

Accused filed a complaint of trespass and was told to produce copies of the Revenue Records in support of his claim, and knowingly he produced forged copies as genuine : *Held*, that the accused had not been forced to produce the copies, and that he was guilty of an offence under S. 471 of the Penal Code. *Ishar Das v. Emperor*.

26 Cr. L. J. 1171 :

88 I. C. 595 : 6 Lah. 50 :

A. I. R. 1925 Lah. 333.

———S. 471—Prosecution under, *legality of*.

A person cannot be prosecuted under S. 471 where the facts alleged constitute an offence under S. 193, for which a complaint by the Court is necessary. *K. S. Subramania Ayyar v. Swamikannu Chetty*.

34 Cr. L. J. 800 :

144 I. C. 519 : 37 L. W. 547 :

1933 M. W. N. 217 : 1 R. 1933 Mad. 424 :

A. I. R. 1933 Mad. 413.

———S. 471—Scope—*Essence of offence—Guilty knowledge, necessity of*.

In the absence of proof that the accused knew that the document produced by him was forged or of such circumstances that it can be presumed that he had the necessary knowledge of its being forged, he cannot be convicted under S. 471, Penal Code. *Akbar Hussain v. Emperor*.

26 Cr. L. J. 1358 :

89 I. C. 398 : 8 N. L. J. 87 :

A. I. R. 1925 Nag. 294.

———S. 471—Scope of.

In previous trial accused referring to document which was filed and *istafanama* which was not filed—Prosecution producing it and

PENAL CODE ACT (XLV OF 1860)

defence Counsel referring to it in cross-examination: *Held*, no user within S. 471. *Emperor v. Tarak Nath Baidya*.

37 Cr. L. J. 30 :
159 I. C. 149 : 39 C. W. N. 1309 :
63 Cal. 481 : 8 R. C. 281 :
A. I. R. 1935 Cal. 687.

———S. 471—*Scope of*.

Where a document is produced and put in evidence by the prosecution and the Pleader of the accused cross-examines the witness upon this evidence, the cross-examination cannot be held to be user within the meaning of S. 471. *Emperor v. Tarak Nath Baidya*.

37 Cr. L. J. 30 :
159 I. C. 149 : 39 C. W. N. 1309 :
63 Cal. 481 : 8 R. C. 281 :
A. I. R. 1935 Cal. 687.

———S. 471—Use of forged documents—*Copy of forged document*.

Where a person took copies of forged documents and put these copies forward as evidence in support of his title: *Held*, that this was a use by him of forged documents. *Mulai Singh v. Emperor*.

3 Cr. L. J. 255 :
3 A. L. J. 190 : 26 A. W. N. 71.

———S. 471—*Use of forged document, what amounts to—Filing document—Cross-examining witness upon document—Sanction, if may be given to one not party in proceeding—Sanction, if may be given by successor of Magistrate before whom offence was committed—Primary intention of using forged document—Not supporting document by perjury*.

During the examination of a witness for the prosecution in a case of rioting, the accused handed to his *Mukhtear* a document which the *Mukhtear* tendered to the witness who said it was not genuine. The document, a rent receipt, was, however, initialled by the Magistrate and filed as a document produced on behalf of the accused: *Held*, that this was sufficient user to support a conviction of the accused under S. 471, Penal Code: *Held*, also, that sanction granted in this case to the agent of the landlord, whose seal was alleged to have been counterfeited on the receipt, was not improper. A sanction is valid if granted by the successor-in-office of the Magistrate before whom the offence was committed. *Rathi Jha v. Emperor*.

13 Cr. L. J. 201 :
14 I. C. 201 : 15 C. L. J. 509 :
16 C. W. N. 623 : 39 Cal. 463.

———S. 471—‘Use’, what amounts to—‘Dishonestly,’ ‘fraudulently’—*Alleged caeculant denying registration, accused called upon in a judicial enquiry to say whether it was genuine or forged—Accused appearing and asserting its genuineness, not dishonest or fraudulent user within the terms of S. 471, I. P. C.*

A presented a document for registration before a Sub-Registrar alleging that S had executed it. S having denied execution, the Sub-Registrar reported the matter to the District Magistrate. The District Magis-

PENAL CODE ACT (XLV OF 1860)

trate ordered a judicial enquiry, and the Deputy Magistrate who was conducting the same, called upon A to state whether the document was genuine or forged. A appeared and stated that the document was genuine, but the Deputy Magistrate held otherwise. A was, therefore, tried and convicted under S. 471, I. P. C.: *Held*, that it was impossible to say that A ‘used’ the document. The use of a forged document which is contemplated by S. 471, Penal Code, is such use as causes wrongful gain or wrongful loss, that is to say, that section applies to the case of a person who appears before some other person or before a Court with a document and endeavours to induce that person or Court to do some act which he or it would not do if it was known to be a forgery. *Asimuddi v. Emperor*.

5 Cr. L. J. 351 :
5 C. L. J. 454 : 11 C. W. N. 838.

———S. 471—‘Use,’ what amounts to—*Forged document tendered to Police during investigation, whether amounts to “use” of forged document*.

Where a person during the course of a Police investigation tenders a forged document to the Investigating Officer, and thereby causes that officer to do something which he would otherwise not have done, he is guilty of having used a forged document within the meaning of S. 471, Penal Code. *Sajan Lall v. Emperor*.

22 Cr. L. J. 274 :
60 I. C. 674 : 3 U. P. L. R. Pat. 42.

———S. 471—‘User’ of document, what is.

Producing a document in Court with the intention of obtaining an acquittal, amounts to producing it ‘dishonestly’ within the meaning of S. 471, Penal Code. Neither the acquisition nor the deprivation of property is essential ingredient of the intent in an offence under S. 471, Penal Code. Where two persons were jointly tried in a case and the Pleader of the first accused filed a forged document in the case under the instructions of the second accused for the common benefit of both, and both of them took advantage of the document: *Held*, that there was a ‘user’ of the document by the second accused also within the meaning of S. 471, Penal Code. *Baju Jha v. Emperor*.

30 Cr. L. J. 236 :
113 I. C. 712 : 9 P. L. T. 800 :
I. R. 1929 Pat. 104 :
A. I. R. 1929 Pat. 60.

———S. 471—‘User’—*Presentation of forged document for registration*.

The presentation of a forged document before a Sub-Registrar for registration is sufficient evidence of its user as a genuine document for the purposes of S. 471, I. P. C. *Cheta Mahto v. Emperor*.

26 Cr. L. J. 1482 (b) :
89 I. C. 1050.

PENAL CODE ACT (XLV OF 1860)

—S. 471—'User,' what amount to—*Filing false document in Court—Plaint returned—Document not used in evidence—Offence—Punishment.*

If a person puts forward a document as supporting a claim in any matter, whether document is acted upon by the Court or used in evidence, is immaterial for the purpose of constituting use of the document by the party within the meaning of S. 471, Penal Code. The offence of producing forged documents in Courts for being used as evidence should be severley dealt with. Where a witness produced a forged document in a Court for the purposes of a trial in advance of the trial, and the Court before which the suit was filed, returned the suit to another Court and the document was not used in the trial at all: *Held*, that there was a sufficient 'use' of the document in a judicial proceeding and the witness was guilty of an offence under S. 471, Penal Code. *Jabbar Ali v. Emperor.*

30 Cr. L. J. 656 :
116 I. C. 632 : 49 C. L. J. 193 :
I. R. 1929 Cal. 488 :
A. I. R. 1929 Cal. 203.

—S. 471—'User', what amounts to—*Forged document—Filing document with plaint, whether amounts to user.*

Where a document is filed with the plaint in a suit but is not used in the course of the case, there is 'user' of the document within the meaning of S. 471, Penal Code. *Idu Jolaha v. Emperor.*

19 Cr. L. J. 709 :
46 I. C. 293 : 2 P. L. J. 386 :
A. I. R. 1918 Pat. 274.

—S. 471—'User', what amounts to—*Forged document mentioned in another document.*

Where in order to support a false claim, a forged document is so mentioned in another document that it can be easily identified, it constitutes the offence of "using a forged document within the meaning of S. 471, I. P. C." *In re : Sithava Naik.*

16 Cr. L. J. 703 :
30 I. C. 751 : A. I. R. 1916 Mad. 1049.

—S. 471—User, what amounts to—*Fraudulently using forged document as genuine—Document produced in compliance with order of Court, effect of.*

Whenever a person fraudulently or dishonestly presents a document to another person as being what it purports to be, or causes the same to be so presented, knowing or having reason to believe that the document is a forged document, the document is "used as genuine" within the meaning of S. 471, Penal Code. Whether there has been a user or not, must depend upon the circumstances of each case. If all that the accused has done is to swear that a forged document is a genuine document, he has not "used" the document within the meaning of S. 471, but if the evidence discloses that the accused when called upon to produce a document which he knew or had reason to believe was a

PENAL CODE ACT (XLV OF 1860)

forged document, fraudulently or dishonestly presented that document as being a genuine document, he cannot claim absolution for the fraudulent or dishonest use which he has made of the document merely because he has been served with summons to produce the document. *Emperor v. Mohit Kumar Mukerjee.*

27 Cr. L. J. 177 :
91 I. C. 993 : 52 Cal. 881 :
A. I. R. 1926 Cal. 89.

—S. 471—'User', what constitutes—*Fraudulently using forged document—Document used in support of good title, whether used fraudulently.*

To constitute "use" of a document within the meaning of S. 471, Penal Code, it is not necessary that the Court should accept the document produced before it or filed in Court. If a person puts forward a document as supporting his claim in any matter, whether that document is acted upon by the Court or used in evidence, is immaterial for the purpose of constituting use of the document by the party, within the meaning of S. 471 of the Code. A man may be said to use a document fraudulently even if it is used for the purpose of supporting a good title. *Emperor v. Bansi Sheik.*

26 Cr. L. J. 24 :
83 I. C. 504 : 51 Cal. 469 :
A. I. R. 1924 Cal. 718.

—S. 471—'User,' what constitutes—*Using as genuine a forged document—Document entered in list and filed, but not tendered in evidence.*

In proceedings under S. 145, Cr. P. C., the accused produced two rent receipts which were entered in a list and filed with the statement on behalf of a third party. They were at once denounced as forgeries, and were never tendered in evidence: *Held*, that the mere filing of receipts without any attempt to use them as evidence does not constitute any user, or a fraudulent or dishonest user within the meaning of S. 471, I. P. C. *Ambika Prasad Singh v. Emperor.*

8 Cr. L. J. 398 :
35 Cal. 820.

—S. 471—'Using a document', meaning of—*Using a document as genuine—Compulsory production in Court.*

The production of a document which a person is summoned by a Court to produce, does not amount to using the document as genuine. The expression 'using a document' is apparently used in the sense of its being put forward in some way for one of the purposes mentioned in S. 468, Penal Code. *Assistant Sessions Judge of North Arcot v. Ramammal.*

13 Cr. L. J. 35 :
13 I. C. 275 : 10 M. L. T. 563 :
1912 M. W. N. 3 : 22 M. L. J. 141.

—S. 471—Using forged document, what amounts to.

The accused produced before a *Patwari* a sale-deed asking him to enter up mutation according to the deed with a view to its final attestation by the *Tahsildar*. It was proved that in the deed the share of

PENAL CODE ACT (XLV OF 1860)

the land sold had been altered, but the area had in no way been tampered with. The *Patwari* of his own motion entered the area in his register according to the altered share. When the *Patwari* put up the mutation papers before the *Tahsildar*, the accused was present, and he simply asked the *Tahsildar* to attest his mutation. On the vendor telling the *Tahsildar* that he had sold less than what was shown in the mutation paper, the accused was asked to produce the registered deed, and it was then that it was discovered that the share had been altered. The accused said no more to the *Tahsildar* than this:—“What was entered in the deed should be entered in the mutation sheet: *Held*, (1) that the offence under S. 471, Penal Code, had not been committed: (2) that the accused did use as genuine the sale-deed in question before the *Patwari*. *Karimdad v. Emperor*.

14 Cr. L. J. 667 :

21 I. C. 907 : 25 P. R. 1913 Cr.

—S. 471—What constitutes offence—‘User,’ meaning of.

Accused produced a document before a *Munsif* in obedience to a Court summons, and when examined as a witness, stated that P. W. No. 1 delivered it to him. It was found that the document was not genuine and that P. W. No. 1 had not given it to him. Accused was tried and convicted under S. 471, Penal Code, for using as genuine a forged document: *Held*, that the conviction was wrong as the mere production by a person of a document in obedience to a Court summons is not, by itself, a user of that document by him. *In re : Muthiah Chetty*.

13 Cr. L. J. 46 :

13 I. C. 286 : 11 M. L. T. 21 :

22 M. L. J. 181.

—Ss. 471, 196—Procedurc—Offence established under S. 471—Conviction under S. 196, legality of.

Where the facts found show that the offence committed by the accused falls under S. 471, Penal Code, the Magistrate should not convict the accused under S. 196, Penal Code, but should commit him to Sessions for trial under S. 471. *Hara Mohan Das v. Emperor*.

27 Cr. L. J. 871 :

96 I. C. 119 : 30 C. W. N. 840 :

44 C. L. J. 113.

—Ss. 471, 474—Conviction, legality of—Cr. P. C., S. 476—Prosecution under S. 476 without complaint of Court—Legality of conviction.

Where the offence committed is really one under S. 471, Penal Code, it is illegal to reduce the charge to one under S. 476, Penal Code, and prosecute the accused without a complaint under S. 476 of the Cr. P. C. If a person puts forward a document as supporting his claim in any matter, whether that document is acted upon by the Court or used in evidence, is immaterial for the purpose of constituting use of the document by the party within the meaning of S. 471, Penal Code. *Ibrahim v. Emperor*.

29 Cr. L. J. 849 :

110 I. C. 433.

PENAL CODE ACT (XLV OF 1860)

—Ss. 471, 474—Miscellaneous—Forgery—Using forged document—Presumption—Guilty knowledge—Interest in establishing contents of document—Conduct—Filing of document, if user—Convictions under both sections, whether legal—Charge under Ss. 465, 471—Conviction under Ss. 466, 471, if legal.

The fact that a man who files a document is interested in establishing its contents, does not raise a presumption that he filed it knowing it to be forged. Conduct is the principal criterion of guilty knowledge. Where a man filed a document upon which he relied but when it was discovered that the document had been forged, he fled away: *Held*, that his conduct was in no way consistent with his innocence. The filing of a document as the basis of a plaint or as a necessary sequel to the pleas in the plaint, is itself a user: and it then becomes incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine. Convictions under Ss. 471 and 474, Penal Code, cannot stand together. Where a charge is laid against an accused under S. 465 read with S. 471, Penal Code, he cannot be convicted and sentenced under S. 466 read with S. 471. *Mobarak Ali v. Emperor*. 13 Cr. L. J. 449 :

15 I. C. 81 : 17 C. W. N. 94.

—Ss. 471, 474—Stay of Criminal proceedings pending Civil suit—Registration Act, S. 82 (a).

Where the alleged executant of a document having denied execution before the Sub-Registrar, an enquiry was held and the District Magistrate directed the prosecution of the person presenting the document for registration and the said person filed a civil suit under S. 77, Registration Act, the High Court directed the criminal proceedings to be stayed pending the disposal of the civil suit. *Ram Charan Singh v. Emperor*. 5 Cr. L. J. 199 : 5 C. L. J. 233.

—Ss. 471, 474—‘User,’ what constitutes, offence—Sanction, if required—Cr. P. C., Ss. 195, 476.

Prosecution under S. 474, Penal Code, requires no sanction. In a rent suit filed by the petitioners, the complainant was summoned to produce a *kabuliyat* and an *amalnamah*. The documents were produced not by the complainants but by the petitioners themselves as coming from the custody of the complainant: *Held*, that the facts constituted a user within the meaning of S. 471, Penal Code, and for prosecution for this offence, sanction under S. 195 or an order under S. 476, Cr. P. C., was necessary. *Asrabuddin Sarkar v. Kali Dayal*. 16 Cr. L. J. 309 :

28 I. C. 645 : 19 C. W. N. 125 :

A. I. R. 1915 Cal. 596.

—Ss. 471, 474—Using false Hundi as genuine—Offence—Hundi purporting to be drawn by firm which did not exist—Taking hundi knowing it to be false—Admission of accused before Committing Magistrate.

S and A were charged with using as genuine a forged hundi. S admitted before the Committing

PENAL CODE ACT (XLV OF 1860)

Magistrate that he executed the *hundi*, which purported to be drawn by a firm which never had any existence. In the Sessions Court he modified his statement by saying that he did not write or sign the *hundi*. A stated that S executed the *hundi* for consideration; Held, (1) that, as the admission of S before the Committing Magistrate was true in the main, he was consequently rightly convicted; (2) that, as A took the *hundi* from S knowing full well that S had executed a false document, he was, therefore, guilty under S. 474, Penal Code, and that as he negotiated it, knowing it to be a forged document, he was also guilty under S. 471, Penal Code; (3) that as the conviction though not technically correct, did substantial justice, it could not be quashed. *Arura Mal v. Emperor*. 17 Cr. L. J. 474 : 36 I. C. 154 : 30 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 275.

—S. 473.

See also (i) Cr. P. C., 1898, S. 530.
(ii) Penal Code, 1860, S. 29.

—S. 474.

See also Penal Code, 1860, Ss. 380, 471.

—Ss. 474, 464, 30—Valuable Security.

A blank promissory note and a blank receipt contained the forged signatures of the executant but contained no specification of the person in whose favour either document purported to be executed, nor yet of the date or place of execution nor yet of the money involved. At the top of each of these papers, there was an adhesive stamp of one anna, but the signature was not across the stamp nor had the stamp been cancelled: Held, (1) that the documents were not stamped in accordance with law; (2) that nevertheless the documents were valuable securities within the meaning of S. 30, I. P. C., inasmuch as they created a legal right. *Jawahir Thakur v. Emperor*. 17 Cr. L. J. 203 : 34 I. C. 315 : 14 A. L. J. 643 : 38 All. 430 : A. I. R. 1916 All. 197.

—Ss. 474, 467—Expert evidence—Forged document—Executant's denial—Handwriting—Corroboration.

An alleged executant of a document denied having made the signature on the document. The testimony of an expert in handwriting was to the effect that the contested signature did not agree with the admitted signature of the executant: Held, that the expert's evidence afforded reliable corroboration of the executant's evidence. *Jawahir Thakur v. Emperor*. 17 Cr. L. J. 203 : 34 I. C. 315 : 14 A. L. J. 643 : 38 All. 430 : A. I. R. 1916 All. 197.

—S. 476—Counterfeiting a trade mark—Trade mark—Representation.

In order to prove that a trade mark is an imitation of the other, it is not necessary that there should be a resemblance in every case. It is sufficient if the resemblances are of such a nature as to be calculated to mislead an unwary purchaser. A representation that the goods of

PENAL CODE ACT (XLV OF 1860)

the manufacture of A are those of B need not be made orally or in writing but it may be made by the manner in which the goods are made up by the wrapper or by the name or design. The counterfeit is itself a representation. *Emperor v. Tapidas*. 6 Cr. L. J. 75 : 9 Bom. L. R. 732.

—S. 476—Offence under—Altering date of stamp paper—Nature of offence—Antedating by itself, whether culpable.

The complainant instituted a suit against the accused and applied for a temporary injunction restraining the accused from alienating certain property. A few days after the service of summons in the suit but a few days before the service of notice of the injunction, the accused presented to a Registry Office for registration of a mortgage-deed relating to the property purporting to have been executed by them some months prior to the suit. The complainant asserted that the document was antedated, that the stamp paper on which it was engrossed was bought from the stamp-vendor only after the date of the suit, and that the date of the stamp paper had been altered by the accused. The accused were charged under S. 465, Penal Code, but discharged: Held, that the section applicable to the offence was S. 476, Penal Code, and not S. 465, and that the offence was consequently triable only by a Court of Session. *Rangaswami Chettyar v. Maung Po Ku*. 29 Cr. L. J. 599 : 109 I. C. 679 : 6 Rang. 49 : 40 I. L. T. Rang. 51 : A. I. R. 1928 Rang. 117.

—S. 477.

See also (i) Cr. P. C., 1898, Ss. 195 (c), 494.
(ii) Penal Code, 1860, S. 147.

—S. 477—Charge of falsification of accounts.

The mere fact that a partnership subsisted between the parties is no answer to a charge of falsification of accounts against a partner who is in charge of the books. *Mohindra Mohan v. Srish Chandra Das*. 33 Cr. L. J. 597 : 138 I. C. 339 : 36 C. W. N. 303 : I. L. R. 1932 Cal. 447 : A. I. R. 1932 Cal. 464.

—S. 477—Fraudulent secretion—Prosecution for concealing—Will—Grant of Letters of Administration, whether bar to prosecution—Genuineness of Will whether necessary for conviction.

The grant of Letters of Administration, though it operates as a judgment *in rem* under the provisions of S. 41, Evidence Act, and presupposes the non-existence of a Will, is no bar to the prosecution of a person under S. 477, Penal Code, for having fraudulently concealed a Will of the deceased. The fraudulent secretion of any document purporting to be a Will would constitute an offence within the meaning of S. 477, I. P. C., quite apart from the validity of

PENAL CODE ACT (XLV OF 1860)

the Will as defined in S. 3 of the Probate and Administration Act. *Mali Muthu Servay v. Emperor*.

27 Cr. L. J. 1230 :
97 I. C. 1054 : 4 Rang. 251 :
A. I. R. 1926 Rang. 202.

-----S. 477—Scope of.

Will—Death of testator—Will received by son from solicitors—No steps taken to obtain probate—Affidavit by son in Land Acquisition proceedings that his father died intestate—Concealment of Will, held not made out—Absence of seeretion—Offence under S. 477, held not committed. *Nukur Chandra Sarkar v. Ranjit Kumar Mallik*.

35 Cr. L. J. 716 :
148 I. C. 587 : 58 C. L. J. 283 :
6 R. C. 469 : A. I. R. 1934 Cal. 217.

-----S. 477-A—Essentials of—'Intent to defraud,' meaning of—Manager offering bribe out of company's funds—Intention to promote company's interests.

One of the most important ingredients of S. 477-A, Penal Code, is intent to 'defraud.' This expression implies conduct coupled with intention to deceive and thereby to injure : in other words "defraud" involves two conceptions, namely, deceit and injury to the person deceived, that is, infringement of some legal right possessed by him but not necessarily deprivation of property. Where, therefore, the manager of a company offers bribe out of the funds of the company, his intention being not to cause any injury to the company but on the contrary to promote its interests, though his act might be punishable under another section of the Penal Code, yet it is clearly not punishable under S. 477-A, Penal Code. *Ong Boon Hock v. Emperor*.

38 Cr. L. J. 887 :
170 I. C. 257 : 10 R. Rang. 72 :
A. I. R. 1937 Rang. 280.

-----S. 477-A—False entries.

Accused pleading that his father was partner of complainant's firm and entries were made under his authority—Prosecution must negative these allegations—Whether father was or was not partner, not clearly proved—Conviction held should be set aside. *Indra Kumar Hazra v. Emperor*.

36 Cr. L. J. 74 :
152 I. C. 226 : 59 C. L. J. 83 :
7 R. C. 258 : A. I. R. 1934 Cal. 500.

-----S. 477-A—False entries to conceal previous fraud—"Fraudulently," meaning of.

Certain sums of money were received at a Munsifi for payment into Government Treasury but they were never paid. The accused, an accountant in the Munsifi's Court, did not enter these sums in the Chalan Register. But after the commencement of an enquiry into the matter, he, for the purpose of concealing the non-payment, made false entries in the Chalan Register showing that these sums had been paid to the credit of the Collector : Held, that inasmuch as the accused, in making the false entries was in reality furthering the fraud which had been committed upon the Government, he acted fraudulently and was, therefore, guilty under S. 477-A, I. P. C. That even if the

PENAL CODE ACT (XLV OF 1860)

intention with which the false entries were made was to conceal a fraudulent or dishonest act previously committed, the intention would be to defraud, and the case would fall within S. 477-A, Penal Code. *The Deputy Legal Remembrancer v. Rash Behary Dass*.

7 Cr. L. J. 378 :
12 C. W. N. 581 : 35 Cal. 450.

-----S. 477-A—Falsification of accounts—Cr. P. C., Ss. 233, 234, 235—Separate falsifications—Same transaction—Non-specification of entries charged as false—Omission to object in first Court—Accused not prejudiced.

Where an accused, a public servant, was charged with nine separate falsifications of account : Held, that the charge was not illegal under S. 235, Cr. P. C., as all the false entries were made by the accused in the course of one transaction : Held, also, that non-specification of the alleged false entries in the charge did not vitiate the trial as the accused knew the subject of the charge and was not prejudiced in his defence and did not object to it in the Court of Session. *Aiyagari Venkataramiah v. Emperor*.

13 Cr. L. J. 251 :
14 I. C. 603 : 1912 M. W. N. 545.

-----S. 477-A—Falsification of accounts—Wrongful gain—Falsification for purpose of obtaining money actually due—Offence.

Accused falsified the account books of a Bank with a view to obtain money which was due to him from the Bank but which could not be obtained at once and in a fair manner and which, under certain circumstances, may not have been possible to obtain in full : Held, that the accused was guilty of an offence under S. 477-A, Penal Code. *Narain Dutt Tewari v. Rudra Dutt Bhatt*.

26 Cr. L. J. 1384 :
89 I. C. 520 : 23 A. L. J. 657 :
47 All. 948 : A. I. R. 1925 All. 654.

-----S. 477-A—'Fraudulently' and 'dishonestly' distinction between—"With intent to defraud" within meaning of S. 477-A, what is.

A reference to S. 25, Penal Code, shows that the expressions "fraudulently" and "with intent to defraud" are synonymous ; but there is no further definition of their meaning in the Code. The difference between an act done dishonestly and an act done fraudulently is that if there is the intention by the deceit practised to cause wrongful loss, that is dishonesty, but even in the absence of such an intention, if the deceitful act wilfully exposes anyone to risk of loss, there is fraud. *Sukhamoy Maitra v. Emperor*.

39 Cr. L. J. 374 :
173 I. C. 759 : 16 Pat. 688 :
10 R. P. 445 : 4 B. R. 337 :
19 P. L. T. 297 : A. I. R. 1938 Pat. 165.

-----S. 477-A—Offence under, what constitutes.

The fact that the accused subsequently thought better of it and remitted the money would not alter the character of the falsifica

PENAL CODE ACT (XLV OF 1860)

tion, which must be judged by the accused's intention at the time he made it. The falsification of books to conceal an embezzlement or to assist in the completion of an offence of criminal breach of trust constitutes an offence under S. 477-A of the Penal Code. *Emperor v. W. C. Das*.

11 Cr. L. J. 185 (b) :

4 I. C. 1089 :

1 U. B. R. 1907-09 Penal Code, 29.

————S. 477-A—Partner falsifying accounts.

When a partner of a firm has been appointed to manage its business and write its accounts and he falsifies its accounts, he is liable under S. 477-A, Penal Code. *Mahomed v. Mahomed Idris*.

26 Cr. L. J. 1101 :

88 I. C. 189 : 18 S. L. R. 274 :

A. I. R. 1925 Sind 328.

————S. 477-A—Punishment.

What the law punishes is an act that causes harm illegally to any person in body, mind, reputation or property, or an attempt to commit such an act. Therefore anybody who has committed an act not with the intention of causing an injury to anybody but with the intention of promoting the interests of others, is clearly not punishable under the Code. *Ong Boon Hock v. Emperor*.

38 Cr. L. J. 887 :

170 I. C. 257 : 10 R. Rang. 72 :

A. I. R. 1937 Rang. 280.

————S. 477-A—Scope of.

A person who is acting as an agent for another, many thousands of miles away, must have had power to act on his own initiative which is the ordinary mark of difference between a servant and an agent. Documents containing accounts, in respect of which falsifications were alleged to have been made, were prepared by an agent but were never made over to the employer, who was many thousands of miles away in another country and there was no falsification after they reached the hands of the complainant: *Held*, that it did not amount to an offence under S. 477-A, Penal Code, as the documents could not be said to be belonging to or in possession of the employer. *E. A. Morley v. Emperor*.

37 Cr. L. J. 927 :

164 I. C. 369 : 9 Rang. 81 :

A. I. R. 1936 Rang. 299.

————S. 477-A—Scope of.

In a prosecution of the officers of a company who issued a false statutory report, for an offence under S. 477-A, Penal Code, it is not necessary for the prosecution to prove that any person or persons were actually deceived, it being quite sufficient if it is proved that the report had that tendency. S. 477-A, Penal Code, does not presuppose the existence of a document, but applies also to the preparation of an entirely new document which is false. *Ram Chand Gurwala v. Emperor*.

27 Cr. L. J. 1383 :

98 I. C. 599 : A. I. R. 1926 Lah. 385.

————S. 477-A—Scope of.

S. 477-A, Penal Code, speaks of two

PENAL CODE ACT (XLV OF 1860)

offences, namely, falsification of accounts and making of false entry, or omitting or altering, or abetting the omission or alteration of an entry, and these two offences are distinct and not interdependent. *Prafulla Chandra Kharchoria v. Emperor*.

32 Cr. L. J. 318 :

129 I. C. 356 : 34 C. W. N. 925 :

I. R. 1931 Cal. 164 : A. I. R. 1931 Cal. 8.

————S. 477-A—Scope of—Tampering with Court-fee stamps on documents—Offence.

Accused was charged under S. 477-A, Penal Code, with tampering with requisitions and *vakalatnamas* presented under the Public Demands Recovery Act, by removing the Court-fee stamps affixed to them and affixing in their stead stamps removed from other documents. On a reference to the High Court: *Held*, that the acts alleged against the accused could not be brought within the scope of S. 477-A, Penal Code. *Emperor v. Bibhudananda Chakravarti*.

21 Cr. L. J. 188 :

54 I. C. 892 : 23 C. W. N. 935 :

30 C. L. J. 258 : 47 Cal. 71 :

A. I. R. 1920 Cal. 86.

————S. 477-A—Servant—Partner of firm—Falsification of accounts.

A partner of a firm, appointed to manage the business of the firm or to write its accounts, acts as its servant, and therefore, if he falsifies the accounts of the firm, he is liable under S. 477-A, I. P. C. *Emperor v. Laloo Ghella*.

1 Cr. L. J. 757 :

6 Bom. L. R. 553.

————S. 477-A, 25—'Intent to defraud'—Issuing false statutory report, whether fraudulent—Actual deception, whether necessary.

The expression 'intent to defraud' implies deceit and consequent injury or intended injury, *i. e.*, the infringement or intended infringement of some legal right possessed by the person deceived. It does not necessarily imply that the person deceived should be deprived of property. The issuing of a false statutory report of a company calculated to deceive the public and intended to induce them to invest their money in the company which they would not otherwise have invested is an act done 'with intent to defraud' within the meaning of S. 477-A, Penal Code. An advantage to the accused is not necessary to constitute his conduct fraudulent. *Ram Chand Gurwala v. Emperor*.

27 Cr. L. J. 1383 :

98 I. C. 599 : A. I. R. 1926 Lah. 385.

————Ss. 477-A, 465—Conviction—Maintainability—Accused making false entry in diary of Court to screen his own negligence as clerk—Whether guilty under S. 477-A or S. 465.

Advantage which is intended must relate to some future occurrence, or in other words, must be of a prospective nature. Where a clerk of a Court has not committed any offence of criminal breach of trust or criminal misappropriation but he had the false entries made merely for the purpose of screening his own negligence of his duties as clerk

PENAL CODE ACT (XLV OF 1860)

of the Court, nor has he by these false entries facilitated any misappropriation or embezzlement nor did he intend thereby to cause injury to any other person, it cannot be contended that by means of the deception he intended to secure his advancement in the service and he cannot be convicted either of the offence under S. 477-A or under S. 465, Penal Code. *Maung Tint v. The King*.

40 Cr. L. J. 552 :
181 I. C. 439 : 11 R. Rang. 464 :
A. I. R. 1939 Rang. 156.

———S. 478.

See also (i) Trade mark.

———S. 478—Duty of complainant.

Goods, subject of the mark in question, must be proved to be manufactured by complainant and to be reputed to be his manufacture alone. Under S. 478 complainant has to prove that the goods which are the subject of the mark, are manufactured and sold by himself and that goods are known in the market as being of his manufacture alone. Where the article bearing the mark was proved to have been manufactured and sold by both the complainant and the accused on a large scale and there was no sufficient evidence to support the view that the article was reputed to be the complainant's exclusive manufacture: *Held*, no offence was committed. *Gobinda Chandra Roy v. Abdul Rashid*.

A. I. R. 1928 Cal. 235.

———S. 478—Imitation of 'get-up' of package—Liability in civil suit for.

The complainant had, for many years, carried on business as a vendor of ground coffee. He sold this in cylindrical tin boxes, each containing one pound of coffee. On the outside of the cylindrical portion of each box, he had affixed a paper label on which was printed *inter alia* a picture of a railway engine and carriage. Over the lid and round each box vertically, he had pasted an orange coloured paper band, and on this in the portion crossing the lid, a facsimile of his signature was printed. The accused sold coffee in similar tin boxes, bearing a similar band, though of a shade of pink and a label on which was printed a picture of a steamer, the pink-band purporting to be a facsimile of the accused's signature in the same position as that in which the complainant's facsimile signature appeared on his boxes: *Held*, that on the complainant's boxes the chief trade mark was the picture of a railway train; that he may have a trade mark in his facsimile signature, but that trade mark could not reasonably be held to be infringed by the use of a signature of another person of a very different name, and that consequently a prosecution based on the use of what purported to be a facsimile of the accused's name could not succeed: *Held*, further, that the band round the boxes vertically did not constitute a trade mark as defined in the Penal Code, and that such band was merely a part of the "get-up" of the boxes. *Stephen Ah Kyun v. James Pelley*.

1 Cr. L. J. 375 :
10 Bur. L. R. 84.

PENAL CODE ACT (XLV OF 1860)

———S. 478—Trade mark—What is.

Valid trade mark must be distinctive—Surname is not suitable for trade mark—Certain mark commonly used in market to denote goods of particular kind, cannot be distinctive mark—Trade mark is acquired by user. *Loke Nath Sen v. Aswini Kumar Dey*. 39 Cr. L. J. 537 :
175 I. C. 144 : 66 C. L. J. 210 :
10 R. C. 754 : I. L. R. 1938, 1 Cal. 665 :
42 C. W. N. 1121 : A. I. R. 1938 Cal. 216.

———Ss. 478, 482—Trade mark—Selector—Colourable imitation.

The complainants who are selectors, import hand-made sugar into Cawnpore and use a distinctive mark of their firm for the purpose of denoting that the sugar contained in bags so marked has been selected and imported by them, and their customers accept the mark as a guarantee that the sugar is hand-made. The accused was found in possession of certain bags marked with a colourable imitation of the firm's mark: *Held*, that the complainants' mark was a trade mark as defined in S. 478, Penal Code, and that the accused was guilty of an offence under S. 482, Penal Code. *Latif Miyan v. Emperor*.

17 Cr. L. J. 535 ;
36 I. C. 583 : 14 A. L. J. 1080 :
A. I. R. 1917 All. 429.

———Ss. 478, 486—Scope of—'Trade mark,' counterfeited—Intention to deceive—'Counterfeit,' meaning of.

The expression "trade mark," as defined in S. 478, Penal Code, must not be confined to the trade mark of the complainant as registered but must include the whole design. Where the express intention is to deceive and the petitioners have failed to bring themselves within the exception to S. 486, the case clearly comes within the definition of "counterfeit" in S. 28, I. P. C. *Nilmoney Nag v. Durga Pado Banerjee*.

16 Cr. L. J. 719 :
30 I. C. 1007 : 19 C. W. N. 957 :
A. I. R. 1916 Cal. 538.

———S. 479—Property-mark—Trade mark—Movable property.

The National Bank of India imported from England for sale in India bars of gold, each bar being of a uniform size, weight and touch; and having the words "National Bank of India" impressed upon it in Gujarathi characters as their property-mark. The gold so imported by the Bank and sold was, on account of that property-mark, known in the market as "Nasranna Bak" among the large number of people who were unable to understand and pronounce English correctly; and it had obtained a special value in the market. The accused, who dealt in bars of gold, impressed upon each of their own bars the words "Nasranna Bak" in Gujarathi characters. *Held*, a property-mark is intended to denote ownership over all movable property belonging to a person, whether it is all of one kind or different kinds. *Held*, on facts that the property-mark which the National Bank claims as theirs is intended to denote what movable property is theirs. Their property consists not merely of the gold they import and sell as

PENAL CODE ACT (XLV OF 1860)

theirs but of other movable properties also, all falling into one class—the movable property of the Bank. And they must be presumed to have always actual existing property denoted or capable of being denoted by their property-mark. The mark claimed by the National Bank of India was their “property-mark,” and the act of the accused amounted to counterfeiting it and they were guilty of the offence. *Emperor v. Dayabhai Chakasha*.

1 Cr. L. J. 581 :
6 Bom. L. R. 512.

————S. 480.

See also Merchandise Marks Act, 1889,
S. 6.

————S. 480—False trade mark.

Mark is none the less a false trade mark within the meaning of S. 480, Penal Code, because it appeared upon the box in which the goods were sold and not upon the goods themselves. *Manavala Chetty v. Emperor*.

5 Cr. L. J. 94 :
1 M. L. T. 409 : 17 M. L. J. 219 :
I. L. R. 29 Mad. 569.

————S. 480—False trade mark — Offence or a wrong.

Where the trade mark used by the accused is a crescent encircling a Crown over the letters A. M. R. and the one used by the complainant is a crescent encircling a star over the letters A. G. M., no offence of using a false trade mark or selling goods under a counterfeiting trade mark is committed. A civil action for damages may lie. *Rasoolkhan Saheb v. Emperor*.

13 Cr. L. J. 175 :
13 I. C. 927 : 1912 M. W. N. 85.

————S. 480—Ingredients of offence—Prosecution need not prove intent to defraud—But accused proving want of such intention, is entitled to acquittal.

In order to establish a case under S. 480, the prosecution must prove that the accused marked goods, that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked were the manufacture or merchandise of some other person and that such goods are not the manufacture or merchandise of such person. It is unnecessary for the prosecution to prove that an accused in such a case had acted with intent to defraud, should the latter, however, prove that he acted without intent to defraud, he is entitled to be acquitted. *P. A. Pakir Mohd. v. Emperor*.

A. I. R. 1929 Rang. 322.

————Ss. 480, 482, 486—Right to exclusive use of mark—Proof.

Since December 1900, the respondents were selling fish-hooks, which they imported from Europe, in boxes bearing labels on which appeared a design of two fish crossed, with their heads and tails bent up. During the season 1908 the appellants sold fish-hooks in similar boxes bearing similar labels, and a design of one fish with its head and tail turned up. The inscription on the appellants' labels

PENAL CODE ACT (XLV OF 1860)

differed from that on the respondents' labels, particularly the name of the maker, which was truly given : *Held*, that the respondents' right to the exclusive use of a mark, which might have acquired the designation of *mach marka* (fish mark), is not plain enough to consider it proved as against a person charged with an offence. The mere fact that the respondents' mark was known as *mach marka* cannot be held to prevent the persons from applying a mark to fish-hooks which may be generally known by the same term. *Buckaulla Mullick, Khoda Bux Mullick v. Ghosh, Singh & Co.*

1 Cr. L. J. 140 :
8 C. W. N. 307 : I. L. R. 31 Cal. 411.

————S. 480—‘Use of false trade mark’, what amounts to.

Not only whosoever marks any goods or package or receptacle containing goods but also whosoever uses any such package or receptacle with any such mark thereon is said to use a false trade mark if the whole thing is done in a manner reasonably calculated to cause it to be believed that the goods are of a certain manufacture, whereas they are not of that manufacture. *Sirumal v. Emperor*.

33 Cr. L. J. 778 :
139 I. C. 335 : 26 S. L. R. 241 :
I. R. 1932 Sind 119 :
A. I. R. 1932 Sind 94.

————Ss. 480, 482—Scope of—If mark bears particular name in market, another mark bearing same name cannot be used.

If a purchaser would naturally be led, from the mark impressed on article to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the Court considers the use of such a mark to be fraudulent. If the goods of a manufacturer have from the mark or device he has used become known in the market by a particular name, the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as the actual copy of his device. *P. A. Pakir Mohammad v. Emperor*.

A. I. R. 1929 Rang. 322.

————Ss. 480, 482—Using false trade mark, what amounts to—Trade mark—One company's tins materially altered but name of company permanently embossed on tin—Selling different oil in such tins.

The respondent had a small Refinery near Prome and refined an illuminant oil from crude petroleum. The tins issued by it bear one or other of its trade marks and the name of the company prominently embossed on them. All that the respondent did, before issuing oil refined by him in such tins, was to take off the handles and replace them with handles not bearing the company's name, to change the caps, and to affix a paper label with words denoting that it was oil manufactured at a Prome Refinery. The respondent was convicted by the Magistrate by whom he was tried, but was acquitted on appeal by the District Magistrate, who held that it was quite clear that the respondent had no intention to pass off his oil as oil manufactured by the Burma Oil

PENAL CODE ACT (XLV OF 1860)

Company. This was an appeal directed by the local Government against such acquittal. The first question in the case was whether the issue by the respondent of his illuminant oil in tins bearing the Burma Oil Company's trade mark was reasonably calculated to cause it to be believed that the oil contained in the tins was illuminant oil manufactured by the Company: *Held*, that in considering this question, what had to be considered was whether the sale of the respondent's oil in tins bearing the Company's trade marks was calculated to deceive the incautious, ignorant or unwary purchaser: *Held*, that in putting his illuminant oil in tins bearing the Company's trade marks used for their illuminant oil, and by letting his oil go out from his Refinery in such tins, with the knowledge that his oil would be sold in or from such tins, the respondent brought himself within the words of S. 480, Penal Code, and was liable to punishment under S. 482 of the Code unless he proved that he acted without intent to defraud. *Emperor v. Nga Po Saing*.

7 Cr. L. J. 113 :

13 Bur. L. R. 381 : 4 L. B. R. 192.

———Ss. 480, 482, 486, 28—*Intention to defraud, absence of, effect of—Using false trade mark—Selling goods marked with counterfeit trade mark—Deception, absence of—Conviction, whether justified.*

Certain goods bearing the trade mark of the complainant were purchased by the accused from one S who had originally obtained them from Japan and it appeared that the manufacturer of the goods in Japan had either put the trade mark of the complainant upon the goods by mistake or had sent the goods by mistake to S instead of to the complainant: *Held* (1) that the accused had not committed any offence under S. 486, Penal Code, inasmuch as the marks on the goods were not counterfeit as defined by S. 28 which involves an intention to practise deception; (2) that the accused could not be convicted of an offence under Ss. 480 and 482, Penal Code, inasmuch as there was no intention to defraud on the part of the accused. *Syon Sheeman & Co. v. Solomon*.

27 Cr. L. J. 755 :

95 I. C. 275 : 4 Rang. 16 :

A. I. R. 1926 Rang. 134.

———S. 482.

See also (i) Merchandise Marks Act, 1889, Ss. 7, 15.

(ii) Penal Code, 1860, S. 480.

(iii) Trade mark.

———S. 482—Duty of complainant—*Complainant should show that goods sold under his label and get-up were goods which had reputation in market as being manufactured or sold by him.*

As a general rule, in order to succeed in criminal proceedings, something further has to be proved beyond what is required in civil proceedings arising out of the same transaction. An example is trespass. In some cases proof of the same facts would entitle the plaintiff to a decree in a civil case and a complainant to a conviction in criminal proceedings. Under S. 482, Penal Code, the

PENAL CODE ACT (XLV OF 1860)

complainant must prove that the goods sold under his label and get-up were goods which had a reputation in the market as being goods manufactured or sold by him of which the label and get-up were distinctive and well-known in the particular market. *Ma Pan Ei v. The King*.

40 Cr. L. J. 546 :

181 I. C. 404 : 11 R. Rang. 461 :

A. I. R. 1939 Rang. 145.

———S. 482—Fraudulent use of trade mark—*Offence—Title to trade mark.*

A person aggrieved by the infringement of the trade mark can institute criminal proceedings under the Penal Code, or bring an action for an injunction and damages and although the Criminal Court has a discretion in view of the peculiar circumstances of a particular case, e. g., if there exists a *bona fide* dispute as to the right to use a trade mark, or where there has been undue delay in commencing criminal proceedings, to stay its own hands and direct the complainant to establish his right in a Civil Court, an aggrieved person is not bound to seek his remedy in the Civil Court. *Mohammad Raza v. Emperor*.

31 Cr. L. J. 1176 :

127 I. C. 36 : 7 O. W. N. 598 :

A. I. R. 1930 Oudh 360.

———S. 482—Infringement of trade mark—*Merchandise Marks Act, S. 15—Limitation—Acquiescence.*

There is nothing in S. 15, Merchandise Marks Act, to prevent a prosecution under S. 482, Penal Code, provided that the infringement alleged against the accused is in point of time within the period limited in the section. If the goods of a manufacturer have, from the mark used by him, become known in the market by a particular name, the adoption by a rival trader of any mark which would cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as an actual copy of his device, for he causes it to be believed that the goods, so marked, are the manufacture of the other trader. In such cases, the dissimilarity of the rival marks cannot be relied upon as a complete defence. *Abdul Majid v. Emperor*.

17 Cr. L. J. 488 :

36 I. C. 168 : 10 Bur. L. T. 19 :

A. I. R. 1917 L. Bur. 149.

———S. 482—Intent to defraud *absence of, effect of—Using false trade mark.*

It was agreed between different Oil Companies that tins belonging to one Company might be used by another Company provided that the latter Company put upon the cap of the tin a distinctive mark indicating that the oil contained in the tin was the oil of the Company which was using the tin. Accused sold eight tins of the Standard Oil Company containing the oil of the Burma Oil Company. Two only of the tins bore the distinctive mark of the latter Company. It was found that the accused told the purchaser at time of the sale that the tins contained the oil of the Burma Oil Company: *Held*, that the accused had used a false trade mark, but that there being no intent to defraud, he could

PENAL CODE ACT (XLV OF 1860)

not be convicted of an offence under S. 482, Penal Code. *Abdul Rashid v. Emperor*.

19 Cr. L. J. 722 :
46 I. C. 402 : 16 A. L. J. 476 :
A. I. R. 1918 All. 109.

———S. 482—*Intent to defraud—Presumption—Want of proof that purchasers were deceived, does not prove want of intention to defraud—State of mind of accused should be established to discharge onus of proving want of intention to defraud.*

Even though no cases of purchasers having been deceived by the use of false trade mark are proved, this fact standing alone is insufficient to justify the contention that the accused acted without intent to defraud. The state of mind of the persons responsible for the introduction of the trade mark is a most relevant fact which can be established by evidence. In the absence of such evidence, the accused cannot be held to have discharged the onus of proving want of intention which was upon him. *P. A. Pakir Mohammad v. Emperor*.

A. I. R. 1929 Rang. 322.

———S. 482—*Interpretation of Statute.*

When the language of a Statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words. The intention of the Legislature will be frustrated if it is held that the owner of a trade mark can stand by for several years while his trade mark is being infringed continuously and then bring a criminal complaint in respect of some recent instance in which there has been an infringement. To interpret the section in that way, would reduce its provision to a nullity, for it would entirely remove the bar of limitations except in case where the series of infringements has actually ceased. *Mahomed Jewa v. Wilson*.

12 Cr. L. J. 246 :
10 I. C. 787 : 4 Bur. L. T. 83.

———S. 482 — *Miscellaneous — Genuine dispute between parties as to who used false trade mark—Case should be brought in Civil Court.*

Where in criminal proceedings regarding infringement of a trade mark the accused, claims that the label she used is her label and the Magistrate is unable to decide which of the parties, complainant or the accused, used the label first, there is a genuine dispute between the parties as to whose mark it is, and who has used a false trade mark, and the case should be brought in the Civil Court and not in the Criminal Court. *Ma Pan Ei v. The King*.

40 Cr. L. J. 546 :
181 I. C. 404 : 11 R. Rang. 461 :
A. I. R. 1939 Rang. 145.

———S. 482—*Prosecution, if time-barred—Merchandise Marks Act, S. 15.*

The accused was prosecuted once in 1908 and then in 1910, under S. 482, Penal Code, for using a false trade mark, the charge against

PENAL CODE ACT (XLV OF 1860)

him being that he sold oil which was not oil manufactured by the Burma Oil Co., Ltd., in second-hand tins of that Company's make without obliterating this Company's trade mark on the tins and he was both times acquitted. When the Company by their Agent lodged a fresh complaint alleging the commission of a fresh offence by the accused : *Held*, that the complaint was barred under S. 15, Merchandise Marks Act. *Mahomed Jewa v. Wilson*.

12 Cr. L. J. 246 :
10 I. C. 787 : 4 Bur. L. T. 83.

———S. 482—*Prosecution under—Person not necessarily manufacturer acquiring rights in respect of the mark, can prosecute.*

A person, not necessarily a manufacturer, who uses a mark for the purpose of his trade, may acquire rights to, and in respect of, that mark. Where in the course of a user extending over a large number of years goods are sold by a firm bearing a certain mark which had been known to purchasers by that mark, a prosecution would also lie at the instance of the firm. *P. A. Pakir Mohammad v. Emperor*.

A. I. R. 1929 Rang. 322.

———S. 482—*Sentence — Offence under—Punishment—Measure of.*

In a case of an offence under S. 482, Penal Code, the measure of punishment should be the damage caused to the complainant. *Girdharilal Marwari v. Emperor*.

38 Cr. L. J. 35 :
165 I. C. 745 (2) : 17 P. L. T. 667 :
3 B. R. 71 : 9 R. P. 203 :
A. I. R. 1936 Pat. 579.

———S. 482—*Use of false trade mark.*

Where there was a striking similarity in the design of the complainant's bottle and that of the accused, and this fact was not disputed : *Held*, that the accused had used a false trade mark. *Sirumal v. Emperor*.

33 Cr. L. J. 778 :
139 I. C. 335 : 26 S. L. R. 241 :
I. R. 1932 Sind 119 :
A. I. R. 1932 Sind 94.

———Ss. 482, 483 — *Trade mark, what is—Mark used for number of years, whether trade mark—Mark used by accused likely to deceive people—Evidence of actual deception, whether necessary.*

A mark which has been used by the complainant in the market for six years can become a trade mark within the meaning of S. 482, Penal Code. Where it is found that the mark used by the accused is likely to deceive customers, evidence of any person being actually deceived is not necessary for a conviction. *Lakhan Chandra v. Emperor*.

25 Cr. L. J. 1098 :
81 I. C. 922 : A. I. R. 1925 Cal. 149.

———Ss. 482, 486—*Burden of proof.*

Under Ss. 482 and 486, Penal Code, the prosecution has not to prove the *mens rea* ; and as the burden of proving innocence is thrown on the accused under those sections, when once a *prima facie* case has been established, a Limited Company, when accused, can prove

PENAL CODE ACT (XLV OF 1860)

ts innocence by the evidence of its agents or servants or otherwise as it thinks fit. *Seena M. Haniff & Co. v. Liptons, Limited.*

15 Cr. L. J. 337 :
23 I. C. 689 : 7 Bur. L. T. 116 :
7 L. B. R. 306 : A. I. R. 1914 L. Bur. 15.

———Ss. 482, 486 — Conviction, illegality of—Different trade mark—False trade mark.

Where the trade marks are so different that no one would be misled, a conviction under Ss. 482 and 486, Penal Code, is bad, but it is good under Ss. 6 and 7 of Act IV of 1889. *In re : Kanehi Doraisamy.*

11 Cr. L. J. 393 :
6 I. C. 683 : 7 M. L. T. 309.

———Ss. 482, 486 — Conviction under—False trade mark, using—Counterfeit trade mark, possession of goods marked with—Property in trade mark—Bona fides, onus of proving.

Where it was proved that the complainants had a property in their trade mark and the accused were in possession of goods bearing a trade mark so like the complainants mark that an ordinary purchaser would suppose that the goods so marked were those of the complainants: *Held*, that the accused were liable to conviction under Ss. 482, 486, Penal Code. Under S. 486, Penal Code, the onus is not upon the complainant to show that the accused acted dishonestly, but the onus is upon the accused to bring himself within the exceptions to the section. *Holland Bombay Trading Company v. Buktear Mull.*

1 Cr. L. J. 300 :
8 C. W. N. 421.

———Ss. 482, 486—Interpretation of Statutes.

Where the language of a Statute is not clear, to ascertain the real meaning, the course or necessity of the law being made should be considered. Every clause of a Statute should be construed with reference to the context and the other clauses of the Act so as, so far as possible, to make a consistent enactment of the whole Statute or series of Statutes relating to the subject-matter. *Seena M. Haniff and Co. v. Liptons, Limited.*

15 Cr. L. J. 337 :
23 I. C. 689 : 7 Bom. L. T. 116 :
7 L. B. R. 306 : A. I. R. 1914 L. Bur. 15.

———Ss. 482, 486—Object of—Merchandise Marks Act, S. 15—Using false trade mark—Limitation for criminal prosecution—"First offence," meaning of.

The recourse to Criminal Courts under Ss. 482 and 486, Penal Code, for use of false trade marks has been provided as a speedy remedy to traders who are diligent, and any prosecution not filed within three years from the date of the first offence, will be barred by S. 15, Merchandise Marks Act. The expression "first offence" in S. 15, Merchandise Marks Act, must be construed as the first offence of the series of similar offences regarding the same trade mark. *Jagan Nath v. Emperor.*

17 Cr. L. J. 367 :
35 I. C. 671 : 10 S. L. R. 45 :
A. I. R. 1916 Sind 49.

PENAL CODE ACT (XLV OF 1860)

———Ss. 482, 486—Scope of—False or counterfeit trade mark.

Some woollen shawls, bearing the labels of "K. L. Dass and Sons" were made in and sent from Germany to the order of K. L. Dass and Sons, who refused to take their delivery in Calcutta. Upon this, they were sold in the market without removing the labels. The accused (Petitioner) purchased the shawls and sold them with their labels on. They were convicted under S. 486, I. P. C. The High Court set aside the conviction and held that the Petitioner had committed no offence either under S. 482 or S. 486, I. P. C. *Matilal Prensak v. Kanhai Lal Dass.*

3 Cr. L. J. 146 :
I. L. R. 32 Cal. 969.

———Ss. 482, 486—'Whoever,' scope of.

The word "whoever" in Ss. 482 and 486, I. P. C., does not refer only to a definite individual or definite individuals and can apply to a corporate body. The word "whoever" with which Ss. 482 and 486 begin, means the same thing as "every person who" in S. 2 (2), English Merchandise Marks Act and shows that the provision of the sections apply to persons generally. The scope of a penal section in an Act would (so far as the language is concerned) be the same whether it began with the words "every person who" or with the word "whoever" unless, the word "person" is defined so as to have a more restrictive or a more extended meaning than it in fact has. Limited Companies are not excluded from the operations of Ss. 482 and 486, Penal Code, and there is nothing inherent in the nature of a Limited Company which would prevent it from proving its innocence either by showing that it acted without intent to defraud under S. 482, or under 486 in any of the ways prescribed in that section. *Seena M. Haniff and Co. v. Liptons, Limited.*

15 Cr. L. J. 337 :
23 I. C. 689 : 7 Bur. L. T. 116 :
7 L. B. R. 306 : A. I. R. 1914 L. Bur. 15.

———S. 485—Conviction, legality of—Trade mark consisting of impression moulded on glass and label—Person found only with mould with intention of counterfeiting trade mark.

Where a trade mark consists of an impression moulded in the glass of which the bottles are made, together with a label, and a person is found in possession of the mould in question with intention of counterfeiting that trade mark, although the apparatus for counterfeiting the label which would complete the trade mark has not been found, the person can be convicted under S. 485, Penal Code. *Abdul Sovan v. Ramani Mohan Chatterjee.*

32 Cr. L. J. 136 :
128 I. C. 332 : I. R. 1931 Cal. 92 :
A. I. R. 1930 Cal. 664.

———Ss. 485, 486, 109—Conviction, legality of.

The two petitioners placed with the two accused, an article described as a Litho Stone, from which certain labels which were

PENAL CODE ACT (XLV OF 1860)

trade marks of the complainant's goods were to be counterfeited. They instructed those two persons who were printers, to make certain alterations in that instrument and to print certain labels from the die as altered. The alteration was such as to make the labels finally printed a clear counterfeit of the labels of the complainant. The two accused were acquitted of an offence under S. 485 but the two petitioners were convicted under S. 486 as well as under S. 485 read with S. 109: *Held*, that as the two petitioners were convicted under S. 486, the further prosecution of them for offence under S. 485 read with S. 109 was uncalled for. *Sri Narayan v. Mahammed Salch*.

41 Cr. L. J. 836 :
190 I. C. 167 : 44 C. W. N. 867 :
71 C. L. J. 497 : 13 R. C. 154 :
I. L. R. 1940, 2 Cal. 1 :
A. I. R. 1940 Cal. 351.

———S. 486.

See also (i) Merchandise Marks Act, 1889, S. 7.

(ii) Penal Code, 1860, Ss. 480, 482.

(iii) Trade mark.

———S. 486—Absence of intention—*Indiscriminate use by various aerated water manufacturing firms of another's bottles*.

The complainant and the accused were manufacturers of aerated waters. At the place where the parties carried on their business, it was a common practice for various kinds of bottles to be used by different mineral water manufacturing firms indiscriminately, i. e., bottles of one firm were sent by customers to another firm for being filled with mineral water. The accused firm thus came to use the bottles of the complainant firm. *Held*, that since there was no intention to do anything harmful, no conviction could be maintained under S. 486, Penal Code. *E. S. Olpadvalla v. James Wright*.

30 Cr. L. J. 832 :
117 I. C. 691 : 32 C. W. N. 1115 :
I. R. 1929 Cal. 579 : A. I. R. 1928 Cal. 873.

———S. 486—'Counterfeit', meaning of.

For the purposes of S. 486, Penal Code, the word "counterfeit" does not connote an exact reproduction of the original counterfeit, and the difference between the counterfeit and the original is not limited to a difference existing only by reason of faulty reproduction. A person, for instance, convicted of counterfeiting the King's coin would not be able to avoid conviction on the ground that he had deliberately made a small alteration in the design or omitted a letter from the superscription surrounding the Monarch's head. The same principle would apply in the counterfeiting of a trade mark. *Local Government v. Moti Lal Jain*.

39 Cr. L. J. 109 :
172 I. C. 228 : 20 N. L. J. 183 :
10 R. N. 187 : I. L. R. 1938 Nag. 192 :
[A. I. R. 1937 Nag. 341.

PENAL CODE ACT (XLV OF 1860)

———S. 486—*Counterfeit trade mark, what amounts to*.

Dongre's Balamrit is a commodity not ordinarily purchased by Europeans who are ignorant of the Nagri script, and the Indian purchaser would naturally look at the Nagri script and not at the English, of which many purchasers may be presumed to be ignorant. If the English script were removed, the designs would be practically identical, and that the mere substitution of the word "Domre" for the word "Dongre" in the English script, particularly where there was no such substitution in the Nagri, was entirely insufficient to take the label out of the category of a counterfeit trade mark and bring it within the category of a false trade mark only. *Local Government v. Moti Lal Jain*.

39 Cr. L. J. 109 :
172 I. C. 228 : 20 N. L. J. 183 :
10 R. N. 187 : I. L. R. 1938 Nag. 192 :
A. I. R. 1937 Nag. 341.

———S. 486—*Deception—Counterfeit trade mark—Likelihood of deception—Test—Merchandise Marks Act (IV of 1889), S. 15, object of*.

In a charge under S. 486, Penal Code, the test is not whether a literate purchaser would be deceived if he had the two marks side by side, but whether an ordinary unwary purchaser would be deceived. S. 15, Merchandise Marks Act, is designed to prevent stale claims from becoming the subject-matter of criminal prosecution, and cannot apply to a case where the offence is a continuing one. *Aswini Kumar Pal v. Emperor*.

32 Cr. L. J. 137 :
128 I. C. 334 : 34 C. W. N. 524 :
I. R. 1931 Cal. 94 : A. I. R. 1930 Cal. 728.

———S. 486 — Defence — *Infringement of trade mark*.

To a charge under S. 486, to limit a defence, under Excep. (c), to the knowledge of the accused concerning the infringement of the trade mark is unduly restrictive and at variance with the express terms of S. 486, proviso (c), which permits the accused to offer any evidence he chooses as to his innocence when once he admits that he was not deceived into thinking the label to be a genuine one. It is true that proviso (b) to S. 486 of the Penal Code, as a defence permissible to the accused, is linked with proviso (a) but the fact that the accused did give all the information in his power with respect to the person from whom he obtained the goods is admissible in considering the question whether he acted innocently or not. *Local Government v. Motilal Jain*.

39 Cr. L. J. 109 :
172 I. C. 228 : 20 N. L. J. 183 :
10 R. N. 187 : I. L. R. 1938 Nag. 192 :
A. I. R. 1937 Nag. 341.

———S. 486—*Evidence*.

Where in a prosecution for counterfeiting trade mark the judgments in the prior case were filed: *Held*, that the judgments were relevant under S. 13, Evidence Act. *Palli Ram v. Emperor*.

32 Cr. L. J. 1177 :
134 I. C. 477 : 8 O. W. N. 827 :
I. R. 1931 Oudh 381 : A. I. R. 1931 Oudh 277.

PENAL CODE ACT (XLV OF 1860)

———S. 486—Identity — Labels — General resemblance—Counterfeit and false trade mark.

Where the general get-up of the labels of tooth powder tins of two different manufacturers was also identical : *Held*, that an offence under S. 486, Penal Code, had been committed; that for the purposes of the case, false trade mark and counterfeit trade mark were the same thing. *Emperor v. Ganpat Sitaram*.

15 Cr. L. J. 522 :
24 I. C. 834 : 16 Bom. L. R. 78 :
A. I. R. 1914 Bom. 128.

———S. 486—Limitation for prosecution —Use of counterfeit trade mark.

A prosecution under S. 486 and S. 15, Merchandise Marks Act, for using a counterfeit trade mark need not be instituted within three years of the first of the series of offences committed by the accused but can be instituted within three years of the specific offence complained against. *Muhammad Ahmad v. Beavada Venkanna*.

32 Cr. L. J. 809 :
131 I. C. 848 : 1930 M. W. N. 1263 :
I. R. 1931 Mad. 608 : A. I. R. 1931 Mad. 276.

———S. 486 Offence under, what amounts to—Get-up and general appearance of labels of accused, so similar to those used by complainant on same kind of goods, as to deceive purchasers —Accused is guilty under S. 486.

Where the get-up and general appearance of the labels of the accused are so similar to those of the complainant that the class of persons to whom the goods are sold would easily be deceived by the appearance of the accused's labels into supposing that the goods that they were purchasing were those of the complainant, the accused is guilty under S. 486, I. P. C. *Sri Narayan v. Mohammad Abu Saleh*.

41 Cr. L. J. 836 :
190 I. C. 167 : 44 C. W. N. 867 :
71 C. L. J. 497 : I. L. R. 1940, 2 Cal. 1 :
13 R. C. 134 : A. I. R. 1940 Cal. 351.

———S. 486—Scope of—Mark, whether must be exclusive property of anybody, for purposes of S. 486.

For the purposes of S. 486, I. P. C., it is not necessary that the mark in question should be the exclusive property of anybody. The only consideration which is of importance with reference to the provisions of S. 486 is whether the mark in question has come to be so identified with the merchandise of the person using the mark as to be regarded in the market as a distinctive mark to denote that particular merchandise. *Sri Narayan v. Mohammad Abu Saleh*.

41 Cr. L. J. 836 :
190 I. C. 167 : 44 C. W. N. 867 :
71 C. L. J. 497 : I. L. R. 1940, 2 Cal. 1 :
13 R. C. 134 : A. I. R. 1940 Cal. 351.

———S. 486—Scope of.

The test is not, whether a literate purchaser would be deceived if he had the two marks side by side, but whether an ordinary unwary purchaser would be deceived. *Faqir Chand v. Emperor*.

36 Cr. L. J. 776 :
155 I. C. 270 : 35 P. L. R. 749 :
16 Lah. 114 : 7 R. L. 672 :
A. I. R. 1934 Lah. 687.

PENAL CODE ACT (XLV OF 1860)

———S. 486—Using false trade mark.

Where, therefore, the accused used marks on his bar likely to deceive an ignorant and unwary purchaser, but which would be obvious on ordinary observation by comparison with a genuine bar : *Held*, that this was a case of using a false trade mark and not a counterfeit one and the accused was not guilty of an offence under S. 486, I. P. C. *Lokumal v. Emperor*.

16 Cr. L. J. 230 :
27 I. C. 902 : 8 S. L. R. 199 :
A. I. R. 1914 Sind 163.

———S. 486, Excep. (c) — Scope of—No attempt at substitution of counterfeit goods with original—Conviction under S. 486, propriety of.

The provisions of S. 486, Penal Code, are aimed at a retailer who connives with a fraudulent whole-saler or manufacturer in palming off on an unsuspecting public goods which purport to be other than what they are. Where, therefore, no attempt at substitution is made, the accused cannot be convicted under this section. *Local Government v. Motilal Jain*.

39 Cr. L. J. 109 :
172 I. C. 228 : 20 N. L. J. 183 :
10 R. N. 187 : I. L. R. 1938, Nag. 192 :
A. I. R. 1937 Nag. 341.

———S. 489-A—Counterfeiting coins, ingredients of.

Where one person represents to another that he is in a position to counterfeit currency notes, without any intention of trying to counterfeit, and thus induces that person to advance money, the offence of cheating under S. 420, Penal Code, is complete but a charge under S. 489-A, Penal Code, cannot stand. *Meera v. Emperor*.

18 Cr. L. J. 362 :
38 I. C. 746 : 10 Bur. L. T. 255 :
A. I. R. 1917 L. Bur. 105.

———S. 489-A — Scope of—Counterfeiting currency notes, offence of—Ability to counterfeit and materials for counterfeiting, necessity of—Attempt to counterfeit.

For an offence under S. 489-A, Penal Code, *i. e.*, for the offence of counterfeiting of a currency note, both ability and materials of a particular kind are required. In considering an offence under S. 489-B, Penal Code, possessing instruments or materials for forging or counterfeiting currency notes, it is not necessary to prove that the accused had the ability to produce counterfeit currency notes with materials in his possession. *Jwala v. Emperor*.

30 Cr. L. J. 690 :
116 I. C. 797 : I. R. 1929 All. 621 :
1929 A. L. J. 127 : 51 All. 470 :
A. I. R. 1928 All. 754.

———S. 489-B—Burden of proof—Using as genuine forged note—Knowledge of accused—Prosecution, duty of.

Where an accused person is charged with using as genuine a forged note, the burden is on the prosecution to prove that at the time when the accused was passing the note, he knew that it was a forged one, and the mere possession of it by him does not place the burden on him to account for its

PENAL CODE ACT (XLV OF 1860)

possession and to prove his innocent possession thereof. *Emperor v. Habu*.

25 Cr. L. J. 935 :
81 I. C. 551.

———S. 489-B—Object and scope of—"As genuine", effect of—Person selling forged note—Offence.

The object of Legislature in enacting S. 489-B, Penal Code, is to stop the circulation of the forged notes by punishing all persons who knowing or having reason to believe them to be forged, do any act which would lead to their circulation. A person who knowingly sells a forged note to a person who also knows it to be forged, is guilty under S. 489-B, Penal Code. The word "as genuine", in S. 489-B, Penal Code, govern only the verb 'uses' and not any other verb. *Bhika Ram v. Emperor*.

27 Cr. L. J. 638 :

91 I. C. 414 : 7 Lah. 80 :
27 P. L. R. 514 : A. I. R. 1926 Lah. 72.

———S. 489-B—Scope of.

It cannot be said that if the specific charge of the uttering of particular forged notes fails, the charge of conspiracy for the passing of forged notes as genuine must also fail. *Satdeo v. Emperor*.

37 Cr. L. J. 182 :

159 I. C. 919 : 1936 O. L. R. 18 :
1936 O. W. N. 28 : 8 R. O. 225 :
A. I. R. 1936 Oudh 164.

———S. 489 (c)—Inference as to intention—Counterfeit currency notes found in possession of person.

The number of counterfeit notes found in a man's possession and the circumstances in which they were so found may, by themselves, constitute a sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine: *Held*, on facts and the circumstances of the case that the accused was in possession of the counterfeit currency notes with the intention of using them as genuine or that they might be used as genuine. Consequently, the accused was guilty of an offence under S. 489 (c), Penal Code. *Public Prosecutor v. Rowthula Kondal Rao*.

40 Cr. L. J. 458 :

180 I. C. 631 : 1938 M. W. N. 1121 :
48 L. W. 754 : 11 R. M. 738 :
A. I. R. 1939 Mad. 96.

———S. 489-D—'Counterfeiting', meaning of.

The word "counterfeiting" should be used in the sense that the resemblance must be such as may, in circulation, ordinarily impose on the word. The standard of resemblance must not be judged in the light of the intelligence of the most primitive people who may be found in the country. The resemblance need not be perfect, but it must be sufficient to deceive people of ordinary intelligence who are familiar with the things which it is intended to counterfeit. The fact that the materials are capable of being used for the purposes of counterfeiting, should be proved

PENAL CODE ACT (XLV OF 1860)

by expert evidence. *Abdul Rahman v. Emperor*.

12 Cr. L. J. 377 :
11 I. C. 241 : 10 M. L. T. 108 :
21 M. L. J. 766.

———S. 489-D—Duty of Crown.

The Crown should not leave it to the Court to come to a judgment on the question of the adaptability of the materials for the purpose of counterfeiting by means of the knowledge possessed by the presiding Judge, nor should it ask the Court to presume the purpose and intention of the accused from the nature of the instruments in his possession. Before the Court could come to a conclusion that the accused had the objects in question for the purpose of counterfeiting, the Crown should establish that he had formed in his mind the purpose or intention of counterfeiting. *Abdul Rahman v. Emperor*.

12 Cr. L. J. 377 :

11 I. C. 241 : 10 M. L. T. 108 :
21 M. L. J. 766.

———S. 489-D—Duty of prosecution—Possession of instruments and materials for counterfeiting—Counterfeiting of currency notes.

The accused was tried and convicted, under S. 489-D, Penal Code, on a charge of being in possession of materials and instruments for the purpose of forging or counterfeiting currency notes. In order to establish a charge under S. 489-D, I. P. C., what the prosecution has to prove in the first place is that the machinery, instrument or material found in the possession of the accused person is such as would be used for the production of a counterfeiting note, and if that is proved, the next element which is to be proved is that the accused knew or intended that such articles would be used for the purpose of counterfeiting currency notes. *Abdul Rahman v. Emperor*.

12 Cr. L. J. 377 :

11 I. C. 241 : 10 M. L. T. 108 :
21 M. L. J. 766.

———S. 489-D—Presumption—Charge for being in possession of materials for counterfeiting coin.

Where the accused who was not a man of such means that a 5-rupee note would be of little consequence to him, experimented with some chemical on such a note, and was in possession of materials for counterfeiting and falsely denied the possession of the materials: *Held*, that the Court might safely presume under the circumstances that the accused had an intention to counterfeit a 5-rupee note with the materials found in his possession. *Ayyub v. Emperor*.

30 Cr. L. J. 47 :

112 I. C. 911 : I. R. 1929 All. 94 :
26 A. L. J. 1391 : A. I. R. 1928 All. 759.

———S. 489—Scope of—Person found in possession of instruments or materials for purposes of being used for counterfeiting notes—Case, whether covered by S. 489-D, even if instruments found were not all articles required for counterfeiting.

The wording of S. 489-D, Penal Code, is

PENAL CODE ACT (XLV OF 1860)

very wide and would clearly cover a case where a person is found in possession of machinery, instruments or materials for the purpose of being used for counterfeiting currency notes, even though the machinery, instruments or materials so found were not all the articles required for the purpose of counterfeiting. *Kadur Baksh Waroo v. Emperor*.

40 Cr. L. J. 810 :

183 I. C. 591 : 12 R. S. 62 :

1939 Kar. 744 : A. I. R. 1939 Sind 190.

———S. 489-D—Scope of.

Under S. 489-D, Penal Code, the possession of a complete outfit for the purpose of counterfeiting, is not necessary to constitute an offence. The possession of even a single instrument would be sufficient, provided it were shown that such implement was intended to be utilised in the work of counterfeiting. It is always open to the accused to show that he possessed them for innocent purposes. In cases where, though the ultimate object of the possessor may be counterfeiting, the particular articles found are of such rude or imperfect nature as to indicate unmistakably that the work was only in an experimental stage and that they could not be intended for utilization in the preparation of the finished counterfeit, or where the instruments, though fit for counterfeiting, have been broken or otherwise rendered incapable of further use, no offence is constituted under S. 489-D, Penal Code. *Abdul Rahman v. Emperor*.

12 Cr. L. J. 377 :

11 I. C. 241 : 10 M. L. T. 108 :

21 M. L. J. 766.

———S. 491—Fraudulent Hindu marriage—Bigamy.

A Hindu marriage tainted by fraud is a voidable transaction, but it is binding until it is set aside by a competent Court. Unless it is declared to be invalid, it can sustain an indictment for bigamy. *Gajja Nand v. Emperor*.

24 Cr. L. J. 87 :

71 I. C. 215 : A. I. R. 1922 Lah. 139.

———S. 494.

See also (i) Cr. P. C., 1898, Ss. 105 (b), 108, 406.

———S. 494—Abetment—Cr. P. C., S. 198—Bigamy, abetment of—Complaint by husband, whether necessary.

If a woman having her husband living, marries another person, the person to whom the woman is remarried, is not guilty of the substantive offence of bigamy but is liable for abetment. The provisions of S. 198, Cr. P. C., do not apply to a charge of abetment of an offence therein referred to, and therefore, no complaint by the person aggrieved is necessary where the charge is one of abetment of and not of the substantive offence of bigamy. *Munir v. Emperor*.

27 Cr. L. J. 161 :

91 I. C. 533 : 24 A. L. J. 155 :

A. I. R. 1926 All. 189.

———S. 494—Bigamy—Bigamy—Christian wife's conversion to Islam, whether dissolves

PENAL CODE ACT (XLV OF 1860)

marriage—Law applicable—Subsequent marriage, whether bigamous.

A Christian marriage is not dissolved by the apostasy of one of the parties. Where, therefore, the accused, a Christian wife, renounced Christianity and embraced Islam and then married a Muhammadan : *Held*, that according to the Christian Marriage Law, which was the law applicable to the case, the first marriage was not dissolved, and therefore, the subsequent marriage was bigamous. *Emperor v. Ruri*.

20 Cr. L. J. 3 :

48 I. C. 493 : 5 P. R. 1919 Cr. :

13 P. W. R. 1919 Cr. :

A. I. R. 1919 Lah. 389.

———S. 494—Bigamy—Chamar woman becoming convert to Islam and marrying Mussulman during life-time of first husband—Offence—Ignorance of law—Sentence.

The mere fact of a Chamar woman becoming a convert to Islam, does not dissolve her marriage with her Chamar husband, and if she marries a second time during the life-time of her first husband, she is guilty of an offence under S. 494, Penal Code. In such a case, the fact that the woman thought her conversion had dissolved her previous marriage, may be treated as extenuating her offence, although it does not absolve her from liability. *Nandi v. Emperor*.

22 Cr. L. J. 1 :

59 I. C. 33 : 1 Lah. 440.

———S. 494—Bigamy—Mona Sikh—Anand marriage, validity of.

A Hindu professing the Sikh religion though a *Mona*, may have his marriage performed according to the *Anand* rites, and such a marriage would be valid for all intents and purposes, such as an offence under S. 494, Penal Code. *Walū Ram v. Emperor*.

25 Cr. L. J. 1269 :

82 I. C. 277 : A. I. R. 1925 Lah. 168.

———S. 494—Bigamy—Native Christian—Marrying a Hindu woman—Christian wife living.

A Native Christian having a Christian wife living, married a Hindu woman according to Hindu rites, without renouncing his religion : *Held*, that he was guilty of bigamy under S. 494, I. P. C. *In re : Lazar*.

6 Cr. L. J. 338 :

2 M. L. T. 345 : I. L. R. 30 Mad. 550 :

17 M. L. J. 476.

———S. 494—Complaint—Cr. P. C., S. 198—Bigamy by minor wife—'Person aggrieved.'

Where the offence of bigamy is committed by a girl having a husband, who is of age, the husband, and not the father of the girl, is the 'person aggrieved,' within the meaning of S. 198, Cr. P. C., and as such, entitled to institute complaint of an offence under S. 494, Penal Code. *Sessions Judge v. Gudru Subbamma*.

13 Cr. L. J. 204 :

14 I. C. 204.

PENAL CODE ACT (XLV OF 1860)

———S. 494—Duty of prosecution—Bigamy
—Points to be proved—Parties Muhammadans
—Proof of acquiescence of girl after attainment
of puberty of first marriage—Necessity of.

In order that a prosecution for bigamy should succeed, the prosecution must show, first of all, that at the time of the second marriage, there was the first valid subsisting marriage. Where the parties are Muhammadans, it must be shown that the girl after she had attained puberty, acquiesced in or ratified the first marriage. *Hajul v. Palio*.

38 Cr. L. J. 88 :
165 I. C. 745 (1) : 9 R. S. 109 :
30 S. L. R. 325 : A. I. R. 1936 Sind 189.

———S. 494—Duty of prosecution.

In a prosecution for abetment of bigamy, the prosecution must prove that the person knew, when he arranged or assisted at the second marriage, that the person who was remarried had contracted a valid first marriage and that the husband or wife of the first marriage was still living. *Shafi Ullah v. Emperor*.

35 Cr. L. J. 1033 :
150 I. C. 139 : 1934 A. L. J. 387 :
6 R. A. 1033 : 3 A. W. R. 598 :
A. I. R. 1934 All. 589.

———S. 494—Essentials of Muhammadan marriage—No evidence as to proposal and acceptance—Marriage, if legally proved to have taken place.

The legal essentials for a Muhammadan marriage are that there should be proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Muhammadans. The proposal and acceptance must both be expressed at one meeting; a proposal made at one meeting and an acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any religious ceremony is essential. Where there is no evidence as to any proposal having been made at the meeting or any acceptance of such proposal having been given on behalf of the bride, a valid marriage cannot be said to have been legally proved to have taken place. *Joga Bibi v. Mesel Shaikh*.

37 Cr. L. J. 1072 :
164 I. C. 957 : 63 Cal. 415 :
9 R. C. 323.

———S. 494—Evidence.

For abetment under S. 494, there must be evidence that the person accused of abetting the offence knew that the person he married was the wife of another man. *Hamid v. Emperor*.

32 Cr. L. J. 1210 :
134 I. C. 589 : I. R. 1931 Lah. 973 :
A. I. R. 1931 Lah. 194.

———S. 494—Fraudulent Hindu marriages—Bigamy—Hindu Law—Daughter—Marriage performed by mother valid until declared invalid.

A Hindu marriage is a sacrament, and a

PENAL CODE ACT (XLV OF 1860)

marriage which is duly solemnised and is otherwise valid, is not rendered invalid merely because it is brought about without the consent of the guardian in marriage or even in contravention of an express order of the Court. A marriage tainted by fraud is a voidable transaction but it is binding until it is set aside by a competent Court. Unless it is declared to be invalid, it can sustain an indictment for bigamy. *Gajja Nand v. Emperor*.

23 Cr. L. J. 20 :
64 I. C. 500 : 2 Lah. 288 :
8 P. L. R. 1922 : A. I. R. 1922 Lah. 139.

———S. 494—Jurisdiction—Order of discharge after defence, value of.

Under the Cr. P. C., as modified on the 1st of September, 1923, a Magistrate of the First Class has jurisdiction to try an offence under S. 494, Penal Code, and dispose of the same without committing the case to the Court of Session, and an order of discharge passed by the Magistrate in such a case, after the accused had been called upon to enter on his defence, is tantamount to an acquittal. *Dal Chand v. Ram Lal*.

25 Cr. L. J. 39 :
75 I. C. 727 : A. I. R. 1925 Oudh 60.

———S. 494—'Marry,' meaning of.

The word "marry" in S. 494, means going through a form of marriage, whether the marriage should prove in fact legal and valid or illegal and invalid. Consequently, the prosecution has merely to show that the accused went through a form of marriage. *Local Government v. Soni*.

37 Cr. L. J. 161 :
159 I. C. 855 : 8 R. N. 142 :
A. I. R. 1936 Nag. 13.

———S. 494—Offence under—Bigamy—Caste panchayat, power of, to dissolve marriage—Custom—Husband long absent abroad—Re-marriage—Offence.

Courts do not recognize the authority of a caste to dissolve a marriage or to declare it void or give permission to a married woman to remarry. Where, therefore, the accused's marriage was, in accordance with a custom prevailing in her caste, dissolved by a caste *panchayat* in consequence of her husband having gone abroad and his whereabouts being unknown for eight years, during which period, accused was left unprovided for, and the accused, on the strength of such decision, remarried during the lifetime of her husband: *Held*, that the decision of the *panchayat* was inoperative in law and the re-marriage of accused fell within the prohibition of S. 494, Penal Code. *Bai Ganga v. Emperor*.

18 Cr. L. J. 468 :
39 I. C. 308 : 19 Bom. L. R. 56 :
A. I. R. 1916 Bom. 97.

———S. 494—Offence under—What is.

A second marriage during the lifetime of the first husband and without the first marriage being annulled (the mere wish of the woman against that of her husband being

PENAL CODE ACT (XLV OF 1860)

insufficient), is an offence under S. 494, Penal Code. *In re : Gedalu Narayana.*

33 Cr. L. J. 647 :
138 I. C. 518 : 1932 M. W. N. 1082 :
36 L. W. 237 : I. R. 1932 Mad. 591 :
A. I. R. 1932 Mad. 561.

———S. 494—Plea of good faith, if sufficient.

The plea of good faith and absence of *mens rea* is not a proper defence to a charge of bigamy. The fact that the accused acted in good faith and ignorance of law is no answer to the charge, though it may be considered in mitigation of sentence. *Narantakath Avul-lah v. Parakkal Mammu.*

24 Cr. L. J. 17 :
71 I. C. 65 : 1922 M. W. N. 662 :
16 L. W. 626 : 43 M. L. J. 663 :
45 Mad. 986 : A. I. R. 1923 Mad. 171.

———S. 494—Proof—Offence under—Custom permitting remarriage—Proof, nature of.

Assuming that the custom of *sagai* during the lifetime of the first husband is a valid defence under S. 494, Penal Code, a strict proof is required of such a custom in respect of the particular caste, in the particular area, and in respect of the conditions in which the custom operates. *Fagu Tanti v. Chotelal Tanti.*

27 Cr. L. J. 867 :
96 I. C. 115 : 7 P. L. T. 443 :
A. I. R. 1926 Pat. 346.

———S. 494—Scope of—Bigamy—Hindu convert to Christianity marrying a Christian wife—Reversion to Hinduism—Subsequent marriage with a Hindu woman during the lifetime of Christian wife.

The accused, a Hindu convert to Christianity, married a Christian woman according to the rites of the Roman Catholic Religion. He subsequently renounced Christianity and again became a Hindu. He then married a Hindu woman according to Hindu rites, his Christian wife being at the time alive : *Held*, that the accused was not guilty of the offence of bigamy. *Emperor v. Antony.*

11 Cr. L. J. 682 :
8 I. C. 572 : 33 Mad. 371.

———S. 494—Sentence—Bigamy—Second marriage by woman abandoned by husband—Sentence.

Where a woman had been left largely to her fate by her husband and had been living in adultery with a paramour marries that paramour, she is guilty only of a technical offence under S. 494, Penal Code, and should be awarded only nominal punishment. *Ritha v. Emperor.*

27 Cr. L. J. 74 :
91 I. C. 250 : 8 N. L. J. 178 :
A. I. R. 1926 Nag. 127.

———S. 494—'Void,' meaning of—'Void' and 'invalid' marriages, distinction between.

F The word 'void' in S. 494, Penal Code, is not used in the technical sense in which it is used in the Mohammadan Law. The Penal Code, makes no distinction between a void and an invalid marriage and the term void used therein

PENAL CODE ACT (XLV OF 1860)

covers marriages of both classes. *Allah Din v. Emperor.*

29 Cr. L. J. 201 :
110 I. C. 333 : 29 P. L. R. 533 :
A. I. R. 1928 Lah. 844.

———Ss. 494, 114—Mistake of fact, effect of—Abetment of bigamy—Accused believing that earlier marriage had been set aside by Court, effect of.

A certain girl was married by her grandfather to one B. On attaining puberty, she brought a suit to have the marriage declared void, as she wished to repudiate it, and obtained an *ex parte* decree which was, however, set aside and later on the suit was withdrawn. Some time after she went through the form of marriage with K., who was charged with having committed an offence under Ss. 494 and 114, I. P. C. It was found that at the time of the marriage K did not know that the *ex parte* decree had been set aside and believed that it held good : *Held*, that inasmuch as by reason of a mistake of fact K. thought that the previous marriage had been declared void by a Court of competent jurisdiction, he had not committed any offence. *Karim Bukhsh v. Emperor.*

19 Cr. L. J. 680 :
46 I. C. 40 : 31 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 217.

———Ss. 494, 497, 498—Duty of Court—Marriage—Duty of prosecution.

It is necessary for the prosecution under S. 494, Penal Code, to prove that the form of marriage was a form recognized by or known to the law, otherwise it would be open to the prosecution by mere assertion to constitute any mutual act on the part of the man and woman, a form of marriage. S. 494, when it uses the word "marries" does not, of course, refer to a valid marriage. A bigamous marriage cannot be a valid marriage, and apart from the bar of the first marriage, it may be that there may be some other legal impediment to the validity of the marriage of the man or woman, some legal impediment, personal to the man or woman, such as consanguinity, yet if the second marriage be a form recognized by or known to the law, that would be sufficient to satisfy this particular provision of the section. *Kalan v. Emperor.*

39 Cr. L. J. 656 :
175 I. C. 461 : 11 R. S. 1 :
A. I. R. 1938 Sind 127.

———S. 496—Duty of prosecution—Essentials to be proved.

To establish a charge under S. 496, Penal Code, it is not enough to show that the marriage may be set aside on the ground of fraud or declared a nullity, it is incumbent upon the prosecution to go further and to prove that the accused knew that there was no valid marriage and he has gone through a show of marriage with a fraudulent or ulterior object in view. *Kshish Chandra Chakrabarty v. Emperor. (F. B.)*

38 Cr. L. J. 577 :
168 I. C. 708 : 41 C. W. N. 540 :
9 R. C. 869 : I. L. R. 1937, 2 Cal. 221 :
A. I. R. 1937 Cal 214.

PENAL CODE ACT (XLV OF 1860)

———S. 496—Offence of marriage ceremony fraudulently gone through without lawful marriage—*What constitutes.*

Marriage between Muhammadans within published degrees—Marriage being civil contract in Muhammadan Law, offence under S. 496 is not constituted. *In re: Muhammad Lowai.*

32 Cr. L. J. 1116 :
134 I. C. 57 : 1930 M. W. N. 694 :
I. R. 1931 Mad. 809 :
A. I. R. 1931 Mad. 247.

———Ss. 496, 109, 360—*Fraudulent intention—Marriage ceremony fraudulently gone through, and its abetment—Kidnapping—Prosecution for offence against marriage—Sacred fire indispensable in Hindu marriage ceremony.*

Where a Hindu went through a marriage ceremony, performed by a priest of another caste in the fields and also in the absence of sacred fire, with a minor girl without her guardian's consent: *Held*, that it was well settled that under the Hindu Law, a marriage duly performed was not invalid simply because there was no consent by a minor's guardian, but that the element of sacred fire was indeed the mysterious sacred symbol of divine approval imparting solemnity and divine sanction to the rite, and that since its absence was proved and admitted by the priest performing the marriage, the marriage would appear to be an unlawful one, that the final ingredient was dishonesty or fraudulent intention, but that from the point of view of Hindu Law, marriage being a sacred rite rather than a contract, there could hardly be involved any loss of property to which the guardian was entitled, and so dishonesty would hardly be satisfied: *Held*, as regards the abettor, the priest, that it must be proved that he joined in a conspiracy with the bridegroom or that he was privy to the fraudulent intention, that it was insufficient to say that he solemnized an unlawful marriage at his peril, that though he would, in such a case be morally culpable, he did not appear to be criminally liable under the I. P. C. unless it was established that he shared the fraudulent intention. *Emperor v. Rughnath Giga.*

3 Cr. L. J. 488.

———Ss. 496, 419—*Misrepresentation—Accused misrepresenting himself to belong to same sub-caste as complainant marrying her daughter—Complainant suffering harm to reputation and mind—Offence.*

Where the accused who belonged to the Barna sub-caste of Brahmins, representing himself to be a Barendra Brahmin, went through the ceremony of marriage with the daughter of the complainant who was a Barendra Brahmin and who would not have given her daughter in marriage to the accused but for the misrepresentation, and on account of the marriage, the complainant was ex-communicated and thus suffered harm to her mind and reputation: *Held*, that the marriage not being invalid, the accused could not be convicted under S. 496, Penal Code, but was liable to conviction under

PENAL CODE ACT (XLV OF 1860)

S. 419. *Kshitish Chandra Chakraborty v. Emperor.* (F.B.) 38 Cr. L. J. 577 :
168 I. C. 708 : 41 C. W. N. 540 :
9 R. C. 869 : I. L. R. 1937, 2 Cal. 221 :
A. I. R. 1937 Cal. 214.

———Ss. 496, 494—*Essence of offence—Marriage—Fraudulently going through form of—Show of marriage—Ulterior fraudulent purpose—Practice.*

Under the Hanafi Law where the father of a minor girl is present at her marriage and is a consenting party, no special recitations are necessary to make a valid marriage. The marriage is irrevocable and cannot be repudiated by the girl on attainment of puberty. The essence of an offence under S. 496, I. P. C., is that the marriage ceremony should be fraudulently gone through and that there should be no lawful marriage. The accused must have the knowledge that there is no marriage. A case of bigamy is not contemplated by S. 496, I. P. C. where it is intended that there should be a valid marriage and not that there should be only a show of marriage for some ulterior and fraudulent purpose; the case does not come under S. 496, I. P. C. *Sheikh Alimuddin v. Emperor.*

4 Cr. L. J. 152 :
10 C. W. N. 982.

———S. 497.

See also (i) Cr. P. C., 1898, Ss. 100, 182, 199.

(ii) Divorce Act, 1869, S. 61.

(iii) Evidence Act, 1872, S. 50.

———S. 497—*Connivance of husband, meaning of—Adultery, prosecution for.*

Connivance is a figurative expression meaning a voluntary blindness to some present act or conduct, to something going on before the eyes or something which is known to be going on without any protest or desire to disturb or interfere with it. A person charged with the offence of adultery cannot escape liability by merely showing that the complainant connived at the immorality of his wife. He must prove his specific connivance at her adultery with himself. *Munir v. Emperor.*

27 Cr. L. J. 101 :
91 I. C. 533 : 24 A. L. J. 155 :
A. I. R. 1926 All. 189.

———S. 497—*Evidence.*

Direct evidence of the fact of adultery can rarely be possible. It has to be inferred from circumstances, but the circumstances must be such as to fairly justify the inference that sexual intercourse took place. *W. J. Phillips v. Emperor.*

36 Cr. L. J. 1298 :
158 I. C. 6 (b) : 8 R. O. 67 :
1935 O. W. N. 1015 :
1935 O. L. R. 547 :
A. I. R. 1935 Oudh 506.

———S. 497—*Factum valet—Enticing married woman—Proof of legal marriage—Presumption from cohabitation—Hindu Law—Marriage between different castes.*

Where a man and a woman live together as

PENAL CODE ACT (XLV OF 1860)

husband and wife, there is a presumption that they are legally married. The doctrine of *factum valet* would apply to the case of a marriage between persons of different classes or castes which ought not to intermarry. *Anandaw v. Emperor*. 28 Cr. L. J. 868 : 104 I. C. 708 : 6 Bur. L. J. 122 : A. I. R. 1927 Rang. 261.

———S. 497—Offence under—*Adultery*—*Evidence of sexual intercourse circumstantial—Conviction, legality of.*

The provisions of S. 497, Penal Code, are not restricted in their application, and apply to all classes of persons, including Europeans. Accused took up his abode in the house of another man's wife, and there was evidence that for 15 days he and she slept in the same bed and that there was considerable attachment between them: *Held*, that the evidence, although circumstantial, was amply sufficient to hold that sexual intercourse had taken place and that the accused was guilty of an offence under S. 497, Penal Code. *Hunter v. Emperor*.

22 Cr. L. J. 382 : 61 I. C. 238 : 2 U. P. R. All. 419.

———S. 497—Offence under, nature of—*Whether offence against public—Crown, if a prosecutor.*

Although no Court may take cognizance of an offence under S. 497, Penal Code, except upon a complaint made by the husband as provided in that section, nevertheless, the offence referred to in that section is like all other offences described in the Penal Code, an offence against the public in which the Crown, as always, is the prosecutor. The complainant merely puts the Crown in motion. Thereafter, the issue is between the Crown and the accused. *Allan E Kar v. Promotha Nath Sarkar*.

37 Cr. L. J. 825 : 163 I. C. 224 : 62 Cal. 1037 : 39 C. W. N. 917 : 8 R. C. 722.

———S. 497—Proof of marriage—*Adultery—Statement of complainant, whether sufficient.*

In a prosecution for adultery, the marriage must be strictly proved. For the purposes of such a prosecution, the marriage cannot be held to have been proved merely by the statement of the complainant. *Gopal v. Emperor*.

27 Cr. L. J. 651 : 94 I. C. 603 : 4 Bur. L. J. 107 : A. I. R. 1925 Rang. 328.

———S. 497—Proof of marriage—*Evidence Act, S. 50—Actual fact of marriage must be proved—Conduct not sufficient.*

To justify a conviction under S. 497, Penal Code, the actual fact of marriage must be proved in some way or another. The evidence that the man and woman spoke of each other as husband and wife and that some of those who were acquainted with them spoke of them as man and wife, proves nothing more than conduct, and under S. 50, Evidence Act, con-

PENAL CODE ACT (XLV OF 1860)

duct alone is not sufficient to prove marriage. *Bhagu Dhondi v. Emperor*.

16 Cr. L. J. 213 : 27 I. C. 837 (2) : 17 Bom. L. R. 75.

———S. 497—Proof of marriage—*No particular number of witnesses are necessary—Evidence of husband and wife, whether sufficient—Proof of ceremonies for marriage, necessity of.*

In prosecution under S. 497, Penal Code, where marriage is an ingredient in the offence, the fact of the marriage must be strictly proved in the regular way. This implies that the marriage must be proved as an event which took place and not merely as the state in which the parties were living and if it is sought to prove it by oral evidence, that evidence must, in accordance with S. 60, Evidence Act, be direct, that is to say, must be the evidence of an eye-witness. No particular number of witnesses must be examined to prove the fact of marriage between two persons. It cannot be said that the evidence of a husband and a wife that a marriage in fact took place between them cannot be accepted as sufficient to prove that fact, nor will any presumption against the validity of such a marriage arise unless there is at least some suggestion that a particular part of the ceremony necessary to its validity was lacking; every case depends on its own facts. *Aziz Khan v. Ekram Hussain*. 38 Cr. L. J. 213 : 166 I. C. 338 : 3 B. R. 159 : 9 R. P. 290 : 18 P. L. T. 166 : A. I. R. 1937 Pat. 219.

———S. 497—Prosecution under.

S. 61, Divorce Act, does not forbid the Crown to prosecute and punish an alleged adulterer under S. 497. What S. 61 forbids is a civil suit for damages. *W. J. Phillips v. Emperor*.

36 Cr. L. J. 1298 : 158 I. C. 6 (b) : 1935 O. W. N. 1015 : 1935 O. L. R. 547 : 8 R. O. 67 : A. I. R. 1935 Oudh 506.

———Ss. 497, 498—*Evidence—Enticing married woman—Marriage, nature of evidence necessary to prove—Precedents as to sufficiency of evidence, value of—Evidence Act, S. 50.*

A Court, under the provisions of S. 50, Evidence Act, while not directed to exclude evidence of opinion as expressed by conduct to prove a legal marriage is directed not to have a finding that such a marriage has taken place upon the evidence of opinion alone. Outside that a Court is at perfect liberty to arrive at a decision as to whether a legal marriage is in existence upon all relevant and admissible evidence, which is placed before it in the due course of law, and will decide upon such evidence whether such a marriage is or is not proved, when after considering the matter before it, it either believes it to exist or considers existence so probable that a prudent man ought, in the circumstances of a particular case, to act upon the supposition that it does exist. It is not usually profitable for a Court in dealing with evidence in one case to endeavour to obtain much in the way of guidance from the way in which another

PENAL CODE ACT (XLV OF 1860)

Court dealt with different evidence in another case. *Raghupat Singh v. Emperor*.

28 Cr. L. J. 311 :
100 I. C. 535 : 4 O. W. N. 172 :
A. I. R. 1927 Oudh 140.

———Ss. 497, 498—*Miscellaneous — Special rules passed in Malia State in 1878 for adultery and cohabitation with other's wife.*

The special rules (called the Salmon Rules) passed in Malia State in 1878 regarding adultery and cohabitation with another's wife, do not oust the application of the ordinary criminal law, as they do not expressly exclude the right of an injured husband to make a criminal complaint and seem to govern a civil plaint in order to save lengthy civil proceedings (which would tend to aggravate or create a breach of the public peace), and if their intention were, as the Rules say, to follow that procedure in *all* such cases, and to prevent a criminal complaint, it would be quite *ultra vires*. *In re: Mowar Raimal Meraman*.
7 Cr. L. J. 331.

———Ss. 497, 498—*Inference of adultery, legality of—Enticing away married woman—Intention.*

For a conviction under S. 498, Penal Code, there must be an intention that the woman should leave her husband's control without any definite intention that she should return to him, or an intention that she should remain away indefinitely. Where it was alleged that the accused committed adultery with a woman while shut up in a shop with her angry husband outside, their entry in the shop together having been discovered at once and the door having been chained on them immediately: *Held*, that it did not appear likely that the accused would commit adultery under such circumstances. *Ahmad v. Emperor*.

19 Cr. L. J. 441 (b) :
44 I. C. 969 : 145 P. L. R. 1917 :
A. I. R. 1918 Lah. 346.

———S. 498.

See also (i) Cr. P. C., 1898, Ss. 4 (1) (b), 4, Cl. 4 (b) 109, 199, 200, 202, 227, 252, 345, 403.

(ii) Criminal trial.

(iii) Penal Code, 1860, Ss. 182, 366, 366-A, 497.

———S. 498—*Adultery—Complaint by brother and no necessary averments—Conviction, if proper.*

For a conviction under S. 497 or S. 498, Penal Code, a complaint by the husband is an essential requirement which cannot be dispensed with. If a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted in the manner provided by law, and if it is not, the requirements of S. 199 of the Cr. P. C., will not have been satisfied. In the absence of a legal complaint for the offence of adultery and in the absence of necessary averments, no offence under S. 497

PENAL CODE ACT (XLV OF 1860)

can be alleged against the accused. *Ram-narayan Baburao Kapur v. Emperor*.

38 Cr. L. J. 769 :
169 I. C. 526 : 10 R. B. 34 :
39 Bom. L. R. 61 :
I. L. R. 1937 Bom. 244 :
A. I. R. 1937 Bom. 186.

———S. 498—'Any such woman,' meaning of.

The words "any such woman" in S. 498, I. P. C., refer to a woman "who is and whom he knows or has reason to believe to be the wife of any other man." The words "whoever takes or entices away" cannot possibly be interpreted as an adjective describing the woman in question. *Bipad Bhanjin Sarkar v. Emperor*.

41 Cr. L. J. 954 :
190 I. C. 632 : 13 R. C. 196 :
44 C. W. N. 702 : I. L. R. 1940, 2 Cal. 93 :
A. I. R. 1940 Cal. 477.

———S. 498—Benefit of doubt.

Consent of woman is not material—Evidence of taking or enticing away of the woman by accused is necessary. Benefit of doubt should be given to the accused. *Norman O'Connor v. Emperor*.

37 Cr. L. J. 73 :
159 I. C. 314 : 8 R. C. 301 :
A. I. R. 1935 Cal. 345.

———S. 498—Complaint.

Abandonment of wife—Wife marrying in *Karao* form—Enticement of wife—Second husband is entitled to make complaint under S. 498. *Aslop v. Emperor*.

32 Cr. L. J. 315 :
1930 A. L. J. 1492 : I. R. 1931 All. 146 :
129 I. C. 370 : A. I. R. 1930 All. 834.

———S. 498—Complaint by father.

Evidence recorded—Statement by husband that complaint was filed with his consent. Conviction under S. 498 is bad in law. High Court cannot alter conviction to one under S. 366-A or S. 378 as these are major offences. *Mahandi v. Emperor*.

36 Cr. L. J. 423 :
153 I. C. 721 : 7 R. L. 451 :
A. I. R. 1934 Lah. 122.

———S. 498—Complaint.

Complaint by husband under S. 366—Court can convict under S. 498 if from allegations in complaint offence disclosed falls under S. 498—Test in such cases pointed out. *Mohan Singh v. Emperor*.

36 Cr. L. J. 404 :
153 I. C. 697 : 7 R. A. 569 :
A. I. R. 1934 All. 472.

———S. 498—Complaint.

Complaint by person other than husband—Absence of leave of Court—Court cannot entertain complaint—Irregularity is not curable under S. 537, Cr. P. C. *Akshay Kumar Maiti v. Emperor*.

34 Cr. L. J. 1092 :
145 I. C. 874 (2) : 38 C. W. N. 113 :
6 R. C. 157 : A. I. R. 1933 Cal. 880.

———S. 498—Complaint to Police, if sufficient.

A complaint to Police Officer of an offence

PENAL CODE ACT (XLV OF 1860)

under S. 408 is not sufficient for the purposes of S. 109, Cr. P. C. *Arumuga Mudaliar v. Emperor*.

23 Cr. L. J. 592 :
68 I. C. 624 : 16 L. W. 494 :
31 M. L. T. 254 : 43 M. L. J. 564 :
1922 M. W. N. 801 :
A. I. R. 1923 Mad. 59.

———S. 498—Connivance of husband, effect of—Enticing away married woman..

A conviction under S. 498, Penal Code, is not bad merely because the husband connived at the taking away or concealing of the wife. *Ganesh Ram v. Gyan Chand*.

21 Cr. L. J. 139 :
54 I. C. 619 : A. I. R. 1920 Pat. 522.

———S. 498—Conviction for adultery—Deposition—Complaint.

An accused person was tried under S. 366, Penal Code, at the instance of the Police. During the course of the trial, the husband was examined, and from his deposition, it appeared that he wanted the conviction of the accused as he had committed adultery with his wife: *Held*, that the deposition of the husband was a complaint on which the accused could be convicted under S. 408, Penal Code. *Bhawani Dutt v. Emperor*.

17 Cr. L. J. 72 :
32 I. C. 664 : 14 A. L. J. 233 :
38 All. 276 : A. I. R. 1916 All. 307.

———S. 498—Conviction, illegality of.

Absence of proof of kidnapping or abduction or of knowledge of accused that girl was married—No proof that accused had or intended to have illicit intercourse with girl—Conviction under S. 498, held not justifiable. *Dori v. Emperor*.

34 Cr. L. J. 1196 :
146 I. C. 40 (2) : 10 O. W. N. 833 :
6 R. O. 93.

———S. 498—Conviction, legality of—Charge under S. 366, Penal Code.

Where the accused is charged under S. 366, Penal Code, and the prosecution fails to prove either kidnapping or abduction, he cannot be convicted of an offence under S. 498. *Bangar Asari v. Emperor*.

1 Cr. L. J. 281 :
Sc., I. L. R. 27 Mad. 61 : 2 Weir 236.

———S. 498—Conviction, legality of—Complaint and charge implicating one person—Such person acquitted—Appellate Court finding that another person detained girl in his house—Such person, if can be convicted.

Where the complaint and the charge state that the girl was enticed away from her husband for the purposes of illicit intercourse with the accused A, and accused A has been acquitted, another person who was found by the Appellate Court to have detained the girl at his own house, cannot be convicted on a charge which he was not called upon to meet. *Jalaluddin v. Kartikram*.

38 Cr. L. J. 433 :
167 I. C. 569 : 19 N. L. J. 158 :
9 R. N. 202 : A. I. R. 1937 Nag. 123.

———S. 498—Conviction, legality of—

PENAL CODE ACT (XLV OF 1860)

Cr. P. C., S. 232—Charge for enticing away complainant's wife from his custody—Evidence showing that woman was enticed from another person's custody—Evidence against accused scanty—Order for retrial on amended charge, propriety of.

The accused was charged with having taken away the complainant's wife from the complainant's custody. The evidence showed that the accused had taken away the woman from the custody of another person and there was nothing to show that this person had the care of the woman on behalf of the complainant. The evidence connecting the accused with the offence was also very scanty: *Held*, (1) that the accused could not, under the circumstances, be convicted under S. 498, Penal Code, on the charge as framed; (2) that a retrial on an amended charge was not necessary as the evidence against the accused was very scanty. *Sun-nal Mondal v. Makar Sheikh*.

31 Cr. L. J. 697 :
124 I. C. 520 : A. I. R. 1930 Cal. 138.

———S. 498—Conviction, maintainability of—Married woman discarded by husband living with her father and brother—Father and brother not having care of her on behalf of her husband—Her elopement with accused—Offence under S. 498, if made out—Cr. P. C., Ss. 199, 177—Complaint by brother is not sufficient.

It is an essential ingredient of the offence under S. 498, Penal Code, that the person concerned shall have been taken or enticed from a person having the care of her on behalf of the husband. Where, therefore, the accused is alleged to have enticed a married woman living with her father and brother having been discarded by her husband and the father and brother were taking care of her on their own account and not on behalf of her husband, a conviction under S. 498, cannot be sustained. In such a case, a complaint by the brother is not competent under S. 109, Cr. P. C., as the brother is acting on his own behalf and not under the authority of her husband. The words 'on his behalf' must be given some meaning. It is not enough that a person should take care of the wife instead of the husband because the husband will not take care of her and there is no one else to do it. *Ramnarayan Baburao Kapur v. Emperor*.

38 Cr. L. J. 769 :
169 I. C. 526 : 39 Bom. L. R. 61 :
I. L. R. 1937 Bom. 244 : 10 R. B. 34 :
A. I. R. 1937 Bom. 186.

———S. 498—Defect in charge, effect of—Charge—Omission to state knowledge of, or reason to, believe marriage—Defect, whether fatal.

In a case under S. 498, Penal Code, an omission in a charge sheet to charge the accused with knowledge or reason to believe that the abducted was a married woman is not by itself fatal to the case. *Allah Din v. Emperor*.

28 Cr. L. J. 419 :
101 I. C. 451 : A. I. R. 1927 Lah. 432.

PENAL CODE ACT (XLV OF 1860)

———S. 498—'Detain', meaning of—*Enticement and concealment.*

"Detain" in S. 408, Penal Code, has to be interpreted *ejusdem generis* with enticement and concealment. There must be evidence to show that the accused did something, which had the effect of preventing the woman from returning to her husband. *Prithi Missir v. Harak Nath Singh.*

38 Cr. L. J. 180 (b) :
166 I. C. 290 (2) : 40 C. W. N. 996 :
9 R. C. 498 (1) : I. L. R. 1937, 1 Cal. 166 :
A. I. R. 1936 Cal. 450.

———S. 498—'Detained', meaning of—*Woman staying willingly with accused—Detention—No offence.*

The expression "to detain" in S. 408, Penal Code, means to keep back from somebody or to restrain. The complainant's wife left him and went willingly to live with the accused. The complainant did not take any steps for her recovery for about 15 years: *Held*, that the woman cannot, under the circumstances, be held to have been 'detained' by the accused within the meaning of S. 408 of the Penal Code, and that the accused was not guilty of an offence under the section. *Abdul Wahid Khan v. Emperor.*

28 Cr. L. J. 703 :
103 I. C. 559 : 1 Luck. Cas. 235 :
A. I. R. 1927 Oudh 318.

———S. 498—'Detains', meaning of.

The word 'detains', in S. 408, Penal Code, clearly implies some act on the part of the accused by which the woman's movements are restrained and this again implies unwillingness on her part. 'Detention' cannot include persuasion by means of blandishment or similar inducements, which would leave the woman free to go if she wished. The word 'detains' cannot be reasonably construed as having reference to the husband. *Harnam Singh v. Emperor.*

40 Cr. L. J. 760 :
183 I. C. 318 : I. L. R. 1939 Lah. 148 :
41 P. L. R. 487 : 12 R. L. 107 :
A. I. R. 1939 Lah. 295.

———S. 498—'Detains', meaning of.

The word "detains" in S. 408, I. P. C., means "keeps back." It need not necessarily be by physical force; it may be by persuasion, or, by allurements and blandishment. But the use of the word does require that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman. 147 I. C. 43 (3), relied on. *Bipad Bhanjan Sarkar v. Emperor.*

41 Cr. L. J. 954 :
190 I. C. 632 : 44 C. W. N. 702 :
I. L. R. 1940, 2 Cal. 93 : 13 R. C. 196 :
A. I. R. 1940 Cal. 477.

———S. 498—'Detains,' meaning of—*Woman eloping and living with accused of her own will—Keeping back, if constituted.*

The word 'detains' in S. 408, Penal Code, has its ordinary meaning of 'keeping back'. There may be various ways of keeping back. It need

PENAL CODE ACT (XLV OF 1860)

not necessarily be by physical force, but the use of the word does require that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman, and it cannot properly be said that a man detains a woman if she has no desire to leave, and on the contrary, wishes to stay with him. Where, therefore, a married woman elopes with the accused, lives with him willingly and is not willing to leave him, and is also a free agent, there is no 'keeping back' within S. 408. *Ramnarayan Baburao Kapur v. Emperor.*

38 Cr. L. J. 769 :
169 I. C. 526 : 39 Bom. L. R. 61 :
I. L. R. 1937 Bom. 244 : 10 R. B. 34 :
A. I. R. 1937 Bom. 186.

———S. 498—Detention—*Cr. P. C., S. 403—Detaining married woman—Offence, nature of—Previous acquittal, whether bars prosecution for subsequent act of detention.*

The detention of a married woman is continuing offence and the fact that a person has been acquitted of such an offence on one occasion, does not operate as a bar to his prosecution for any subsequent act of detention. To such subsequent prosecution, the provisions of S. 403, Cr. P. C., do not apply. *Nadar v. Emperor.*

24 Cr. L. J. 636 :
73 I. C. 524 : 4 L. L. J. 535 :
A. I. R. 1921 Lah. 186.

———S. 498—Detention—*Man picking up woman in brothel and taking her to his house, if detains her.*

It would obviously be extremely difficult to prove that a man who picks a woman up in a brothel and takes her to his house can be said to have detained her in any sense of the term. *Bipad Bhanjan Sarkar v. Emperor.*

41 Cr. L. J. 954 :
190 I. C. 632 : 44 C. W. N. 702 :
I. L. R. 1940, 2 Cal. 93 : 13 R. C. 196 :
A. I. R. 1940 Cal. 477.

———S. 498—Detention.

Where a man keeps a woman under his protection in a house provided by him with the knowledge and intent specified under S. 498, he detains her within the meaning of that section. *Bansi Lal v. Emperor.*

14 Cr. L. J. 595 :
21 I. C. 467 : 36 P. W. R. 1913 Cr. :
319 P. L. R. 1913.

———S. 498—Detention, what amounts to—*Accused marrying woman represented to be a widow—Woman claimed as wife by another—Denial by her of marriage and staying preferably with accused—Accused, whether guilty of wrongful detention.*

Accused married a woman whom her relatives represented to be a widow. The complainant claimed the woman as his wife and demanded her from the accused. She denied that she had ever seen the complainant, or had anything to do with him and deliberately walked into accused's house. Accused was convicted under S. 408, Penal Code, for detaining the woman with unlawful intent knowing or having reason

PENAL CODE ACT (XLV OF 1860)

to believe that she was the wife of the complainant: *Held*, that the conviction could not be sustained as the woman's attitude showed that she was not being detained by the accused with or without justification, having determined to stay with him and not submit to the complainant, and that the accused did not have "reason to believe" that she was the wife of the complainant. *Lachman Chamar v. Emperor*.

21 Cr. L. J. 417 :
56 I. C. 209 : 18 A. L. J. 311 :
A. I. R. 1920 All. 43.

———S. 498—'Detention,' what amounts to.

Providing shelter for a married woman is such an inducement as to amount to detention within the meaning of S. 498, Penal Code. Where a married woman was found in the house of the accused where she was living for some time, and sexual intercourse between them had taken place: *Held*, that there was persuasion amounting to detention within the meaning of S. 498. *Bunarsi Raut v. Emperor*.

39 Cr. L. J. 952 :
177 I. C. 706 : 11 R. P. 178 :
19 P. L. T. 795 : 5 B. R. 14 :
A. I. R. 1938 Pat. 432.

———S. 498—Detention, what constitutes.

To constitute detention, proof of some kind of persuasion is necessary. Where woman is not prevented from going anywhere she liked, there is no detention. *Emperor v. Mahiji Tula*.

35 Cr. L. J. 376 :
147 I. C. 43 : 35 Bom. L. R. 1046 :
58 Bom. 88 : 6 R. B. 184 :
A. I. R. 1933 Bom. 489.

———S. 498—Detention, what is—Enticing away married woman—Offence, what constitutes.

To constitute an offence under S. 498, Penal Code, it is not necessary that the woman should be physically restrained or that she be actively prevented from the exercise of her free will or action. The gravamen of the offence consists in depriving the husband of his proper control over his wife for purposes specified in S. 498, and a detention occasioning such deprivation may be brought about by means other than mere physical constraint, e.g., even by the influence of allurements and persuasions. *Rati Ram v. Emperor*.

23 Cr. L. J. 730 :
69 I. C. 458 : A. I. R. 1923 Lah. 45.

———S. 498—Divorce—Enticing away married woman—Hindu Law—Khatiks—Low class Sudras.

Khatiks are low class Sudras. They do not follow strict Hindu Law, consequently, there is no prohibition among them of divorcing a wife by a written deed. *Bholar v. Emperor*.

15 Cr. L. J. 539 :
24 I. C. 947 : 181 P. W. R. 1914 :
31 P. W. R. 1914 Cr.
A. I. R. 1914 Lah. 178.

———S. 498—Enticing away married woman—Discarded wife living in her father's house—Protection—Knowledge or belief of her being wife of another man.

PENAL CODE ACT (XLV OF 1860)

A husband who openly discarded his wife for many years and recognised her as a free agent to go where she liked, has no ground for complaining under S. 498, Penal Code, even if she is enticed away by another man from her father's house where she lives. In such a case, it cannot be said either that her father has the care of her on behalf of her husband or the man enticing her away had the knowledge or belief of her being the wife of the complainant. *Pahlwan v. Emperor*.

16 Cr. L. J. 216 :
27 I. C. 840 : 5 P. W. R. 1915 Cr. :
129 P. L. R. 1915 :
A. I. R. 1915 Lah. 461.

———S. 498—Evidence—Enticing away married woman—Essential element for conviction.

In order to sustain a conviction under S. 498, Penal Code, there must be evidence that the accused knew that the woman was the wife of another man, mere presumption that he must have known this, is not sufficient. *Batiram Kool v. Bhandaram Kool*.

22 Cr. L. J. 412 (b) :
61 I. C. 652 : A. I. R. 1921 Mad. 458.

———S. 498—Evidence of marriage—Marriage, proof of, among Jats.

Among Jats, according to custom, cohabitation for a long period as husband and wife is sufficient to furnish *prima facie* evidence of marriage. *Mangal Singh v. Emperor*.

30 Cr. L. J. 668 (a) :
116 I. C. 717 : I. R. 1929 Lah. 573 :
A. I. R. 1929 Lah. 846.

———S. 498—Inducement—Accused inducing wife of complainant to leave her husband—Previous long-standing intrigue—Providing her with shelter, whether inducement.

Where the accused who carried on an intrigue with the wife of the complainant for a number of years, entices her away one day and keeps her with him in another town by providing her with a shelter, his providing a shelter for her is an inducement to her to withhold herself from her husband. This conduct on his part would be sufficient to bring him within the purview of S. 498, Penal Code. *Muhammad Aslam Khan v. Emperor*.

38 Cr. L. J. 576 :
168 I. C. 607 : 39 P. L. R. 488 :
9 R. L. 656 : A. I. R. 1937 Lah. 617.

———S. 498—Ingredients of offence—Enticing away a married woman—Evidence—Proof of marriage—Statement of complainant.

The two essential ingredients of an offence under S. 498, Penal Code, are that the woman enticed away is the wife of the complainant and that the fact of marriage is known to the accused. The mere statement of the complainant that the woman is his wife is not sufficient evidence of marriage. *Emperor v. Bachar*.

13 Cr. L. J. 541 :
15 I. C. 813 : 5 S. L. R. 270.

PENAL CODE ACT (XLV OF 1860)

———S. 498 — Intention — *There must be abduction with intention of illicit sexual intercourse.*

Where it is not established beyond all reasonable doubt that the woman was abducted from the custody of her husband for the purposes of carrying on sexual intercourse with her, conviction under S. 498, Penal Code, cannot be had. *Dittu v. Emperor.*

39 Cr. L. J. 195 :
172 I. C. 799 : 39 P. L. R. 191 :
10 R. L. 369.

———S. 498 — Jurisdiction—*Complaint instituted by husband under S. 498, I. P. C.—Subsequent death of husband—Effect of.*

Where a complaint under S. 498, I. P. C., has been properly instituted by the husband, the Court is vested with jurisdiction to try the same, and the subsequent death of the husband cannot have the effect of destroying that jurisdiction. There can be no abatement of a criminal prosecution. *Imperator v. Nur Mahomed.*

8 Cr. L. J. 190 :
1 S. L. R. 72.

———S. 498—*Jurisdiction.*

Where there is no complaint as required by S. 199, Cr. P. C., but charge under S. 498 is added, trial is without jurisdiction. *Ramjanam Tewari v. Emperor.*

36 Cr. L. J. 856 :
155 I. C. 866 : 16 P. L. T. 348 :
14 Pat. 717 : 7 R. P. 634 :
A. I. R. 1935 Pat. 357.

———S. 498 — Miscellaneous — *Jhanjrara marriages valid in the Kangra District—Divorcing and selling a wife illegal—Absence of lawful marriage.*

Jhanjrara (Chadar Andazi) marriage with a widow is no doubt valid according to the custom prevailing generally in the Kangra District, but there is no custom (and even if there be any, it cannot be enforced) allowing a husband to divorce and sell his wife to another on receipt of pecuniary compensation. Such a connection between the woman and the purchaser does not create any legal relationship of husband and wife which can be recognized by any Civil or Criminal Court. *Nihala v. Emperor.*

11 Cr. L. J. 155 :
4 I. C. 1042 : 22 P. W. R. 1909 Cr. :
12 P. L. R. 1910.

———S. 498 — Offence under — *Enticing away a married woman—Hindu law—Marriage between Banya husband and girl born of Banya mother and Brahmin father—Validity—Illegitimacy, if disqualification for marriage.*

A marriage between a Banya male and a woman born of a Brahmin father and a Banya mother, who is recognized by the husband's caste as a Banya, is valid. A man who entices away such a woman is guilty of an offence under S. 498, Penal Code. *Madan Gopal v. Emperor.*

13 Cr. L. J. 705 :
16 I. C. 513 : 10 A. L. J. 82 :
34 All. 589.

PENAL CODE ACT (XLV OF 1860)

———S. 498—*Offence under—Enticing away married woman from her husband's house for marriage—Offence.*

A person enticed away a married woman from her husband's house with intent that he might dispose of her in marriage to some one else: *Held*, that he committed an offence under S. 498, Penal Code. *Naurang v. Emperor.*

16 Cr. L. J. 315 :
28 I. C. 651 : 13 A. L. J. 251 :
A. I. R. 1915 All. 120.

———S. 498—*Proceedings ultra vires—Enticing away a married woman—Compounding of offence before police.*

On the 18th December 1908, the complainant instituted a case against the present petitioner under Ss. 497, 498 and 363, Penal Code, asserting that on 1st February 1908, the petitioner had taken away his wife and child after removing the hinges of his door. In the proceedings that ensued he stated that his wife had left him in his absence and simply mentioned his suspicions that the petitioner had got hold of the woman through the agency of a third person. On 18th March 1909, a compromise was effected before the Inspector of Police when the case was under investigation by the Police, and the case was withdrawn. On 7th May 1909, the complainant asserted that he had been forced into the compromise and wished to go on with his case against the petitioner. The Magistrate ordered a warrant to be issued against the petitioner for an offence under S. 498, Penal Code: *Held*, that the offence had been compounded, the proceedings before the Magistrate were *ultra vires*. *Emperor v. Harnam Singh.*

11 Cr. L. J. 366 :
6 I. C. 497 : 22 P. L. R. 1910.

———S. 498—*Proof of marriage.*

A complainant is incompetent to prosecute another man under S. 498, Penal Code, for enticing away a woman unless he establishes that he is her lawful husband. *Nihala v. Emperor.*

11 Cr. L. J. 155 :
4 I. C. 1042 : 22 P. W. R. 1909 Cr. :
12 P. L. R. 1910.

———S. 498 — *Proof of marriage—Enticing away married woman—Marriage, proof of—Evidence of complainant and his wife, whether sufficient.*

The applicant was convicted of an offence under S. 498, Penal Code. The only evidence of marriage consisted of the testimony of the complainant and his wife, which was not, however, subjected to cross-examination by the accused: *Held*, that the evidence was sufficient to establish the relationship of husband and wife to warrant a conviction under S. 498. S. 50, Evidence Act, requires direct proof of marriage in cases under S. 498, Penal Code, opinion regarding the relationship being insufficient for a conviction under this section. *Syed Munir v. Emperor.*

18 Cr. L. J. 1016 :
42 I. C. 700 : 14 N. L. R. 28 :
A. I. R. 1917 Nag. 76.

PENAL CODE ACT (XLV OF 1860)

———S. 498—*Proof of marriage—Enticing away married woman.*

To sustain a conviction under S. 498, Penal Code, the mere statement of the complainant and the woman that they are married, is not sufficient evidence of the marriage. *Buddhu v. Emperor.*

21 Cr. L. J. 368 :
55 I. C. 736 : 2 U. P. L. R. All. 87 :
18 A. L. J. 411 : 42 All. 401 :
A. I. R. 1920 All. 175.

———S. 498—*Proof of marriage—Evidence Act, Ss. 50, 58—Enticing away married woman—Admission of accused, effect of.*

In order to prove a marriage for the purposes of a prosecution under S. 498, Penal Code, it is not enough that the prosecutor says that the woman is his wife and the woman says that she is married to the prosecutor. The marriage must be proved like any other essential fact in the case by direct evidence of witnesses speaking to the facts said to constitute a marriage so that the Court may determine whether what the witnesses state to have taken place did take place in fact, and if so, whether it constitutes a marriage in point of law. The admission of the accused that the woman is the wife of the prosecutor does not absolve the prosecution from proving the marriage. *Emperor v. Phikku.*

26 Cr. L. J. 1376 :
89 I. C. 464 : 2 O. W. N. 586 :
A. I. R. 1925 Oudh 701.

———S. 498—*Proof of marriage—Hindu Law—Marriage among sub-castes, legality of—Offence relating to marriage.*

In proving an offence in which marriage is an essential ingredient, it is necessary that the factum of marriage must be strictly proved. It is doubtful whether there could be a valid marriage under Hindu Law between an Oriya male and Telugu female. *Ramanathan v. Emperor.*

28 Cr. L. J. 263 :
100 I. C. 286 : 5 Bur. L. J. 190 :
A. I. R. 1927 Cal. 277.

———S. 498—*Proof of marriage—Marriage of woman to be proved.*

The fact and the legality of a marriage are material elements in a case under S. 498, and must be proved as strictly as any other material fact. But it is not necessary to prove this in any particular way. *Nazir Khan v. Emperor.*

15 Cr. L. J. 78 :
22 I. C. 430 : 11 A. L. J. 994 :
36 All. 1 : A. I. R. 1914 All. 214.

———S. 498—*Proof of marriage—Presumption from long cohabitation, whether sufficient.*

Under S. 498, Penal Code, marriage must be strictly proved and it is not permissible to base a conviction on the presumption of marriage arising from cohabitation for a number of years. *Vir Singh v. Emperor.*

30 Cr. L. J. 1051 :
119 I. C. 332 : I. R. 1929 Lah. 876 :
30 P. L. R. 643 : A. I. R. 1930 Lah. 230.

———S. 498—*Proof of marriage—Proof of putting vermilion on woman's forehead and giving feast, whether sufficient.*

PENAL CODE ACT (XLV OF 1860)

In cases where marriage is an ingredient of an offence, the fact of marriage must be strictly proved. Where the only evidence of marriage in a case under S. 498, Penal Code, was that the complainant had put vermilion on the forehead of the woman and that there was a feast of the caste people, and there was no evidence that among the caste to which the complainant belonged, a valid marriage could be effected with these formalities alone : *Held*, that the evidence of marriage was insufficient for conviction under S. 498, Penal Code. *Prahlad Barman v. Emperor.*

31 Cr. L. J. 1091 :
126 I. C. 761 : 34 C. W. N. 227 :
A. I. R. 1930 Cal. 447.

———S. 498—*Proof of marriage.*

Proof that marriage had been celebrated in accordance with custom and law, is necessary—Mere presumption that accused must have known that she was married without proof of such marriage is not enough. *Akshay Kumar Moiti v. Emperor.*

34 Cr. L. J. 1092 :
145 I. C. 874, (2) : 38 C. W. N. 113 :
6 R. C. 156 : A. I. R. 1933 Cal. 880.

———S. 498—*Proof of marriage.*

To sustain a conviction under S. 498, Penal Code, it is necessary to establish that the marriage between the complainant and the enticed, is a legally valid marriage. *Saudagar v. Emperor.*

29 Cr. L. J. 210 :
107 I. C. 98 : A. I. R. 1928 Lah. 165.

———S. 498—*Proof of marriage, absence of—Criminal intimacy.*

The accused was convicted of an offence under S. 498, Penal Code, for enticing away one Assi, wife of Usman. The story for the prosecution was, that the accused had at one and the same time enticed away two young women Fatma and Assi, and the Magistrate found that "the intent to have criminal intercourse with one of the girls must be assumed from the admitted facts" and except that Assi was referred to as the wife of Usman, no proof was adduced as to the marriage of Assi with Usman : *Held*, that the prosecution must fail for want of strict proof of the marriage, and also on the ground that there was no finding that the accused had criminal intimacy with Assi. *Imperator v. M. Peters.*

10 Cr. L. J. 235 :
2 S. L. R. 22.

———S. 498, scope of.

A case under S. 498 is sufficiently established, if it can be shown that the accused person personally and actively assisted the wife to get away from her husband's house or from the custody of any person who was taking care of her on behalf of the husband. Of course, the "taking" must be with the "intention" stated in the section. *Janendra Nath Dey v. Kshitish Chandra Dey.*

37 Cr. L. J. 28 :
159 I. C. 140 : 39 C. W. N. 1280 :
8 R. C. 280 : A. I. R. 1935 Cal. 677.

PENAL CODE ACT (XLV OF 1860)

———S. 498—Scope of.

Complainant's wife choosing to leave her husband and live with accused of her own accord—Absence of evidence of concealment or detention—Offence under S. 498 is not made out. *Mohammad Husain v. Lckhai*.

35 Cr. L. J. 932 :
149 I. C. 228 : 11 O. W. N. 672 :
6 R. O. 535 : A. I. R. 1934 Oudh 258.

———S. 498 — Scope of — Enticing away married woman—Offence, proof of.

In order to sustain a conviction under S. 498, Penal Code, it must be established that the woman had been enticed away or taken away from her husband's house and that she was detained for the purpose of illicit intercourse. The mere fact that she was seen outside the accused's house is not sufficient. *Deonandan v. Emperor*.

21 Cr. L. J. 383 :
55 I. C. 863 : 2 U. P. L. R. All. 75 :
A. I. R. 1920 All. 33.

———S. 498—Scope of—Girl taken away from mother's care with mother's consent—Whether amounts to enticing away within S. 498.

Where the accused takes away a girl from the care of her mother with her mother's consent, it is not taking or enticing away within the meaning of S. 498, Penal Code. *Abdul Rahman v. Emperor*.

37 Cr. L. J. 1155 :
165 I. C. 497 : 39 C. W. N. 1055 :
9 R. C. 412.

———S. 498—Scope of—It must be shown that wife left by reason of act or assistance proceeding from accused.

S. 498, Penal Code, has no doubt been enacted for the protection of the husband's rights, and any disposition of the woman or any consent or willingness on her part would be perfectly immaterial to the guilt of the prisoner. At the same time, there must be some influence operating on the woman, or co-operating with her inclination at the time the final step is taken which causes a severance of the woman from her husband, for the purpose of causing such step to be taken. It is not enough to constitute an offence under S. 498 that the woman left her husband's house or that she was afterwards seen passing along with the accused. It must be shown that she left by reason of any act or assistance proceeding from the accused. *Hossaini Mehor v. Emperor*.

38 Cr. L. J. 986 :
170 I. C. 903 : 41 C. W. N. 931 :
65 C. L. J. 421 : 10 R. C. 211 :
A. I. R. 1937 Cal. 460.

———S. 498—Scope of—Woman living with accused of her own free will—Refusal to accompany husband—Offence.

Where a woman was living with the accused of her own free will, and refused to go back to her husband and the only evidence against the accused was that he helped the woman in her not being taken away by force by the complainants; *Held*, that the accused could

PENAL CODE ACT (XLV OF 1860)

not be convicted under S. 498, Penal Code. *Ochachal Ahir v. Emperor*. 29 Cr. L. J. 273 :
107 I. C. 689 : 26 A. L. J. 403 :
A. I. R. 1928 All. 194.

———S. 498—Sentence—Abduction—Woman actively abetting her own abduction.

When the woman is an active abettor in her own abduction, the sentence for abduction should be a light one. *Chandgi v. Emperor*.

28 Cr. L. J. 52 :
99 I. C. 84 : 27 P. L. R. 642 :
A. I. R. 1927 Lah. 91.

———S. 498—Sentence—Enticing away married woman—Wife neglected by husband—Sentence.

Where in a case under S. 498, Penal Code, it appears that the husband and wife have not been on good terms and that the husband did not care much about the wife and took no action in respect of the offence until several months after the date of its commission, a heavy sentence is not called for. *Gahra v. Emperor*.

27 Cr. L. J. 192 :
91 I. C. 1008 : A. I. R. 1926 Lah. 176.

———S. 498—Sentence—Finding of fact—Enticing away married woman—Detention—Defective charge, when immaterial—Amount of punishment, where woman is abettor.

A defect in a charge is of no consequence if the accused has not been prejudiced thereby. In a case under S. 498, I. P. C., 1860, a light sentence is sufficient to meet the ends of justice when the abducted woman is an active abettor. A finding of fact cannot be questioned in revision when there is some evidence to support it. *Lal Khan v. Emperor*.

15 Cr. L. J. 524 :
24 I. C. 836 : 20 P. W. R. 1914 Cr. :
153 P. L. R. 1914 : A. I. R. 1914 Lah. 101.

———S. 498—Sentence—Woman going to accused of her own accord.

Where the accused is convicted of an offence under S. 498, Penal Code, and it appears that the woman not being on good terms with her husband went to accused of her own accord, a sentence of one year's rigorous imprisonment is too severe. *Rasul Khan v. Emperor*.

11 Cr. L. J. 592 :
8 I. C. 226 : 33 P. L. R. 1910.

———S. 498—Sentence—Woman of bad character—Husband of immature age—Value of first report—Admission of its certified copy in revision—Punishment.

Where the first report to the Police falsifies a complaint, the accused is entitled to an acquittal. Where a woman of undoubted bad character who is married to an immature boy is abducted and is detained not against her wishes, the accused should be treated leniently. *Ram Chand v. Emperor*.

12 Cr. L. J. 500 :
10 I. C. 220 : 29 P. W. R. 1911 Cr. :
224 P. L. R. 1911.

———S. 498—'Such woman,' meaning of.

The words "such woman" in S. 498, Penal Code, do not mean such a woman as has been so enticed as mentioned in that section, but mean such woman whom the accused knows or

PENAL CODE ACT (XLV OF 1860)

has reason to believe to be the wife of any other man. *Emperor v. Jagannath Gir.*

38 Cr. L. J. 621 :
168 I. C. 833 : 1937 A. L. J. 547 :
1937 A. W. R. 203 : 9 R. A. 676 :
A. I. R. 1937 All. 353.

—S. 498—Voidable marriage, defence of—Option of avoiding marriage, time for exercise of.

The fact that the marriage of the enticed with the complainant was voidable at the option of the enticed, is not a defence to a charge under S. 498, Penal Code, unless it is also shown that that option was exercised before the enticement. *Fazal Dad v. Emperor.*

29 Cr. L. J. 762 :
110 I. C. 794 : A. I. R. 1928 Lah. 898.

—S. 498—Voidable marriage, effect of.

A woman is not the wife of a man within the meaning of S. 498, Penal Code, if their marriage is voidable. Consequently, the enticement, etc., of such a woman is not indictable under the said section. A judicial order is not necessary to effect the cancellation of a voidable marriage among Sunnies. *Bulanda v. Emperor.*

11 Cr. L. J. 664 :
8 I. C. 494 : 33 P. W. R. 1910 Cr.

—S. 498—Women accused—Summonses to issue in first instance.

Where in case under S. 498, I. P. C., the accused are women, the Magistrate should ordinarily, in the first instance, issue summonses instead of warrants upon all the women, and whether their attendance could be dispensed with, should also be considered. *Badraddin Gul Hassan Khan v. Balocho Bakar Chandio.*

41 Cr. L. J. 310 :
186 I. C. 391 : 1940 Kar. 110 :
12 R. S. 206 : A. I. R. 1939 Sind 342.

—S. 498—No complaint by husband or guardian, absence of, effect of.

Where there is no complaint to a Magistrate by a husband or a guardian, a conviction under S. 498, is not sustainable. *Bhana v. Emperor.*

12 Cr. L. J. 50 (a) :
8 I. C. 1160 : 32 P. R. 1910 Cr. :
39 P. L. R. 1911.

—S. 498, 497—Mutual consent, effect of : Held, elopement was a joint adventure and there was no enticement.

Where a married woman discarded by her husband and living with her father and brother fell in love with her next door neighbour and they eloped to another place : Held, that the elopement was a joint adventure in which the motive force was mutual affection, and there was no enticement within the meaning of S. 498. *Ramnarayan Baburao Kapur v. Emperor.*

38 Cr. L. J. 769 :
169 I. C. 526 : 39 Bom. L. R. 61 :
I. L. R. 1937 Bom. 244 :
10 R. B. 34 : A. I. R. 1937 Bom. 186.

—S. 499.

See also (i) Evidence A 1872, S. 192. .
(ii) Penal Code , S. 77.

PENAL CODE ACT (XLV OF 1860)

—S. 499—Absolute privilege—Statements in a petition of complaint to Magistrate.

A defamatory statement contained in a petition of complaint presented to a Magistrate concerning the person who is charged therein, is absolutely privileged and no prosecution lies under Ss. 499 and 500, Penal Code, against the person making it. *Muthusawami Naidu v. Emperor.*

13 Cr. L. J. 293 :
14 I. C. 757 : 11 M. L. T. 431.

—S. 499—Accusation and imputation in good faith—Constitute exceptions.

The accused felt aggrieved by an order made by the *Mamlatdar* complainant, and as he was entitled to do under the provisions of the Land Revenue Code, appealed to the Assistant Collector against the order praying that it may be reversed. In the petition of appeal it was stated that the *Mamlatdar* had acted towards the appellant unjustly and spitefully, that in passing the order appealed against, he was actuated by personal ill-will and malice against the appellant and that the *Mamlatdar* had, in acting as he had done, exercised his authority with a view to cause harassment and loss to the appellant. The *Mamlatdar* charged the accused for defaming him : Held, per *Davar* and *Shah, JJ.*—That the accused was protected by Exceptions 8 and 9 of S. 499, Penal Code. *Anandrao Balkrishna v. Emperor.*

16 Cr. L. R. 177 :
27 I. C. 657 : 17 Bom. L. R. 82 :
A. I. R. 1915 Bom. 28.

—S. 499—Benefit of exceptions—Burden of proof—Doctrine of absolute privilege, applicability of, in India.

The English Common Law doctrine of absolute privilege does not obtain in the *mofussil* in India. S. 499, Penal Code, is exhaustive and if a defamatory statement does not fall within the specified exceptions, it is not privileged. Although it is for the prosecution to make out a case for conviction, the accused person has under S. 105, Evidence Act, to prove the existence of circumstances bringing the case within any of the general exceptions in the Penal Code. *Surajmal v. Ramnath.*

28 Cr. L. J. 996 :
105 I. C. 820 : A. I. R. 1928 Nag. 58.

—S. 499—Benefit of exceptions, when available.

To entitle a person to the benefit of exception (1), the statements made must not only be proved to be true, but it must be shown that their publication was for the public good. Public good is the good of the general public as contra-distinguished from that of an individual. The denouncing of a Brahmin for providing alcoholic refreshment at a wedding reception for those of his guests who desired to partake of such beverages is not "for the public good". *Madanjit v. Emperor.*

12 Cr. L. J. 129 :
9 I. C. 775 : 4 Bur. L. T. 148.

—S. 499—Burden of proof.

In a trial for defamation, the burden of proving the exception lies upon the accused ;

PENAL CODE ACT (XLV OF 1860)

the burden of proving that the accused really, honestly and in good faith believed the truth of the accusation which he made, is on him. *Rasool Bhai v. The King*.

41 Cr. L. J. 48 :

184 I. C. 566 : 1939 Rang 479 :

12 R. Rang. 159 : A. I. R. 1939 Rang. 371.

———S. 499—*Burden of proof—Complaint for defamation—Privilege—Dismissal of complaint on ground of privilege without taking evidence, legality of.*

Under S. 105, Evidence Act, in a complaint for defamation, the burden of proving that statements *prima facie* defamatory were made in good faith is on the accused, and a Magistrate cannot, therefore, without taking the prosecution evidence dismiss a complaint for defamation on the ground that Exception 8 to S. 499, Penal Code, is applicable to the case. *Dhondu Bapu Gujar v. Emperor*.

28 Cr. L. J. 575 (b) :

102 I. C. 511 : 29 Bom. L. R. 713 :

A. I. R. 1927 Bom. 436.

———S. 499—*Civil and criminal proceedings.*

There is a distinction between criminal and civil liability for defamation. Civil liability is to be determined by the principles of English Law, but criminal liability is governed by the provisions of the Penal Code, and by those provisions alone. *Champa Devi v. Pirbhu Lal*.

27 Cr. L. J. 253 :

92 I. C. 429 : 24 A. L. J. 329 :

A. I. R. 1926 All. 287.

———S. 499—*Completion of offence—Defamation—Party to judicial reputation, whether necessary.*

In order to render the offence of defamation complete, there must be an imputation with reference to a person intending to harm, or knowing, or having reason to believe, that such imputation will harm the reputation of the person against whom the imputation is made. Proof of actual harm to the reputation of the person defamed is not necessary. *Alex Pimento v. Emperor*.

22 Cr. L. J. 58 :

59 I. C. 202 : 22 Bom. L. R. 1224.

———S. 499—*Conviction for oral defamation.*

It is unnecessary to prove the exact words used by the accused for the purpose of supporting a conviction for oral defamation. It is sufficient to prove the purport or substance of the defamatory imputations. If the prosecution evidence has to be discarded as not making out even a *prima facie* case, the accused cannot be rightly convicted merely on his own admissions. *Bhola Nath v. Emperor*.

30 Cr. L. J. 101 :

113 I. C. 213 : 1 R. 1929 All. 110 :

51 All. 313 : 26 A. L. J. 1334 :

A. I. R. 1929 All. 1.

———S. 499—*Conviction, maintainability of—Confidential inquiry—Accused asked by Police if he had heard anything, merely stating*

PENAL CODE ACT (XLV OF 1860)

what he had heard—This would not amount to defamation—Accused cannot be convicted when precise words used by accused are not on record.

Where in a highly confidential Police inquiry, a person being interrogated by the Police merely if he had heard anything, states in good faith merely what he had heard, the statement would not amount to defamation in such circumstances. In any event, it is difficult to base a conviction for a defamation when the precise words uttered by the accused are not before the Court. Where a charge of defamation is based on an answer to a question, much turns upon the precise form of question and the precise form of the answer. If a Court is not satisfied on these matters, it is impossible to maintain a conviction. It is not sufficient for a Court to come to the conclusion that substantially something or other was said. The Court must be satisfied that certain words were used. *Jaiwarain Singh v. Emperor*.

41 Cr. L. J. 814 :

190 I. C. 33 : 6 B. R. 888 :

13 R. P. 179 : A. I. R. 1941 Pat. 9.

———S. 499—*Conviction, propriety of—Defamation—Privilege—Application for transfer of criminal case by accused—Defamatory statement knowingly made in application—Whether accused guilty of defamation.*

An accused person, in the course of his trial upon a criminal charge, made an application to the District Magistrate for the transfer of his case to another Court. In that application, he made a certain defamatory statement, which was untrue to his knowledge, and he was convicted under S. 499, Penal Code: *Held*, that the propriety of the conviction was at least open to serious doubt and it should be set aside. *Kari Singh v. Finch*.

14 Cr. L. J. 61 :

18 I. C. 349 : 40 Cal. 441 *note* :

17 C. W. N. 449.

———S. 499—*Defamation—Calling a Parsutia Kaisth "Kori Chamar."*

The accused referred to the complainant, who was a *Parsutia Kaisth*, as a *Kori Chamar*, with the result that none of the priests attended the religious ceremony which had to be performed at the complainant's house: *Held*, that the accused were guilty of an offence under S. 499, Penal Code. *Bachha Paragwal v. Emperor*.

11 Cr. L. J. 413 :

6 I. C. 876.

———S. 499—*Defamation, what amounts to—Imputation of dishonesty in management of company—Notice published in newspaper.*

An imputation conveyed in a notice published in a newspaper that the complainant has been dishonest in the management of the affairs of a Company and was trying to conceal the dishonesty by methods that were themselves dishonest, is defamatory within the meaning of S. 499, Penal Code. *Madhorao Gangadhar Chitnavis v. Narayan Bhaskar Khare*.

27 Cr. L. J. 1119 :

97 I. C. 431 : A. I. R. 1927 Nag. 17.

PENAL CODE ACT (XLV OF 1860)

—S. 499—'Defamation,' what constitutes.

Mere publication of an imputation concerning any person, does not of itself constitute defamation. A person is not guilty of defamation unless he intends that the words spoken should harm a person or knows or has reason to believe that his words would harm such persons. *Jainarain Singh v. Emperor*.

41 Cr. L. J. 814 :
190 I. C. 33 : 6 B. R. 888 :
13 R. P. 179 : A. I. R. 1941 Pat. 9.

—S. 499—Defamation of newspaper—Newspaper, whether 'a person'—Defamation of newspaper, whether criminal offence.

A newspaper, is not a person, and the defamation of a newspaper, therefore, is not a criminal offence where it does not involve the defamation of any individual concerned with the paper. *Maung Sein v. Emperor*.

28 Cr. L. J. 139 :
99 I. C. 347 : 4 Rang. 462 :
A. I. R. 1927 Rang. 43.

—S. 499—Defamatory language—Implications contained in letter—Accused acting recklessly and without due care and caution.

Accused sent a petition to the Forest authorities saying that the Village Munsif was a very rich man and that he had gained over the Range Officer to his side and had been illicitly grazing goats in the reserve, and urging an enquiry by some officer other than the Range Officer : *Held*, (1) that the accused was guilty of the offence of defamation, inasmuch as the language employed by him was calculated to harm the Village Munsif and lower the Range Officer in the estimation of his subordinates and the public ; (2) that Exceptions 8 and 9 to S. 499, Penal Code, could not apply to the case inasmuch as the accused had acted recklessly and without due care and caution. *Madappa Goundan v. Emperor*.

19 Cr. L. J. 115
43 I. C. 403 : A. I. R. 1918 Mad. 343.

—S. 499—Defamatory petition—Dismissal after inquiry—Defamation, action for, maintainability of—Witness, how far protected.

Nine persons presented a petition, the character of which was generally defamatory, to the District Magistrate complaining of various acts of oppression against the *Mukhia* of a village. An inquiry was held and certain persons were examined as witnesses with the result that the petition was dismissed. The *Mukhia* then filed a complaint under S. 500, Penal Code, against sixteen persons, including those who had signed the petition, but the complaint was dismissed under S. 202, Cr. P. C., on the ground that the parties complained against having made statements in answer to questions they could not be prosecuted : *Held*, that the complaint being not only against such persons as were called and examined, but against all the signatories to the petition to the District Magistrate, the order dismissing the complaint could not be sustained. A witness has no greater protection against a charge of defamation than any person. A witness in order to be protected from a state-

PENAL CODE ACT (XLV OF 1860)

ment *prima facie* defamatory made by him, must bring himself within one or more Exceptions to S. 499. *Muhammad Sher Ali Khan v. Ghasi Ram*.

22 Cr. L. J. 159 :
59 I. C. 863 : 3 U. P. L. R. All. 35.

—S. 499—Defamatory statement in Judicial proceedings—Witness, liability of.

A person, who makes a defamatory statement as a witness in a judicial proceeding, is not exempted from criminal liability under S. 499, Penal Code, unless his statement is covered by any of the exceptions to the section. *Miran Shah v. Emperor*.

13 Cr. L. J. 494 :
15 I. C. 494 : 31 P. W. R. 1912 Cr. :
244 P. L. R. 1912 : 5 P. R. 1912 Cr.

—S. 499—Defamatory statement in pleadings—Privilege—Good faith.

In India criminal liability in respect of defamation is determined exclusively by the provisions of the Penal Code. A defamatory statement whether made in a pleading or otherwise, falls within the purview of S. 499, Penal Code, and is not absolutely privileged. In such a case the question of importance to be considered is that of good faith. *Karu Singh v. Emperor*.

27 Cr. L. J. 1320 :
98 I. C. 392 : 7 P. L. T. 587 :
A. I. R. 1926 Pat. 425.

—S. 499—Defamatory words—Confirmation by conduct—Offence.

An accused person cannot escape liability for defamation merely because he did not himself utter the words complained of. Where by his conduct and by words which he did speak, he intended to give and gave the impression that he adopted as his own the words uttered by another, he must, in effect, be deemed to have uttered the words imputed to him. *Basina Apbana v. Peta Akkana*.

26 Cr. L. J. 521 :
85 I. C. 361 : 47 M. L. J. 746 :
20 L. W. 921 : A. I. R. 1925 Mad. 320.

—S. 499—Defective charge, effect of—Publication to person not mentioned in charge—Defect cured by S. 537, Cr. P. C.

The plea that there has been no publication of defamation to the person mentioned in the charge but to some one else, is a highly technical one and any defect in the charge on that score can be cured by S. 537, Cr. P. C. *Tikamdas v. Emperor*.

27 Cr. L. J. 947 :
96 I. C. 499 : A. I. R. 1927 Sind 58.

—S. 499—Duties and position of Advocate.

If an Advocate is to carry out his duties to his client, he must frequently have to make imputations or statements, the correctness of which he has not had the time or opportunity to verify, and it is a very fair presumption in ordinary cases that a statement or imputation so made by an Advocate in the course of judicial proceedings is made, not for the purposes of defamation, but in good faith, for the protection of the interests of his client. In such a case, therefore, to establish an offence of criminal

PENAL CODE ACT (XLV OF 1860)

defamation, it is necessary not only to show that a defamatory statement has been made, but that it has been made maliciously, wantonly, or with some improper motive. A Magistrate should refuse to take cognizance of a complaint in such a case unless there is some allegation of malice, wantonness or improper motive. *McDonnell v. Emperor*.

27 Cr. L. J. 321 :
92 I. C. 737 : 4 Bur. L. J. 147 :
3 Rang. 524 : A. I. R. 1926 Rang. 345.

———S. 499—Duty of Court.

A caste is an autonomous association, the power vested in its constituted heads being subject to any special custom, those necessary for the protection of the interests committed to their charge. Where a dispute arises as to the proper exercise of those powers, the only duty of the Court is to see whether those powers are exercised in accordance with the principles of natural justice, that is in the majority of cases, after the person to be affected by their exercise has been heard and his defence has received fair consideration. It is not for the Courts to dictate the details of procedure to persons in the position of heads of a caste. *Sukralendra Thirihwa Swami of Kasi Mutt v. Prabhu*.

24 Cr. L. J. 325 :
72 I. C. 165 : 17 L. W. 500 :
45 M. L. J. 116 : A. I. R. 1923 Mad. 587.

———S. 499—Duty of Magistrate—*Defamation*—Possibility that accused might have some defence, if ground for dismissal.

A complaint under S. 499, I. P. C., which is made on oath, cannot be dismissed on the ground that there is a possibility that the accused might have some defence to the complaint, if true. The Magistrate should direct his attention to ascertain whether there is any reason for disbelieving the complaint. *Sheodeni Pattak v. Budheshwar Dubey*.

41 Cr. L. J. 504 :
187 I. C. 721 : 21 P. L. T. 608 :
6 B. R. 542 : 12 H. P. 648 :
A. I. R. 1940 Pat. 179.

———S. 499—English Law, if applicable—*Absolute privilege, rule of, inapplicable in India*—English cases, not to be referred for guidance.

In construing the provisions of the I. P. C., the Code is not to be frittered away by reference to English cases laying down a different principle. The English rule of absolute privilege in cases of defamation does not apply *proprio vigore* in India. Where a certain statement made in a petition for divorce filed in Court is alleged to amount to defamation, the case must be decided not with reference to the rules of English Law but with reference to S. 499, I. P. C. *Mr. McGill v. Mr. Bryne*.

13 Cr. L. J. 25 :
13 I. C. 217 : 5 S. L. R. 133.

———S. 499—English Law, if applicable—*Prosecution for defamatory statement in affidavit*—Defence of absolute privilege, whether available to accused.

Where a person is prosecuted criminally for a defamatory statement made in an affidavit filed

PENAL CODE ACT (XLV OF 1860)

in the course of a suit, the case must be tried having regard to the provisions of S. 499, Penal Code, the English Common Law doctrine of absolute privilege cannot be invoked in aid of the accused. *Mull Chand v. Buga Singh*.

32 Cr. L. J. 132 :
128 I. C. 371 : 8 Rang. 359 :
I. R. 1931 Rang. 19 :
A. I. R. 1931 Rang. 81.

———S. 499—Essentials of.

To convict a man under S. 499, Penal Code, it must be shown that the complainant has proved that the imputation has directly or indirectly lowered his moral or intellectual character or has lowered his character in respect of his calling or has lowered his credit in the 'estimation of others'. The words 'in the estimation of others', taken in conjunction with the word 'lowers' in Explanation 4, govern all clauses in that provision of S. 499. It is not sufficient for the complainant merely to raise a presumption that the imputation may lower him or may lower his moral or intellectual character in the estimation of others, or that it may, in the estimation of others, lower his character in respect of his calling, or may lower his credit. These are matters that must be proved. There must be proof that the complainant has been lowered as to his character, credit, or calling, reputation or position in the estimation of some person or persons. *Anandrao Balkrishna v. Emperor*.

16 Cr. L. J. 177 :
27 I. C. 657 : 17 Bom. L. R. 82 :
A. I. R. 1915 Bom. 28.

———S. 499—Evidence and proof.

A statement in praise of oneself does not necessarily imply a reflection on some other. The prosecution have to establish that the matter alleged to be defamatory contains an imputation concerning the complainant, calculated to harm his reputation. *Genda Ram v. Emperor*.

37 Cr. L. J. 258 :
160 I. C. 230 : 1936 A. L. R. 67 :
1936 A. L. J. 66 :
8 R. A. 579 : A. I. R. 1936 All. 143.

———S. 499—Fair comment.

An article in a newspaper which is a fair comment on public affairs and is merely an expression of opinion cannot be said to be defamatory, unless it is proved that it was the outcome of a dishonest or corrupt motive. *Subroya Aiyar v. Abdul Kadar*.

15 Cr. L. J. 357 :
23 I. C. 725 : 1914 M. W. N. 351 :
A. I. R. 1914 Mad. 352.

———S. 499—Fair comment—*Declaration of Judge*.

A declaration or an opinion expressed in his judgment by a Magistrate or Judge is open to searching and severe observations, and may be freely criticised and commented upon by the Editor of a newspaper. But where the criticism is converted into an attack upon the Judge or Magistrate as a conspirator against justice, a traitor to his oath, a trickster, a man who has so manouvred his procedure as to defeat truth and protect an associate, it is for the person who has uttered these things to

PENAL CODE ACT (XLV OF 1860)

justify them, or, under the Penal Code, to establish affirmatively that he believes them to be true, and that on reasonable grounds.
Channing Arnold v. Emperor.

15 Cr. L. J. 309 :
23 I. C. 661 : 18 C. W. N. 785 :
26 M. L. J. 621 : 41 Cal. 1023 :
1 L. W. 461 : 7 Bur. L. T. 67 :
1914 M. W. N. 506 : 16 M. L. T. 79 :
12 A. L. J. 1042 : 20 C. L. J. 161 :
16 Bom. L. R. 544 :
A. I. R. 1914 P. C. 116.

———S. 499—Fair comment.

Where in a newspaper report the main aspersion of the accused against the complainant is true, the fact that there is some exaggeration or departure from strict truth, does not deprive the accused of the protection provided in Exception 3 to S. 499, Penal Code. Mere exaggeration, or even gross exaggeration, does not make a comment unfair. Where the matter is of public interest, the Court ought not to weigh any comment on it in a fine scale and some allowance must be made for even intemperate language, provided however, that the writer keeps himself within the bounds of substantial truth and does not misrepresent or suppress any facts. *Murlidhar Jeramdas v. Narayandas.*

16 Cr. L. J. 141 :
27 I. C. 205 : 8 S. L. R. 143 :
A. I. R. 1914 Sind 85.

———S. 499—Good faith.

Accused refusing to attend *Panchayat* of which complainant was member—Statement in explanation of refusal—Allegation that complainant had been outcasted—Statement, falls within Exceptions 9 and 10, to S. 499. *Bhagwant v. Emperor.*

35 Cr. L. J. 180 :
146 I. C. 821 : 10 O. W. N. 778 : 6 R. O. 183 :
A. I. R. 1933 Oudh 377.

———S. 499—Good faith—Defamation.

The accused published a circular purporting to say that at a *Panchayat* held at certain place, it was resolved that the complainant who had been to England was not to be taken into the caste, and that those of their community who associated with him, could be taken into the caste only on their consenting to give up all connection with him in future and on performing a proper penance. It was found that the representation of the accused that the circular was an outcome of a decision arrived at by all the members of the *Panchayat* was false and that the publication was not made in good faith: Held, that the accused were rightly convicted of the offence of defamation. The publication of the circular lowered the character of the complainant in respect of his caste. *Makund Ram v. Emperor*

9 Cr. L. J. 535 :
2 I. C. 226 : 6 A. L. J. 472.

———S. 499—Good faith.

Excommunication of complainant—Communication by *Panches* to members of community.—Good faith must be presumed and in the

PENAL CODE ACT (XLV OF 1860)

absence of evidence of malice, communication must be deemed to be privileged. *Desai v. Emperor.*

33 Cr. L. J. 472 (2) :
137 I. C. 499 : 1932 A. L. J. 75 :
I. R. 1932 All. 332.

———S. 499—Good faith—Ingredients of.

In good faith, an essential ingredient is honesty of purpose. The accused must, firstly, honestly believe his imputation to be true, and, secondly, he must honestly make it from a sense of duty either to himself or to the public. He must not exaggerate, or say unnecessary things, nor must he make the communication to an unnecessary number of persons. He must not make his duty the cover for spreading the libel. The actual words used, the manner in which the words are published, the persons to whom they are communicated, must all be limited to the reasonable requirements of the occasion. The question for enquiry is whether the accused had reasonable grounds for believing the imputations to be true, and for believing that it was necessary for his safety to give wide publicity to them. *Jaffar Fadu v. Emperor.*

11 Cr. L. J. 588 :
8 I. C. 209 : 4 S. L. R. 67.

———S. 499—Good faith.

Pleader cross-examining under instructions in client's interests—Absence of malice—Pleader, cannot be convicted under S. 500—Presumption of good faith arises in case of Pleader. *Narayan Ohandra Ganguli v. Harish Chandra Saha.*

34 Cr. L. J. 865 (2) :
144 I. C. 935 : 6 R. C. 65 :
A. I. R. 1933 Cal. 185.

———S. 499—Good faith.

Report by Municipal Commissioner and Engineer about removal of road metal by Contractor—Contractor's complaint for defamation—Absence of sanction under S. 197, Cr. P. C.,—Case cannot proceed against Commissioner but can proceed against Engineer—If report is made in good faith, Engineer held protected under Exceptions 7 and 8 to S. 499. *Jotindra Nath Mukharji v. Radha Krishna Budhia.*

36 Cr. L. J. 285 :
152 I. C. 1029 : 15 P. L. T. 507 :
7 R. P. 292 : A. I. R. 1934 Pat. 548.

———S. 499—Good faith.

Where the offence of defamation is repeated and the accused has neither apologised nor is there any indication that he was acting solely according to his private opinion, the presumption of good faith is destroyed. *Babulal v. Tundilal.*

33 Cr. L. J. 835 :
139 I. C. 401 : 28 N. L. R. 106 :
I. R. 1932 Nag. 112 :
A. I. R. 1932 Nag. 97.

———S. 499—Imputation against persons who cannot be identified—Defamation.

A defamatory statement to be actionable must contain an imputation concerning some particular person or persons whose identity can be established. An imputation against an Association or collection of persons jointly amounts to defamation within the meaning

PENAL CODE ACT (XLV OF 1860)

of S. 499, I. P. C., but it must be an imputation, capable of being brought home to a particular individual or collection of individuals as such. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed against a particular person or persons who can be identified. The rule is that if the words used contain no reflection upon a particular individual or individuals but may equally well apply to others, although belonging to the same class, an action will not lie. *Government Advocate v. Gopa Bandhu Das*.

23 Cr. L. J. 433 :
67 I. C. 609 : 3 P. L. T. 209 : 1922 Pat. 117 :
4 U. P. L. R. Pat. 27 : 1 Pat. 414 :
A. I. R. 1922 Pat. 101.

—S. 499—Imputation in good faith—*What is.*

In the *mofussil* of this country where instructions are very commonly inaccurate and misleading, a pleader would certainly be at least as much justified in acting on his own recollection as on specific instructions and, because he has drawn merely a wrong inference from a fact, that of itself, in the absence of any malice, should not take him out of the Ninth Exception to S. 499, Penal Code. *Upendra Nath Bagchi v. F. A. Savi*.

9 Cr. L. J. 165 :
1 I. C. 147 : 13 C. W. N. 340 :
9 C. L. J. 259 : 36 Cal. 375.

—S. 499—Imputation, meaning of—*Expression of suspicion—Accusation.*

An "imputation" ordinarily implies an accusation, or something more than an expression of opinion. But a mere expression of suspicion may amount to an "imputation" where it conveys the same impression as an accusation to the person to whom it is communicated. *Thambu v. Emperor*.

27 Cr. L. J. 899 (a) :
96 I. C. 211 : 8 L. L. J. 97 :
27 P. L. R. 171 : A. I. R. 1926 Lah. 278.

—S. 499—Justification.

Statement of accused that complainant was turned out by officer at public auction is defamatory. Justification cannot be pleaded. *Samrathmal Marwadi v. Emperor*.

34 Cr. L. J. 154 :
141 I. C. 438 : I. R. 1933 Nag. 63 :
A. I. R. 1932 Nag. 158.

—S. 499—Malice.

The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind which is wrong or faulty (whether evinced in action by excess or defect) such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should, in all cases, be established by evidence extrinsic to the comment which is the subject of the complaint. For whether fair comment is to be regarded as following under a branch

PENAL CODE ACT (XLV OF 1860)

of the law of privilege or not, it cannot excuse an injury arising not from the mere act of criticism, but from a state of mind in the critic which is in itself unjustifiable, and the excuse may be so forfeited either by reason of an evil intent in him or by reason of mere recklessness in making an unwarrantable assertion. For then the comment would not be fair comment at all. *Emperor v. Abdul Dawood*.

5 Cr. L. J. 237 :
9 Bom. L. R. 230 :
I. L. R. 31 Bom. 293.

—S. 499—Offence under—*Defamation—Pleader calling the other side "notorious wrong-doer" in course of letter to the Magistrate—Good faith—Malice.*

When a pleader is charged with defamation in respect of words spoken or written while performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose. A pleader representing a complainant wrote to the trying Magistrate to enquire when the latter would take up the case for trial; and in the letter described the accused as a "notorious wrong-doer." A complaint was then filed against the pleader for defamation: and the Magistrate finding that the pleader was not then acting as a pleader, convicted him of defamation: *Held*, affirming the conviction, that the imputation was not made by the accused as a pleader. *Emperor v. Purshottamdas*.

6 Cr. L. J. 387 :
9 Bom. L. R. 1287.

—S. 499—Presumption of good faith—*What is*

When a Pleader is charged with defamation in respect of words spoken to or written, while performing his duty as a Pleader, the Court ought to presume good faith and not hold him criminally liable unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as Pleader for an indirect purpose. *Upendra Nath Bagchi v. F. A. Savi*.

9 Cr. L. J. 165 :
1 I. C. 147 : 13 C. W. N. 340 :
9 C. L. J. 259 : 36 Cal. 375.

—S. 499—Privilege.

A communication made [by one member of a caste to the other members inviting an inquiry into the conduct of persons against whom the allegations are directed, is a privileged communication. *Emperor v. Padman Babul Mhatre*.

13 Cr. L. J. 687 :
16 I. C. 335 : 14 Bom. L. R. 585.

—S. 499—Privilege.

A finding that a defamatory statement was made in good faith within S. 499, Penal Code, cannot be read into a general statement by the Sessions Judge, that the statement was covered by privilege, and that it was made not with the intention of doing harm to the person defamed but with the object of saving the person making it. The immunity

PENAL CODE ACT (XLV OF 1860)

conferred by S. 312 (2), Cr. P. C., does not extend to a written statement by the accused. *Champa Devi v. Pirbhu Lal*.

27 Cr. L. J. 253 :
92 I. C. 429 : 24 A. L. J. 329 :
A. I. R. 1926 All. 287.

———S. 499—Privilege.

Advocate charged with defamatory statements made in the course of duties as Advocate—Court should presume on grounds of public policy that he acted in good faith and on instructions and should require other party to prove express malice. *Tulsidas Amanmal Karani v. S. F. Billimoria*.

33 Cr. L. J. 740 :
139 I. C. 275 : 34 Bom. L. R. 910 :
I. R. 1932 Bom. 487 :
A. I. R. 1932 Bom. 490.

———S. [499—Privilege—Defamation—Imputation contained in petition to higher authorities for redress of grievances.

A statement made by a villager casting imputation on the character of a co-villager in a complaint to the higher authorities, is privileged only if the imputation is substantially true and made in good faith. *Parvataneni Kamayya v. Kasinaduni Tripuranlakam*.

15 Cr. L. J. 281 :
23 I. C. 489 : 1 L. W. 239 :
A. I. R. 1914 Mad. 382.

———S. 499—Privilege—Defamation—Slandorous written statement, whether privileged.

The whole criminal law of libel in India is contained in the I. P. C., and defamatory statements are punishable unless they fall under one or more of the exceptions to S. 499 of the Code. A written statement filed by a respondent in maintenance proceedings is not privileged. *Subramonia Iyer v. Thirumudi Mudaliar*.

18 Cr. L. J. 1019 :
42 I. C. 763 : A. I. R. 1918 L. Bur. 116.

———S. 499—Privilege—Defamation—Statement by party to judicial proceedings.

The English doctrine of absolute privilege does not obtain in the Courts in India. A defamatory statement made by a party to a judicial proceeding is not privileged. Even if there is a general privilege in respect of words uttered by a party to a judicial proceeding, such privilege only refers to words spoken in the ordinary course of a proceeding before the Court. *Meer Burks v. Maung Hla Pe*.

20 Cr. L. J. 125 :
49 I. C. 109 : 3 U. B. R. 1918. 101 :
A. I. R. 1919, U. Bur. 30.

———S. 499—Privilege—Defamation—Will, registration of—Defamatory statements, by party opposing Will—Absolute privilege—Registrar, whether a Court.

Defamatory statements made by a party opposing the registration of a Will are not so absolutely privileged as to exempt him from liability to punishment for an offence under S. 499, Penal Code. The Registration

PENAL CODE ACT (XLV OF 1860)

officer, in such proceedings, is not a Court. *Krishnamal v. Krishnaiyengar*. (F. B.)

13 Cr. L. J. 508 :
15 I. C. 652 : 1912 M. W. N. 473 :
23 M. L. J. 50.

———S. 499—Privilege—Doctrine of absolute privilege—Statements in bad faith made in execution of decree, whether protected—Defamatory statement in application for transfer, whether absolutely privileged.

The English Common Law doctrine of absolute privilege has no application to the Indian *mosussil*. S. 499, Penal Code, is exhaustive; in a case of defamation, the question of privilege must be decided by the terms of the section; and if a defamatory statement does not come within the specified exceptions, it is not privileged. Statements made in bad faith are not protected. Therefore, a defamatory statement, made in bad faith in an application for the transfer of a case is not privileged. *Kari Singh v. Emperor*.

14 Cr. L. J. 100 :
18 I. C. 660 : 17 C. W. N. 297 :
40 Cal. 433.

———S. 499—Privilege.

In a criminal prosecution the question whether a statement was made on a privileged occasion or not must be decided with reference to S. 409, Penal Code, and S. 105, Evidence Act. *U. San Win v. U. Hla*.

32 Cr. L. J. 934 :
132 I. C. 553 : I. R. 1931 Rang. 185 :
A. I. R. 1931 Rang. 83.

———S. 499—Privilege.

No complaint for defamation against a witness should be permitted until the Court before whom the witness gave evidence in answer to questions put to him which are relevant to the inquiry has expressed its opinion on such evidence. *Ghanshamdas Gianchand v. Nenumal*.

36 Cr. L. J. 78 :
152 I. C. 346 : 28 S. L. R. 251 :
7 R. S. 85 : A. I. R. 1934 Sind 114.

———S. 499—Privilege.

Where an Advocate makes imputations about another on the strength of instructions from his client, and the instructions turn out to be untrue, the Advocate is bound to withdraw the imputation. *Tulsidas Amanmal Karani v. S. F. Billimoria*.

33 Cr. L. J. 740 :
139 I. C. 275 : 34 Bom. L. R. 910 :
I. R. 1932 Bom. 487 :
A. I. R. 1932 Bom. 490.

———S. 499—Privilege of witness—Defamatory statement made in witness-box.

The question of criminal liability of a witness for defamation for statements made in course of their depositions must be decided by what is laid down in the I. P. C., without regard to the state of law in England or considerations of what would be desirable in the interest of public policy and administration of justice. When a witness makes remarks which are defamatory of a third party, he can be convicted of defamation unless he can show that the statement

PENAL CODE ACT (XLV OF 1860)

comes within any of the Exceptions of S. 499, Penal Code. If it had been the intention of the Legislature to extend to communications made by witnesses in the witness-box, the privilege of freedom from being made the subject of a civil or criminal trial, they could or would surely have amplified S. 132 of Act I of 1872. The absence of the enactment is conclusive that it was omitted from the Code for a set purpose. Per *Richards, J., contra*—The principle is and public policy requires, that witnesses should give their testimony free from any fear of being harassed by an action on an allegation whether true or false, that they acted from malice. It would be simply disastrous to the administration of justice in this country if a prosecution could be instituted against every witness, who gave evidence in a Court of Justice, for defamation. *Ganga Prasad v. Banke Lal*.

6 Cr. L. J. 197 :
4 A. L. J. 605 : 27 A. W. N. 235 :
I. L. R. 29 All. 685.

—S. 499—Procedure.

As a rule, a Court of Revision, does not interfere with a pending case, but where the real object of the complainant is, not to vindicate his own character or to exact from the defendant the substantive penalty for his own offence, but to subject him to heavy financial loss and very serious and long continued annoyance by the very process of the trial itself, the Court will quash proceedings. *Muridhar Jeramdass v. Narayandas*.

16 Cr. L. J. 141 :
27 I. C. 205 : 8 S. L. R. 143 :
A. I. R. 1914 Sind 85.

—S. 499—Proof of actual harm, if necessary—Defamation.

In a case under S. 499, Penal Code, it is not necessary to prove that the complainant has been injuriously affected by the alleged defamation. The law merely requires that the person who makes or publishes any imputation, should do so intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person. *Bhikhchand v. Emperor*.

27 Cr. L. J. 868 :
96 I. C. 116 : A. I. R. 1926 Sind 258.

—S. 499—Public good.

A statement in order to come under the first exception to S. 499, Penal Code, must be true in fact. If a statement made by a witness in a judicial proceeding is true in fact and also relevant to the matter under investigation, it is for the public good that it should be made. *Kallu v. Sital*.

19 Cr. L. J. 231 :
43 I. C. 823 : 16 A. L. J. 201 :
A. I. R. 1918 All. 260.

—S. 499—Public interest—Defamation—Privilege—Good faith—Statement substantially true—Justification—Fair comment.

Where a matter is of public interest, the Court ought not to weigh any comment on it in a fine scale. Some allowance must be made for even intemperate language, provided however,

PENAL CODE ACT (XLV OF 1860)

that the writer keeps himself within the bounds of substantial truth and does not misrepresent or suppress any facts. *Emperor v. Fernandez*.

12 Cr. L. J. 595 :
12 I. C. 971 : 13 Bom. L. R. 1187.

—S. 499—Publication.—Defamation—Communication addressed to a person's Pleader—Communication irrelevant to the business on which Pleader addressed—Pleader not absolutely identified with his client.

Communication of defamatory matter, concerning a particular person, to that person only is not publication, within the purview of S. 499, Penal Code. But it is publication within the meaning of the section, if made to a person's Pleader, who cannot be said to be absolutely identified with his client and is a third person as regards the defamatory communication made to him, which is wholly irrelevant to the business on which he had addressed the communicator on behalf of his client. *Dr. J. v. Sher Singh*.

11 Cr. L. J. 281
5 I. C. 892 : 6 P. W. R. 1910 Cr.
10 P. R. 1910 C

—S. 499—Publication—Intention to harm reputation—Injury to reputation, whether necessary.

A person commits defamation within the meaning of S. 499, Penal Code, who publishes any imputation concerning any person intending to harm the reputation of that person whether harm is actually caused or not. A person who publishes defamatory matter against another in a case not covered by any of the exceptions, cannot escape punishment on the ground that the reputation of the person attacked was so good, or that of the person attacking so bad, that serious injury to the reputation was not in fact caused. *Ram Narain v. Emperor*.

26 Cr. L. J. 23 :
83 I. C. 503 : 22 A. L. J. 639 :
A. I. R. 1924 All. 566.

—S. 499—Publication.

Notice issued by President of Notified Area—Reply of accused defaming President—Reply read by members of committee in official routine. There is publication. *Sukhdeo v. Emperor*.

34 Cr. L. J. 952 (2) :
145 I. C. 392 : 1933 A. L. J. 266 :
55 All. 253 : 6 R. A. 61 :
A. I. R. 1933 All. 210.

—S. 499—Publication.

The delivery of the letter containing defamatory matter by the accused to the complainant is obviously not a publication such as would render the accused liable to punishment for defamation as the letter could not have injured the complainant in the estimation of others to whom they were not made known. *Abdul Aziz v. Mohammad Arab Saheb*.

37 Cr. L. J. 133 :
159 I. C. 527 : 61 C. L. J. 205 :
8 R. C. 325 : A. I. R. 1935 Cal. 736.

PENAL CODE ACT (XLV OF 1860)

———S. 499—*Publication.*

To publish, without regard to the feelings of those against whom it is directed, every foul rumour that may be reported to him, cannot be justified by any recognised standard of editorial duty, specially in a case where the untruth of the rumour could easily have been established by a few simple enquiries on the spot. The Editor, in such a case, neither acts in "good faith" nor for the "public good."
Government Advocate v. Gopa Bandhu Das.

23 Cr. L. J. 433 :

67 I. C. 609 : 3 P. L. T. 209 :

1922 Pat. 117 : 1 Pat. 414 :

4 U. P. L. R. Pat. 27 :

A. I. R. 1922 Pat. 101.

———S. 499—*Publication of libel—Good faith.*

One McCormick, a planter, was charged with having abducted and committed rape upon a girl of about 11 years of age. Mr. Buchanan, the Sub-Divisional Magistrate, thought that there was a case for committal. But Mr. Andrew, the District Magistrate, released McCormick on bail and after holding an enquiry into the matter, discharged the accused. The appellant Mr. Arnold, the Editor of a newspaper, published two articles which contained a series of libels of the grossest character against Mr. Andrew. These libels were at least seven in number. *First*, of conspiracy with a Police Officer, Captain Finnie, to prostitute justice by saving McCormick; *Secondly*, of having apparently, knowingly and as part of the partnership, bailed out McCormick for a non-bailable offence; *Thirdly*, of having misled the girl, her parents and friends, by leaving them without professional advocacy; *Fourthly*, of having perverted the course of truth by employing an interpreter who was a paid parasite of the accused; *Fifthly*, of having tried the case *in camera*. *Sixthly*; of not having called certain witnesses in the enquiry; *Seventhly*, of having heard the case knowing that certain people objected to his doing so: *Held*, (1) that although the appellant had made a fair and statable case in support of his defence, yet the answer with which he was met, gave a severe shock to his plea of *bona fides* and established that in publishing the libels, which he admitted to be false, he did not act in good faith believing those libels to be true, after giving due care and attention to seeing that they were so; (2) that it was no valid excuse for a belief in gross slander that an incriminating letter had already appeared in another newspaper; (3) that Mr. Andrew had exercised a proper discretion in releasing McCormick on bail, at any rate, this point could not be viewed as a substantial element weighing with the appellant as a reasonable writer in justification of his belief in the truth of the libel; (4) that it was the duty of the appellant to have explained his position, when questioned by the Magis-

PENAL CODE ACT (XLV OF 1860)

trate, as to his good faith after due care and attention. *Channing Arnold v. Emperor.*

15 Cr. L. J. 309 :

23 I. C. 661 : 18 C. W. N. 785 :

26 M. L. J. 621 : 41 Cal. 1023 :

1 L. W. 461 : 7 Bur. L. T. 67 :

1914 M. W. N. 506 : 16 M. L. T. 79 :

12 A. L. J. 1042 : 20 C. L. J. 161 :

16 Bom. L. R. 544 :

A. I. R. 1914 P. C. 116 (P. C.).

———S. 499—*Qualified privilege—Defamation—Malice, burden of proof—Inference of malice, if question of law—Advocate's duties.*

The liability of an Advocate or Pleader charged with defamation in respect of words spoken or written in the performance of his professional duty has to be determined in India with reference to S. 499, Penal Code, and a Court cannot engraft thereupon exceptions derived from the Common Law of England or based upon grounds of public policy. A person in such a position is, therefore, entitled only to the benefit of a qualified privilege. But good faith will be presumed in his favour and it is for the prosecution to prove that he was actuated by malice or indirect motives. The question whether upon the facts found or proved, malice has been established is a question of law. Advocates in discharge of their onerous and sacred duties must be very careful not to give rise to the faintest suspicion of a personal element in their speech or action as Advocates. *Nirsu Narayan Singh v. Emperor.*

27 Cr. L. J. 1090 :

97 I. C. 354 : 7 P. L. T. 608 :

1926 Pat. 314 : 6 Pat. 224 :

A. I. R. 1926 Pat. 499.

———S. 499—*Qualified privilege—Defamation by party to civil proceeding—Privilege, extent of, Court.*

If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by a reference to the provisions of S. 499, Penal Code. The Court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position, is entitled only to the benefits of the qualified privilege mentioned in S. 499, Penal Code. *Hoondraj Mithomal v. Emperor.*

26 Cr. L. J. 234 :

84 I. C. 58 : 16 S. L. R. 150 :

A. I. R. 1921 Sind 92.

———S. 499—*Scope of—Cr. P. O., Ss. 198, 439—Defamation—False claim for debt on post-card, whether amounts to defamation.*

Putting forward even a false claim on a post-card to the effect, that the addressee should pay the addressor a certain sum of money which the former owes the latter, does not *prima facie* amount to defamation, as defined in S. 499, I. P. C. *Abdullah v. Clarke.*

9 Cr. L. J. 154 :

1 I. C. 99 : 3 P. W. R. 1909 Cr.

———S. 499—*Special powers of Magistrate.*

The question raised in these proceedings was

PENAL CODE ACT (XLV OF 1860)

whether petitioner, Maung Mya Thi, is liable to prosecution under S. 499, Penal Code, for statements contained in his affidavit sworn on the 17th October 1905 and filed in support of his petition dated the 27th October 1905, praying for the transfer of criminal regular No. 442 of 1905, in the Court of the Additional Magistrate of Nyounglebin from that Court to the Court of some other Magistrate. The application for transfer was granted and the petitioner was acquitted and was afterwards prosecuted in Criminal No. 144 of 1906 in the Court of the Special Magistrate of Pegu under S. 499 in respect of statements made in such affidavit: *Held*, that the Special Powers Magistrate of Pegu was not precluded by the objection that the statements contained in the petitioner's affidavit sworn on the 17th October 1905, are absolutely privileged from proceeding to hear and determine Criminal No. 144 of 1906 in his Court, and that the question of the petitioner's innocence or guilt must be decided by reference to the provisions of S. 499, Penal Code. *Maung Mya Thi v. Henry Po Saw*.

5 Cr. L. J. 382 :

13 Bur. L. R. 96 : 3 L. B. R. 264.

—S. 499—Statements in applications, pleadings and affidavits—*Whether there is absolute immunity from prosecution for such statements—Whether if such statements are relevant or made in good faith, they are privileged.*

Authority is strongly against the absolute immunity from prosecution for defamatory statements contained in applications, pleadings and affidavits, and so is common sense and expediency, for it cannot be to the public advantage that litigants should be free to insert any matter they please into their pleadings, applications and affidavits, or to make any statements they like in the witness-box, however, irrelevant, scurrilous or insulting they may be, and then claim absolute privilege with success. To so hold would render the Courts a privileged laboratory for slander and defamation. The public interest lies in exactly the opposite direction, and it is of the utmost importance that parties to proceedings in Court should know that if they indulge in defamatory statements in their pleadings or anything connected with them or in the witness-box, they must take the consequences, if their statements are irrelevant or not made in good faith. *Maung Mya Thi v. Henry Po Saw*.

5 Cr. L. J. 382 :

13 Bur. L. R. 96 : 3 L. B. R. 264.

—S. 499—Statement in judicial proceeding—*Privilege qualified—Party to judicial proceeding sued in Civil Court for defamation, liability of, for damages.*

Where a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provision of S. 499, Penal Code, and he is entitled only to the benefit of the qualified privilege mentioned in that section. Where a party to a judicial proceeding is sued in a Civil Court for defamation in respect of a statement made

PENAL CODE ACT (XLV OF 1860)

therein on oath or otherwise, his liability, in the absence of Statutory rules applicable to the subject, must be determined with reference to the principles of justice, equity and good conscience. *Satis Chandra v. Ram Dayal*.

22 Cr. L. J. 31 :

59 I. C. 143 : 32 C. L. J. 24 :

24 C. W. N. 982 : 48 Cal. 388 :

A. I. R. 1921 Cal. 1.

—S. 499—Burden of proof—*Exception—Burden.*

If the accused relies on the exception to S. 499, I. P. C., it is for him to prove that they applied. *Bhagolelal v. Emperor*.

41 Cr. L. J. 734 :

189 I. C. 382 : 1940 N. L. J. 309 :

13 R. N. 47 : A. I. R. 1940 Nag. 249.

—S. 499—Good faith—*Exception to S. 499—Person acquitted of certain charge—Complainant repeating charge must show good faith.*

When a man is charged with something and acquitted after trial, the man who repeats the charge has to be on very sure ground if he wishes to plead that he repeats this charge in good faith. *Aung Pe v. The King* (F. B.).

39 Cr. L. J. 663

175 I. C. 915 : 11 R. Rang. 15.

1938 Rang. 404 : A. I. R. 1938 Rang. 232.

—S. 499, Excep. 1—*Statement to person in authority.*

Petition to Magistrate containing allegations of being a bad character and previous convict—Statement proved true—Justification by truth—Excep. 1 to S. 499, if applies. *Emperor v. Murit Singh*.

36 Cr. L. J. 260 :

152 I. C. 1057 : 7 R. A. 441 :

3 A. W. R. 243 : A. I. R. 1934 All. 904.

—S. 499, Excep. 1 and 2—*Distinction between.*

The distinction between the first and the second Exception to S. 499, Penal Code, is that the former deals with an expression of opinion, while the latter deals with allegations of fact. *Channing Arnold v. Emperor*.

15 Cr. L. J. 309 :

23 I. C. 661 : 18 C. W. N. 785 :

26 M. L. J. 621 : 41 Cal. 1023 :

1 L. W. 461 : 7 Bur. L. T. 67 :

1914 M. W. N. 506 :

16 M. L. T. 79 : 12 A. L. J. 1042 :

20 C. L. J. 161 : 16 Bom. L. R. 544 :

A. I. R. 1914 P. C. 116.

—S. 499, Excep. 1, 8—*Proof of harm, if necessary—Truth of imputation.*

In order to establish the offence of defamation under S. 500, Penal Code, it is not necessary to prove that actual harm has been caused. It is sufficient to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputations made by him would harm his reputation. Where a complainant described as a man with whom not even Turks, let alone

PENAL CODE ACT (XLV OF 1860)

Brahmins, could associate and the wedding of his daughter was characterised as a sinful carnival worthy of perdition—a moral end involving a disgrace, degradation and degeneration, it was held that the language used was unrestrained, the object of the writer being to hold the complainant up to public execration. *Madanjit v. Emperor*.

12 Cr. L. J. 129 :
9 I. C. 775 : 4 Bur. L. T. 48.

—S. 499—Exceptions 1, 9—*Answers of witnesses—Evidence Act (I of 1872), S. 132, —Answers of witness, whether entitled to absolute privilege—Compulsion to answer questions under S. 132, nature of.*

A witness is not absolutely privileged as regards defamatory statements made by him on oath in answer to questions put to him by Counsel or Court, but has only a qualified privilege. A witness who answers a question or questions put to him by his Counsel without seeking the protection of S. 132, Evidence Act, is not entitled to that protection, though he may claim the limited privilege afforded to him by S. 499, Penal Code. Whether or not a witness is compelled within the meaning of S. 132, Evidence Act, to answer any particular question put to him while in the witness-box is in each case a question of fact. Whether the witness seeks the protection of the Court in a set form of words or not, if the witness is made to understand directly or indirectly that he has no option in the matter but to answer all the questions put to him, he would bring himself within the proviso to S. 132, Evidence Act. A witness who is prosecuted for defamation in respect of statements made by him on oath before a Court has two courses open to him. He may plead in bar of the prosecution the protection given to him under S. 132 of the Evidence Act. If he did not claim the protection of S. 132, when he gave his evidence, he can claim the privilege given by the ninth exception or any other exception to S. 499 of the Penal Code. *Elavarthi Peddappa Reddi v. Iyyala Varada Reddi*.

30 Cr. L. J. 613 :
116 I. C. 337 : 29 L. W. 210 :
1929 M. W. N. 84 : I. R. 1929 Mad. 529 :
52 Mad. 432 : 56 M. L. J. 570 :
A. I. R. 1929 Mad. 236.

—S. 499—Exceptions 1, 9—*Miscellaneous.*

Exceptions 1 and 9 to S. 499, Penal Code, codify those portions of the law of libel and slander treated in English text-books under the heads of justification and qualified privilege. It is a good defence in criminal cases that the words complained of are, in fact, true and that it was for the public benefit that the matters charged should be published, even though the actual motive of publication was malevolence. The expression "imputation on the character" in Exception 9 cannot be taken to imply that allegations of definite acts are excluded. The exception covers not only such allegations of fact as

PENAL CODE ACT (XLV OF 1860)

could be proved true; but also expressions of opinion and personal inferences. Exception 9, for all practical purposes of defence, covers Exception 1 and the latter would only be relied on when for some purpose, other than that of obtaining an acquittal, an accused person desires to prove the absolute truth of his words. In order to be entitled to the benefit of Exception 9, the accused must show that he in good faith made the imputations in self-defence or for the public good. *Jaffar Fadu v. Emperor*.

11 Cr. L. J. 588 :
8 I. C. 209 : 4 S. L. R. 67.

—S. 499—Exception 1 and 9—*Privilege—Defamation.*

Where a person publishes defamatory statements and there are sufficient grounds to indicate that they were intended to refer and did actually refer to particular individual, the person making such statements is not protected by the plea that they were made against a class of persons and no particular person was specified. A privilege under S. 499, Penal Code, is destroyed if the publication has been unnecessarily wide and is published among persons who could not be possibly interested in the statements made. *Sreenivasa Doss v. Vanamamalari*.

9 Cr. L. J. 425 :
12 M. C. C. R. 220.

—S. 499—*Exceptions 1 to 9, Publication.*

The accused was called upon by the Punjibhai Jamayat, of which body, he was a member at one time, to show cause why he should not be ex-communicated. In reply, he published a letter in the local papers in which he characterised the Punjibhai Jamayat as a dangerous society giving every encouragement to murder and assassination, and that the object of the notice to him was to incite and arouse the intolerance and murderous feeling of the ignorant, deluded and fanatic members of the society to the necessary pitch for the express object of taking his life: *Held*, that the accused could not claim exemption, under the Exception 1 and 9, even though he was under a vague apprehension that some ignorant fanatic might be suddenly moved by the idea that it was his duty to murder him. There was nothing to connect the whole community with such fanatics and the publication in the papers was quite unnecessary. *Jaffar Fadu v. Emperor*.

11 Cr. L. J. 588 :
6 I. C. 209 : 4 S. L. R. 67.

—S. 499, Excep. III—*Mis-statement of facts, effect of—Defamation—Criticisms on conduct of public servant—Defence of fair comment, scope of.*

Defamatory allegations cannot be justified on the ground of fair comment, when they are based on mis-statement of facts. *Bhagwan Das v. Emperor*.

27 Cr. L. J. 1361 :
98 I. C. 481 : A. I. R. 1927 All. 116.

—S. 499, Excep. III—*Privileged occasion.*

Where the occasion is privileged, it is not necessary to justify every detail of the charge,

PENAL CODE ACT (XLV OF 1860)

provided the gist of the libel is proved to be in substance correct, and the details, etc., which are not justified, produce no different effect on the mind of the reader than the actual truth would do. *Murlidhar Jcramdass v. Narayandas*.

16 Cr. L. J. 141 :
27 I. C. 205 : 8 S. L. R. 143 :
A. I. R. 1914 Sind 85.

—S. 499, Exceps. 3, 6, 9, Ss. 500, 502—
Right of fair comment—Good faith.

The right of fair comment, involves two essentials : first that the imputation should be comment on the work criticised, and second that it should be "fair", that is to say, if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. Good faith requires not logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care, and caution must in each case be considered with reference to the general circumstances, and the capacity, and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal, and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment. The object of Exception 6 to S. 499, Penal Code, is that the public should be aided by comment, in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited only on such evidence, as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him ; he is also bound in the words of the exception to express his opinion with due care and caution and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. *Emperor v. Abdul Wadood*.

5 Cr. L. J. 237 :
9 Bom. L. R. 230 : I. L. R. 31 Bom. 293.

—S. 499, Excep. VII—*Interdict issued by head of mutt—Defamation—Caste—Swamis, powers of—Principle of natural justice.*

PENAL CODE ACT (XLV OF 1860)

Though an interdict issued by the head of a caste, against a member of the caste, who is not guilty of any moral offence savours of tyranny and oppression from the point of view of an advancing community, and becomes almost intolerable as the community becomes more catholic, so long as submission to the headship of a *Swami* remains the usage of the caste and the members of the community do not shake themselves off from such headship, the *Swami* is perfectly within his rights to resort to the orthodox methods of conventional discipline, and of vindicating caste usage, provided principles of natural justice are not violated. The advancing community, is not justified in expecting its own progressive opinions to be reflected in the immutable minds of the *Swamis* or their faithful followers, nor can they be coerced to change with the time by fear of criminal prosecution. *Sukralendra Thirtha Swami of Kasi Mutt v. Prabhu*.

24 Cr. L. J. 325 :
72 I. C. 165 : 17 L. W. 500 :
45 M. L. J. 116 : A. I. R. 1923 Mad. 587.

—S. 499, Excep. VII—*Scope of.*

Accused, the head of a *mutt*, on receipt of a formal accusation signed by several members of the caste stating, that complainant had taken part in a dinner which disqualified him from taking part in caste functions, issued a temporary interdict against the complainant which was *prima facie* defamatory pending the issue of a final order after inquiry. It was found, that, although the complainant was aware that the accusation had been preferred against him, no formal notice of the matter was given to him, before the issue of the provisional interdict : *Held*, that the interdict having been issued *bona fide* to meet the urgency of the case, was covered by Exception VII to S. 499, Penal Code. *Sukralendra Thirtha Swami of Kasi Mutt v. Prabhu*.

24 Cr. L. J. 325 :
72 I. C. 165 : 17 L. W. 500 :
45 M. L. J. 116 : A. I. R. 1923 Mad. 587.

—S. 499, Exceps. 7, 8 and 9—*Good faith—Defamation—Statements made before Panchayat.*

If a person at a meeting of the *panchayat* of his caste makes a defamatory statement, it will come within Exceptions 7, 8 and 9, S. 499, Penal Code, only if the accused proves that the statement was made in good faith, that is to say, it was true or that he had reasonable cause to believe it was true, whether or not it was so in fact. There can be no good faith when the accused had no reasonable grounds for believing the truth of that statement. *Baga Mahar v. Emperor*.

25 Cr. L. J. 169 :
76 I. C. 393 : A. I. R. 1924 Nag. 172.

—S. 499, Excep. (8)—*Complaint of grievance to person in authority.*

The accused, who were paddy merchants, sent a telegram to the Traffic Manager of a Railway, that a Station Master unduly favoured the charcoal traders in the allotment of waggons, and in allowing them to send charcoal in excess of the quantity for which

PENAL CODE ACT (XLV OF 1860)

freight was paid, and that for this purpose, he received a bribe. It was proved, that the accused acted in consultation with each other, and had no grudge against the Station Master. Certain account books were tendered in evidence ranging over a long period containing entries of payment of bribes to the Station Master. The Magistrate discredited the evidence, oral and documentary, and convicted the accused, finding that the allegation of payment of bribes to the Station Master was false: *Held*, that it could not be said that the accused had no reasonable ground for the telegram, even if it should afterwards appear that their information was untrue in whole or in part, and that, as they complained to the proper authority, and did not further publish the imputation of bribery, they were protected by Exception (8) to S. 499, I. P. C. *Nga Poona v. Emperor*.

17 Cr. L. J. 213 :
34 I. C. 325 : 9 Bur. L. T. 136 :
8 L. B. R. 440 : A. I. R. 1916 L. Bur. 108.

———S. 499, Excep. 8—*Privilege—Defamatory statement, in complaint to Magistrate—Whether absolutely privileged—Rules of English Common Law, applicability of.*

A defamatory statement, made in a complaint to a Magistrate is not absolutely privileged. The privilege is qualified only, and should be confined to the Exceptions to S. 499, Penal Code. The privilege defined by the Exceptions to S. 499, Penal Code, must be regarded as exhaustive as to the cases which they purport to cover, and recourse cannot be had to the English Common Law, to add new grounds of Exception to those contained in the Statute. *Tiruvengada Mudali v. Tripurasundari Ammal*. (F. B.)

27 Cr. L. J. 1026 :
96 I. C. 978 : 51 M. L. J. 112 :
1926 M. W. N. 606 :
49 Mad. 728 : 25 L. W. 207 :
A. I. R. 1926 Mad. 906.

———S. 499, Excep. 8—*Publication.*

If A and B conspire to draw up a document, defaming Z and leave it with B, there is no publication. *C. Doraisami Naidu v. Kanniappa Chetty*.

32 Cr. L. J. 767 :
131 I. C. 654 : 1931 M. W. N. 366 :
I. R. 1931 Mad. 558 :
A. I. R. 1931 Mad. 487.

———S. 499, Excep. 8, 9—*Benefit of Exceptions—Defamation—Good faith, determination of—Accused attempting to protect himself—Charge, form of.*

In determining the question of good faith, the Court should take into account the intellectual capacity of the person, his predilections and the surrounding facts. Where the petition alleged to contain defamatory matter, was filed by the accused with a desire to protect himself rather than to injure others, he is entitled to the benefit of Exceptions 8 and 9 to S. 500, Penal Code. Where a document alleged to contain defamatory matter contains a multitude of statements, it is not correct to incorporate the whole of the document in the charge and thus to leave it

PENAL CODE ACT (XLV OF 1860)

to the accused to find out which exactly are the imputations that were intended or believed to cause harm to the reputation of the opposite party. *Muhammad Gul v. Hazi Fazley Karim*.

31 Cr. L. J. 369 :
122 I. C. 205 : 56 Cal. 1013 :
33 C. W. N. 446 :
A. I. R. 1929 Cal. 346.

———S. 499, Excep. 8, 9—*Good faith, absence of—Defamation—Receiving property from unadjudicated insolvent, whether receiving stolen property—Imputation.*

Where the creditors of an unadjudicated insolvent saw the complainant leave his shop with a bundle in his arm, and suspecting that it contained the insolvent's property, accused him of receiving stolen property, but on opening, it was not found to contain the expected stolen property: *Held*, that the imputation was not made in good faith within the meaning of Exception 8 or 9 to S. 499, Penal Code, and that the creditors were guilty of defamation. *Bulchand Ramchand v. Emperor*.

15 Cr. L. J. 675 :
25 I. C. 1003 : 8 S. L. R. 55 :
A. I. R. 1914 Sind 133.

———S. 499, Excep. 8, 9—*Libellous complaint made to caste.*

The accused having suspected that the complainants were in the habit of drinking liquor, made an application to the caste calling for an inquiry into their conduct. The application contained libellous allegations but it was not communicated to anybody outside the caste: *Held*, that the alleged libel was a privileged communication and was protected by Exceptions 8, 9 to S. 499, Penal Code, because: (1) the accused had every right to do what they did so long as they acted in good faith, with due care and attention, and for the protection of the interests of the caste; (2) all that the accused did was to complain to the caste which had jurisdiction to inquire into the complaint. *Emperor v. Padman Babul Mhatre*.

13 Cr. L. J. 687 :
16 I. C. 335 : 14 Bom. L. R. 585.

———S. 499, Excep. 8, 9—*Privilege—Complaint to Police Constable—Burden of proof—Evidence Act, S. 105.*

A complaint to a Police Constable is not privileged. The rule of law that parties before the Court, Counsel and witnesses are absolutely privileged, cannot be extended to the case of complaints to a Police Constable. An accused person, who, in a charge of defamation, pleads privilege under Exception 8 of S. 499, Penal Code, has to establish affirmatively two ingredients which alone will bring him within that exception, viz., (1) the preferring of a complaint in good faith, and (2) preferring it to a person who has authority over the person complained against. This is what S. 105, Evidence Act, lays down. *In re: Kakumara Anjaneyalu*.

17 Cr. L. J. 381 :
35 I. C. 813 : A. I. R. 1917 Mad. 600.

PENAL CODE ACT (XLV OF 1860)

———S. 499, Exceps. 8 and 9, 500—*Good faith—Defamation—Justification—Sentence.*

A person who defames another is liable under S. 500, Penal Code, and it is not necessary that there should be an intention to harm the reputation; it is sufficient if there was reason to believe that the imputation made would harm the reputation. Under exception 8 or 9, it is essential that the imputation shall have been made in good faith, i. e., with due care and caution and where there are *prima facie* materials for malice, the exception will not operate. Courts should, at the time of passing sentence, keep in view the position of the parties. *Kewala Nandgir v. Emperor.*

14 Cr. L. J. 606 :
21 I. C. 478 : 34 P. W. R. 1913 Cr. :
317 P. L. R. 1913.

———Ss. 499, Exceps. 8, 9, 500—*Good faith—Defamation—Statement made in good faith in answer to charge—Offence.*

Accused was charged before a *panchayat* with having beaten the complainant who also stated that the accused had been molesting her for three or four years for immoral purposes. The accused stated that he had kept the complainant for 10 or 11 years. Complainant thereupon prosecuted the accused for an offence under S. 500, Penal Code: *Held*, that the statement made by the accused before the *panchayat* was made in good faith in order to explain his beating of the complainant and was covered by the 8th and 9th Exceptions to S. 499, Penal Code. *Nanhey v. Pyari Bahu.*

27 Cr. L. J. 938 (b) :
96 I. C. 394 : A. I. R. 1926 Nag. 504.

———Ss. 499, Excep. (8), 500—*Good faith—Proof—Imputation honestly believed though untrue in fact—Absence of unnecessary publication—Seeking redress.*

A person charged with defamation under S. 500, Penal Code, who claims the benefit of Exception (8) to S. 499, must show that the accusation complained of was a *bona fide* complaint of a grievance, and not a wanton accusation maliciously made with the object of injuring another person. If, without express malice, a person makes a defamatory charge which he *bona fide* believes to be true, against one whose conduct in the respect defamed has caused him injury, to one whose duty it is to inquire into and redress such injury, the occasion is privileged, because the person making the charge has an interest in its subject-matter and the person to whom the communication is made has, on hearing it, a duty to discharge in respect of it. *Nga Poona v. Emperor.*

17 Cr. L. J. 213 :
34 I. C. 325 : 9 Bur. L. T. 136 :
8 L. B. R. 440 : A. I. R. 1916 L. Bur. 108.

———S. 499, Excep. 9—*Benefit of exception—Defamatory.*

In the course of the trial of a civil suit, the Advocate of the petitioners in cross-examining one of the other party's witnesses, asked him whether his daughter had given birth to a child without having been married to a man.

PENAL CODE ACT (XLV OF 1860)

The question had been put by the Advocate under instructions from his client and with a belief that it was permissible under S. 146 (1), Evidence Act: *Held*, that the accused could not be convicted under S. 500, Penal Code, in these circumstances. They were entitled to the benefit of Exception 9 to S. 499, Penal Code, in the publication made by them of the defamation to their lawyer. *Ahmed Ali Khan v. Walli Mohamed.*

39 Cr. L. J. 229 :
172 I. C. 953 : 10 R. Rang. 301 :
A. I. R. 1937 Rang. 535.

———S. 499, Excep. 9—*Defamation—Plaintiff's privilege.*

Plaintiff to a suit is not privileged under Exception 9 to S. 499, Penal Code, unless the allegations made in the plaint were made in good faith. *Til Kanchan Gir v. Emperor.*

11 Cr. L. J. 594 (b) :
8 I. C. 220.

———S. 499, Excep. 9—*Good faith.*

A Vakil appearing for the defence in an action for defamation, in the course of his argument made statements in Court, oral and written, to the effect that the defamatory statement was in substance true and had been set out as a fact in a reported judgment of the High Court in certain proceedings for professional misconduct against the Advocate. On a charge of defamation against the Vakil and his client: *Held*, (1) that in the absence of anything to show that the client instructed the Vakil in the definite terms used by him in his argument, the client was not guilty of any offence; (2) that the Vakil made the statement in good faith and came within the 9th Exception to S. 499, Penal Code, inasmuch as the truth of the statement was an essential element of the defence and the Vakil would have been gravely lacking in his duty to his client if, when he had its truth definitely set out in a public law report, he omitted to bring that to the notice of the Court before whom he was arguing. *Anwaruddin v. Fathim Bai Abrdin.*

28 Cr. L. J. 313 (b) :
100 I. C. 537 : 25 L. W. 295 :
52 M. L. J. 269 : 1927 M. W. N. 164 :
38 M. L. T. 130 : 50 Mad. 667 :
A. I. R. 1927 Mad. 379.

———S. 499, Excep. (9)—*Good faith—Defamation—Ex-communication from caste—Test—Publication of resolution of ex-communication in discharge of duty.*

There is a dividing line between the passing of a resolution at a caste meeting and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste published to all its members a caste resolution in such discharge, the law will hold the occasion of the publication to be privileged. The member who published it was bound to publish it, and the members of the caste had an interest in hearing it. But then there must be good faith on the part of the member who published, that is, it must be proved that the publication was made with due care and attention. That is a question of fact. One test of good

PENAL CODE ACT (XLV OF 1860)

faith is whether the circumstances of the case show that the accused made the imputation having reasonable grounds to believe it to be true. *Virji Bhagwan v. Bai Amba*.

10 Cr. L. J. 372 :

3 I. C. 744 : 11 Bom. L. R. 638.

————S. 499, Excep. 9—*Good faith—Defamation—Statement based on flimsy materials—Publication without inquiry.*

The fact, that certain evidence is produced at the trial in a prosecution for defamation cannot be prayed in aid to establish due care, and intention on the part of the accused in publishing the defamatory statement, unless there is evidence to show that some of the information was in the possession of the accused at the time the defamatory statement was published. Where a statement which is *prima facie* defamatory, and is based upon very flimsy materials, is published without any inquiry being made, it cannot be said that the publication is made in good faith. For the purposes of Exception 9 to S. 499 of the Penal Code, if good faith is not established, it is not necessary to consider whether the public good was involved. *Emperor v. Purna Chandra Ghose*.

26 Cr. L. J. 71 :

83 I. C. 631 : 28 C. W. N. 579 :

A. I. R. 1924 Cal. 611.

————S. 499, Excep. 9—*Good faith—Defamation—Statement, relevant, by party to suit—Privilege—Malice.*

A statement made by a party to a suit in good faith and for the protection of his interests, and which is relevant, to the matter in issue, falls under Exception 9 of S. 499, Penal Code, and is privileged. In order to take such a statement out of the exception, express malice must be proved. *Baija v. Babu*.

19 Cr. L. J. 641 (b) :

45 I. C. 833 : A. I. R. 1918 Nag. 221.

————S. 499, Excep. 9—*Good faith—Imputation made by one party against opposite party's witness.*

During the Police investigation of a case, the accused called the complainant, who was named as one of his witnesses by the other party, a rogue. It was found, that the complainant had shortly before been convicted, and fined for insulting the accused : *Held*, that the expression used by the accused was defamatory, but that the statement having been made by the accused in good faith, and for the protection of his own interest during a Police investigation, it was covered by the 9th Exception to S. 499, Penal Code. *Esufalli Abdul Hussein v. Emperor*. 19 Cr. L. J. 731 :

46 I. C. 411 : 20 Bom. L. R. 601 :

A. I. R. 1917 Bom. 192.

————S. 499, Excep. 9—*Good faith, presumption of—Defamation—Pleader asking question in cross-examination, making imputation under instructions from client—Liability of Pleader—How to rebut presumption.*

A Pleader is entitled to the presumption that the questions he asks in cross-examination are asked in good faith for the protec-

PENAL CODE ACT (XLV OF 1860)

tion of the interest of his client. The presumption, therefore, is that a question asked in cross-examination, making an imputation affords no ground for a criminal prosecution. To rebut this presumption, it is not sufficient merely to allege that the client knew the imputation to be untrue. To rebut the presumption of good faith, there must be convincing evidence that the Pleader was actuated by an improper motive, personal to himself, and not by a desire to protect or further the interest of his client in the cause. Therefore, where a Pleader for an accused asked a prosecution witness in cross-examination, whether he smoked *ganja*, he is not liable to be prosecuted for defamation by the witness, where no improper motive on the part of the Pleader is alleged. *Nikunja Behari Sen v. Harendra Chandra Sinha*.

14 Cr. L. J. 528 :

20 I. C. 1008 : 18 C. W. N. 424.

————S. 499, Excep. 9—*Good faith.*

The accused, on receiving an information that a theft had been committed at his house by the complainant, and on satisfying himself about the truth of the information, communicated that information to the leaders of his caste, who eventually called a *panchayat*, and outcasted the complainant. The complainant charged the accused with defamation : *Held*, that the question whether the *panchayat* had jurisdiction or not was altogether immaterial : *Held*, further, that although the imputation was of an offence, it would nevertheless, be an imputation on the character of complainant. In reporting the matter to the *panchayat*, the accused was on a safer ground, since his action goes to show his anxiety to bring social pressure to bear on complainant and thus induce her to mend her ways. The case fell under Exception 9 appended to S. 499, Penal Code. *Dularibai v. Sahulal Bania*. 37 Cr. L. J. 845 :

163 I. C. 452 : 18 N. L. J. 204 :

9 R. N. 4.

————S. 499, Excep. 9—*Good faith.*

The accused's son married a European lady, and the accused *bona fide* believing that the lady was likely to murder his son, approached an officer in charge of the institution in which his son was serving, and the District Magistrate, and in their presence, made certain statements to the effect: (1) that the lady was likely to murder his son, and (2) that the lady was a woman of immoral character and 'man-mad'. The lady filed a complaint against the accused for defamation, and the accused was charged in respect of these statements : *Held*, (1) that the accused having *bona fide* believed that his son's life was in danger at the hands of his wife, he must be held to have acted in the protection of his son's interest in approaching the authorities, and was not guilty of defamation in respect of the first statement; (2) that the accused was not justified in making any imputation against the moral character of the complainant, and was not entitled to claim the benefit of Exception 9 of S. 499, Penal Code, in respect

PENAL CODE ACT (XLV OF 1860)

of the second statement. Exception 9 to S. 499, Penal Code, can only mean that a person who makes an imputation in good faith, and makes that imputation for the protection of the interest of himself or any other person, is outside the operation of S. 499. The Exception cannot be read as meaning that if the person making the imputation *believes* in good faith that he has been acting for the protection of the interest of himself or any other person, he is not liable. It will be a question of law, and not of fact for decision, in a particular case, by the Court, whether the man making the imputation in good faith was, or was not acting for the protection of the interest of himself, or any other person. *Bhola Nath v. Emperor*.

30 Cr. L. J. 101 :
113 I. C. 213 : I. R. 1929 All. 110 :
26 A. L. J. 1334 : 5 All. 313 :
A. I. R. 1929 All. 1.

———S. 499, Excep. 9—*Good faith*.

Where in answer to the questions put to him by the Magistrate or Public Prosecutor, a witness makes defamatory statements, he is entitled to the benefit of an initial presumption of good faith; generally speaking there would be a presumption that what the witness says is said *bona fide* in the protection of his own interests and that he would, therefore, be protected by the provisions of Exception 9 to S. 499, Penal Code. *Rasool Bhai v. Emperor*.

41 Cr. L. J. 48 :
184 I. C. 566 : 1939 Rang. 479 :
12 R. Rang. 159 : A. I. R. 1939 Rang. 371.

———S. 499, Excep. 9—*Insult or abuse*.

Remarks by accused by way of protest and for protection of his interest—Words casting imputation on complainant's character—Accused held protected by Exception 9. *Bishunath Singh v. Emperor*.

35 Cr. L. J. 703 :
148 I. C. 514 : 11 O. W. N. 382 :
6 R. O. 420 : A. I. R. 1934 Oudh 169.

———S. 499, Excep. 9—*Interpretation of*.

S. 499, Penal Code, is meant to be universal and the English Law of absolute privilege does not apply in this country to statements of Advocates in judicial proceedings. It is, however, for the public good that a person charged with the responsibility of an Advocate should, so far as may be, feel unfettered by any control other than that of the Presiding Judge, in the use of every weapon placed at his disposal by the law for the defence of the liberty of his client. Exception 9 to S. 499 of the Penal Code must, therefore, be interpreted accordingly, and it is the duty of a Court when a complaint is made against an Advocate or Legal Practitioner for defamation that it should presume that the remark was made on instructions and in good faith; and unless circumstances clearly show that it was made wantonly, or from malicious or private motives, the complaint should not be entertained. Even if the circumstances suggest recklessness or malice, further enquiry should be made and an opportunity, if possible, should be given to a Legal Practitioner to offer an explanation

PENAL CODE ACT (XLV OF 1860)

before summons is issued against him. *Mc Donnell v. Emperor*.

27 Cr. L. J. 321 :
92 I. C. 737 : 4 Bur. L. J. 147 :
3 Rang. 524 : A. I. R. 1926 Rang. 345.

———S. 499, Excep. 9—*Malice, effect of*.

Where a lawyer is acting in the course of his professional duties and is thus compelled, subject to the disciplinary action of the Court, to put forward everything which may assist his client, good faith is to be presumed; bad faith is not to be assumed merely because a statement by him is *prima facie* defamatory, but there must be some independent allegation and proof of private malice from which in the circumstances of the case the Court considers itself justified in inferring that the statement was not made because it was necessary in the interests of the client but that the occasion was wantonly seized as an opportunity to vent private malice. Even in cases where some private malice is gratified by the publication of the statement, if such publication was imperatively called for in the interests of his duty to his clients, the presence of such malice will not negative the presumption of good faith. *Anwaruddin v. Fathim Bai Abidin*.

28 Cr. L. J. 313 (b) :
100 I. C. 537 : 25 L. W. 295 :
52 M. L. J. 269 : 1927 M. W. N. 164 :
38 M. L. T. 130 : 50 Mad. 667 :
A. I. R. 1927 Mad. 379.

———S. 499, Excep. 9—*Privilege—Defamation—Defamatory statements by accused in the course of his examination under S. 342, Cr. P. C.*

Statements of a defamatory character made by an accused person in the course of the statement, which he is invited to make under S. 342, Cr. P. C., are privileged. *Hayes v. Christian*; 15 Mad. 414, referred to. *In re : Payini Chellaya*.

9 Cr. L. J. 276 :
1 I. C. 248 : 5 M. L. T. 256.

———S. 499, Excep. 9—*Privilege, who are entitled to—Defamatory statement, when protected—Complainant, whether entitled to privilege*.

Exception (9) to S. 499, Penal Code, only affords protection when a defamatory statement is made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. The protection which may be given upon principles of public policy to a witness cannot be given to a complainant who, when asked by the Magistrate to state his grievance, deliberately makes a defamatory statement without the slightest justification. *Dinshaji Edulji Karkaria v. Jehangir Cowasji Mistri*.

23 Cr. L. J. 654 :
69 I. C. 94 : 24 Bom. L. R. 400 :
A. I. R. 1922 Bom. 38.

———S. 499, Excep. 9—*Publication—Defamation—Ex-communication of member of Sabha*.

Accused who were members of a Sabha received notice of a charge against the complainant and called upon the complainant to defend himself. The complainant failed to appear to answer the charge and was thereupon ex-communicated in accordance with the usual procedure of the Sabha, and the fact of

PENAL CODE ACT (XLV OF 1860)

ex-communication was communicated in the manner usual in such cases to other *Sabhas*: *Held*, that the publication being in the usual course of the duty of the accused, and there being nothing to show that the accused were not acting in good faith in the interests of their community, the publication was protected by the 9th Exception to S. 499, Penal Code, and accused were not, therefore, guilty of the offence of defamation. *Ayyaswamy Ayyar v. Annan Thirumali Ayyar*. 26 Cr. L. J. 215 :

83 I. C. 999 : 19 L. W. 639 :
47 M. L. J. 8 : 1924 M. W. N. 541 :
A. I. R. 1924 Mad. 670.

—S. 499, Excep. 9—*Publication of ex-communication—Held, offence of defamation—Caste panchayat—Extent of jurisdiction.*

A caste *panchayat* can no doubt deal with offences relating to caste usages and customs, but it has no jurisdiction to decide questions regarding private property or impose any sanction, such as loss of caste on any member of the community who declined to part with his property. It can hardly be argued that informing people even of one's own community that a certain person has been ex-communicated from his caste, does not harm that person's reputation in the eyes of his followers. Nor can it be said that such a consequence is not one which the person who made the publication could not have known to be likely. *Komari Polthuraju Selly v. Krishnapatam Padda Poliah*.

40 Cr. L. J. 385 :
180 I. C. 473 : 1939 M. W. N. 127 :
49 L. W. 268 : 1939, 1 M. L. J. 414 :
11 R. M. 712 : A. I. R. 1939 Mad. 382.

—S. 499, Excep. 9—*Scope of.*

Allegations which are made in a petition for divorce filed by the accused after his wife has left his house, and in the truth of which he has a reasonable belief, fall within the 9th Exception to S. 499. *Mr. McGill v. Mr. Bryne*.

13 Cr. L. J. 25 :
13 I. C. 217 : 5 S. L. R. 133.

—S. 499, Excep. 9—*Scope of.*

The 9th Exception to S. 499, Penal Code, does not mean that in order to bring pressure to bear upon a person to part with his property which he is entitled in law to keep, a defamatory allegation that such person is ex-communicated by the caste can be made on the ground that it is for the protection either of the person who made it or of the community to which he belongs. *Kumari Polthuraju Selly v. Krishnapatam Padda Poliah*.

40 Cr. L. J. 385 :
180 I. C. 473 : 1939 M. W. N. 127 :
49 L. W. 268 : 1939, 1 M. L. J. 414 :
11 R. M. 712 : A. I. R. 1939 Mad. 382.

—S. 499, Excep. 9—*Statements in judicial proceedings—Defamation—Absolute privilege, doctrine of, applicability of.*

The law of absolute privilege does not apply in India in the case of criminal prosecutions for perjury. In a prosecution for perjury, however, in respect of a statement made by a party to a judicial proceedings, the special

PENAL CODE ACT (XLV OF 1860)

position occupied by the party must not be lost sight of. Parties and witnesses in all judicial proceedings are in a peculiar position, and it is necessary, if their interests are to be safe-guarded, that they should be allowed to make statements freely, subject to the ordinary law of perjury. Generally speaking, there would be a presumption that what they say is said *bona fide* in the protection of their own interests and they would be protected by the provisions of the Ninth Exception to S. 499 of the Penal Code. *Syed Ally v. Emperor*.

27 Cr. L. J. 648 (b) :
94 I. C. 600 : 4 Bur. L. J. 181 :
A. I. R. 1925 Rang. 360.

—S. 499, Excep. (9), ill. (a)—*Bona fide statement, to protect self-interest—Defamation—Special damage—Civil action more appropriate remedy than criminal prosecution.*

The alleged defamatory letter, written by the appellant's attorney under his instructions, ran as follows:—Dear Sir,—We are instructed by Messrs. Cassim Kurrim to give you notice not to make any payment to Messrs. J. H. Seedick and Company on account of brokerage or difference in gunny transactions or on any other account. One member of the said firm, *viz.*, Virchand Nanchand, has filed his petition under the provisions of the Insolvency Code, in respect of his business debts, the object being to collect all the outstandings and defeat the creditors, our clients being creditors to a large amount. We would point out that where one member of a firm is before the Insolvency Court, the other members are not entitled to collect the outstandings nor are they in a position to give an effectual discharge to persons making payments so that in the event of your making any such payment, you would be called upon by the Official Assignee to pay the same again. We may inform you that we are taking steps on behalf of our said clients to have all the members of the said firm declared insolvent. Yours faithfully. &c., &c. : *Held*, that the particular class of libel under which this case falls is a libel of the kind which is analogous to an action on a case, for special damage, and as such, it can be far more properly dealt with in the Civil Courts than in a criminal prosecution. *Held, on evidence*, that the letter was written with the *bona fide* intention of protecting the interests of the appellant; and that it does not contain more than what the appellant was fairly entitled to state. The case, therefore, falls within illustration (a) to the 9th Exception to S. 499, Penal Code. *Cassem Kurrim v. Junas Hadjee Seedick*.

2 Cr. L. J. 47 :
9 C. W. N. 195.

—S. 499—Exceptions 9 and 10—*Good faith, proof of.*

Exceptions 9 and 10 to S. 499 both require the existence of good faith, which implies the exercise of due care and attention. *Bhagolelal v. Emperor*.

41 Cr. L. J. 734 :
189 I. C. 382 : 1940 N. L. J. 309 :
13 R. N. 47 : A. I. R. 1940 Nag. 249.

PENAL CODE ACT (XLV OF 1860)

————S. 499—Exception 9, 500—*English Law.*

A definite pronouncement of the Indian Legislature, is not liable to be overridden by the provisions of the Common Law of England. The law as to absolute privilege is not applicable to the Criminal Law of defamation in India. The I. P. C. is a complete Code in itself. It is, to a large extent, founded on the Common Law of England, but the ordinary criminal offences in this country are punishable, not because they would be offences under the English Common Law, but because they have been declared to be offences punishable under the Penal Code. S. 499 defines the criminal offence of defamation. The section is quite clearly wide enough in certain circumstances to make statements made by Advocates in exercise of their profession amounting to criminal defamation punishable under S. 500. There are a number of Exceptions set forth in S. 499, and any statement falling within those Exceptions, does not amount to criminal defamation. But any statement which does not fall within any of these Exceptions, and which otherwise, satisfies the terms of the general definition in the section, is quite clearly declared by S. 499 read with S. 500 to be punishable. *McDonnell v. Emperor.*

27 Cr. L. J. 321 :
92 I. C. 737 : 4 Bur. L. J. 147 : 3 Rang. 524 :
A. I. R. 1926 Rang. 345.

————S. 499—Excep. (9), 500—*Master and servant—Person aggrieved—Master cannot sue for defamation of servant.*

A plaintiff in a rent suit made the following allegation in his plaint:—“In 1910 *F* the plaintiff gave evidence in defence of Sub-Inspector Gur Narian Lal. In consequence of this, defendant (*M*) became exceedingly annoyed with the plaintiff, and the servants of the defendant began to oppress the plaintiff in all manner of waysand by threats of confining him, and of having him disgraced by beating, realized this amount from him. On the basis of the above allegation, *M* made a complaint under S. 500, Penal Code: *Held*, that the allegation defamed not *M* but his servants, and action for defamation could not be sustained at the instance of *M*. *Til Kanchan Gir v. Emperor.*

11 Cr. L. J. 594 (b) :
8 I. C. 220.

————S. 499—Excep. 9, 500—*Privilege—Defamation—Privileged statement—Statement contained in an affidavit.*

A defamatory statement, made of one's own accord, and most wantonly in an affidavit in respect to an inquiry where such a statement is wholly irrelevant, is not privileged under Exception 9 or any other of the Exceptions contained in S. 499, Penal Code. *Pran Krishto Ghosh v. Giribala Dassi.*

1 Cr. L. J. 122 :
8 C. W. N. 292.

————S. 499—Excep. 10, 500—*Ex-communication—Defamation—Warning to caste-fellows*

PENAL CODE ACT (XLV OF 1860)

not to deal with person ex-communicated—Offence.

Complainant had been put out of caste for having taken water from the hands of a certain person, and the accused warned certain other members of the caste that if they took water from the hands of the complainant, they would also be liable to be put out of caste: *Held*, that the action of the accused was covered by the tenth Exception to S. 499, Penal Code, and did not amount to defamation. *Umed Singh v. Emperor.*

25 Cr. L. J. 472 :
77 I. C. 824 : 22 A. L. J. 79 :
A. I. R. 1924 All. 694.

————S. 499—Explanation 1—*Imputation of unchastity of wife—Defamation—Husband, an aggrieved person—Cr. P. C., S. 198—Error in charge—No failure of justice.*

Where an imputation of unchastity is made in respect of a married woman, her husband is a person aggrieved within the meaning of S. 198, Cr. P. C. and is entitled to take criminal proceedings in respect of the same. Where a charge stated that the defamation was of the complainant, the husband, and not of the wife, it was a mere irregularity which would not vitiate a conviction unless the same should prejudice the accused, or occasion a failure of justice. *Anantha Goundan v. Emperor.*

2 Cr. L. J. 381 :
15 M. L. J. 224 : 2 Weir 231.

————S. 499, Expl. 2—*Applicability of—Expl. 2 whether applies to complaint of an individual as such.*

If a collection or company of persons as such is defamed, one of their members may make a complaint on behalf of the collection or company of persons as a whole according to Explanation 2 to S. 499, Penal Code, but the defamation must be shown to be of all the persons in the association or collection as such, the defamation is of the collection or association as such. If, therefore, the complaint is one of an individual as such, Explanation 2 has no application. *Ahmadali Adamali v. Emperor.*

39 Cr. L. J. 518 :
175 I. C. 9 : 10 R. S. 274 :
A. I. R. 1938 Sind 88.

————S. 499, Expl. IV—*Imputation as to caste—Statement of having been outcasted used with respect to Muhammadan, whether defamatory—Caste, meaning of.*

It is defamatory, to say without cause, that any one is ex-communicated from caste. The fact, that all Muhammadans are, generally speaking of one caste, does not make such a statement made with reference to Muhammadans any less defamatory. The word ‘caste’ is not entirely confined to Hindus, and refers to any class who keep themselves socially distinct or inherit exclusive privilege. *Yusaf Beg Sahib v. Mahomed Sayad Sahib.*

28 Cr. L. J. 207 :
99 I. C. 943 : 25 L. W. 357 :
A. I. R. 1927 Mad. 397.

PENAL CODE ACT (XLV OF 1860)

———S. 499, Expl. 4—*Scope*.

Explanation 4 to S. 499, Penal Code, like the other three, merely describes the quality or nature of the imputation, and not its actual effects. *Anandrao Balkrishna v. Emperor*.

16 Cr. L. J. 177 :
27 I. C. 657 : 17 Bom. L. R. 82 :
A. I. R. 1915 Bom. 28.

———Ss. 499, 500—*Absolute privilege—Cr. P. C., 1898, S. 342—Evidence Act, S. 132—Statement made by witness—Statement by accused—Defamation—Absolute privilege*.

A relevant statement made by a witness on oath or solemn affirmation in a judicial proceeding, is not absolutely protected from being made the subject of a prosecution for defamation under S. 500, Penal Code, on grounds of public policy or Exceptions derived from the Common Law of England, apart from the provisions of S. 499, Penal Code. Nor is such a statement protected by the proviso to S. 132, Evidence Act, in cases where the witness has not objected to answering the question put to him. A relevant statement by an accused person under S. 342, Cr. P. C., or contained in a written statement filed by him, with the Court's permission is not absolutely protected from being the subject of prosecution for defamation under S. 500, Penal Code. *Bai Shanta v. Umrao Amir Malak*.

27 Cr. L. J. 423 :
93 I. C. 151 : 28 Bom. L. R. 1 :
50 Bom. 162 : A. I. R. 1926 Bom. 141.

———Ss. 499, 500—*Absolute privilege—Defamation—Statement by accused in answer to questions put by Court*.

The statement of a person charged with an offence in answer to a question put by the Court trying him is an absolutely privileged statement, and he is not liable to be punished for an offence under S. 499, Penal Code, in respect of such statement. *Polaraju Venkata Reddi v. Emperor*. (F. B.)

13 Cr. L. J. 275 :
14 I. C. 659 : 1912 M. W. N. 476 :
11 M. L. T. 416 : 23 M. L. J. 39.

———Ss. 499, 500—*Burden of proof—Defamation—Good faith*.

In a prosecution for defamation, the onus of showing the truth, the good faith, the public good and the justification by law as an answer to the complaint rests upon the person making use of the defamatory expression. *Bhagwan Singh v. Arjun Dutt*.

21 Cr. L. J. 564 :
57 I. C. 84 : 18 A. L. J. 846 :
2 U. P. L. R. All. 182 :
A. I. R. 1920 All. 232.

———Ss. 499, 500—*Complaint—Complaint under S. 500—Facts constituting offence also under S. 182—No sanction as required by S. 195, Cr. P. C., obtained—Complaint under S. 500, if should be dismissed*.

There is no Exception to S. 499, Penal Code, that when the defamation is made, in a statement to a public servant or in Court proceedings, by virtue of which the offence

PENAL CODE ACT (XLV OF 1860)

was punishable under S. 182 or S. 211, Penal Code, or some other section, then no prosecution under S. 500 would lie. Consequently, a complaint under S. 500 cannot be dismissed even if the same facts constitute also an offence under S. 182 and no sanction as required by S. 195, Cr. P. C., is obtained. *Aung Pe v. The King*. (F. B.)

39 Cr. L. J. 663 :
175 I. C. 915 : 11 R. Rang. 15 :
1938 Rang. 404 : A. I. R. 1938 Rang. 232.

———Ss. 499, 500—*Conversation between pleader and client—Imputation with intention of harming reputation, necessary to constitute defamation*.

Immediately after the termination of a Criminal Case against the accused, he stated in answer to a question of his pleader in conversation, that the trouble arose out of the elopement of the daughter-in-law of the complainant in this case. The accused was convicted of defamation for this statement : *Held*, that the accused did not make any imputation with the intention of harming the reputation of anybody, as he made it in answer to a very natural question put to him by his pleader at a time when the relationship of legal adviser, and client cannot be said to have ceased and that he was not guilty. *Devendra Nath Shaha v. Bhagirath Shaha*.

10 Cr. L. J. 475 :
4 I. C. 27 : 13 C. W. N. 1087.

———Ss. 499, 500—*Defamation of class of persons—Every member can file complaint—In other cases, complainant must satisfy that imputation is against him*.

If a well-defined class is defamed, each and every member of that class can file a complaint. In other cases, the defamatory words must refer to some ascertained and ascertainable person, and that person must be the complainant. Where the words reflect on each and every member of a certain number or class, each or all can sue. If the words reflect impartially on either A or B, or on some one of a certain number or class, and there is nothing to show which one was meant, no one can sue. If a person complains that he has been defamed, as a member of a class, he must satisfy the Court that the imputation is against him personally, and he is the person aimed at before he can maintain a prosecution for defamation. *Ankaraaju Subbarya v. Batuk Prasad*.

38 Cr. L. J. 1086 :
171 I. C. 534 : 1937 A. L. J. 781 :
10 R. A. 280 : 1937 A. W. R. 708 :
A. I. R. 1937 All. 677.

———Ss. 499, 500—*Defamation, what constitutes—Report at Thana on information received*.

A report to the Police by the accused that he had been informed that his buffalo was in the house of a certain person, does not constitute defamation. *Sarup Singh v. Emperor*.

27 Cr. L. J. 816 :
95 I. C. 480 : A. I. R. 1926 Lah. 141 (4).

PENAL CODE ACT (XLV OF 1860)

———Ss. 499, 500—*English Law.*

In dealing with cases of criminal defamation, it is necessary to follow carefully the provisions made in the Penal Code, on the question of defamation. There is a marked difference between criminal liability for defamation under the English Law, and under the Indian Law, arising from the fact that the English Criminal Law when dealing with defamation had mainly to consider whether the defamation was such as would result in a breach of the peace or the question whether the person who claimed punishment for defamation was a person aggrieved by the statements made. *Parwari v. Emperor.*

20 Cr. L. J. 231 :
49 I. C. 855 : 17 A. L. J. 214 :
41 All. 311 : A. I. R. 1919 All. 276.

———Ss. 499, 500—*Essence of offence under.*

Under the Indian Law, the essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. *Patwari v. Emperor.*

20 Cr. L. J. 231 :
49 I. C. 855 : 17 A. L. J. 214 :
41 All. 311 : A. I. R. 1919 All. 276.

———Ss. 499, 500—*Imputations on conduct of Police force—Individual members, if defamed.*

Complainant was the principal officer in charge of a certain Police force which was stationed at a certain place for the purpose of investigating a certain occurrence. There were some complaints against the conduct of the members of the Police force and the accused, after making some inquiries from the villagers, made two speeches at two different places, as a consequence of which he was charged and tried at the instance of the complainant for offences under S. 500, Penal Code. The charge with regard to the first speech alleged that the accused had stated that not to speak of the Police only but the British Government themselves and the superior officers including from the District Magistrate down to the *daroga* and the *chaukidars* were all beasts and pigs in their conduct, and the charge with regard to the second speech alleged that the accused had stated that the Police force had bitten off the nipple of the breast of a woman and had bitten the cheek of a woman nine months pregnant. In his defence the accused sought to prove the notes taken by him of the statements made to him by the villagers of the ill-treatment accorded to them by members of the Police force, but the notes of statements of those persons who were not called as witnesses at the trial were not admitted in evidence: *Held*, (Per *Newbould, J.*)—(1) that the statement by the accused that the members of the Police force were beasts and pigs in their conduct was defamatory of the complainant who was a member of the Police force; (2) that so far as the second charge was concerned, it related to definite acts of brutality by individual members of the Police force and inasmuch

PENAL CODE ACT (XLV OF 1860)

as the complainant personally was not accused of the brutal conduct alleged, the accused could not be convicted of an offence under S. 500, Penal Code, in respect of the second charge. Per *Ghose, J.*—(1) that the accused was entitled to prove the notes of the statements made to him by the villagers as evidence of his good faith, and that the notes were relevant on the question, although the persons who had made the statements were not examined as witnesses; (2) that the words in the first charge that not to speak of the Police only but the British Government themselves and the superior officers including from the District Magistrate down to the *daroga* and *chaukidars* were all beasts and pigs in their conduct were too wide to admit of the construction that any particular Police Officer was defamed; (3) that as the evidence showed that the Police force had been guilty of acts of misconduct, oppression and persecution, the accused had reasonable grounds for believing in the truth of the allegations made to him and that the case was, therefore, covered by the 9th Exception to S. 499, Penal Code, and that on that ground also the accused was entitled to an acquittal. *Pralap Chandra Guha Roy v. Emperor.*

26 Cr. L. J. 1539 :
90 I. C. 387 : 29 C. W. N. 904 :
42 C. L. J. 178 : A. I. R. 1925 Cal. 1121.

———Ss. 499, 500—*Irregularity.*

A Magistrate to whom such a postcard is privately handed over without a complaint, as required by S. 108 of Act V of 1898, commits material irregularity and acts without jurisdiction in starting thereon criminal prosecution under S. 500, I. P. C. The High Court, on revision, can altogether quash such proceedings at any stage of the case. *Abdulla v. Clarke.*

9 Cr. L. J. 154 :
1 I. C. 99 : 3 P. W. R. Cr. 1909.

———Ss. 499, 500—*Offence under.*

A letter is deemed to be published both where it is posted and where it is received and opened. The accused sent a letter enclosed in a cover in the outside of which the following words were written: "Worse than the thief is the ingrate, for he is a thief who steals our goodness and kindness, then stabs, then twists the dagger." There was no evidence to show that the words were read by anybody or that they referred to the complainant: *Held*, that no offence of defamation had been made out. *Burke v. Skipp.*

25 Cr. L. J. 641 :
81 I. C. 129 : 18 L. W. 718 :
1923 M. W. N. 913 :
45 M. L. J. 754 : 33 M. L. T. 168 :
A. I. R. 1924 Mad. 340.

———Ss. 499, 500—*Privilege—Defamation—Defamatory questions put at the instance of accused in a criminal case.*

Defamatory questions put to a witness at the instance of an accused person in a criminal trial are privileged and do not render the accused liable to be prosecuted for defamation under S. 500, Penal Code. *G. Padamraju Pantulu v. S. S. Vencatramana.*

9 Cr. L. J. 385 :
1 I. C. 799 : 6 M. L. T. 15 :
19 M. L. J. 217.

PENAL CODE ACT (XLV OF 1860)

———Ss. 499, 500—*Privilege*.

No privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of a journalist is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go, so also may the journalist, but, apart from Statute Law, his privilege is no other and no higher. In other words, the range of a journalist's assertions, criticisms, or comments is as wide as and no wider than, that of any other subject. No privilege attaches to his position. On the other hand, no privilege or protection attaches to a Judge, which exempts his public acts from free and adverse comments. He is not above criticism, his conduct and utterances may demand it. Freedom would be seriously impaired if the judicial tribunals were outside the range of such comments. *Channing Arnold v. Emperor*.

15 Cr. L. J. 309 :
23 I. C. 661 : 18 C. W. N. 785 :
26 M. L. J. 621 : 41 Cal. 1023 :
1 L. W. 461 : 7 Bur. L. T. 67 :
1914 M. W. N. 506 : 16 M. L. T. 79 :
12 A. L. J. 1042 : 20 C. L. J. 161 :
16 Bom. L. R. 544 :
A. I. R. 1914 P. C. 116.

———Ss. 499, 500—*Privilege*.

Statements made to a Police Officer under Ss. 154 and 155, Cr. P. C., are privileged and cannot be made the foundation of a charge of defamation. *Parwari v. Emperor*.

20 Cr. L. J. 231 :
49 I. C. 855 : 17 A. L. J. 214 :
41 All. 311 : A. I. R. 1919 All. 276.

———S. 499, 500—*Procedure*.

In a case of defamation, it is always necessary that the prosecutor or the plaintiff, according to whether the case is a criminal or a civil one, should be ready to go into the witness-box and submit to the most searching cross-examination. In a vast number of these cases, the character of the complainant is the thing which requires to be most meticulously gone into. *Rasool Bhai v. The King*.

41 Cr. L. J. 48 :
184 I. C. 566 : 1939 Rang. 479 :
12 R. Rang. 159 : A. I. R. 1939 Rang. 371.

———Ss. 499, 500—*Publication—Defamation—Cr. P. C., S. 198—Aggrieved person—Privileged communication*.

The husband of a married woman is a person aggrieved, within the meaning of S. 198, Cr. P. C., by imputations defamatory of his wife and is entitled to take criminal proceedings in respect of such imputations. When a person addressed a postcard containing defamatory matter in respect of a follower of the *mull*, to the Swami of such *mull* which was read out in public in the presence of other persons : *Held*, that this publication was sufficient to deprive any privilege in respect of such communication. *Subbana v. Lakshmana Murti*.

10 Cr. L. J. 263 :
12 M. C. C. R. 201.

PENAL CODE ACT (XLV OF 1860)

———Ss. 499, 500—*Publication*.

The law of defamation in India demands publication, *i. e.*, the defamatory matter was read at least by one other person than the defamer and the defamed. It is clearly the duty of the prosecution to prove affirmatively that the accused published the libel, the mere fact that the accused has omitted to deny publication will not supply the deficiency. The defamatory words must be published within territorial jurisdiction. *Burke v. Shipp*.

25 Cr. L. J. 641 :
81 I. C. 129 : 18 L. W. 718 :
45 M. L. J. 754 : 1923 M. W. N. 913 :
33 M. L. T. 168 : A. I. R. 1924 Mad. 340.

———S. 499, 500—*Statement in a judicial proceeding—Defamation—Liability of a party or witness for making defamatory statement in a judicial proceeding—Revision*.

A person making a statement as a party or witness in a judicial proceeding, which is *prima facie* defamatory, is liable to be charged with defamation under S. 500, I. P. C., irrespective of his liability to be prosecuted for perjury. Such person would be protected, if he could show that any of the Exceptions to S. 499, I. P. C., apply to him. *Phundi Ram v. Emperor*.

12 Cr. L. J. 193 :
10 I. C. 682 : 7 P. W. R. 1911.

———S. 499 (10)—*Applicability of—Imputation of act involving ex-communication from caste—Defamation*.

An imputation which leads to the ex-communication of a person from his caste, is defamatory to him if he had not been guilty of committing the act. To say about a person in the presence of his caste people, that he married a woman, who had been married before would, therefore, fall within S. 500, Penal Code, if under the caste rules such an act would entail his ex-communication from the caste. Exception 10 to S. 499, Penal Code, is clearly not applicable to such a case. *Hari Pada Baidya v. Emperor*.

31 Cr. L. J. 1225 :
127 I. C. 553 : 34 C. W. N. 580 :
A. I. R. 1930 Cal. 645.

———S. 500.

See also (i) Cr. P. C., 1898, Ss. 195, 195 (1)(b), 198, 211, 239, 253, 845 (b), 476.
(ii) Penal Code, 1860, Ss. 211, 228, 449, 499.
(iii) Printing Presses and Newspapers Act, 1867, S. 7.

———S. 500—*Absence of malice, effect of—Defamation—Privileged communication—Bonafides—Social position of accused to be considered*.

Where the accused told his friend E and subsequently at the instance of E, wrote to the superior officer of the complainant to the effect that the complainant and the wife of E had been seen behaving on a certain night in such a manner, and under such circumstances, as to render unavoidable the conclusion that

PENAL CODE ACT (XLV OF 1860)

acts of impropriety took place between them, and it was found that the accused honestly believed in the truth of the statements: *Held*, that the accused could not be convicted of an offence under S. 500, I. P. C., unless express malice was proved by the prosecution. That though a person in a higher social position than the accused would have probably acted differently under the circumstances, it did not follow that the accused was, therefore, actuated by malice in acting as he did. *H. Grant v. Emperor*.

5 Cr. L. J. 160 :
11 C. W. N. 390.

————S. 500—Acquittal under S. 182, if bar to trial under S. 500.

An acquittal on a charge under S. 182 on the ground that the person to whom the information was given was not public servant, is no bar under S. 403, Cr. P. C.; to a trial for defamation. *Ram Sewak Lal v. Maneshwar Singh*.

11 Cr. L. J. 325 :
6 I. C. 352 : 14 C. W. N. 839 :
37 Cal. 604 : 12 C. L. J. 15.

————S. 500—Bona fide criticism.

It is open to any one to draw attention to the non-Indian elements in the Government of India, and to argue that these impair the efficiency of that Government, and that it would be to the public advantage, if they were replaced by Indian elements. That is legitimate criticism. *Annie Basant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916, 2 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
21 M. L. T. 124 :
A. I. R. 1918 Mad. 1210.

————S. 500—Burden of proof—Slander.

In a case under S. 500, Penal Code, for slander, the burden lies on the accused to establish a plea of justification for the imputations made, and not on the complainant to prove that the statements complained of are false. *Sukhadayal v. Saraswati*.

39 Cr. L. J. 370 :
173 I. C. 844 : I. L. R. 1938 Nag. 217 :
10 R. N. 326 : A. I. R. 1937 Nag. 122.

————S. 500—Defamation—Evidence as to reputation of complainant, admissibility of.

Similarly, in a criminal prosecution where it is essential, in order to constitute the offence of defamation, that the person who makes or publishes the imputation complained of, should intend to harm, or know or have reason to believe that the imputation will harm, the reputation of the person concerning whom it is made or published, the question what reputation the complainant has, is relevant. Where the imputation complained of is that the complainant, an official, had compelled the accused to pay him a bribe, the accused is entitled to prove that the complainant has a notoriously bad reputation as a bribe taker, so that the imputation made as to his having taken a bribe on the particular occasion in question, even if false, could not damage his reputation as he had none to lose. In any case, proof of the complainant's bad reputation

PENAL CODE ACT (XLV OF 1860)

would affect the sentence to be passed in case of a conviction. *Devi Dial v. Emperor*.

24 Cr. L. J. 693 (b) :
73 I. C. 805 : 4 Lah. 55 : 2 P. W. R. 1923 Cr. :
A. I. R. 1923 Lah. 225.

————S. 500—Defamation, what constitutes—Host asking guest to leave—Offence.

The Criminal Law is not meant to punish every insult, however grievous, offered by one person to another in the course of social relations. The essence of the offence of defamation, is some sort of an imputation calculated to harm the reputation of some person. Accused gave a feast to the members of his brotherhood to which he also invited the complainant. When the complainant sat down to the feast, he was asked by the accused to leave the place. He left, and prosecuted the accused for an offence under S. 500, Penal Code: *Held*, that no imputation of any sort calculated to harm the complainant's reputation having been made by the accused, he was not guilty of an offence under S. 500, Penal Code. *Faqir Julaha v. Emperor*.

27 Cr. L. J. 1390 :
98 I. C. 606 : 24 A. L. J. 893 :
A. I. R. 1926 All. 711.

————S. 500—Defamatory words—Use of the expression "topsy-turvy" in relation to complainant in a newspaper article, held, amounted to defamation.

A newspaper editor wrote an article in his newspaper, wherein he pointed out the inconsistencies of the complainant's conduct in regard to the question of acceptance of ministerial office. The writer drew and published the inference that the complainant was altogether inconsistent and "topsy-turvy": *Held*, that the use of such expression as "topsy-turvy" was defamatory. *U Po Hnyin v. U Tun Than*.

41 Cr. L. J. 271 :
186 I. C. 226 : 12 R. Rang. 260 :
A. I. R. 1940 Rang. 21.

————S. 500—Defective charge, effect of—Joint trial of more than one person, validity of—Charge to specify particulars of each occasion.

Under S. 239, Cl. (d), Cr. P. C., a joint trial of more than one person who are associated together in circulating on different occasions defamatory statements with the common object of injuring the complainant, is not illegal. Where the accused is alleged to have defamed the complainant on several occasions, the charge must give particulars of the different occasions on which defamatory statements are alleged to have been made, otherwise, the charge is bad and the trial is vitiated. *Ali Mahomed v. Emperor*.

30 Cr. L. J. 1073 :
119 I. C. 532 : I. R. 1929 Sind 212 :
A. I. R. 1930 Sind 62.

————S. 500—Discharge under, legality of.

The accused cannot be discharged of an offence under S. 500, Penal Code, because the Magistrate thinks that there may be

PENAL CODE ACT (XLV OF 1860)

some substance in the defamatory remarks made by the accused. *Anath Nath Dey v. Mohendra Nath.* 13 Cr. L. J. 488 (b) : 15 I. C. 488.

————S. 500—Duty of prosecution—Defamation—Proof—Public good.

In a criminal case an accused person is not to be judged by how he pleads and fails to plead in the proceeding. Much injustice may be done by applying to criminal proceeding the precise and pedantic requirements of C. P. C. In dealing with defamation, the Penal Code has introduced a series of provisions, adopted partly from the old Common Law, in the nature of defences but it has not altered the fundamental principle of the Criminal Law, that the complainant or prosecution must prove the accused to be guilty, or in other words, the absence of such facts as happen to bring the case within either of the defences or exceptions laid down in the section. A complainant in a case of defamation is bound to prove that the statement complained of is false, and that if it is true, it is not for the public good. What is for the public good is a question of fact in each case. Where a person has been outcasted, a statement made to the brotherhood that he has been outcasted is made for the public good. *Umed Singh v. Emperor.* 25 Cr. L. J. 327 : 77 I. C. 183 : 21 A. L. J. 765 : 46 All. 64 : A. I. R. 1924 All. 299.

————S. 500—Duty of prosecution—Defamation—Essential for prosecution to prove publication.

The applicant was convicted by the Additional Magistrate of Toungoo of defaming the complainant under S. 500, Penal Code, by publishing a letter stating that the complainant had informed the Hospital Sub-Committee that he had been improperly solicited by a hospital nurse and describing the complainant as a scoundrel. It was not written by the applicant, but appeared to be signed by him and both Courts below found that he signed it. As regards the publication of the letter, there was no evidence that the accused published it. It seemed to have been intended for some friend of the hospital nurse in question and there was nothing to show that the accused did not intend to give it to such person with instructions to treat it as a confidential communication : *Held*, that it was essential for the prosecution to prove that the accused (applicant) posted the letter and that, as they failed to do so, the conviction must be set aside. *P. A. Mariano v. Emperor.*

1 Cr. L. J. 982 :
10 Bur. L. R. 304.

————S. 500—Essentials.

The essence of the offence of defamation is the publication of an imputation with the knowledge that it will harm the reputation of the person defamed. *Wahid Ullah Ahrari v. Emperor.*

36 Cr. L. J. 816 :
155 I. C. 638 : 1935 A. L. J. 676 :
1935 A. W. R. 698 : 7 R. A. 961 :
A. I. R. 1935 All. 743.

PENAL CODE ACT (XLV OF 1860)

————S. 500—Evidence — Prosecution for defamation—Denial of statement—Right to adduce evidence to prove statement is true.

In a prosecution for defamation, the accused is entitled to call evidence to prove that the allegations are true, even though he has denied making such allegations. *Abdul Aziz v. Fazal Rahman.* 30 Cr. L. J. 239 :

113 I. C. 816 : I. R. 1929 Rang. 48 :
A. I. R. 1928 Rang. 167.

————S. 500—Ex-communication—To say a man is outcast when he has not been outcasted, is to defame him—Delay in bringing complaint, whether ground for acquittal.

To say a man is an outcast when he has not been outcasted, is to defame him. Such conduct is to be distinguished from the permissible course of bringing up an allegation before a caste *panchayat* for a decision whether the person complained against should be outcasted or not. It is also permissible to refuse personally to have anything to do socially with a caste fellow of whose conduct one disapproves, but it is a different matter to dub him an outcast and induce other persons to boycott him before there has been a decision of the caste in which the person accused has been given a fair hearing. The delay in bringing the complaint is not by itself a ground for acquitting the accused. *Bhanwarsingh v. Sukhramsingh.* 41 Cr. L. J. 585 :

188 I. C. 413 : 1940 N. L. J. 410 :
13 R. N. 2 : A. I. R. 1940 Nag. 283.

————S. 500 — Fair comment, limits of—Libel—Justification.

To say of a person that he makes gifts to certain funds not out of charity but from self-advantage, is defamatory if the words used invite public contempt and ridicule. A fair comment must be based upon facts and a writer is not entitled to invent facts and express his opinions upon such invented facts. Nor can the conduct of a public man or of a person in his public character be assailed as dishonest simply because the writer fancies such conduct is open to suspicion. An accused justifying his libel, cannot both deny as well as justify it. *Appa v. Maricar.*

19 Cr. L. J. 129 :
43 I. C. 417 : A. I. R. 1918 L. Bur. 36.

————S. 500—Fair comment, plea of—Defamation.

In order to justify a plea of fair comment, the comment must not mis-state facts because a comment cannot be fair which is built upon facts which are not truly stated ; and further it must not convey imputations of an evil sort except so far as the facts truly stated warrant the imputation. *Mir Allahbux Khan v. Emperor.* 30 Cr. L. J. 548 :

116 I. C. 99 : I. R. 1929 Sind 99 :
23 S. L. R. 216 : A. I. R. 1929 Sind 90.

————S. 500—Good faith.

Person getting information that others are about to do him harm—Report to Police—

PENAL CODE ACT (XLV OF 1860)

Prosecution for defamation is not maintainable.
Yeo Cheong Chew v. Emperor.

36 Cr. L. J. 1307 :
158 I. C. 93 : 8 R. Rang. 146 :
A. I. R. 1935 Rang. 297.

———S. 500—Good faith—Presumption.

It is not defamatory to make imputation on the character and position in life of a witness, provided that the imputation is made in good faith and for the protection of the client who has engaged the Advocate. The presumption, therefore, is that a question asked in cross-examination making an imputation as regards a witness affords no ground ordinarily for a criminal prosecution, and that it is the duty of a Court when a complaint is made against an Advocate for having used defamatory words, to presume that the remark or question objected to was made on instructions and in entire good faith. *Banerjee v. Emperor.*

28 Cr. L. J. 877 (b) :
104 I. C. 717 : 46 C. L. J. 227 :
A. I. R. 1927 Cal. 823.

———S. 500—Harm to reputation—Defamation—Abuse, whether amounts to defamation.

Though a mere abuse is not ordinarily a defamation, the fact that the words used by the writer of an article are those of abuse, does not of itself take the article out of the definition of defamation, if taken as a whole, it is calculated to harm the reputation of the person concerned. *Inayat Shah v. Emperor.*

30 Cr. L. J. 4 :
112 I. C. 772 : 1 R. 1929 Lah. 86.

———S. 500—Imputations of immorality—Defamation of a Hindu widow living with her brother—Complaint by brother—Brother, an aggrieved person.

Serious imputations were made against a Hindu widow, accusing her of immorality. She was living with, and was practically under the guardianship of her brother: *Held*, a Hindu lady residing with her father, brother or her son is a member of his family; and her reputation is bound up with the reputation of the person in whose house and under whose charge she is living. If any imputation is made against her character, that would affect as much the relative with whom she is living as herself. And therefore, the brother was a person aggrieved within the meaning of S. 198, Cr. P. C., and it was competent to a Court to take cognizance of the offence of defamation upon his complaint. *Thakur Dass Sur v. Adhar Ohandra Misri.*

1 Cr. L. J. 445 :
8 C. W. N. 515 : 1 L. R. 32 Cal. 425.

———S. 500—Imputation of insolvency.

An imputation of insolvency against a person in the way of his trade is *per se* defamatory. *Bhikaehand v. Emperor.*

27 Cr. L. J. 1276 :
98 I. C. 124 : A. I. R. 1927 Sind 54.

———S. 500—Libel—Proof—Communication to specified person whether necessary.

In the case of a libel, it is not necessary

PENAL CODE ACT (XLV OF 1860)

for the prosecution either to allege or to prove that the act of the accused was directed at communicating the libel to any specified person or persons or that the libel, as a matter of fact, was brought to the notice of such person or persons; it is sufficient to prove that the accused intentionally did any act which had the quality of communicating to a third person or persons generally the alleged libel. *Bhikaehand v. Emperor.*

27 Cr. L. J. 1276 :
98 I. C. 124 : A. I. R. 1927 Sind 54.

———S. 500—Malice—Defamation—Challenged statement.

A person who maliciously makes a defamatory statement in respect of another, in the presence of several persons, is guilty of defamation, notwithstanding that he makes the statement on being challenged to do so by the person defamed. *Beni Ram v. Emperor.*

27 Cr. L. J. 310 :
92 I. C. 694 : A. I. R. 1926 All. 237.

———S. 500—Harm to reputation—Defamation—Using obscene and insulting language in respect of complainant.

After an altercation between the parties was over, the accused addressing third persons used language of an obscene and insulting nature in respect of the complainant, a respectable *Mukhtar*: *Held*, that the words were calculated to harm the reputation of the complainant and that the accused was, therefore, guilty of an offence under S. 500, Penal Code. There is some authority for the proposition that words *prima facie* defamatory used in a street quarrel should be regarded as mere vulgar abuse, and that their utterance under such circumstances, does not necessarily suggest an intention to harm the reputation of the person to whom they are applied. *Raja Ram Singh v. Emperor.*

19 Cr. L. J. 669 :
45 I. C. 1005 : 16 A. L. J. 498 :
A. I. R. 1918 All. 125.

———S. 500—Miscellaneous.

S. 80, Probate and Administration Act, contains the law on the subject of a cause of action surviving to the representative of a deceased Plaintiff, and the principle underlying the rule laid down in the section is applicable to the criminal proceedings under S. 500, Penal Code, having regard to the narrowness of line between a prosecution and a suit for damages. *Ishar Das v. Emperor.*

7 Cr. L. J. 290 :
3 P. W. R. Cr. 21 : 112 P. L. R. 1908 :
10 P. R. Cr. 1908.

———S. 500—Presumption of good faith—Defamation—Complaint against Pleader—No defamation unless remark is made wantonly or from malicious or private motive.

The Court should presume, when a complaint is made against a legal practitioner for defamation that the remark was made on instructions and in good faith, and there can be no defamation unless the circumstances show that the remark was made

PENAL CODE ACT (XLV OF 1860)

wantonly, or from a malicious or private motive. *U Pike v. Ma Khin Thein*.

41 Cr. L. J. 480 :
187 I. C. 463 : 12 R. Rang. 339 :
A. I. R. 1940 Rang. 77.

—S. 500—Presumption of good faith—Pleader filing defamatory written statement on behalf of client—Absence of malice—Prosecution for defamation, legality of.

A Pleader who files a petition containing defamatory statements on behalf of his client, cannot be prosecuted under S. 500, Penal Code, where there is no allegation of any malice or absence of good faith on his part. It is the duty of a Court when complaint is made against an Advocate for having used defamatory words to presume that the remark or question objected to was made on instructions and in entire good faith. *Nazir Ahmed v. Jogeshchandra Banerjee*.

29 Cr. L. J. 889 :
111 I. C. 569.

—S. 500—Privilege—Defamation—Degradation in caste.

A statement by the accused to certain members of the caste that the complainant had become a sweeper by reason of his having shaken hands and associated with sweepers, is defamatory and is not privileged where it does not represent the decision formally arrived at by a *punchayat* held to consider the matter. *Khamani v. Emperor*.

27 Cr. L. J. 296 :
92 I. C. 584 : 24 A. L. J. 171 :
A. I. R. 1926 All. 306.

—S. 500—Privilege—Defamation—False evidence—Voluntary statement of witness—Malice—Irrelevant—Witness, if protected.

A statement made by a witness under examination wholly irrelevant to the matter of enquiry, uncalled for by any question put to him and introduced by him maliciously for his own purposes, is not privileged. *Haider Ali v. Abru Mia*.

2 Cr. L. J. 459 :
9 C. W. N. 911 : I. L. R. 32 Cal. 756 :
2 C. L. J. 105.

—S. 500—Privilege—Defamation—Pleader asking defamatory questions to witness—Bad faith—Criminal liability.

A Pleader must use a certain amount of common sense and caution in asking defamatory questions to witnesses. If he puts defamatory questions to a witness with utter recklessness and without seeing whether there is any truth in them with a view to injure the reputation of the witness publicly rather than for the proper conduct of his case, he acts in bad faith and is not entitled to claim privilege. *Fakir Prasad Ghose v. Kripasindhu Pal Bhuti*.

28 Cr. L. J. 472 :
101 I. C. 600 : 54 Cal. 137 :
A. I. R. 1927 Cal. 303.

—S. 500—Privilege—Privilege of Advocates, nature of—Advocate, responsibilities of.

Advocates in India have not such unqualified and absolute privilege as is accorded to their

PENAL CODE ACT (XLV OF 1860)

brethren in England, in respect of questions asked in cross-examination. There may be circumstances which may show that the question or remark objected to was made wantonly or from malice or from private motive, but the greatest care ought to be taken to enquire into the circumstances and an opportunity should be given to the party accused of such offence to offer explanations before summons is issued. While Counsel have their privileges, they have also their responsibilities and they ought never to abuse their position or their privileges. *Banerjee v. Emperor*.

28 Cr. L. J. 877 (b) :
104 I. C. 717 : 46 C. L. J. 227 :
A. I. R. 1927 Cal. 823.

—S. 500—Proof, mode of—Libel through newspaper—Delivery of newspaper within postal area, sufficient proof of publication.

To prove the publication of libel through newspaper, it is sufficient to prove that the newspaper was delivered within the postal area over which the Court had jurisdiction and it is not necessary to go further and show that the article was read by some particular person since a newspaper is a commodity printed for the purpose of being read and it must be assumed that it was so read. *Emperor v. Jhabbar Mal*.

30 Cr. L. J. 530 :
115 I. C. 872 : 26 A. L. J. 196 :
I. R. 1929 All. 472 :
A. I. R. 1928 All. 222.

—S. 500—Prosecution of Receiver—Defamation—Charge of defamation against Receiver—Sanction of Court, whether necessary—Defamation arising out of matter of repairs of estate under charge of Receiver.

It is not a general rule of law that in all criminal proceedings the leave of the Court is not necessary to prosecute a Receiver. Sanction is required to proceed against a Receiver when he acts for the protection of the estate in his hands. Therefore, where the alleged act of defamation arises out of a matter of repairs of the estate in the possession of the Receiver and is based upon a letter in which he claims that he is acting on behalf of the estate, a charge of defamation against the Receiver is incompetent without the leave of the Court. As the Receiver in this case was appointed by the original side of the High Court, the case was sent to that Court for disposal of the question whether leave of the Court is required. *Anath Nath Dey v. Mohendra Nath*.

13 Cr. L. J. 489 :
15 I. C. 488.

—S. 500—Publication—Defamatory statement—Publication of libel.

The accused made certain defamatory statements against a Government Official in her petition to the Lieutenant-Governor, and on inquiry, she repeated the same statements before two Magistrates on different occasions. Held, that the statements made before the two Magistrates were the publication of the original defamatory statements made in the memorial to the Lieutenant-Governor and the

PENAL CODE ACT (XLV OF 1860)

accused was guilty of three separate publications of the libel. *Jai Debi Kuar v. Emperor*.

16 Cr. L. J. 482 :
29 I. C. 322 : 13 A. L. J. 681 :
A. I. R. 1915 All. 162.

—S. 500—Publication.

The swearing of an affidavit containing defamatory words before a Court Commissioner and using it in Courts, is sufficient publication of the defamatory words. *Bhikachand v. Emperor*.

27 Cr. L. J. 1276 :
98 I. C. 124 : A. I. R. 1927 Sind 54.

—S. 500—Publication of false account of social function causing communal tension—Defamation—Dummy Editor, responsibility of—Mitigation of offence—Editor—Punishment.

The mere circumstance that the accused is not the writer of the article or is a dummy Editor is no ground by itself for reduction of the sentence. Ordinarily a person who for monetary or other consideration allows himself to be used as a 'blind' for concealing the identity of the 'real' Editor and thus assists the latter in deceiving the public and defeating the law, cannot be heard to argue in mitigation of his guilt that he was a mere figure-head and must bear the full consequence of his acts. The Editor of a newspaper who at a time of intense communal tension first publishes a false and fabricated account of an innocent social function in terms calculated to stir up communal feelings, and then maliciously and incorrectly gives out that the false information on which the publication was based had been supplied by a person who had in fact never done so, cannot be lightly dealt with. *Azis Ahmad v. Emperor*.

29 Cr. L. J. 684 :
110 I. C. 236 : A. I. R. 1928 Lah. 865.

—S. 500—Revision.

It is only rarely and in exceptional circumstances that the High Court interferes in revision with findings of fact and only in cases when the findings are supported by no legal evidence or are so manifestly erroneous as to have resulted in miscarriage of justice. *Bhikachand v. Emperor*.

27 Cr. L. J. 1276 :
98 I. C. 124 : A. I. R. 1927 Sind 54.

—S. 500—Scope of—Cr. P. C., Ss. 195, 476—Statements constituting offence under S. 500 made by person during proceedings in Court—Private complaint, if maintainable.

Since the Legislature had not chosen to include S. 500, Penal Code, amongst those sections in which prosecution must be initiated by the Court in connection with which the offence has been committed, there is no provision of the law by which the Court can refuse to permit a prosecution under S. 500 where the facts appear to justify such a prosecution because the proceedings have not been initiated under S. 476, Cr. P. C., by the time before which the offence is alleged to have been committed and because the prosecution is designed to evade provisions of S. 195, Cr. P. C. The guilt or innocence of the accused must be decided in accordance with the evidence in the

PENAL CODE ACT (XLV OF 1860)

case and provisions of S. 499, Penal Code. *Guru Prosad Ram Gupta v. Rameshwar Marwari*.

39 Cr. L. J. 730 :
176 I. C. 572 : 42 C. W. N. 674 :
11 R. C. 127 : A. I. R. 1938 Cal. 527.

—S. 500—Scope of—Defamation—Boycott resolution for good reasons.

For a number of persons to meet and resolve not to associate with a person for good reasons, is not defamation nor does the sending a copy of the resolution to the person in question make it defamation. It would be a different matter if a copy of the resolution is published. *Nga On Thi v. Emperor*.

23 Cr. L. J. 240 :
66 I. C. 20 : A. I. R. 1923 L. Bur. 16.

—S. 500—Scope of—Defamation—Religious controversy—Violent expressions—Personal character not assailed, offence.

A book was written by the accused, in reply to one written by the complainant on highly controversial religious matters, in which the accused used most violent expressions against the complainant and his work, without however, assailing his personal character and respectability: *Held*, that the language used taken with the context was not defamatory. *Kumaragurudasa Swamigal v. Krishnaswamy Mudaliar*.

26 Cr. L. J. 464 :
85 I. C. 144 : 47 M. L. J. 664 :
1924 M. W. N. 768 :
A. I. R. 1924 Mad. 898.

—S. 500—Scandalous accusations.

Articles implying that girls of a college were habitually guilty of misbehaviour—All girls in college collectively and each girl individually, suffer in reputation—Complaint for defamation is maintainable. *Wahid Ullah Ahrari v. Emperor*.

36 Cr. L. J. 816 :
155 I. C. 638 : 1935 A. L. J. 676 :
7 R. A. 961 : 1935 A. W. R. 698 :
A. I. R. 1935 All. 743.

—S. 500—Sentence—Words used in the heat of passion—Sentence need not be severe.

It is not a pleasant thing for one man to say to another that his father is an opium consumer and his mother a prostitute, but when these words are uttered in the heat of passion, it cannot be said that a serious case of defamation has arisen which calls for a severe penalty. *Maung Maung v. Emperor*.

2 Bur. L. J. 10 :
A. I. R. 1923 Rang. 148.

—S. 500—Statement in suit or proceedings.

Cross-examination of complainant—Accused asking the question whether complainant's husband is habitual offender—Question put out of malice: *Held*, offence under S. 500, Penal Code, was committed. *Maung Nyi Bu v. Emperor*.

36 Cr. L. J. 1309 :
158 I. C. 91 : 8 R. Rang. 148 :
A. I. R. 1935 Rang. 293.

PENAL CODE ACT (XLV OF 1860)

————S. 500, Excep. 8—*Scope of—Publication of alleged defamatory matter to person in authority intended to give information about some offence with a view to get redress—If offence under S. 500.*

Where the publication of the alleged defamatory matter was to a person in authority and was really intended to give information about some offences with a view to get redress or protection, the offence, if any, must be only the furnishing of false information or the making of a false accusation. It cannot be said that the offence of defamation is also committed simply because some part of the information or the accusation may be found to be defamatory and false. Such a case comes under the eighth Exception to S. 500, Penal Code. *G. N. Sribba Rao v. Anna M. Venkatachalapathi Ayyar.*

40 Cr. L. J. 69 :
178 I. C. 478 : 48 L. W. 320 :
1938 M. W. N. 871 (2) :
1938, 2 M. L. J. 397 : 11 R. M. 459 :
A. I. R. 1938 Mad. 904.

————S. 500, Excep. 9—*Standard of care—Charge of defamation in respect of allegations made in complaint to Court—Standard of care and caution to be expected from complainant—Tests.*

In a case under S. 500, Penal Code, in respect of allegations made by the accused in a complaint to the Court, in determining whether due care, within the meaning of Exception 9 to the said section, was taken by the accused, allowances have got to be made for the intelligence of the accused, his capacity to reason the circumstances under which he was placed, and the occasion which necessitated his making the imputations, and a too exacting standard of care and caution cannot be applied to the case of a comparatively ignorant and timid man apprehending harassment from the complainant. *Yadati v. Emperor.*

31 Cr. L. J. 831 :
125 I. C. 297 : 51 C. L. J. 472 :
34 C. W. N. 1070 : 57 Cal. 843 :
A. I. R. 1929 Cal. 779.

————Ss. 500, 499—Excep. 9—*Common interest—Defamation—Lawyer's reply notice—Allegations of immorality—Privilege.*

The complainant served a lawyer's notice on the accused, her deceased husband's nephew, charging him with theft and criminal breach of trust with regard to properties left by her deceased husband and threatening him with Civil and Criminal proceedings. The accused in reply to the notice sent a letter also through his lawyer, alleging that the complainant was living an adulterous life, that her daughter was not born to her husband, that she had been discarded by him during his lifetime, and that she had lost all right to his property: *Held*, (1) that there was a matter of common interest between the complainant and the accused relating to the title to property left by the deceased giving rise to qualified privilege; (2) that there was no malice or want of *bona fides* or presence of improper motive in the accused when he gave instructions to his Vakil to write the

PENAL CODE ACT (XLV OF 1860)

letter; (3) that the matter fell within Exception 9 to S. 499, Penal Code, and was not defamatory. *Sankamma v. Govinda Chetty.*

26 Cr. L. J. 428 (b) :
85 I. C. 44 : 20 L. W. 779 :
A. I. R. 1925 Mad. 246.

————S. 500, 506—*Defect in procedure.*

Process was issued against the accused under S. 506, Penal Code, and he was tried under that section. He was discharged of an offence under S. 500, Penal Code, and his plea to the charge under S. 506 was not recorded: *Held*, that the proceedings were irregular, that the plea of the accused ought to have been taken under S. 506, as the law provides that in summons cases the first thing to be done is to ask the accused what he has got to say, and that the discharge of the accused under S. 500, when he was charged under S. 506, was without jurisdiction. *Anath Nath Dey v. Mohendra Nath.*

13 Cr. L. J. 488 (b) :
15 I. C. 488.

————S. 503—*Intimidation, what amounts to.*

A Municipal Commissioner threatened a butcher who had purchased a cow that if the latter bought the cow, he would have him sent to the jail and would make it impossible for him to continue to live within the Municipality: *Held*, that the threat amounted to an offence of criminal intimidation under S. 503, Penal Code. *Nand Kishore v. Emperor.*

28 Cr. L. J. 589 :
102 I. C. 557 : A. I. R. 1927 All. 783.

————S. 503—*Revision.*

Intimidation—Accused using language falling within S. 503—Complainant alarmed by threat—Conviction under S. 500 cannot be interfered with in revision. *Kishori Lal v. Emperor.*

34 Cr. L. J. 1167 :
146 I. C. 17 (1) : 34 P. L. R. 968 :
6 R. L. 157 : A. I. R. 1933 Lah. 497.

————S. 504.

See also (i) Cattle Trespass Act, 1871, S. 20.

(ii) Cr. P. C., 1898, Ss. 106, 506.

(iii) Penal Code, 1860, Ss 95, 342.

————S. 504—*Conviction, when justifiable.*

Where a Police sergeant went to a shop and there became engaged in a dispute with the owner, as a result of which, he was asked to leave the shop, a conviction under S. 504, is not justifiable. *Chainrai Valiram v. Emperor.*

36 Cr. L. J. 1461 :
158 I. C. 608 : 8 R. S. 52 :
A. I. R. 1935 Sind 107 (1).

————S. 504—*Duty of Court—Use of abusive language likely to create breach of peace—Courts should consider normal effect of words used, not temperament of person concerned.*

In dealing with S. 504, Penal Code, the Court should not concern itself with the temperament or the idiosyncrasies of the individual concerned, but should try to find

PENAL CODE ACT (XLV OF 1860)

out what, in the ordinary circumstances, would have been the effect of the abusive language used. *Gurandilla v. Emperor*.

32 Cr. L. J. 62 (a) :

127 I. C. 860 : I. R. 1930 Lah. 892 :

31 P. L. R. 892 : A. I. R. 1930 Lah. 344.

————S. 504—*Insult—Offence, what constitutes—Discourtesy and bad manners, whether amount to insult.*

In order to constitute an offence under S. 504, Penal Code, it is necessary that the insult should have been intentionally caused and thereby provocation given with the intention or knowledge that such provocation is likely to cause the person provoked to break the peace or to commit any other offence. Mere discourtesy and bad manners do not amount to a criminal offence for which a person can be criminally punished. *Rahim Bux v. Emperor*.

21 Cr. L. J. 451 :

56 I. C. 435 : 18 A. L. J. 515 :

2 U. P. L. R. All. 124 :

A. I. R. 1920 All. 10.

————S. 504—*Insult—Provocation to cause breach of peace—Pulling of beard—Offence.*

A man who pulls the beard of a Muhammadan in the public street, intentionally insults him and thereby causes him provocation knowing that such provocation is likely to cause the victim to break the public peace, and is guilty of an offence under S. 504 of the Penal Code. Human nature being what it is, nothing is more likely than that a self-respecting person who has his beard pulled or his nose pulled or is submitted to any other painful and humiliating treatment in public should lose his temper and attempt to strike his assailant or retaliate. *Bhagwan Das v. Saddiq Ahmad*.

26 Cr. L. J. 703 :

86 I. C. 79 : 23 A. L. J. 73 :

A. I. R. 1925 All. 318.

————S. 504—*Insulting expression.*

Where the accused used the expression *pehle munh se bakko*, towards a Police Officer who had been ordered by the District authorities to serve notices upon the shopkeepers of a certain bazar, and who attempted to serve a notice on the accused : *Held*, that the use of the expression was intentionally insulting and likely to provoke a breach of the peace, and the accused was consequently guilty of an offence under S. 504, Penal Code. *Shankar Lal v. Emperor*.

28 Cr. L. J. 821 :

104 I. C. 437 : A. I. R. 1927 Lah. 702.

————S. 504—*Intentional insult — Insult with intention to provoke breach of peace—Barrister—Privilege.*

An intentional insult with intent to provoke a breach of the peace is an offence more cognate to the offence of assault than to the offence of defamation. A Barrister cannot claim privilege in the case of an assault, nor can he claim any privilege

PENAL CODE ACT (XLV OF 1860)

if his conduct is calculated to provoke an assault. *Tikekar v. Piareylal*.

19 Cr. L. J. 666 :

45 I. C. 1002 : A. I. R. 1918 Nag. 152.

————S. 504—*Intentional insult.*

Mere vulgar abuse is not sufficient. Intentional insult knowing it likely that provocation would cause breach of peace is necessary. *Philip Rangel v. Emperor*.

33 Cr. L. J. 463 :

137 I. C. 186 : 34 Bom. L. R. 282 :

56 Bom. 196 : I. R. 1932 Bom. 239 :

A. I. R. 1932 Bom. 193.

————S. 504—*Intentional insult, when offence—Insult when intentional.*

An insult is no less intentional because it is "incidental" to another insult or even to another statement or proceedings which is not insulting. But to insult another intentionally is not an offence punishable under S. 504, Penal Code, unless the offender intends by that insult to provoke the other person into breaking the public peace, by assaulting him or getting him assaulted or reviling him in loud and angry tones or in any other way, or at least knows that such a disturbance is a probable result of his insult. Where, therefore, the accused wrote an insulting letter to the complainant who was away in another town : *Held*, that it was highly improbable that the complainant would travel a journey in order to create a disturbance, and the accused was not guilty of an offence under S. 504, Penal Code. *R. M. Siffles v. M. R. Dixit*.

25 Cr. L. J. 1079 :

81 I. C. 903 : 7 N. L. J. 124 :

A. I. R. 1924 Nag. 121.

————S. 504—*Joinder of charge under S. 20, Cattle Trespass Act, and S. 504, legality of.*

A joinder of charges for offences under S. 20, Cattle Trespass Act, and S. 504, Penal Code, is not illegal where acts constituting the offences formed part of the same transaction. *Deenadayulu Naidu v. Ratna Padayachi*.

28 Cr. L. J. 301 (b) :

100 I. C. 381 : 52 M. L. J. 251 :

25 L. W. 282 : 1917 M. W. N. 167 :

50 Mad. 841 : A. I. R. 1927 Mad. 396.

————S. 504 — *Miscellaneous — Insult—"Kirar," whether abuse.*

Aroras are *Kirars*, though they may not be pleased to be called so. The word *kirar* may sometimes have a somewhat contemptuous significance. Where an Arora is called a *kirar*, on provocation, the incident is of too trivial a nature to be brought before a Court, and no offence under S. 504, Penal Code, is committed. *Muhammad Baksh v. Emperor*.

23 Cr. L. J. 171 :

65 I. C. 635 : A. I. R. 1922 Lah. 455.

————S. 504—*Offence under — Insult with intent to provoke breach of peace.*

Where seven persons going upon the land of another, deliberately prevented him from irrigating his fields, and when remonstrated,

PENAL CODE ACT (XLV OF 1860)

with, used abuse and threatened to strike : Held, that they intended to convey insult and their conduct was calculated to provoke a breach of the peace, and that, therefore, they were guilty of an offence under S. 504, Penal Code. *Habib Khan v. Mazhar-ul-Haque*.

18 Cr. L. J. 463 :
39 I. C. 303 : 1 P. L. W. 536 :
A. I. R. 1917 Pat 658.

—S. 504—Offence under—Public Servant—Abusive language, in performance of civic right. Accused should be tried for an offence under the section. In re : *Abdul Rahiman Khan Sahib*.

17 Cr. L. J. 462 :
36 I. C. 142 : 4 L. W. 556 :
A. I. R. 1917 Mad. 769.

—S. 504 — Offence, what constitutes—There must be publication to person insulted.

For the offence under S. 504, Penal Code, it is necessary that the insult should be delivered to the person insulted with the intention that he may be there and then provoked to commit an offence, but where there is no such publication, no offence under S. 504 is committed. *Gaurishanker v. Bachha Singh*.

39 Cr. L. J. 980 (a) :
177 I. C. 896 (2) : 11 R. P. 198 (2) :
5 B. R. 40 : 19 P. L. T. 892 :
A. I. R. 1939 Pat. 27.

—S. 504—Punishment.

Where a person, while under the influence of liquor, abuses another and is convicted under S. 504, Penal Code, the most appropriate punishment to award is a substantial fine in accordance with the means of the accused. *Ohet Singh v. Emperor*.

12 Cr. L. J. 435 :
11 I. C. 619 : 21 P. W. R. 1911 Cr.

—S. 504—Scope of.

Accused saying to Assistant Sub-Inspector: "You are a tyrant, justice cannot be expected from you"—Offence under S. 504, is not made out though act is reprehensible. *Nasir Khan v. Emperor*.

36 Cr. L. J. 1210 :
157 I. C. 753 (1) : 8 R. Pesh. 32 :
A. I. R. 1935 Pesh. 122.

—S. 504—Scope of—Provocation causing commission of offence other than breach of peace.

A person is within the ambit of S. 504, Penal Code, not only if the provocation offered by him is of such a character as to cause the person provoked to commit a breach of peace, but even if it is of such a nature as to cause him to commit any other offence. *Gul Muhammad v. Alibar Ali*.

28 Cr. L. J. 172 :
99 I. C. 604 : A. I. R. 1927 Lah. 129.

—S. 504—Scope of.

S. 504, Penal Code, applies not only to spoken words but also to words written in a letter. A person is within the ambit of S. 504, Penal Code, not only if the provocation offered by him is of such a character as to cause the person provoked to commit a breach of peace but even if it is of such a nature as to cause him to commit any other offence. Mere abuse unaccompanied by an intention to cause a

PENAL CODE ACT (XLV OF 1860)

breach of the peace or knowledge that a breach of the peace is likely, does not come within S. 504. *Silvester Vaz v. Louis Dias*.

31 Cr. L. J. 846 :
125 I. C. 434 : 32 Bom. L. R. 103 :
A. I. R. 1930 Bom. 120.

—S. 504—Scope of.

S. 504 requires an intention to insult and thereby to give provocation to the person insulted and an intention that such provocation should cause or the knowledge that that provocation is likely to cause the person so insulted to break the public peace or commit any other offence. *Chaitrai Laliram v. Emperor*.

36 Cr. L. J. 1461 :
158 I. C. 608 : 8 R. S. 52 :
A. I. R. 1935 Sind 107 (1).

—S. 504—Scope of.

The case is not taken away from the purview of S. 504, merely because the insulted person exercised self-control and did not actually break the peace or commit another offence. *Kanshi Ram v. Fazal Muhammad*.

33 Cr. L. J. 548 :
138 I. C. 120 : 33 P. L. R. 695 :
I. R. 1932 Lah. 412 : A. I. R. 1932 Lah. 480.

—S. 506.

See also (i) Cr. P. C., 1808, Ss. 107, 106-A, 250.

(ii) Penal Code, 1860, S. 341.

—S. 506 — Criminal intimidation — Self-constituted Court—Notice to appear—Ex parte decree to be passed on failure to appear—Offence.

Accused issued a notice, signed by himself as President of a self-constituted Arbitration Court to complainant calling on him to appear on a certain date and answer a claim brought against him, failing which an ex parte decree would be passed against him : Held, that the statement in the notice that a decree would be passed in the event of the complainant failing to appear as directed, amounted to a threat to harm his person, reputation or property, and amounted to criminal intimidation punishable under S. 506, Penal Code. *Priyannath Gupta v. Lalji Choudhary*.

24 Cr. L. J. 396 :
72 I. C. 508 : 27 C. W. N. 479 :
37 C. L. J. 526 : A. I. R. 1923 Cal. 590.

—S. 506—Injury to property, what amounts to.

Compelling trader to execute agreement not to import foreign cloth on threat of picketing, amounts to an injury to property and is an offence under S. 506. *Raghubar Dayal Misra v. Emperor*.

32 Cr. L. J. 465 :
130 I. C. 193 : I. R. 1931 All. 241 :
53 All. 407 : A. I. R. 1931 All. 263.

—S. 506—Threat.

Proposal by Managing Committee to refer to General Body to rescind grant made to member of Society cannot be regarded as threat to cause

PENAL CODE ACT (XLV OF 1860)

illegal harm. *Jhamandas Thawerdas v. Hem Chand Gellaram*. 34 Cr. L. J. 884 :
145 I. C. 136 : 27 S. L. R. 214 :
6 R. S. 18 : A. I. R. 1933 Sind 196.

———S. 506—*Threat*.

The threat of a social boycott is not a threat to a man's person or reputation unless it is accompanied by something more directly affecting his character as an individual. *Ghulam Mohammad v. Emperor*.

32 Cr. L. J. 1176 (a) :
134 I. C. 495 (a) : I. R. 1931 Lah. 943 (1) :
A. I. R. 1931 Lah. 288.

———Ss. 506, 503 — *Intimidation, what amounts to—Materials to show threat should be produced—Firm, if can commit offence under S. 506—Held, on facts, letter did not amount to intimidation.*

After the accused was no longer in the employ of a company, he adopted the course of circularising a number of Firms and Government Departments making *prima facie* defamatory accusations against his former employers. The solicitors warned the respondent of consequences of continuing to issue these statements but they were prepared, so they said in one of their letters, to refrain from instituting criminal proceedings against him if he was prepared to give an undertaking not to continue these circulars. So far from giving this undertaking, he invited prosecution and consequently, the Firm, by their representatives, instituted a complaint against the accused under S. 500, Penal Code. A few weeks before this was done and whilst the correspondence with regard to the defamation case was still going on, by way of a counterblast, accused proceeded to launch a complaint under S. 506 against the Firm represented by their directors : *Held*, that the letter, on which the action under S. 506 was based, could not be regarded as a threat within the meaning of S. 503 and the proceedings ought to be quashed. *T. G. Studdert v. J. F. Logan*.

38 Cr. L. J. 924 :
170 I. C. 367 : 41 C. W. N. 831 :
10 R. C. 146 : A. I. R. 1937 Cal. 367.

———S. 509—*Offence under—Letter sent by post containing indecent overtures—Insulting modesty of woman—Offence.*

A person who sends a letter by post to a woman containing indecent overtures, is guilty of an offence under S. 509, Penal Code. *Tarak Das Gupta v. Emperor*.

27 Cr. L. J. 455 :
93 I. C. 247 : 50 Bom. 216 :
28 Bom. L. R. 99 :
A. I. R. 1926 Bom. 159.

———S. 509—*Offence under—Offence—Modesty of some particular woman must be outraged.*

To constitute an offence under S. 509, Penal Code, the modesty of a particular woman or women should be outraged, though it is not necessary that that particular woman or

PENAL CODE ACT (XLV OF 1860)

women should personally make a complaint. *Khair Mahomed v. Emperor*.
26 Cr. L. J. 904 :
86 I. C. 968 : A. I. R. 1925 Sind 271.

———S. 511.

See also (i) Bengal Food Adulteration Act, 1919, S. 76, Sub-s. (4).

(ii) Cr. P. C., 1898, Ss. 117, 419, 432 (b), 436, 437, 565.

(iii) Penal Code, 1860, S. 171-F, 193, 196, 300, Cl. (1), 354, 362, 376, 379, 417, 420, 442, 447, 457, 465, 489-A, 511.

(iv) Railways Act, 1890, S. 68.

———S. 511—*Applicability of—Applicability to offences under Bengal Food Adulteration Act.*

S. 511 has no application to an attempt to commit an offence under the Bengal Food Adulteration Act. *Ram Charita Ram Bhakah v. Chairman of District Board, Rajshahi*.

39 Cr. L. J. 252 :
172 I. C. 869 : 10 R. C. 469 :
41 C. W. N. 1213 :
I. L. R. 1938, 1 Cal. 420 :
A. I. R. 1937 Cal. 710.

———S. 511—*Attempt—What amounts to.*

If the actual transaction has commenced which would have ended in a particular crime if not interrupted, there is an attempt to commit the crime. The word "attempt" implies that if the attempt had succeeded, the offence charged would have been committed. In cheating, an act would amount to an "attempt" if it is an act committed with intent to bring preparations to bear upon the mind of the person to be deceived. *In re : Raman Chettiar*.

28 Cr. L. J. 95 :
99 I. C. 127 : 51 M. L. J. 635 :
A. I. R. 1927 Mad. 77.

———S. 511—*'Attempt', what constitutes.*

Under the Penal Code all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. *Rahamat Ali v. Emperor*.

28 Cr. L. J. 680 :
103 I. C. 408 : A. I. R. 1927 Lah. 634.

———S. 511—*'Attempt', what is.*

Accused found travelling in bus carrying opium which N had given him with instructions to give it to him in French Territory—Accused charged under Dangerous Drugs Act, S. 7, read with S. 20 : *Held*, that there was no "attempt" to commit offence but

PENAL CODE ACT (XLV OF 1860)

merely "preparation" for its commission.
In re : Narayanaswami Pillai.

33 Cr. L. J. 582 :
138 I. C. 286 : 36 L. W. 127 :
1932 M. W. N. 545 :
I. R. 1932 Mad 547 :
A. I. R. 1932 Mad. 507.

———S. 511—'Attempt', what is.

An act to amount to an attempt must be such that if not prevented, it would complete the offence. *Malkhan Singh v. Emperor.*

26 Cr. L. J. 359 (b) :
84 I. C. 711 : 22 A. L. J. 1102 :
A. I. R. 1925 All. 226.

———S. 511—Crime, essentials of.

Under the Criminal Law of India, there are four stages in every crime : the intention to commit, the preparation to commit, the attempt to commit, and if the third stage is successful, the commission itself. Intention alone, or intention followed by preparation are not sufficient to constitute an attempt. But intention followed by preparation, followed by any "act done towards the commission of the offence" are sufficient. "Act done towards the commission of the offence" are the vital words in this connection. *Asgarali Pradhan v. Emperor.*

35 Cr. L. J. 97 :
146 I. C. 590 : 37 C. W. N. 1151 :
61 Cal. 54 : 6 R. C. 237 :
A. I. R. 1933 Cal. 893.

———S. 511—Presumption—Perjury, charge of—Contradictory statements.

Where a charge for perjury is based on two contradictory statements, every possible presumption in favour of the reconciliation of the statements should be made. *Imambux v. Emperor.*

15 Cr. L. J. 379 :
23 I. C. 747 : 7 S. L. R. 96 :
A. I. R. 1914 Sind 115.

———Ss. 511, 307, 326—Attempt to cause grievous hurt—Preparation.

The act punishable under S. 307, Penal Code, is an act which is itself capable of causing death. The section only applies when the accused has done an act which, if carried to its utmost possible limits without any interference from without, would have caused death. Where the accused pursued the complainant with an axe on his shoulders, and on approaching the complainant, actually raised the axe above his shoulder and was ruling at the complainant with the axe so raised and ready for striking when he was seized and disarmed by other persons : *Held*, that the act of the accused was done in the course of an attempt to cause grievous hurt towards the commission of such offence and the accused committed an offence punishable under Ss. 326, 511, Penal Code. *Jiwandas v. Emperor.*

1 Cr. L. J. 1078 :
30 P. R. Cr. of 1904.

PERJURY

———Ss. 511, 384, 385—Attempt to commit extortion, if offence—Attempt to commit extortion—Charge under S. 384 with S. 511, legality of.

A charge under S. 384, read with S. 511, Penal Code, is not bad inasmuch as the limitation in S. 511, relates only to such offences as attempts to commit murder or suicide or obtain illegal gratification, which are expressly punishable under other sections of the Code, and there is no such express provision in the Code for punishing an attempt at extortion. *Hem Chandra Singha v. Emperor.*

27 Cr. L. J. 1244 :
98 I. C. 60 : A. I. R. 1927 Pat. 89.

———Ss. 511, 415, 417—Attempt to cheat.

One G R, a coolie recruiter, induced the complainant to come to the coolie depot by promising him domestic service. K L, a clerk in the coolie depot, entered the complainant's name in the books of the depot and wrote a letter to a Coolie Contractor in Calcutta offering the complainant as a coolie. On the same day both G R and K L persuaded the complainant to go to the Railway station to fetch a parcel. At the station G R bought a railway ticket for Calcutta for the complainant and tried to get him to enter the train, but the complainant refused to go. The object of practising deception on the complainant was to send him to Calcutta from where he was to be sent to Assam as a tea garden coolie : *Held*, that the acts of the accused G R and K L amounted to an attempt to cheat within the meaning of Ss. 415 and 511. *Kishorilal Chatterji v. Emperor.*

2 Cr. L. J. 422 :
9 C. W. N. 764.

———Ss. 511, 420—Offence under.

Accused setting fire to insured car and giving false information to Insurance Company to obtain money—Offence falls under Ss. 420/511. Deterrent punishment is necessary. *Dasrath Lal v. Emperor.*

35 Cr. L. J. 1345 :
151 I. C. 249 : 7 R. Pesh. 18 :
A. I. R. 1934 Pesh. 67.

PENAL CODE (AMENDMENT) ACT (XVI OF 1921)

———S. 2—Effect of—Forfeiture of property under Ss. 121, 122, Penal Code, abolished.

The punishment of forfeiture of property for offences under Ss. 121, 122, Penal Code, has been abolished by S. 2, Penal Code, (Amendment) Act. *Umayyathantagatu Puthen Veetal Kunhi Kadir v. Emperor.*

23 Cr. L. J. 203 :
65 I. C. 859 : 15 L. W. 311 :
1922 M. W. N. 71 :
30 M. L. T. 125 : 42 M. L. J. 108 :
A. I. R. 1922 Mad. 126.

PERJURY

See also (i) Cr. P. C., 1898, Ss. 161, 195, 239, 407, 423.

(ii) False evidence.

(iii) Pardon.

(iv) Penal Code, 1860, Ss. 191, 193.

PETROLEUM ACT (VIII OF 1899)

————Perjury.

Where the charge was "you on or about the 7th day of May 1904, at L gave false evidence in a judicial proceeding, and thereby committed an offence punishable under S. 193, I. P. C., within my cognizance": *Held*, A criminal prosecution cannot go on on such a vague charge. *Hira Nand Ojha v. Emperor*.

4 Cr. L. J. 227 :
10 C. W. N. 1099 : 4 C. L. J. 558.

————Perjury.

Where the accused was prosecuted on a charge of an offence under S. 193, I. P. C., for having, in a judicial proceeding, made the statement, alleged to be false, that one D was not his *benamidar* but was the real *thikadar*: *Held*, that a prosecution for perjury in respect of such a statement should not be allowed as it involves the determination of questions of *benami* transactions, which cannot be properly decided in a criminal case. *Hira Nand Ojha v. Emperor*.

4 Cr. L. J. 227 :
10 C. W. N. 1099 : 4 C. L. J. 558.

————Perjury.

In order to convict a person of perjury, it must be shown that the statement could not but be false. It is not sufficient to show that the probabilities are that it was false. *Hira Nand Ojha v. Emperor*.

4 Cr. L. J. 227 :
10 C. W. N. 1099 : 4 C. L. J. 558.

PETROLEUM ACT (VIII OF 1899)

————Rule-making.

Government cannot make a rule requiring that persons must have a licence except for the purpose of possessing or transporting, or for the purpose of possessing or transporting except as provided in the Act. *Kalabhai Mahomedally v. Emperor*.

38 Cr. L. J. 221 :
166 I. C. 277 : 38 Bom. L. R. 967 :
9 R. B. 233 : I. L. R. 1937 Bom. 106 :
A. I. R. 1937 Bom. 11.

————Ss. 5, 11, 15 (a)—Keeping of petrol for transport.

Per *Wallace and Madhavan Nair, JJ.* (*Jackson, J. contra*)—A licence for the transport of petrol includes permission to be in possession of petrol for the purpose of, and during the process of transportation, so as to cover a halt over-night. The keeping of petroleum received under a transport licence, for a short period which is incidental to, and necessary for the distribution of it cannot amount to 'keeping' or 'possession'. The question whether the period of time is short enough to be considered reasonable, or too long to be considered reasonable will have to be decided with reference to the particular facts of each case. *Public Prosecutor v. V. N. Ratnavelu Mudali*.

29 Cr. L. J. 43 :
106 I. C. 459 : 27 L. W. 69 :
54 M. L. J. 158 : I. L. T. 40 Mad. 142 :
51 Mad. 248 : A. I. R. 1928 Mad. 147.

PETROLEUM ACT (VIII OF 1899)

————Ss. 11, 15—Master—Liability.

If an agent of several persons in the sale of petroleum keeps more than 500 gallons in contravention of S. 11, his principal is not responsible for this unless the latter knew that more than 500 gallons were illegally kept on his licence and allowed this. *Ganpat Rai v. Emperor*.

13 Cr. L. J. 792 :
17 I. C. 536 : 17 C. L. J. 390 :
17 C. W. N. 207

————Ss. 11, 15 (a).

The word "possession," in S. 15 (a) must be understood with reference to the terms of S. 11 which defines what is the quantity of petroleum in excess of which the keeping by one person or on the same premises would be an offence. *In re: Swaminatha Iyer*.

18 Cr. L. J. 627 :
39 I. C. 995 : 1917 M. W. N. 720 :
A. I. R. 1918 Mad. 586.

————Ss. 11, 15 (a).

Transporting petroleum, what amounts to. *Hoshnak Ram-Ganga Ram v. Emperor*.

20 Cr. L. J. 686 :
52 I. C. 606 : 28 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 195.

————Ss. 11, 15 (a).

A person who takes delivery of petroleum in excess of the quantity allowed by law, and is unable to prove that he did not continue for a reasonable time to be in possession, is guilty of the offence under S. 15 (a), Petroleum Act. *Hoshnak Ram-Ganga Ram v. Emperor*.

20 Cr. L. J. 686 :
52 I. C. 606 : 28 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 195.

————S. 15.

A person who has no intention of storing or keeping petroleum but merely orders it with the intention of having it stored on licensed premises belonging to another person is not liable to conviction under S. 15. *Kalabhai Mahomedalli v. Emperor*.

38 Cr. L. J. 221 :
166 I. C. 277 : 9 R. B. 233 :
38 Bom. L. R. 967 :
I. L. R. 1937 Bom. 106 :
A. I. R. 1937 Bom. 11.

————S. 15 (a)—Keeping, meaning of.

Where a Railway Company delivered petroleum to a person on the Railway premises and the latter distributed it to persons for whom it was intended, within a reasonable time in the ordinary course of business: *Held*, that in order to make such act amount to "keeping," it must be found as a fact whether the Company allowed the accused the use of the premises for a reasonable time or he himself used it as a godown or a storehouse for purposes of sale. *In re: Swaminatha Iyer*.

18 Cr. L. J. 627 :
39 I. C. 995 : 1917 M. W. N. 720 :
A. I. R. 1918 Mad. 586.

PLEADER

———S. 15 (a).

Storing petrol for person not licensed to deal in petrol—Offence—Abetment. *Bchramsha Ratanji v. Emperor.*

20 Cr. L. J. 665 :
52 I. C. 489 : 21 Bom. L. R. 742 :
A. I. R. 1919 Bom. 143.

———S. 15 (c).

Licence for storage of certain quantity of petroleum at particular place—Storage of excess quantity at another place, no breach of condition of licence. *Dhanraj J. Parmar v. Emperor.*

31 Cr. L. J. 1144 :
127 I. C. 111 : 32 Bom. L. R. 761 :
A. I. R. 1930 Bom. 370.

PLANTERS LABOUR ACT (MADRAS ACT (XII OF 1890)

———S. 35—Scope and meaning.

The Magistrate is empowered to give only one direction after release of a *maistry* or labourer from a first punishment for an offence and to subject the *maistry* or labourer to one further or second prosecution or punishment for disobeying the direction to complete performance of contract. After the end of the period of second punishment. The refusal to obey the direction after the first punishment, is a final refusal, and cannot be treated as a temporary refusal lasting only for the period of second punishment. *Ponga Maistry v. Emperor.*

14 Cr. L. J. 79 :
18 I. C. 415 : 24 M. L. J. 186 : 36 Mad. 497.

PLEA OF GUILTY

Where a Sessions Judge does not accept the plea of guilty and decides to try the case, following the practice in England, he should direct the accused to enter a plea of not guilty. *Khudiram Bose v. Emperor.*

10 Cr. L. J. 325 :
3 I. C. 625 : 9 C. L. J. 55.

PLEADER

———Contempt of Court.

Contempt of Court—Assurance given by Pleader that words used were not meant for Court—Assurance to be accepted. *Rambali Rai v. Emperor.*

14 Cr. L. J. 687 :
21 I. C. 1007 : 11 A. L. J. 955.

———Pleader.

The Bar in general, Vakils and Solicitors must co-operate in the conduct of all suits entrusted to them, with the Court in the orderly and pure administration of justice. The professional conduct of a Vakil must be responsible, orderly and pure. *In the matter of : G. Krishnaswami Aiyar.*

13 Cr. L. J. 680 :
16 I. C. 328 : 16 C. W. N. 1081 :
23 M. L. J. 114 : 12 M. L. T. 396 :
35 Mad. 543 : 14 Bom. L. R. 1079 :
16 C. L. J. 634 : 1912 M. W. N. 963 :
39 I. A. 191 (P. C.)

———Duties of.

Misbehaviour—Filing second complaint on

PLEADER

identical facts without disclosing dismissal of first—Failure to master instructions—Gross neglect. *Re: Inquiry against Mr. M., Pleader.*

18 Cr. L. J. 819 :
41 I. C. 643 : 11 S. L. R. 12 :
A. I. R. 1917 Sind 1.

———Professional misconduct — Inquiry — Procedure.

In an inquiry into the alleged professional misconduct of a pleader, the Court examined two witnesses and also the pleader, on the understanding that the pleader was not then a person on his defence. The pleader was given no opportunity of cross-examining the witnesses, and was not allowed to address the Court upon the evidence. The Judge then expressed an opinion adverse to the pleader that he had deliberately made a false statement in Court: That having regard to the nature of evidence and the defects in procedure, it would not be safe to accept the opinion of the Court. *The Govt. Pleader v. Maganlal.*

6 Cr. L. J. 216 :
9 Bom. L. R. 866.

———Licence for one District—Right to appear in another District—Practice.

A pleader, whose licence entitles him to practice in the Civil and Criminal Courts of one District cannot, as a matter of right, claim to practice in the Criminal Court of another District. *Kimatrai v. Emperor.*

12 Cr. L. J. 118 :
9 I. C. 717 : 4 S. L. R. 207.

The adequate punishment for an Advocate for malversation of his client's money and for professional misconduct, is the cancellation of his *sanad*. *In re: Professional Misconduct.*

10 Cr. L. J. 412 :
3 I. C. 897 : 3 S. L. R. 88.

———Misconduct, what is.

A Pleader who has looked into the papers of a case for the purpose of drafting grounds of appeal, but is not prepared to argue the appeal at the time of the presentation of the appeal papers, cannot be held guilty of professional misconduct. *In re: Turka Hussain Sahib.*

26 Cr. L. J. 411 :
84 I. C. 1051 : 20 L. W. 623 :
47 M. L. J. 661 : 48 Mad. 385 :
1924 M. W. N. 893 :
A. I. R. 1924 Mad. 895.

———Misconduct.

Abandoning client's case in midst of client's examination in Court to attend another case is misconduct. *In the matter of: Babu Beni Madhub Das.*

14 Cr. L. J. 379 :
20 I. C. 139.

———Misconduct—What is.

A Vakil had received money for the printing of a record in a case pending before the High Court of Madras, and by not paying it into Court, had allowed the case to be struck off the list; subsequently, his

PLEADER

clerk wrote to the client that the case was dismissed: *Held*, that this was unprofessional conduct. *In the matter of: G. Krishnasawmi Aiyar.*

13 Cr. L. J. 680 :
16 I. C. 328 : 16 C. W. N. 1081 :
23 M. L. J. 114 : 12 M. L. T. 396 :
35 Mad. 543 : 14 Bom. L. R. 1079 :
16 C. L. J. 634 : 1912 M. W. N. 963 :
39 I. A. 191 P. C.

-----Misconduct.

False plea of *alibi* in a charge of defamation against him—No case under Legal Practitioners Act. *In re: Second Grade Pleader.*

11 Cr. L. J. 452 :
7 I. C. 356 : 20 M. L. J. 498.

-----Misconduct—What is.

False statement to induce client to pay fee due though not approved, not sufficient to call for action. *In the matter of: Tincowri Santra.*

13 Cr. L. J. 208 :
14 I. C. 208 : 15 C. L. J. 224.

-----Misconduct.

The retention by an Advocate of his client's money, to which he had no colour of right, constitutes professional misconduct. It is a grave misconduct on the part of a Barrister to receive money in furtherance of a contract of indemnity of bail, which is illegal both in England and India. It is nothing less than criminal dishonesty to deny that he so received the money and to retain it on the pretence that it was a fee. *In re: Professional Misconduct.*

10 Cr. L. J. 412 :
3 I. C. 897 : 3 S. L. R. 88.

-----Misbehaviour—Sale of client's shares in private capacity—Appropriation of money to fees as Pleader—Wrongful conversion.

M, a Pleader of 20 years' standing, received, in his private capacity, certain shares from a lady client with instructions to sell them and realize the proceeds on her behalf. He appropriated the proceeds, without her consent to the payment of his fees as a Pleader. The client repeatedly insisted on the payment of the money realized as sale-proceeds; but her consent to the appropriation of the money was obtained owing to a desire on her part to avoid a quarrel with her Pleader: *Held*, (1) that in appropriating to himself the sale-proceeds of the shares, M was guilty of wrongful conversion of his client's money, and was liable to be dealt with under S. 10, Sind Courts Act, for his misbehaviour; (2) that M had no lien or right of retainer under Ss. 221 or 217, Contract Act, for that would only attach in respect of services rendered in the matter of sale; (3) that, under the circumstances, M should be given an opportunity to atone for his misconduct by making restitution to his client. *Varanbai v. M., Pleader.*

13 Cr. L. J. 513 :
15 I. C. 785 : 5 S. L. R. 222.

-----Misconduct—Personal misconduct—Filing of a false suit—Legal Practitioners Act (XVIII of 1879), S. 13, Cls. (a) to (f)—“Any other reasonable cause”—*Ejusdem generis.*

PLEADER

The filing of a false suit by a Pleader would be a ground for dismissal or suspension. The words “any other reasonable cause” in S. 13 (f), Legal Practitioners Act, are not to be construed *ejusdem generis* with the causes given in clauses (a) to (c) of the section, the words include personal misconduct as distinguished from professional misconduct. *In the matter of: A Second Grade Pleader.*

12 Cr. L. J. 579 :
12 I. C. 838 : 6 L. B. R. 33 :
4 Bur. L. T. 275.

-----Pleader.

Position of trust—Cheating a client of subject-matter of suit—Misconduct—Punishment—Suspension from practice. *In re: Chanda Singh.*

11 Cr. L. J. 303 P. C. :
6 I. C. 269 : 14 C. W. N. 521 :
11 C. L. J. 438 : 1 M. W. N. 107 :
7 M. L. T. 412 : 20 M. L. J. 447 :
12 Bom. L. R. 425, 1910.

-----Professional misconduct.

A Pleader received from his client the printing charges of an appeal but he failed to deposit the amount in Court and allowed the appeal to be dismissed for default in appearance. His clerk wrote letters to the appellant saying at first, that the records were being printed and the appeal was being made ready and that the case had been decided against the appellant. The Pleader did not give any explanation to the Court at the earliest opportunity nor did he communicate the true facts to his client; ultimately he threw the blame on his clerk through whose mistake, he said, the whole thing had happened: *Held*, (1) that the Pleader was guilty of professional misconduct. *In re: Mr. G. Krishnasawmy Aiyar.*

13 Cr. L. J. 421 :
14 I. C. 965 : 22 M. L. J. 276 :
1912 M. W. N. 348 : 11 M. L. T. 296.

-----Misconduct.

A Pleader who conceals his past conviction by intentionally omitting to recite it in his application for admission, is liable to be dismissed. *In the matter of: A Second Grade Pleader.*

15 Cr. L. J. 587 :
25 I. C. 339 : 7 Bur. L. T. 304 :
A. I. R. 1914 L. Bur. 12.

-----Representation by.

Although persons are entitled to be represented by a Pleader while being dealt with under division B of Chap. VIII, Cr. P. C., because they are impliedly accused persons, nevertheless they are not entitled to be represented by a Pleader while being dealt with under division C of Chap. VIII, in the subsequent proceedings relating to the fitness of the sureties offered under S. 122. There is no general rule of law entitling persons to be represented by Pleader before public officers. The claim must, in each and every case, be referred to some statutory provision. In default of a statutory provision, representation by Pleader is entirely within the judicial discretion of the Magistrate

POLICE

or Court. *Emperor v. Tawakali.*

11 Cr. L. J. 501 :
7 I. C. 606 : 4 S. L. R. 49.

PLEDGE

In the absence of a condition to the contrary, it is open to a pledgee to make a sub-pledge of the pledged property. *Sarju Prasad v. Emperor.*

24 Cr. L. J. 10 :
71 I. C. 58 : 9 O. L. J. 421 :
26 O. C. 4 : A. I. R. 1922 Oudh 280.

POISONS ACT (I OF 1904)

—S. 10, Cls. (A), (B)—*Retail sale by unregistered seller, legality of.*

Retail sale of poison by a person is unlawful, unless exempted under S. 10 (a) being a sale in exercise of his profession by a medical practitioner, or under Cl. (b) being a sale effected by a registered chemist or druggist. The rules apply only to retail sales, and wholesale sales are left uncontrolled. *N. M. Dey v. Emperor.*

16 Cr. L. J. 764 :
31 I. C. 364 : 8 Bur. L. T. 244 :
A. I. R. 1915 L. Bur. 38.

POLICE

—Inquiry into complaints against—*Procedure.*

When a complaint is made against a Police Officer, the Magistrate, who entertains the complaint, under S. 202, Cr. P. C., must, either go to the spot and make inquiry himself and issue process if he finds it necessary to call upon the accused to answer to anything, or if he makes it over under S. 192 to any other Magistrate of the first class, that Magistrate must be vested with full seizin of the case and must continue the inquiry up to the necessary order of discharge, acquittal or conviction, as the case may be. A complaint was made before a District Magistrate against a Police Officer. He allowed the complainant to make his complaint before a Deputy Magistrate at the headquarters. That Deputy Magistrate transferred the investigation to the Sub-Divisional Officer, at B. After inquiry by the Sub-Divisional Officer, he found the case to be false. Then the Deputy Magistrate at the headquarters re-called the case and passed an order under S. 476, Cr. P. C., directing the trial of the complainant under S. 211, Penal Code: *Held*, that the order for prosecution under S. 476 was without jurisdiction, that the erroneous order of transfer to the Sub-Divisional Magistrate may be cured by S. 529 and give jurisdiction to the Sub-Divisional Magistrate. *Emperor v. Bhika Hossein.*

13 Cr. L. J. 484 :
15 I. C. 484 : 39 Cal. 1041 :
16 C. W. N. 885.

—*Police.*

The Police act for the Crown just as much as the Public Prosecutor; they are all agents of the Crown, though differing in status and the character of their duties. *Girishchandra Namodas v. Emperor.*

33 Cr. L. J. 135 :
135 I. C. 443 : 58 Cal. 1335 :
I. R. 1932 Cal. 123 : A. I. R. 1932 Cal. 118.

POLICE ACT (V OF 1861)

—S. 7.

An order for suspension and confinement of a Police Officer for an unlimited period of time exceeding the limits laid down in S. 7 (b), is illegal and no conviction under S. 29 of the Act for disobeying such an order is maintainable. *Ramgopal Adhikari v. Emperor.*

33 Cr. L. J. 15 :
134 I. C. 891 : 58 Cal. 1132 :
35 C. W. N. 547 : I. R. 1931 Cal. 891 :
A. I. R. 1932 Cal. 285.

—S. 7.

Local Government cannot delegate disciplinary powers under S. 7. *Tunya v. The King.*

39 Cr. L. J. 614 :
175 I. C. 442 : 1938 Rang. 104 :
10 R. Rang. 505 (2) : A. I. R. 1938 Rang. 181.

—S. 7, 36.

Police Constable punished for corruption departmentally, can also be prosecuted criminally. *Emperor v. Gul Muhammad.*

16 Cr. L. J. 788 :
31 I. C. 644 : 26 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 350.

—Ss. 9, 29—*Order to return to duty, disobedience of—Offence—Conviction for failure to obey order, legality of.*

Accused, a Police constable, failed to return to duty on the expiry of leave which he had obtained. He was prosecuted under S. 29, Police Act, and fined Rs. 80. During the pendency of this case, he was placed under suspension, and on the conclusion thereof, he was reinstated and directed to appear in the Police Lines and there to give two months' notice as required by S. 9, if he did not wish to continue in the Police force. He failed to comply with this order and was again prosecuted under S. 29 and sentenced to undergo imprisonment. The Sessions Judge recommended that the conviction and sentence be set aside, on the ground that the accused's failure to return to duty was one single offence and he could not legally be again convicted merely because he still failed to return: *Held*, that the second conviction was not for the same offence but for another similar offence—the first conviction being for failure to return to duty after leave, and the second for failure to return after he had been reinstated. *Emperor v. Nurul Hasan.*

20 Cr. L. J. 575 :
52 I. C. 63 : 17 A. L. J. 873 :
42 All. 22 : A. I. R. 1919 All. 35.

—Ss. 12, 29—*Case diary—Police Manual Rules 261, 278, 803.*

S. 29, Police Act, applies to all rules made by the Inspector-General of Police which have received the approval of the Local Government. The meaning of r. 278 (b), is that the Court Officer is to keep the diaries in his own possession and that if the accused or his agent call for the diary in any circumstances other than those mentioned in the earlier part of para. (b), the Court Officer is to refuse the request. Offences under S. 29 are not limited to the wilful breaches or neglect of a rule or a regulation or a lawful order, but include any

POLICE ACT (V OF 1861)

"violation of duty." Where the accused were convicted by a Magistrate under certain sections of the Penal Code, and in appeal, the Sessions Judge framed a charge under S. 29 of the Police Act, and convicted the accused under the said section: *Held*, that the words "shall on conviction before a Magistrate" in S. 29 of the Police Act, did not oust the jurisdiction of the Sessions Judge and the conviction was not *ultra vires*. *Banslochan Lal v. Emperor*. 31 Cr. L. J. 641 :

124 I. C. 396 : 10 P. L. T. 703 :
9 Pat. 31 : A. I. R. 1930 Pat. 195.

-----S. 15—Punitive Police Tax.

Distress warrant for realisation of cost of additional Police quartered in village given to Assessment Officer should not be endorsed to his clerk. In such cases, the entire family is the defaulter and warrant is issued to head of family not in his individual capacity. *Ram Singh v. Emperor*. 36 Cr. L. J. 714 :

155 I. C. 421 (2) : 16 P. L. T. 295 :
7 R. P. 580 : A. I. R. 1935 Pat. 214.

-----S. 17.

The appointment of a person as a special constable under S. 17, Police Act, is not illegal merely because he is an influential congressman engaged in an anti-Government movement or because he is old. *Kulo Singh v. Emperor*. 32 Cr. L. J. 782 :

131 I. C. 785 : 12 P. L. T. 69 :
10 Pat. 596 : I. R. 1931 Pat. 225 :
A. I. R. 1931 Pat. 140.

-----S. 17.

An order under S. 17 appointing certain persons as special constables is of an executive nature and not an order made in a criminal proceeding, and is not revisable under S. 435, Cr. P. C. *Parmeshwar Dat v. Emperor*. 18 Cr. L. J. 900 :

42 I. C. 132 : 20 O. C. 229 :
A. I. R. 1917 Oudh 170.

-----Ss. 17 and 19—Appointment of special constable—Circumstances justifying—Disobedience of order—Offence.

The circumstances which justify the appointment of special constables under S. 17 are that a disturbance of the peace is apprehended, and that the Police force available is insufficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended. In the absence of those circumstances, an order under S. 17 is improper and there can be no conviction of the persons appointed as special constables for disobedience of the same. *Radha Kanta Lal v. Emperor*. 7 Cr. L. J. 185 :

12 C. W. N. 344 : 7 C. L. J. 239 :
12 C. W. N. 727 :
8 C. L. J. 66 : 7 Cr. L. J. 507.

-----Ss. 17, 19—Neglect or refusal to serve as special constable—Failure to obey lawful order.

The failure of a person appointed a special constable under S. 17, Police Act, to obey a lawful notice issued to him to attend a Police station to receive his belt and to take charge of his appointment, amounts to a neglect or

POLICE ACT (V OF 1861)

refusal to serve as a special constable. *Muga Khan v. Emperor*. 19 Cr. L. J. 91 :
43 I. C. 251 : A. I. R. 1918 Cal. 323.

-----Ss. 17, 19—Inexpediency of appointment as special constables of parties pending disposal of security cases.

Special constables should be appointed under S. 19, Police Act, only when it is really intended to use them as Police Officers and to strengthen the ordinary Police force and not otherwise. It is objectionable to appoint as special constables parties to a dispute against whom complaints have been lodged or against whom proceedings are pending under S. 107, Cr. P. C., so as to handicap them in their defence. *Pardip Singh v. Emperor*. 17 Cr. L. J. 197 :

34 I. C. 309 : 43 Cal. 277 :
A. I. R. 1916 Cal. 263.

-----S. 21.

See Evidence Act, 1872, S. 26.

-----Ss. 22, 23, 31—Assaulting Police Officer while controlling traffic in private road—Offence—Duties of Police.

Where a Police Officer who was deputed for the control of traffic during a garden party held at a private residence, was assaulted while he was regulating the traffic along a private road which led to the house: *Held*, that the Police Officer was acting in the lawful discharge of his duty when he was assaulted and that the assailant was guilty of an offence under S. 353, Penal Code. The maintenance of law and order and the control of traffic along public roads as well as roads leading to such public roads is an essential part of the functions of the Police. *Emperor v. Gian Singh*. 29 Cr. L. J. 905 :

111 I. C. 665 : A. I. R. 1928 Lah. 230.

-----S. 23.

See also Penal Code, 1860, S. 21.

-----S. 23.

The preventive action of the Police is not restricted to the prevention of cognizable offences under S. 140, Cr. P. C. The Cr. P. C., and the Police Act together define the extent of their preventive powers. *Emperor v. Nga Kala*. 17 Cr. L. J. 347 :

35 I. C. 523 : 8 L. B. R. 329 :
A. I. R. 1917 L. B. 152.

-----S. 23.

S. 23, Police Act, gives wide powers to Police Officers for preventing offences or breaches of the law generally, and it is not outside their power to stop a *pau* which is held without a licence. *Emperor v. Nga Kala*. 17 Cr. L. J. 347 :

35 I. C. 523 : 8 L. B. R. 329 :
A. I. R. 1917 L. Bur. 152.

-----Ss. 23, 24, 25.

There is nothing in the Police Act, or in the Cr. P. C., to prevent a Police Officer from lodging a complaint in the discharge of his

POLICE ACT (V OF 1861)

official duties, with regard to a non-cognizable offence. *Lal Behari Singh v. Emperor*.

31 Cr. L. J. 55 :
120 I. C. 297 : 10 P. L. T. 601 :
A. I. R. 1929 Pat. 514.

—Ss. 25, 26—Power of—Seizing property—Priority of claim—Seizure of absconder's property by Government.

The Police seized certain property belonging to two absconding accused under S. 25, Police Act. The property, however, was not declared to be at the disposal of the Government under S. 88, Cr. P. C., until 19th February, 1912. Prior to that, i. e., on 5th October, 1911, the applicant sought to attach the said property in execution of his decree against the said accused. The Magistrate of the District refused to hand over the property in obedience to the order of the attachment of the Civil Court: *Held*, that as the Government had established no right to the property on 5th October, 1911, and as the applicant had at the time established a right to have the right, title and interest of the judgment-debtors (the absconders) in it sold by the Civil Court, the order of the District Magistrate refusing to hand over the property to the Civil Court for disposal was wrong. *Subramanian Chetty v. Emperor*.

13 Cr. L. J. 568 :
15 I. C. 984 : 5 Bur. L. T. 113 :
6 L. B. R. 57.

—S. 29.

Where a Police Officer who is trying his best to keep the rioters out during a Hindu-Moslem riot, is carried into a building by the rush of the men he is trying to protect, and is prevented from coming out of it by the people who had entered the building, he cannot be held guilty of cowardice. *Emperor v. Durga Datt*.

29 Cr. L. J. 979 :
112 I. C. 99 : 5 O. W. N. 256 :
A. I. R. 1928 Oudh 285.

—S. 29.

Where a Police Officer, who is directed by the Superintendent of Police to put up a case against a particular person, fails to do so, he is guilty of an offence under S. 29. *Balram Dikshit v. Emperor*.

27 Cr. L. J. 845 :
95 I. C. 765 : A. I. R. 1926 All. 562.

—S. 29.

An order by a Superintendent of Police regulating the duties of the men under his command is a lawful order under S. 29 which the men are bound to obey, and a disobedience of any such order renders the person disobeying, liable to conviction under that section. An order by a Superintendent of Police directing members of the Mounted Police Force to groom their horses, is a lawful order which the men are bound to obey. *Mohamed Yusuf v. Emperor*.

21 Cr. L. J. 465 :
56 I. C. 497 : A. I. R. 1920 Pat. 243.

POLICE ACT (V OF 1861)

—S. 29.

Overstaying leave by Police Officer to settle his affairs with a hank, is not without reasonable cause. *Jagadish Chandra Bose v. Emperor*.

23 Cr. L. J. 227 :
66 I. C. 67 : 25 C. W. N. 408.

—S. 29.

Police Officer failing to report for duty on expiration of leave when he is ill, is not without reasonable cause, even though he is being treated by a private medical practitioner. *Muhammad Naim v. Emperor*.

27 Cr. L. J. 1111 (b) :
97 I. C. 423 : A. I. R. 1927 Lah. 15.

—S. 29.

Before a Police Officer can be convicted of an offence under S. 29, it must be found that he is guilty of deliberate and intentional violation of duty. *Abdul Hamid v. Emperor*.

28 Cr. L. J. 664 :
103 I. C. 200 : 1 Luck. 47 :
A. I. R. 1927 Oudh 257.

—S. 29.

The expression "withdrawal from duty" in S. 29, Police Act, imports intentional refusal or cessation to perform one's duty. Where a constable was deputed to escort a prisoner to a particular place and he having done so, stayed there and delayed his departure from there by a couple of days: *Held*, that he was not guilty of an offence under S. 29. *Akbar Ali v. Emperor*.

30 Cr. L. J. 635 :
116 I. C. 611 : I. R. 1929 Lah. 547 :
A. I. R. 1929 Lah. 325.

—S. 29.

While the accused, two constables, were escorting an under-trial prisoner to headquarters in a camel cart on a dark night, the prisoner obtained permission to get down from the cart to make water, and having freed himself from the rope which was tied to his handcuffs bolted: *Held*, that the accused were not guilty of any wilful breach or neglect of any rule while escorting the prisoner. *Emperor v. Ganesh Prasad*.

26 Cr. L. J. 103 :
83 I. C. 663 : A. I. R. 1925 Oudh 281.

—S. 29—Police rules—Table of punishments—Extra fatigue duty—Scope of a Police constable's duties.

The petitioner, a police constable, was ordered by his officers to join a fatigue party for the purpose of removing certain furniture from the office of the Inspector-General of Police. He refused to do the work, and was, therefore, convicted upon a summary trial of an offence under S. 29. On application for revision to the Chief Court, it was contended on his behalf that the order given was not lawful, because fatigue duty was really a punishment, and that a constable who had committed no offence or been guilty of no dereliction of duty, could not legally be required to do work of a penal character: *Held*, that *per se* there was nothing unreasonable or unlawful in an order of this

POLICE ACT (V OF 1861)

kind, nor was it outside the scope of a constable's duties to perform work of this nature when necessary. In "extra guard fatigue or other duties" in the table of punishments given in Chapter XVI of the Police rules, against serial No. 8, the word 'extra' qualifies all the subsequent words. It is not fatigue duty as such which is penal, but extra fatigue duty. *Sohan Singh v. Emperor*. 12 Cr. L. J. 143 : 9 I. C. 831 : 15 P. W. R. 1911 Cr. : 184 P. L. R. 1911.

———S. 29.

A constable is a Police Officer within the meaning of S. 29. The expression 'Police Officer' throughout the Act, has been used to apply to all the members of the Police force in whatever capacity they may be employed. *Akbar Ali v. Emperor*. 30 Cr. L. J. 635 : 116 I. C. 611 : I. R. 1929 Lah. 547 : A. I. R. 1929 Lah. 325.

———S. 29.

The expression "violation of duty" in S. 29 connotes something more than mere non-performance of duty. It may, under certain circumstances, include illegal omission but such omission must be of some positive duty imposed by law. Every negligence does not amount to violation of duty as violation implies a certain amount of volition. *Muhammad Ali v. Emperor*. 29 Cr. L. J. 285 :

107 I. C. 771 : 29 P. L. R. 30 : I. L. T. 40 Lah. 128 : A. I. R. 1928 Lah. 164.

———S. 30.

See also Penal Code, 1860, S. 153.

———S. 30.

Under S. 30 there must be a notice, special or general, on each occasion on which an intended assembly or assemblies is or are required by the Superintendent of Police to be controlled by means of licences to be taken out by the persons celebrating the festivities concerned. *Emperor v. Shamakandu*. 20 Cr. L. J. 213 : 49 I. C. 773 : A. I. R. 1919 P. 173.

———Ss. 30, 30-A, 32—*Licence for procession—Demanding of sureties, legality of—Liability of sureties—Breach of conditions of licence by any member of procession—Liability of licensee.*

There is no provision of law which makes it incumbent on an applicant for a licence under S. 30 to take out a procession to provide sureties or which authorises the officers concerned to demand such sureties. It is, therefore, the applicant for the licence alone to whom the licence can be given, and who is bound by the conditions of the licence under S. 30. A licensee assumes responsibility for the entire conduct of the procession and its component members, and he cannot repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge. If any member of the procession is guilty of the breach of conditions of the licence, the licensee is

POLICE ACT (V OF 1861)

liable to be prosecuted for it. *Emperor v. Hel Ram*. 30 Cr. L. J. 371 :

114 I. C. 716 : I. R. 1929 Lah. 316 : 30 P. L. R. 261 : 10 Lah. 852 : A. I. R. 1929 Lah. 404.

———Ss. 30, 30-A, 32—*Licence for procession—Duty of licensee to observe conditions throughout the procession.*

Where an application for licence to take out a procession is granted subject to the condition that no member of the procession carries a lathi or sword, it is the duty of the licensee to see also that no one subsequently joins the procession with such weapons. The fact that there is a provision in S. 30-A, giving power to the authorities to stop any procession which violates the conditions of a licence, does not excuse the licensee from controlling the persons who may join the procession. *Badri Dass v. Emperor*.

29 Cr. L. J. 114 (b) : 106 I. C. 706 : 6 Pat. 763 : 9 P. L. T. 395 : A. I. R. 1928 Pat. 166.

———Ss. 30, 30-A, 32—*Prohibiting processions—Penal Code, S. 145, conviction under—Essentials—General notification prohibiting procession without licence—Notification by executive authority, whether law—"Resistance", meaning of—"Law", meaning of.*

In order to secure the conviction of an accused under S. 145, Penal Code, some formal evidence should be given to prove a common object to resist the execution of an order promulgated by a lawful authority, and the accused should be given an opportunity of meeting the case in the Trial Court. The words of S. 30, Police Act, are sufficiently general to enable a Superintendent of Police to issue a general notification containing a prohibition, without any limit of time, against convening or collecting assemblies or directing or promoting processions without licence, and any person contravening the terms of such notice, is punishable under S. 32. A person is free to join an assembly or a procession, which has already been collected, if he has no notice that the convener or promoter has omitted to take out a licence but if, after becoming aware of this fact, he persists in remaining with the assembly or procession, he will be said to share the common object of such person to resist the execution of the notification. When a notification is issued by an Executive Authority in exercise of a power conferred by Statute, that notification is as much a part of the law as if it had been incorporated within the body of the Statute at the time of its enactment. A notification, issued in compliance with S. 30 of the Police Act, is a law, and certainly a legal process. It is immaterial if the wording of the notification is not in the exact language of the section so long as there is, on the whole, a substantial compliance and the public are in no error or doubt as to its purport. Resistance connotes some overt act; mere words without any intention of carrying them into

POLICE ACT (V OF 1861)

effect are not sufficient to prove an intention to resist. *Emperor v. Abdul Hamid*.

23 Cr. L. J. 625 :
68 I. C. 945 : 3 P. L. T. 585 :
1922 Pat. 274 : 2 Pat. 134 :
4 U. P. L. R. Pat. 79 :
A. I. R. 1923 Pat. 1.

———Ss. 30, 31, 32, *object of—Orders issued under S. 30, legality of—Disobedience of orders—Offence.*

The object of Ss. 30, 31 and 32, Police Act, is that the public peace and order should be kept. The duty of keeping order being cast upon the Police, they are *prima facie* the best judges of what orders are necessary for that purpose, and there is a presumption that any orders issued were issued in pursuance of duty. It is, therefore, a question of fact whether the orders issued in a particular case were so issued in the exercise of the duty of keeping order and were reasonably considered necessary for keeping order. *Toli Ram v. Emperor*.

20 Cr. L. J. 313 :
50 I. C. 489 : 15 N. L. R. 51 :
A. I. R. 1919 Nag. 55.

———Ss. 30, 31, 32—*Regulation of public resorts.*

The Police have no authority to regulate by licence the resort of any persons or class of persons to any public place or thoroughfare, nor does S. 31, Police Act, which assigns the duty of "keeping order" at places of public resort and of "preventing obstructions" on certain occasions in such places to the Police, authorize them to give any general order. *Krishna Lal v. Emperor*.

17 Cr. L. J. 448 :
35 I. C. 1008 : 14 A. L. J. 1072 :
A. I. R. 1917 All. 450.

———Ss. 30, 32—*Granting licence for processions.*

Licence given under S. 30 to take out procession—Procession led by person not licensee—Order of Magistrate to procession to move faster while passing mosque—Order disobeyed by leader and resulting in break out of riot—Leader charged under S. 32 for disobeying order of competent authority and convicted—Conviction held proper—Licence held governed all processionists. *Bilas Rai v. Emperor*.

39 Cr. L. J. 590 :
175 I. C. 503 : 40 P. L. R. 148 :
I. L. R. 1938 Lah. 258 : 10 R. L. 730 :
A. I. R. 1938 Lah. 425.

———Ss. 30, 32—*Procession—Application for licence—Licence not issued—Procession taken out—Offence—Police, powers of, to control processions.*

S. 30, Police Act, gives the Police power to control processions, but the Police have no power to forbid the issue of a procession altogether. The power to control does not include the power to forbid. Under S. 30, Police Act, a person intending to take out a procession must make an application in time to the Police for a licence. If the licence is

POLICE ACT (V OF 1861)

issued, he is bound to obey the conditions entered in the licence, whether it is delivered to him or not. If no licence is issued, he is free to take out the procession and is bound only to see that the general law is not broken. In the latter case, the fact that the procession is taken out in the absence of a licence, does not amount to an offence under S. 32, Police Act. *Silaram Das v. Emperor*.

27 Cr. L. J. 522 :
93 I. C. 986 : 4 Pat. 795 :
7 P. L. T. 622 :
A. I. R. 1926 Pat. 173.

———Ss. 30, 32.

A notification under S. 30, Police Act, prohibiting processions without a licence cannot be held to be operative after the occasion which called for the notification has passed away. *Gangadhar Bhattacharya v. Emperor*.

29 Cr. L. J. 126 :
106 I. C. 718 : 32 C. W. N. 162 :
A. I. R. 1928 Cal. 272.

———Ss. 30, 32—*Prohibiting processions.*

Order under S. 30 banning processions without licence—Procession taken out without licence—Offence of resistance to execution of the law constituted—Conviction under S. 148, Penal Code, is proper. *Public Prosecutor v. Vadlamudi Satyanarayana*.

32 Cr. L. J. 806 :
131 I. C. 844 : 1931 M. W. N. 489 :
33 L. W. 671 : 1 R. 1931 Mad. 604 :
A. I. R. 1931 Mad. 484.

———Ss. 30 (2), 32—*Granting licence for procession—Procession without licence—Persons joining procession, whether guilty—Cr. P. C., S. 127.*

The mere fact of joining in a procession which is promoted or organised by other persons, would not amount to a disobedience of a notice under S. 30 (2), Police Act, prohibiting persons from organising or promoting processions without a licence and does not, therefore, render a person guilty of an offence under S. 32 of the Act. The procedure to be adopted in cases where such order is disobeyed, is as provided in S. 127, Cr. P. C. *Harekrishna Mahtab v. Emperor*.

28 Cr. L. J. 443 :
101 I. C. 475 : 8 P. L. T. 245 :
A. I. R. 1927 Pat. 191.

———S. 30 (iv).

The power conferred on the Police by S. 30 of the Police Act, to 'regulate' the extent of music that may be used in streets, does not include a power to prohibit every kind of music by a general order. *Shankar Singh v. Emperor*.

30 Cr. L. J. 696 :
116 I. C. 814 : 1 R. 1929 All. 638 :
1929 A. L. J. 180 : 51 All. 485.
A. I. R. 1929 All. 201.

———S. 31.

Under S. 31 Police have power to pass any order for "keeping order" or "preventing obstruction." But the question whether a particular order could be held to be legally

POLICE ACT (V OF 1861)

justifiable under the section must depend on the facts of each case. *Baliram v. Emperor*.

32 Cr. L. J. 532 :
130 I. C. 425 : 32 P. L. R. 52 :
I. R. 1931 Lah. 297 :
A. I. R. 1931 Lah. 33.

———S. 31—Scope — Section, if authorises issue of order prohibiting doing of legal act.

S. 31, Police Act, does not authorise a Police Officer to issue an order which a Magistrate might have issued under S. 144, Cr. P. C. to refrain from doing a perfectly legal act. S. 31 is obviously intended to empower Police Officers to regulate traffic on public roads, to prevent the commission of offences on such roads; for example, affrays, and also to do their best to prevent obstruction: *Held*, therefore, that the act of the accused was a perfectly legal act in taking out the bridegroom and the bride in palanquins along public roads or highways, and their failure to agree to carry out the instructions of the Police Officer to dismount, did not amount to an illegal act within the meaning of S. 153, Penal Code, because the Police Officer was not empowered to issue such an order. *Jasnam v. Emperor*.

37 Cr. L. J. 866 :
163 I. C. 866 : 1936 A. L. J. 579 :
9 R. A. 88 : 1936 A. W. N. 424 :
A. I. R. 1936 All. 534.

———Ss. 31, 32—Disobeying order of Police—Evidence Act (I of 1872), S. 114, *illus. (c)*—Toll imposed by District Magistrate for entry into certain grounds—Accused refusing to pay toll.

A District Magistrate had issued orders for the levying of a certain amount of toll on animals and carriages sought to be admitted into a certain *mela* ground. Accused who wanted to drive into the *mela* ground in a bullock tonga was asked to pay toll in respect of it, but he refused to do so. Accused having disobeyed the order, was prosecuted and convicted under S. 32 of the Police Act: *Held*, that irrespective of the fact whether the toll had been imposed by the District Magistrate with or without jurisdiction, the Police Constable was entitled to assume that the collector was acting rightfully in carrying out the orders of the District Magistrate, and the order to the accused to pay the toll or turn back, was lawful, and conviction was legal. *Sham Sunder Lal v. Emperor*.

27 Cr. L. J. 24 :
91 I. C. 56 : A. I. R. 1926 All. 264.

———S. 34.

See also Cr. P. C., 1898, Ss. 227, 332.

———S. 34.

The word "causes," as used in S. 34, is not a word of art but a word used in ordinary English, meaning "allows to exist." *Govind v. Emperor*.

20 Cr. L. J. 671 :
52 I. C. 495 : A. I. R. 1918 Nag. 62.

———S. 34—Charge under—Conviction under S. 279, Penal Code, legality of.

The finding that the accused is not guilty

POLICE ACT (V OF 1861)

of an offence under S. 34, Police Act, necessarily and logically means that he cannot be convicted of an offence under S. 279, Penal Code. *Dhum Singh v. Emperor*.

26 Cr. L. J. 1057 (a) :
88 I. C. 1 : 23 A. L. J. 436 :
A. I. R. 1925 All. 448.

———S. 34.

A conviction for an offence under S. 34, Police Act, is not illegal merely because the act complained of also constitutes a breach of S. 110, C. P. Municipal Act, and as such, is punishable under that Act as well. *Govind v. Emperor*.

20 Cr. L. J. 671 :
52 I. C. 495 : A. I. R. 1918 Nag. 62.

———S. 34.

A finding that the accused committed any offence to the obstruction, inconvenience, annoyance, risk, danger or damages to the passengers on the road, is an essential ingredient of an offence under S. 34. It is not sufficient to find that he was drunk and incapable of taking care of himself. *Panehanon Kuthi v. Emperor*.

38 Cr. L. J. 850 (a) :
170 I. C. 224 (1) : 10 R. C. 97 :
A. I. R. 1937 Cal. 312.

———S. 34.

The act of 'making water' falls within the ambit of the expression 'easing himself' as used in S. 34, clause seventh of the Police Act of 1861. *Emperor v. Chauthmal*.

31 Cr. L. J. 1201 :
127 I. C. 261 : 51 C. L. J. 342 :
A. I. R. 1930 Cal. 444.

———S. 34.

A person 'making water' on the roadside, cannot be convicted under the seventh clause, S. 34, Police Act, if no obstruction, annoyance or inconvenience was caused to anybody. *Emperor v. Chauthmal*.

31 Cr. L. J. 1201 :
127 I. C. 261 : 51 C. L. J. 342 :
A. I. R. 1930 Cal. 444.

———S. 34.

M placed a board in front of his house over the water channel and a considerable portion of the road-way, leaving only a small space by which persons could pass by his house. On this board he sat writing and delivering to a large crowd of persons vouchers for bets which they had made with him about the Government opium sales. *Held*, that under these circumstances, although M could not properly be convicted under S. 34, he was liable to conviction under Ss. 268 and 290, Penal Code. *Emperor v. Madho Ram*.

4 Cr. L. J. 492 :
26 A. W. N. 317 : 4 A. L. J. 44.

———S. 34.

An offence under S. 34, can be regarded as cognizable offence. *Maroti Bansi Teli v. Emperor*.

40 Cr. L. J. 905 :
184 I. C. 231 : 1939 N. L. J. 101 :
I. L. R. 1939 Nag. 488 : 12 R. N. 101 :
A. I. R. 1939 Nag. 95.

POLICE ACT (IV B. C. OF 1866)

———S. 34 (3)—Obstructing public road.

Keeping cart on public road—No annoyance or obstruction proved—Conviction, not legal, legality of. *Gobind Ram Marwari v. Emperor*.

31 Cr. L. J. 785 :
125 I. C. 130 : 9 Pat. 97 : 11 P. L. T. 615 :
A. I. R. 1930 Pat. 246.

———S. 34 (4).

Supplying water to public and receiving tips—Water not "exposed for sale." *Kalap Nath v. Emperor*.

27 Cr. L. J. 303 (b) :
92 I. C. 591 : 24 A. L. J. 292 :
A. I. R. 1926 All. 288.

———S. 34, cl. (6).

The word "riotous" in S. 34, clause (6), of the Police Act, is sufficiently wide to cover the case of a person who creates a row in a thoroughfare. *Jagat Ram v. Emperor*.

17 Cr. L. J. 273 (a) :
34 I. C. 993 : 52 P. L. R. 1916 :
29 P. W. R. 1916 Cr.

———S. 34 (vii).

Unless it is proved that an act complained of was to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers, there cannot be a conviction under S. 34. *Ram Charitar v. Emperor*.

20 Cr. L. J. 452 :
51 I. C. 340 : A. I. R. 1919 Pat. 91.

———S. 42.

S. 42 is no bar to a trial of a Sub-Inspector for illegal arrest where the complaint is made against him within the period of limitation prescribed by that section. *Shankor Lal v. Emperor*.

23 Cr. L. J. 81 :
65 I. C. 433 : A. I. R. 1922 All. 264.

———S. 42—Scope of.

False statement by Deputy Superintendent of Police that he caught offender by setting a trap—Act not done under provisions of Police Act. *Ba Hla v. Maung Tun Sein*.

38 Cr. L. J. 945 :
170 I. C. 516 : 10 R. Rang. 96 :
A. I. R. 1937 Rang. 312.

POLICE ACT (IV B. C. OF 1866)

———S. 13-B, cl. (c);

A Police constable when being tried under S. 13-B, clause (c), of Act IV of 1866, for being in possession of a sum of four annas while on duty contrary to an order of the Commissioner of Police, pleaded guilty to having the money in possession but stated he was not on duty: *Held*, that the plea of guilty was merely an admission of the fact that he had at the time in question the sum of annas four upon his person and that he could not be convicted unless his defence was considered and adjudicated upon. *Gaya Roy v. Emperor*.

15 Cr. L. J. 703 :
26 I. C. 151 : 18 C. W. N. 1273 :
A. I. R. 1915 Cal. 153.

POLICE DIARY.

See also (i) Cr. P. C., 1898, S. 172, 172 (2).

(ii) Criminal trial.

(iii) Evidence Act, 1872, S. 159.

———Police diary.

The entries in the Police diaries are not exhaustive and in a protracted inquiry before the Trial Court, little weight attaches to a discrepancy between those entries and the inquiry. *Mukta Prasad v. Emperor*.

27 Cr. L. J. 577 :
94 I. C. 193 : 13 O. L. J. 69.

———Police diary.

A confession recorded in a Police diary cannot be used for anything other than to assist the presiding Judge in the enquiry or trial or for the purpose of enabling the defence under certain circumstances to contradict the witnesses for the Crown. But it is the duty of the Judge to bring on record by evidence any material facts that may come to his knowledge, and for this purpose, a Judge can and should use the diary. *Karan Singh v. Emperor*.

29 Cr. L. J. 26 :
106 I. C. 442 : 26 A. L. J. 92 :
A. I. R. 1928 All. 25.

———Police diary.

A statement contained in a *zimni* which is not proved in Court, is not admissible in evidence against the accused, and it is improper to use such a statement against him. *Aziz v. Emperor*.

26 Cr. L. J. 292 :
84 I. C. 436 : A. I. R. 1925 Lah. 295.

POLICE

When there is a dispute between two sets of persons as to the possession of a plot of land and a fight takes place between them with regard to it, it is the duty of the Police to charge-sheet both the parties for rioting. *In re : Jogali Bhaigo Naiks*.

27 Cr. L. J. 1198 :
97 I. C. 958 : A. I. R. 1927 Mad 97.

POLICE OFFICER

Charge against—Enquiry by District Superintendent of Police improper. *Haladhar Bhumij v. Sub-Inspector of Police*.

2 Cr. L. J. 51 :
9 C. W. N. 199.

POLICE REGULATION ACT (V OF 1861)

———S. 17.

In a case of dispute as to proprietary rights, it is an abuse of the law and an act of oppression to appoint the active men on one side as Special Constables in order to prevent their asserting their alleged rights, and so to give an advantage to the opposite party. *Gopinath Parya v. Emperor*.

3 Cr. L. J. 169 :
2 C. L. J. 555 : 10 C. W. N. 82.

POSSESSION

———S. 29.

S. 29 does not apply to a case, where the offence charged is absence from Special Constable's parade on certain dates without permission. *Khosh Mahomed v. Emperor*.

3 Cr. L. J. 178 :
2 C. L. J. 565 : 10 C. W. N. 79.

———Ss. 29, 18.

S. 29 does not apply to a Special Constable who refuses to act as such. *Umesh Chandra Gupta v. Emperor*.

3 Cr. L. J. 256 :
10 C. W. N. 322.

POLICE REPORT

———Second proceeding based on report of real date, if barred.

Where the second proceedings are based on a Police report, which was not the foundation of former proceedings, they are not invalid. *Chandan Sahu v. Bhadaï Rai*.

14 Cr. L. J. 189 :
19 I. C. 189.

POLICEMAN

When a policeman acts under colour of his office and apparently in good faith, he should not be convicted without clear proof that his action was illegal, and that, therefore, the conviction and sentence should be set aside. *Maung Aung Dun v. Emperor*.

8 Cr. L. J. 424 :
14 Bur. L. R. 258.

PORTS ACT (XV OF 1908)

———S. 54.

The word "disobey" in 54 does not mean "intentional disobedience." *Rahimtullah v. Emperor*.

26 Cr. L. J. 1026 :
87 I. C. 914 : A. I. R. 1925 Sind 284.

POSSESSION

See also (i) Arms Act, 1878, Ss. 9 (b), 13, 19.

(ii) Cr. P. C., 1898, S. 145.

(iii) U. P. Excise Act, 1910,
Ss. 7, 60 (a), 71.

(iv) Opium Act, 1878, Ss. 9,
9 (c).

(v) Penal Code, 1860, Ss. 24,
447.

———Actual and symbolical possession, distinction—Delivery of possession under C. P. C., differs according to nature of possession and property.

The manner of the delivery of possession in C. P. C., is according to the nature of the possession of the man who is to be dispossessed and not that its effect in law is different as against the judgment-debtor. But even if the property is in direct possession of the judgment-debtor, the mode of delivery will naturally vary according to the nature of the property as mode of possession of different properties vary. If the property is in actual physical occupation of the judgment-debtor, for instance, if the property is a house and the judgment-

POSSESSION

debtor is residing in it, he must be dispossessed of it by being bodily removed from it and by putting the decree-holder or auction-purchaser in physical occupation of it. But if the property is *zmindari* or a tank or mineral rights in direct possession of the judgment-debtor, though the delivery of possession will be by ousting the judgment-debtor from it, it is obvious that the judgment-debtor cannot be physically removed from it and the decree-holder or auction-purchaser put in physical occupation of it. In such a case, the delivery of possession is by proclamation that the decree-holder is put in possession. This delivery of possession is not symbolical but actual and is as effective against the judgment-debtor as his physical removal from a house. *Rajendra Narayan Bhanja Deo v. Chintaman Mahapatra*.

40 Cr. L. J. 339 :
180 I. C. 322 : 19 P. L. T. 632 :
20 P. L. T. 333 : 5 B. R. 385 :
11 R. P. 493 : A. I. R. 1939 Pat. 151.

———Judicial determination.

An order made by a Magistrate in a case of disputed possession, to maintain one side in possession, and to restrain the other side, without any judicial determination of the fact of possession is illegal. As to the question of possession, the law contemplates not the opinions of Magistrate on such questions, but their judicial decisions arrived on proper materials in regular proceedings. The action of a Collector in altering the register kept under the Land Registration Act for the mutation of names, by striking out the name of the registered owner and substituting that of another without a proper proceeding or enquiry and without notice to the party whose name is struck out, condemned. *Gopinath Paryah v. Emperor*.

3 Cr. L. J. 169 :
2 C. L. J. 555 : 10 C. W. N. 82.

———Possession—Burden of proof.

Where liquor is discovered from a locked room, the key of which was in the possession of the accused, it must be presumed that the accused knew what was inside the room, and the onus is on him of accounting satisfactorily for such possession. *Mahadeo v. Emperor*.

26 Cr. L. J. 1107 :
88 I. C. 275 : 23 A. L. J. 417 :
47 All. 611 : A. I. R. 1925 All. 388.

———Title.

The possession of the intruder, ineffectual for the purpose of transferring title ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner. *Bholanath Singh v. Wood*.

2 Cr. L. J. 202 :
I. L. R. 32 Cal. 287.

———What is.

Where the place in which an article is found is one to which several persons have equal right of access, it cannot be

POST OFFICE ACT (VI OF 1898)

said to be in the possession of any one of them. *Jagjiban Ghose v. Emperor*.

10 Cr. L. J. 125 :
2 I. C. 681 : 9 C. L. J. 663 :
13 C. W. N. 851.

———Distinction between.

A master becomes possessed, when he personally takes possession on his own account, or when he authorises the servant to take a thing for him, for his benefit or on his account, or when he consents to or sanctions the retention of the thing by the servant or knowingly allows the servant to retain it in custody for him. If there be prior authority to the servant, or arrangement with him to receive, the time when the servant receives is the time when the master becomes possessed. *Fateh Chand v. Emperor*.

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 : 44 Cal. 477 :
A. I. R. 1917 Cal. 123.

POST MORTEM

———Examination.

In India it is very rare to find a dead body free from traces of putrefaction for more than 24 hours after death. *Kheri v. Emperor*.

28 Cr. L. J. 185 :
99 I. C. 857 : 3 L. L. J. 147.

POST-MORTEM EXAMINATION

Considering the important nature of the evidence which is generally furnished by the results of *post-mortem* examination, the results of the observation, external and internal, should be fully recorded. *Pachudayan v. Emperor*.

12 Cr. L. J. 124 :
9 I. C. 730 : 1911, 2 M. W. N. 138 :
9 M. L. T. 321.

———Post-mortem examination.

In a murder case it is most essential that the time of the *post-mortem* should be recorded, as in many cases, it assists the Court in determining whether the death took place at the time alleged or not. *Dwarka v. Emperor*.

32 Cr. L. J. 697 :
131 I. C. 439 : I. R. 1931 Oudh 199 :
8 O. W. N. 107 : A. I. R. 1931 Oudh 119.

POST OFFICE ACT (VI OF 1898)

———Ss. 3, 52.

Undelivered letters found and handed over to Postmaster are in course of transmission by post. Postmaster taking charge of these letters for investigation, not taking action. Charge under S. 52, Post Office, is not defective and alternative charge under S. 201, Penal Code, is not in contravention of S. 236, Cr. P. C. *Emperor v. Faizal Hussain*.

32 Cr. L. J. 461 :
129 I. C. 760 : I. R. 1931 Lah. 232 :
A. I. R. 1930 Lah. 460.

———Ss. 19, 61.

Cocaine not being an "explosive" or a dangerous, filthy, "noxious" or "deleterious

POST OFFICE ACT (VI OF 1898)

substance" within the meaning of S. 19, Post Office Act, the sending of it by post is not an offence under S. 61 of the Act. *Ismail Khan v. Emperor*.

16 Cr. L. J. 319 :
28 I. C. 655 : 13 A. L. J. 356 : 37 All. 289 :
A. I. R. 1915 All. 273.

———Ss. 20, 61—Obscenity—Test of.

The test of obscenity is, whether the tendency of the matter is to deprave and corrupt the minds of those who are open to immoral influences, and into whose hands the publication may fall. *Sarat Chandra Ghose v. Emperor*.

2 Cr. L. J. 201 :
I. L. R. 32 Cal. 247.

———Ss. 20, 61.

To send by post a postcard containing language of an obscene character is an offence under S. 61 read with S. 20, Post Office Act. *Sarat Chandra Ghose v. Emperor*.

2 Cr. L. J. 201 :
I. L. R. 32 Cal. 247.

———Ss. 35, 64, 76, Cls. (1) and (3)—Value-payable Post—Declaration.

The accused, the manager of a Journal called the *International Police Service Magazine*, sent on the 29th October a copy of his Magazine by Value-payable Post to one Mr. Webster, Superintendent of Police, signing a declaration in pursuance of a rule issued by the Governor-General in Council that the article was sent in execution of a *bona fide* order received by him. Mr. Webster refused the article, and the accused was prosecuted for making a false declaration in violation of the Post Office Act. The Magistrate found the declaration false, but acquitted the accused on the ground that the Post Office Act does not require the declaration and that though the rules framed under the Act do require a declaration, yet the rules are not a part of the Act: *Held*, that view of the Magistrate was wrong. *Emperor v. Kothandaramiah*.

11 Cr. L. J. 215 :
5 I. C. 728 : 7 M. L. T. 69.

———S. 52.

It is a necessary ingredient of S. 52, that a paper should have been extracted from the parcel and not merely examined. *In re : S. A. Sattar Khan*.

40 Cr. L. J. 483 :
181 I. C. 364 : 1938 M. W. N. 962 :
11 R. M. 797 : A. I. R. 1939 Mad. 283.

———S. 52.

Extraction of V. P. article by Postmaster—Subsequent payment of amount due—Offences—Criminal misappropriation. *Emperor v. Das Baj*.

29 Cr. L. J. 508 :
109 I. C. 236 : 8 Lah. 662 : 29 P. L. R. 151 :
A. I. R. 1928 Lah. 92.

———S. 52—Misappropriation of postal money order—Evidence.

Where the only evidence against the accused, charged with misappropriating a telegraphic money order, is that the postal account contained entries of delivery on dates

PRACTICE

different from those on which the actual deliveries were made, that merely creates a suspicion and is not sufficient to prove misappropriation. *In re : Kuppli Prakasa Row.*

16 Cr. L. J. 3 :

26 I. C. 367 : A. I. R. 1915 Mad. 887.

———S. 61.

Prosecution under S. 61, not made upon a formal complaint, although authorised by the Postmaster-General, is illegal. *Emperor v. Rohini Kumar Sen.*

4 Cr. L. J. 170 :
10 C. W. N. 1029.

———S. 64, r. 133.

The *bona fides* contemplated by rule 133 of the Post Office rules, do not relate to the manner of sending. *Ghulam Rabbani v. Emperor.*

9 Cr. L. J. 537 :
2 I. C. 228 : 6 A. L. J. 481.

———Ss. 55, 72—Prosecution—Sanction.

Under S. 72, Post Office Act, sanction of the Director-General or Postmaster-General is required before a postal employee can be prosecuted for an offence under S. 55 of the Act. It does not, however, matter whether it is obtained before or after the Court takes cognisance of the offence. *Sankaran Pillai v. Emperor.*

30 Cr. L. J. 929 :
118 I. C. 496 : 29 L. W. 522 :
1929 M. W. N. 275 : 52 Mad. 534 :
56 M. L. J. 551 : I. R. 1929 Mad. 816 :
A. I. R. 1929 Mad. 447.

PRACTICE

———Revision.

It is not the practice of the High Court to entertain an application for revision where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and rejected. *Shafiqat-Ullah v. Wali Ahmad.*

7 Cr. L. J. 48 :
28 A. W. N. 25 : 30 All. 116 :
3 M. L. T. 124.

———Accused, whether bound to give explanation.

If no *prima facie* case is made out against the accused, it is open to the accused to rely safely on the presumption of innocence or of the infirmity of the evidence for the prosecution. But when a *prima facie* case has been made out and the presumption of innocence is displaced, the force of suspicious circumstances is augmented if the accused attempts no explanation of facts which he may reasonably be presumed to be able and interested to explain. *Bahadur v. Emperor.*

26 Cr. L. J. 1063 :
88 I. C. 7 : A. I. R. 1925 Sind 289.

———Adjournment of case.

Where in a criminal proceeding the prosecution apply for an adjournment, on the ground that it would not be advisable to proceed with the case in the absence of a co-accused whose appearance has, up to the date of the application, not been secured, the Magistrate should, before granting the application, require the

PRACTICE

production of some evidence. *Billingshurst v. Meek.*

22 Cr. L. J. 465 :
61 I. C. 993 : 49 Cal. 182 :
A. I. R. 1922 Cal. 334.

———Peace—Appeal—Presentation of appeal—Presentation to Division Bench—Madras High Court Rules.

No special method is enjoined in the Cr. P. C., for presentation of appeals. The question is one of administrative convenience so long as there is an actual presentation to an officer of the Court, a Bench Clerk or one of the Judges, the presentation is not invalid. Rule 1 (i) (f) of the Rules of Practice of the Madras High Court which lays down that application for the admission of appeals should be made before a single Judge, does not, in terms, and is not intended to, deprive the Divisional Courts constituted for the disposal of criminal business of the right to exercise their powers in special cases. The rule providing for the disposal of all applications by the Admission Judge is not intended to restrict the power of the Benches constituted under Clause 14 of the Charter Act. Such Benches have jurisdiction to hear applications and appeals in criminal matters. *Public Prosecutor v. Kotta Paramboth.* (F. B.)

16 Cr. L. J. 593 :
30 I. C. 145 : 29 M. L. J. 101 :
18 M. L. T. 95 : 1915 M. W. N. 504 :
A. I. R. 1916 Mad. 110.

———Appeal against acquittal—Interference.

It is only in very exceptional circumstances that a Court dealing with an appeal against an acquittal will reverse that finding by accepting oral evidence which the trial Court has disbelieved. *Public Prosecutor v. Pakkiriswami.*

31 Cr. L. J. 449 :
122 I. C. 648 : 57 M. L. J. 548 :
1929 M. W. N. 785 : 30 L. W. 791 :
A. I. R. 1929 Mad. 846.

———Appeals arising out of cross-cases, disposal of.

It is always desirable that when there are cases and cross-cases, the appeals arising from such cases should be posted before and tried by the same Bench. *Ramaswami v. Emperor.*

27 Cr. L. J. 108 :
91 I. C. 540 : 1925 M. W. N. 666 :
A. I. R. 1925 Mad. 1213.

———Appellate Bench decisions whether binding on original side Bench.

The opinion of an Appeal Bench in one matter relative to an issue of law or the construction of a document, is not binding upon another Bench sitting as a Court of first instance in another matter. *In re : Oreste Cullington.*

22 Cr. L. J. 691 :
63 I. C. 819 : 48 Cal. 328 :
A. I. R. 1921 Cal. 273.

———Appeal—Conviction for new charge.

An accused person should not be convicted by an Appellate Court of a charge of which he had no notice and which he was not

PRACTICE

called upon to answer in the trial Court.
Mayadhar Mahanty v. Dadardan Kund.

22 Cr. L. J. 485 :
62 I. C. 181 : 2 P. L. T. 243 :
A. I. R. 1921 Pat. 496.

—————*Application against order of Criminal Court—Limitation.*

An application to the High Court against an order of a Criminal Court must be made within 60 days of the order. It is a matter of practice no doubt; but the practice is uniform, and only in special circumstances, can it be departed from. *Kishen Dayal v. Darjeeling Municipality.*

28 Cr. L. J. 639 (b) :
103 I. C. 63 : 54 Cal. 394 :
A. I. R. 1927 Cal. 574.

—————*Counsel's right to argue, limits of.*

So long as a Counsel is not guilty of unnecessary repetition or of irrelevant arguments, he is entitled to present his client's case as he thinks best, and a Judge cannot decline to hear him or to cut short his argument merely because he is expected by the superior Courts to turn out a certain amount of work within a fixed time. *Mahammad Bakhsh v. Emperor.*

29 Cr. L. J. 279 :
107 I. C. 763 : A. I. R. 1928 Lah. 319.

—————*Arrest of witness.*

The arrest of a witness for the defence for giving false evidence, while the evidence for the defence is being taken, is very improper. *Nga Po Kya v. Emperor.*

12 Cr. L. J. 465 :
11 I. C. 1001 : 4 Bur. L. T. 189.

—————*Sentence.*

It is very undesirable to trust to the High Court's power of correcting sentences of the lower Courts where the sentences ought to be deterrent. *Emperor v. Shinwar Birsha.*

15 Cr. L. J. 367 :
23 I. C. 735 : 16 Bom. L. R. 203 :
A. I. R. 1914 Bom. 179.

—————*Sentence.*

Where it is desired by the authorities that a specially deterrent sentence should be imposed, it is their duty to bring that desire to the notice of the trying Court with reasons for the suggestion. *Emperor v. Ragha Jaga.*

15 Cr. L. J. 362 :
23 I. C. 730 : 16 Bom. L. R. 200 :
A. I. R. 1914 Bom. 36.

—————*High Court—Part-heard case.*

Where a case has been heard by one Bench of the High Court, but is not finally disposed of, it is open to the Chief Justice to direct another Bench to proceed with the trial of the case. *Muthu Balu Chettiar v. Chairman, Madura Municipality.*

28 Cr. L. J. 974 :
105 I. C. 686 : 53 M. L. J. 633 :
1927 M. W. N. 835 :
39 M. L. T. 548 : 27 L. W. 239 :
51 Mad. 122 : A. I. R. 1927 Mad. 961.

PRACTICE

—————*'Case-law,' force of.*

It is an established rule to abide by former precedents *stare decisis* where the same points come again in litigation. It is the duty of every subordinate Judge loyally to accept the rulings of the High Court to which he is subordinate unless or until they have been overruled by a higher tribunal. *Emperor v. Deni.*

2 Cr. L. J. 395 :
2 A. L. J. 498 : 25 A. W. N. 184 :
I. L. R. 28 All. 62.

—————*Charge, drawing up of.*

If a Judge does not write his charge before delivery, which is the better course, he should reduce the charge to writing as soon as possible after charging the Jury. *Jag Mohan Singh v. Emperor.*

30 Cr. L. J. 1146 :
120 I. C. 114 : 1930 A. L. J. 486 :
I. R. 1930 All. 2 : A. I. R. 1930 All. 28.

—————*Civil dispute—Criminal case, stay of.*

Parties should not be encouraged to resort to Criminal Courts, in cases in which point at issue can be appropriately decided by Civil Court. *Paras Ram v. Jalal.*

17 Cr. L. J. 7 :
32 I. C. 135 : 4 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 174.

—————*Comments against strangers in judgment.*

It is very undesirable that a Court should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him. *In re : Holibasappa Pareppa.*

22 Cr. L. J. 335 (a) :
61 I. C. 63 : 23 Bom. L. R. 357 :
45 Bom. 1127 : A. I. R. 1921 Bom. 394.

—————*Comments on Police Officers in judgment.*

The practice of making indiscriminate attacks upon police servants, under circumstances in which they are unable to defend themselves, cannot be too strongly deprecated. *Emperor v. Harnama.*

11 Cr. L. J. 66 :
4 I. C. 864 : 15 P. R. 1909 Cr. :
37 P. W. R. 1909 Cr.

—————*Comments on third parties in judgment.*

It is not permissible for any Court to make a sweeping allegation against one who is not on his defence and who is not in a position to defend himself. *Chandika Prosad v. Emperor.*

31 Cr. L. J. 1081 :
126 I. C. 684 : 7 O. W. N. 564 :
A. I. R. 1930 Oudh 324.

—————*Expunging damaging remarks against a witness.*

A Judge has power to reconsider and expunge damaging observations regarding a witness in a criminal case, who had, at the trial, no chance of defending himself. *In re : Malik Umar Hayat Khan.*

11 Cr. L. J. 178 :
5 I. C. 611 : 2 P. W. R. 1910 Cr.

PRACTICE

———*Committal proceeding—Cross-examination, limits of.*

Committal proceeding should not be treated almost as a regular trial and the cross-examination of witnesses should be limited to the purpose of finding whether there is a *prima facie* case or not. *Emperor v. Wahidino.*

30 Cr. L. J. 845 :
117 I. C. 773 : I. R. 1929 Sind 149 :
23 S. L. R. 340 :
A. I. R. 1929 Sind 137.

———*Committal proceeding—Scope of enquiry.*

In committal proceedings the Magistrate has only to find out whether there is a *prima facie* case for committal or not, and the proceedings should not be treated too much like a final trial and protracted unduly. In committal proceedings, there is no obligation on the part of the prosecution to get recorded by the Committing Magistrate every jot and tittle of the evidence which they intend to place before the Sessions Court. *Nur Khan v. Emperor.*

31 Cr. L. J. 117 :
120 I. C. 520 : 24 S. L. R. 96 :
A. I. R. 1930 Sind 99.

———*Compounding offences.*

Magistrate cannot decline to allow the composition of a compoundable offence. *Emperor v. Sundar Singh.*

11 Cr. L. J. 638 :
8 I. C. 387 : 30 P. R. 1910 Cr.

———*Revision—Proper Court.*

The High Court will not entertain a revision from the order of District Magistrate even where the order is passed in appeal unless a previous application for revision has been made to the Sessions Judge. *Sukhaj Singh v. Emperor.*

28 Cr. L. J. 475 :
101 I. C. 603 : A. I. R. 1927 All. 834.

———*Conflicting theories.*

When a Court is unable to say which of the two theories is the more likely one, it must take the view which is more favourable to the accused. *Nur Khan v. Emperor.*

31 Cr. L. J. 117 :
120 I. C. 520 : 24 S. L. R. 96 :
A. I. R. 1930 Sind 99.

———*Appeal—Duty of Court.*

It is very desirable that a Criminal Court of Appeal, without going to the length of writing an elaborate Judgment, should, in deciding an appeal, note briefly but clearly what objections were urged on appeal, and how they were disposed of. *Ekcowri Mukerjee v. Emperor.*

2 Cr. L. J. 170 :
I. L. R. 32 Cal. 178.

———*Conviction.*

Where a Magistrate convicted the accused not according to his own conscience, the conviction was set aside as illegal. *Munshi v. Emperor.*

10 Cr. L. J. 583 :
4 I. C. 428.

PRACTICE

———*Conviction—Prosecution case materially false.*

The prosecution case cannot be thrown out merely because it is false in some material points, but where it is false, materially and substantially, it would be illegal to convict the accused upon the residue of the prosecution case. *Gurpal Pandey v. Emperor.*

22 Cr. L. J. 479 :
61 I. C. 1007 : 2 P. L. T. 242 :
A. I. R. 1921 Pat. 473.

———*Conviction.*

A conviction cannot be based on mere suspicions, however strong they may be. *Prichard v. Emperor.*

30 Cr. L. J. 18 :
112 I. C. 850 : I. R. 1929 Lah. 97 :
A. I. R. 1928 Lah. 382.

———*Conviction—Legality of.*

It is unsafe to base conviction on the uncorroborated statement of the complainant when there is serious enmity between accused and complainant. *Bhangi Dubey v. Emperor.*

24 Cr. L. J. 360 :
72 I. C. 360 : 1 P. L. R. 151 Cr. :
4 P. L. T. 503 : A. I. R. 1923 Pat. 519.

———*Conviction—Prosecution case false.*

Where a prosecution case is disbelieved in essential particulars, it is not safe to convict the accused on the residue of the evidence that may be acceptable. *Mayadhar Mahant v. Danardan Kund.*

22 Cr. L. J. 485 :
62 I. C. 181 : 2 P. L. T. 243 :
A. I. R. 1921 Pat. 496.

———*Practice.*

Conviction set aside in *habras corpus* proceedings by High Court—Fresh proceedings for different offences on same facts not competent. *Public Prosecutor v. Palathingal Valia.*

26 Cr. L. J. 323 :
84 I. C. 547 : 20 L. W. 98 :
1924 M. W. N. 548 : A. I. R. 1924 Mad. 768.

———*Fresh trial.*

Where an accused person has been convicted under a repealed law and the conviction is, therefore, irregular and illegal, a retrial should not be ordered under the new Act when no substantive injury has been done to the accused. *Narahari Bissovi v. The District Magistrate, Ganjam.*

12 Cr. L. J. 616 :
12 I. C. 932 : 1911, 2 M. W. N. 588.

———*Court, duty of.*

A Judge must keep separate judicial and executive considerations. It is not his duty to supplement the failure of the prosecution to prove their case against the accused by directing a fresh trial on purely executive grounds. *Khem Chand v. Emperor.*

26 Cr. L. J. 1339 :
89 I. C. 315 : 1 Lah. Cas. 66 :
A. I. R. 1925 Lah. 625.

———*Evidence.*

Where it is unobjectionable on the part of the presiding Judge of a Court to caution a witness to speak the truth, it is wholly

PRACTICE

wrong to tell the witness that no matter what evidence he gives, no action would be taken against him. *Emperor v. Mahana Singh.*

12 Cr. L. J. 73 :
9 I. C. 436 : 63 P. L. R. 1911.

— Court hours.

The hours prescribed by the rules of the High Courts for sitting are intended not only to suit the convenience of the Courts but also of the parties, and a Court has no right to take up any case after the prescribed Court hours without the consent of the parties. *Gulai Jha v. Emperor.*

29 Cr. L. J. 299 :
107 I. C. 827 : 9 P. L. T. 344 :
A. I. R. 1928 Pat 277.

See also *Emperor v. Akhileshwari Prasad.*

26 Cr. L. J. 1441 :
89 I. C. 961 : 4 Pat. 646 :
A. I. R. 1925 Pat. 772.

— Complaint by Magistrate.

A Magistrate ought not to make any order in any case in which he is even the nominal complainant. *Rup Lal v. Emperor.*

16 Cr. L. J. 801 (a) :
31 I. C. 817 : A. I. R. 1915 All. 484.

— Criminal trial—Duty of Court.

A Criminal Court is not bound by all the statements of a complainant. Its duty is to find out the truth in the midst of the conflicting evidence. *Emperor v. Somnath.*

13 Cr. L. J. 300 :
14 I. C. 764 : 14 Bom. L. R. 135.

— Review.

Under the provisions of the Cr. P. C., the High Court has no power to review its own judgment. *Nagangowda Nilapagowda v. Emperor.*

18 Cr. L. J. 889 :
41 I. C. 1001 : 19 Bom. L. R. 605 :
A. I. R. 1917 Bom. 238.

— Appeal—Judgment.

A judgment in a criminal appeal which proceeds on a wrong view of the facts of the case, enters into matters on confusion of ideas and dismisses the defence evidence too cursorily is vitiated and cannot be upheld. *In re : Nagi Reddy.*

30 Cr. L. J. 1160 :
120 I. C. 69 : I. R. 1929 Mad. 1029 :
A. I. R. 1930 Mad. 443.

— Appeal—Sessions Judge finding case triable by Sessions Court—Procedure.

When a Sessions Judge on appeal finds that the case against the accused is in reality one triable by a Court of Session, he should not modify the charge and alter the sentence but should direct that the accused be admitted for trial to the Court of Session on the new charge. *Hasan Raza v. Emperor.*

23 Cr. L. J. 456 :
67 I. C. 728 : 20 A. L. J. 568 :
4 U. P. L. R. All. 152 : A. I. R. 1922 All. 345.

— Appeal—Dismissal in default.

When once a criminal appeal has been admitted and a date fixed for its hearing, it cannot be dismissed in default. *Ram Chandra v. Emperor.*

24 Cr. L. J. 662 :
73 I. C. 694 : 21 A. L. J. 109 :
A. I. R. 1923 All. 175.

PRACTICE

— Privy Council as Court of Appeal.

The Privy Council, in advising His Majesty, does not act in criminal matters as a Court of Criminal Appeal, and is not concerned to regulate procedure of Courts in India or to criticise what is mere matter of procedure. The principles laid down by the Judicial Committee as regulating its interposition with the course of criminal administration of justice in India, are well settled. Their Lordships' Board will not interfere merely because there has been a departure from the statutory requirements of procedure, unless there has thereby been a violation of the principles of natural justice and the irregularity complained of has in fact occasioned a substantial failure of justice. *Atta Mohammad v. Emperor.*

31 Cr. L. J. 378 :
122 I. C. 17 : 31 P. L. R. 150 :
31 L. W. 306 : 32 Bom. L. R. 529 :
7 O. W. N. 299 : 51 C. L. J. 455 :
58 M. L. J. 363 : 34 C. W. N. 565 :
11 Lah. 192 : A. I. R. 1930 P. C. 57.

— Evidence—Duty of Crown.

The doctrine that the Crown is not bound to call witnesses on whom it does not rely, must not be pressed too far. It is its clear duty to produce all persons, who lay claim to a first-hand knowledge of the incidents under trial, and if the prosecution do not choose to place them in the witness-box, it must at least tender them to the defence for cross-examination. *Imperator v. Jumo.*

11 Cr. L. J. 410 :
6 I. C. 847 : 3 S. L. R. 200.

— Revision—Right of accused.

The mere fact that a reference has been made to the High Court by a Sessions Judge for enhancement of sentence, has not the effect of depriving the accused of the right to apply to the High Court in revision. *Kohna Ram v. Emperor.*

23 Cr. L. J. 496 :
68 I. C. 32 : 20 A. L. J. 775 :
4 U. P. L. R. All. 162 :
A. I. R. 1922 All. 502.

— Criminal trial.

An order directing the accused that he must be ready with his witnesses for the defence on a certain date after the examination of the remaining prosecution witnesses, is not a proper order. *Keshab Deo v. Emperor.*

25 Cr. L. J. 1003 :
81 I. C. 715 : A. I. R. 1924 All. 320.

— Transfer—Trying case on gazetted holiday.

It is highly objectionable on the part of a Magistrate to commence a trial on a gazetted public holiday and to examine all the prosecution witnesses on such day. When this is done on the request of Police Officer, there is good ground for transfer. *Ram Diya v. Emperor.*

29 Cr. L. J. 294 :
107 I. C. 779 : A. I. R. 1928 Lah. 334.

— Evidence of pardanashin woman.

Though the Court has a discretion to issue a Commission in a criminal case for the exa-

PRACTICE

mination of a *pardunashin* woman, the better course is to examine her in Chambers rather than issue a Commission for the examination at her residence, especially where her identity is in question. *Mahomed v. Bacho*.

31 Cr. L. J. 115 :
120 I. C. 518 : A. I. R. 1930 Sind 56.

—Criminal trial—Facts constituting two offences—Conviction for more serious offence.

When the facts proved in a case constitute two or more offences, the Court should convict of, and punish for, the most serious offence that is established provided the accused has been charged with, and has had an opportunity of meeting the charge of that offence. *Nga Shan v. Emperor*.

24 Cr. L. J. 529 :
73 I. C. 145 : 11 L. B. R. 422 :
A. I. R. 1923 Rang. 37.

—Evidence.

Where a Magistrate makes use of knowledge derived from a local inspection without affording the accused an opportunity to cross-examine or to explain the points against him, he acts with material irregularity sufficient to vitiate the trial. *Moniruddin v. Emperor*.

22 Cr. L. J. 442 :
61 I. C. 794 : 2 P. L. T. 455 :
A. I. R. 1921 Pat. 415.

—Criminal trial—Previous litigation—Enmity—Prosecution evidence—Failure to call all prosecution witnesses—Inference.

The fact that the accused have been generally the complainants or plaintiffs in some previous criminal and other proceedings started against the complainants, would not justify the Magistrate to consider that the complainants had reasons of enmity against the accused and not *vice versa*. There must be some limit to the number of witnesses which a Court is asked to hear, and no argument favourable to the accused can be based on the fact that one or two witnesses, out of a large number, have not been called by the prosecution. *Emperor v. Narotam*.

24 Cr. L. J. 770 :
74 I. C. 434 : 10 O. L. J. 68 :
A. I. R. 1923 Oudh 217.

—Stay—Criminal trial, stay of, pending civil suit—Production of forged document in evidence—Prosecution by party.

There is no invariable rule that a criminal proceeding should be stayed pending the result of civil litigation which deals with the same matter. Where a Civil Court finds a document to be forged and a criminal prosecution is instituted against a party in respect of the document, the mere fact that an appeal has been preferred in the civil case in which the finding of the trial Court may be reversed, is no ground for staying the prosecution. Although the Cr. P. C. allows it, it is very reprehensible to allow a party to a civil litigation to prosecute his opponent for forgery in respect of a document produced in the civil case. *Bhagirath Bhagal v. Ram Narayn Sahu*. 30 Cr. L. J. 1144 :
120 I. C. 45 : I. R. 1929 Pat. 685 :
A. I. R. 1930 Pat. 194.

PRACTICE

—Evidence—Cross-examination, mode of.

In criminal cases, it is customary for the cross-examination of each witness for the defence to be made immediately after his examination-in-chief, and not postponed till after the examination-in-chief of all the defence witnesses. This practice should not be departed from against the wishes of the accused, and to his possible prejudice. *Po Wa v. Emperor*.

3 Cr. L. J. 23 :
3 L. B. R. 109 : 11 Bur. L. R. 293.

—Dispute as to title and right.

The practice of taking to the Criminal Courts disputes involving questions of right and title condemned. *Amrit Majhi v. Emperor*.

20 Cr. L. J. 508 :
51 I. C. 668 : 29 C. L. J. 322 :
23 C. W. N. 623 : 46 Cal. 854 :
A. I. R. 1919 Cal. 59.

—District Magistrate's powers of supervision.

It is competent for the District Magistrate, in his capacity as the principal Court of original Criminal Jurisdiction in the District, to supervise the Subordinate Courts under him and give general instructions as to procedure, punishments and other matters of discretion. But such instructions are subject to correction by the Courts superior to him and cannot deprive Subordinate Courts of a discretion vested in them by law. *Rala Ram v. Bula*.

2 Cr. L. J. 43 :
6 P. R. Cr. 1905 : 6 P. L. R. 263.

—Duty of Court—Act conferring on authority power to make order—Penalty sought for, its breach—Duty of Court.

Where an Act confers upon an authority power to make an order in certain conditions, and it is sought to impose a penalty for breach of an order made by the authority, it is incumbent upon the Court hearing the charge to consider whether the order was properly made and to be satisfied on two points : first that the authority has acted reasonably and not capriciously or oppressively, and secondly, that the conditions imposed by the Statute have been observed. (F. B.)

39 Cr. L. J. 792 :
176 I. C. 839 : 40 Bom. L. R. 483 :
1938 Bom. 403 : 11 R. B. 53 :
A. I. R. 1938 Bom. 338.

—Duty of Magistrate to know character of population.

The Magistrates are only doing their duty when they have regard to, and make themselves acquainted with, the character of the population amongst whom they have to administer justice. They are not only entitled but bound to do so. *Emperor v. Ghulam Hoosein*.

10 Cr. L. J. 427 :
3 I. C. 958 : 11 Bom. L. R. 849.

—Value of.

The practice of the Court forms the law of the Court and the Court should be loath to depart from the established practice,

PRACTICE

unless convinced that it has not the sanction of law and is grossly erroneous. *Budhu Lall v. Chotu Gope*.

18 Cr. L. J. 793 :
41 I. C. 313 : 25 C. L. J. 401 :
21 C. W. N. 654 :
A. I. R. 1917 Cal. 527.

—————*Enforcing attendance of witnesses.*

A Magistrate having once issued process against a witness for the defence is bound to enforce his attendance and grant an adjournment of the trial for that purpose. *Mihir Lal Roy v. Emperor*. 24 Cr. L. J. 370 : 72 I. C. 370 : A. I. R. 1924 Cal. 534.

—————*Bail, enhancing of.*

It is open to a Magistrate to demand enhanced bail during the course of the trial, if there are circumstances, which, in his opinion, call for that course to be taken. *Keshab Doo v. Emperor*. 25 Cr. L. J. 1003 : 81 I. C. 715 : A. I. R. 1924 All. 320.

—————*Sentence—Enhancement.*

Although it is contrary to ordinary practice to proceed in an application for enhancement of sentence by a private complainant, the High Court will take action on such an application where it is supported by a report from the District Magistrate. *Hoosrini Allahrahkio v. Jaffar Fadu*. 11 Cr. L. J. 593 : 8 I. C. 218 : 4 S. L. R. 86.

—————*Sentence—Enhancement.*

It has been the invariable practice of the Bombay High Court, in cases that come up before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis. *Emperor v. Chinto Bheirava*. 7 Cr. L. J. 119 : 10 Bom. L. R. 93 : 32 Bom. 162.

—————*Sentence—Enhancement.*

Enhancement of sentence is a very serious proceeding, and where there is a proposal to that effect, it must be supported by Government Pleader with cogent reasons. *Emperor v. Shamji Ramchandra Gujar*. 15 Cr. L. J. 365 : 23 I. C. 733 : 16 Bom. L. R. 202 : A. I. R. 1914 Bom. 29.

—————*European British subject—Rights and liabilities of.*

The privileges which a European British subject enjoys when tried for an offence by a District Magistrate are firstly: that the Magistrate's powers of punishment are much restricted, and secondly, that he can claim trial by Jury. But where the sentence passed by the Magistrate is such as he could legally have passed in the case of a European British subject, and the latter does not claim the privilege of a trial by Jury, there is no reason why against his will he should be forced to undergo a new trial. In such case, when the accused has been tried and convicted by the Magistrate and he appeals to the Sessions Judge,

PRACTICE

the latter should dispose of the appeal on the merits. *George Powell v. Emperor*.

2 Cr. L. J. 17 :
2 A. L. J. 20 : I. L. R. 27 All. 397 :
25 A. W. N. 5.

—————*Confession.*

Where the only evidence against an accused person is his own confessional statement, the Court must except the whole of the statement. *In re : Kaliri*. 26 Cr. L. J. 1143 : 88 I. C. 455 : A. I. R. 1925 Mad. 1069.

—————*Evidence—Examination of witnesses by Counsel in his chamber.*

There is no objection to Advocates and Pleaders examining witnesses in their chambers or elsewhere if they think fit to do so and before such witnesses appear in Court. Such examining is not made with intent to fix witnesses down to certain evidence, but is made to ascertain what they know and to enable the case to be conducted properly. *Jordan v. Emperor*. 13 Cr. L. J. 299 : 14 I. C. 763 : 5 Bur. L. T. 38.

—————*Exhibits—Translation.*

According to the usual practice of the High Court, the person filing an exhibit must cause to be translated by a competent translator of the Court, all such exhibits as he may desire to file. *R. Saigal v. Emperor*. 31 Cr. L. J. 840 : 125 I. C. 470 : 1930 A. L. J. 713 : A. I. R. 1930 All. 401.

—————*Expenses for proper administration of justice.*

Even if considerable expense is incurred by the State in the proper administration of justice, yet that expense must be incurred and injustice must not be perpetrated simply because justice is expensive. *U Po Mya v. The King*. 39 Cr. L. J. 576 : 175 I. C. 350 : 10 R. Rang. 483 : A. I. R. 1938 Rang. 198.

—————*Expunging remarks.*

The High Court has power, in a proper case, to remove remarks made in a judgment against a person. *Baddu Khan v. Emperor*. 29 Cr. L. J. 336 : 108 I. C. 124 : A. I. R. 1928 All. 182.

—————*Evidence—Duty of prosecution.*

There is no rule of law that the prosecution must summon every eye-witness who has seen the occurrence. *Parbhu Dusadh v. Emperor*. 28 Cr. L. J. 868 : 104 I. C. 708 : A. I. P. 1928 Pat. 46.

—————*Granting—Copy of remarks imputing misconduct to Pleader.*

It is but right that an Advocate against whom remarks have been made by a Court imputing to him misconduct, should have furnished to

PRACTICE

him a copy of the written judgment containing those remarks. *In re : Phillip Godinho.*

1 Cr. L. J. 636 :
6 Bom. L. R. 540.

———*Privy Council, appeal—Stay of death sentence.*

As the Judicial Committee of the Privy Council is not a Court of Criminal Appeal, the tendering of advice to his Majesty as to the exercise of his prerogative of pardon is a matter for the Executive Government and is outside the province of the Judicial Committee. Their Lordships were, therefore, unable to make any order on an application to stay execution of a sentence of death while an appeal to the Board was pending. *Balmokund v. Emperor.*

16 Cr. L. J. 494 :
29 I. C. 334 : 19 C. W. N. 674 :
17 M. L. T. 441 : 21 C. L. J. 522 :
17 Bom. L. R. 487 :
2 L. W. 602 : 42 Cal. 739 : 42 I. A. 133 :
A. I. R. 1915 P. C. 29.

———*Granting leave to appeal to Privy Council.*

It is an ordinary criterion applicable to all petitions for special leave to appeal to the Privy Council that leave will not be granted where, upon the face of the application, it is plain that on the merits, it is bound to fail. *Bhagat Singh v. Emperor.*

32 Cr. L. J. 727 :
131 I. C. 415 : 35 C. W. N. 646 :
1931 A. L. J. 448 :
8 O. W. N. 846 : 53 C. L. J. 383 :
1931 M. W. N. 601 :
12 Lah. 280 : 34 L. W. 57 :
33 Bom. L. R. 950 :
32 P. L. R. 658 : 61 M. L. J. 279 :
I. R. 1931 P. C. 143 :
A. I. R. 1931 P. C. 111.

———*Greater relief claimed—Smaller relief, grant of.*

A Court can grant a smaller relief though it is not specifically prayed for, because the greater relief always includes the smaller. *Emperor v. Milkha Singh.*

30 Cr. L. J. 1006 :
119 I. C. 227 : I. R. 1929 Lah. 835 :
A. I. R. 1929 Lah. 667.

———*Hearing Accused's Counsel.*

A Magistrate cannot deliver judgment without allowing the accused's counsel to address the Court on behalf of his client. *Emperor v. Ibo.*

1 Cr. L. J. 760 :
6 Bom. L. R. 665.

———*Date fixed—Expediting date.*

A criminal case once fixed for a future date may be heard at an earlier date provided due notice is given to the accused or his Pleader. *Raotmal v. Sampal.*

29 Cr. L. J. 1092 :
112 I. C. 676 : 11 N. L. J. 260 :
A. I. R. 1929 Nag. 42.

PRACTICE

———*Practice.*

Court stopping Counsel's arguments with promise to hear him further—Decision given against Counsel's client—Procedure illegal. *In re : Anup Ram.*

12 Cr. L. J. 64 :
9 I. C. 350 : 13 Bom. L. R. 27.

———*High Court—Power of Full Bench to deal with whole case.*

Although a particular point is referred to a Full Bench for opinion, the Full Bench has power to look into the circumstances under which the reference was made and to deal finally with the appeal out of which the reference has arisen. *Emperor v. Kiru.*

12 Cr. L. J. 364 :
11 I. C. 132 : 10 P. R. 1911 Cr. :
24 P. W. R. 1911 Cr. : 205 P. L. R. 1911.

———*Identification of things containing poison.*

Judges who try cases of murder by poisoning, should invariably put beyond the possibility of doubt the identification of every single thing that is suspected to contain any poison. The evidence should be complete as to the history of such articles, and it should be shown that they have been kept in proper custody throughout, if they are to be relied on as supporting a conviction. *Emperor v. Shridhar Nana.*

2 Cr. L. J. 585 :
7 Bom. L. R. 640.

———*Basing judgment on private opinion of a person—Illegality.*

It is illegal for a Judge to introduce into his judgment any person's opinion privately given to him and he commits a very grave judicial impropriety if his judgment has in any way been influenced by the said opinion. *Muzam-mal v. Emperor.*

10 Cr. L. J. 321 :
3 I. C. 623 : 8 P. W. R. 1909 Cr.

———*Inquiry into truth of complaint.*

Where a Magistrate is inquiring into the truth of a complaint, he can examine all those who know about the matter, and it is immaterial at what stage they are called as long as opportunity for cross-examination is allowed. *Fatima v. Captain McCormick.* (F. B.)

14 Cr. L. J. 149 :
19 I. C. 149 : 6 Bur. L. T. 21.

———*Privy Council—Special leave to appeal, grant of.*

The Privy Council will interfere if there has been any departure from the ordinary rules of procedure, such as to amount to a denial of ordinary justice, but where the matter depends upon the particular view taken of sections of any act, it cannot be said that grave and substantial injustice has been done. *Umra v. Emperor.*

26 Cr. L. J. 1020 :
87 I. C. 844 : 21 L. W. 160 :
48 M. L. J. 61 : 2 O. W. N. 5 :
27 Bom. L. R. 701 : 3 P. L. R. 93 Cr. :
6 Lah. 45 : 52 I. A. 121 :
A. I. R. 1925 P. C. 52.

PRACTICE

—Interference by Privy Council.

It is no part of the duty of the Board of the judicial Committee in criminal cases to sit as a Court of Criminal Appeal, but only to correct what they regard as a miscarriage of justice, if it has occurred. *Mangal Singh v. Emperor*. 38 Cr. L. J. 573 :

168 I. C. 432 : 1937 O. W. N. 540 :
9 R. P. C. 284 : 3 B. R. 501 :
41 C. W. N. 805 : 39 P. L. R. 426 :
1937 O. L. R. 297 : 46 L. W. 33 :
1937 M. W. N. 633 (2) :
31 S. L. R. 300 : 64 I. A. 134 :
1937, 2 M. L. J. 684 P. C. :
39 Bom. L. R. 960 : 1937 A. W. R. 1014 :
I. L. R. 1937 Lah. 371 :
A. I. R. 1937 P. C. 179.

—Irrelevant issue—Court, whether bound to decide.

A party cannot call upon the Court to express its opinion on an issue which is no longer alive. The function of the Court whether sitting singly or sitting as a Bench whether a Division Bench or a Full Bench, is limited to decide some issue in being between two parties. *Emperor v. Tika Ram*.

29 Cr. L. J. 910 :
111 I. C. 670 : 26 A. L. J. 1201 :
A. I. R. 1928 All. 680.

—Appeal—Hearing by Judge directing prosecution.

A Judge who has directed a prosecution should not hear the appeal of the accused when convicted. *Emperor v. Htuktatwe*.

1 Cr. L. J. 1021 :
2 L. B. R. 302.

—Judgment—Citations.

Commentaries, of course, are very useful things, but they must be used with discretion and with discrimination and the mere citation of a long list of authorities does not of itself make a bad judgment a good judgment or correctly conclude the matter. *Sugnomal Tahilram v. Phatandas Relumal*.

38 Cr. L. J. 133 (b) :
166 I. C. 83 (2) : 30 S. L. R. 327 :
9 R. S. 120 : A. I. R. 1936 Sind 237.

—Jurisdiction—Magistrate seeking advice of District Magistrate, properly of—Jurisdiction—Magistrate bound to decide question himself.

A Magistrate, before whom an accused is placed on trial, cannot seek the advice of the District Magistrate on the question of jurisdiction. The Magistrate is bound to finish his inquiry, complete his record by the reception of all evidence of relevant facts, including the facts, which bear upon the question of accused's amenability to his jurisdiction, and then as a Magistrate pass such order as seems to him to be proper. *Emperor v. Abdul Rahiman Momin*. 13 Cr. L. J. 786 :

17 I. C. 530 : 14 Bom. L. R. 891.

—Evidence—Witnesses in attendance not examined—Procedure.

Where a Magistrate is unable to record the evidence of the witnesses in attendance on the date fixed and the case is adjourned, the

PRACTICE

witnesses should be told to appear on the adjourned date and the party should not be required to resubmit them. *Balmikand v. Nanak Chand*. 13 Cr. L. J. 176 :

13 I. C. 928 : 3 P. W. R. 1912 Cr. :
60 P. L. R. 1912.

—"Proof", meaning and use of.

Although technically the word 'proof' means 'evidence,' yet in an interlocutory order, the expression should be avoided as the fact cannot be held to be 'proved' until it comes to the final adjudication. *Amba Prashad v. Imam Ali*. 40 Cr. L. J. 79 :

178 I. C. 507 : 11 R. L. 461 :
A. I. R. 1938 Lah. 706.

—Murder case—Plea of guilty—Acceptance of.

It is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death. *Emperor v. Chinia Bhika Koli*.

3 Cr. L. J. 337 :
8 Bom. L. R. 240.

—New case.

The prosecution should not be allowed to set up a new case at a late stage. *Emperor v. Diwan Chand Jolly*. 31 Cr. L. J. 692 :
124 I. C. 347 : A. I. R. 1930 Lah. 81.

—New plea in appeal.

It is the practice of the Allahabad High Court in appeal to give little or no weight to the allegations or charges of a defendant or accused if they ought to have been put to the plaintiff or complainant or his witnesses and have not been so put. *Emperor v. Jhabbar Mal*.

30 Cr. L. J. 530 :
115 I. C. 872 : 26 A. L. J. 196 :
I. R. 1929 All. 472 :
A. I. R. 1928 All. 222.

—Trial with assessors—One of them found disqualified—De novo trial.

Where it is discovered, after the trial has begun, that one of them is interested or otherwise unfit to sit as an assessor, the Sessions Judge should refer the case to the High Court to set aside the order by which the incompetent assessor was appointed and all the subsequent proceedings in the trial. In such cases, the Sessions Judge ought to choose another assessor and proceed with the trial *de novo*. *Sessions Judge of Tanjore v. Thiagaraja Thevan*.

13 Cr. L. J. 473 :
15 I. C. 313 : 1912 M. W. N. 378.

—Notices and prohibitory orders, proper form.

It is important that notices and prohibitory orders should be in proper form, and a failure to scrutinise and correct them may well cause subsequent difficulties in the administration of justice. *S. A. Santiago v. Emperor*.

38 Cr. L. J. 230 :
166 I. C. 303 : 9 R. N. 120 :
I. L. R. 1937 Nag. 185 :
A. I. R. 1936 Nag. 237.

PRACTICE

———*Original side of the High Court.*

The practice on the Original Side of the Court is to lay the papers before the Government Solicitor for him to take action thereon, if he thinks fit. *Kedar Nath Kar v. Emperor.*

3 Cr. L. J. 329;
3 C. L. J. 357.

———*Order of Sessions Judge addressed to Magistrate—Refusal of the District Magistrate to forward.*

The District Magistrates should forward orders of Sessions Judges to the Magistrates to whom they are addressed, and they cannot withhold them on the ground of their being illegal. A revision of such orders can, however, be obtained by moving the High Court through the Law Officers of the Crown. *Gangadhara Padayachi v. Velayada Pillai.*

11 Cr. L. J. 327 :
6 I. C. 358.

———*Order passed by District Magistrate in absence of statutory authority, effect of—Power of Magistrate to do an act, where to be derived from.*

The authority of every Magistrate to do an act as Magistrate or as Collector, if such authority exists, must ultimately be found in the powers conferred by Parliament. The immediate power may be an executive order of the local administration, but the power of the local administration to make an order must be derived, either directly or indirectly from Parliament, and it is a mistake to assume that because an officer is an Executive Officer or a Judicial Officer, he has any power to interfere with private or public persons which cannot be derived from a lawful origin. *Musammal Gauhar v. Emperor.*

15 Cr. L. J. 668 :
25 I. C. 996 : 17 O. C. 263 :
1 O. L. J. 481 : A. I. R. 1914 Oudh 381.

———*Panchnama—Proof of.*

It is necessary if a *Panchnama* is to be put in, that it should be legally proved, for it does not prove itself. *Moti Dongarshet Gujar.*

3 Cr. L. J. 41 :
7 Bom. L. R. 978.

———*Passing sentence—Time for.*

No Court has an inherent power to adjourn the passing of a sentence for an indefinite period. *Emperor v. Keshavlal.*

13 Cr. L. J. 288 :
14 I. C. 672 : 14 Bom. L. R. 144.

———*Prosecuting Inspector—Proper place in Court.*

The practice in magisterial Courts for a Prosecuting Inspector to occupy a seat on the dais at the Magistrate's desk when prosecuting cases sent up by the Police for trial, is improper, and should cease. The proper place for the Prosecuting Inspector is below the dais of the Court where the Pleader for the defence stands on an equality with him. *Debi Din v. Emperor.*

12 Cr. L. J. 579 :
12 I. C. 843 : 8 A. L. J. 1235.

PRACTICE

———*Plea of guilty by Pleader on behalf of accused.*

No pleader can be called upon to plead on behalf of his client "guilty" or "not guilty" and it is improper for a Magistrate to act on such plea. It would be more regular in form, if a Magistrate were to call on the accused to say with his own lips whether he denies the truth of the complaint. *Emperor v. Sursing Mathuradas.*

1 Cr. L. J. 939 :
6 Bom. L. R. 864.

———*Plea of guilty to charge of murder—Conviction for culpable homicide, legality of.*

A Sessions Judge is not competent to convict an accused for culpable homicide, not amounting to murder when he had recorded his plea of guilty to a charge of murder. *Emperor v. Wathu.*

10 Cr. L. J. 5 :
2 I. C. 372 : 3 S. L. R. 58.

———*Retrial—Previous findings, effect of.*

When a case is directed, to be retried, the Judge retrying it cannot go behind the findings of fact which were accepted by all the Courts and which were the basis on which a retrial was ordered. *Subbaraya Pillai v. Krishnaswami Pillai.*

15 Cr. L. J. 619 (b) :
25 I. C. 627 : A. I. R. 1915 Mad. 337.

———*English precedents.*

Decisions of Judges are, of course, of the greatest value in assisting Judges, before whom similar points subsequently arise for decision, to construe the meaning of statutory provisions, and are frequently of binding authority; but care must be taken in utilizing for this purpose decisions of the English Courts. Before applying an English decision, it must first be ascertained how far the statute law of India coincides with the law of England. Where the law of India appears to be the same as the law of England, the decisions of the English Courts form a most valuable guide to the Courts in India, and a decision of the House of Lords must be considered to be of paramount authority in India. *Emperor v. U Damapala.* (F. B.)

38 Cr. L. J. 524 :
168 I. C. 193 : 14 Rang. 666 :
9 R. Rang. 340 : A. I. R. 1937 Rang. 83.

———*Precedents—Head-note, value of.*

If a head-note, to a reported case is in any way inconsistent or not wholly reconcilable with the body of the judgment, it is the latter that must undoubtedly be looked upon as authoritative. *Tara Chand Marwadi v. Emperor.*

30 Cr. L. J. 724 :
117 I. C. 210 : I. R. 1929 Nag. 194 :
A. I. R. 1929 Nag. 279.

———*Precedents, value of.*

The Courts in Upper Burma are bound by the Upper Burma Rulings. *Nga Tha Kin v. Emperor.*

12 Cr. L. J. 448 :
11 I. C. 792 : U. B. R. (1911), I, 87.

PRACTICE

—Proceedings under S. 145, Cr. P. C.—
Local inspection.

Where in a proceeding under S. 145, Cr. P. C., the Magistrate, before beginning to hear the case, goes to the spot in order to see the exact land in dispute and the features of the disputed property, and does not take any evidence on the spot or direct his inquiry to any matter which can be proved by oral evidence and places on record a note of his inspection; he acts within his jurisdiction. *Lachmi Narain v. Mukhlram.*

24 Cr. L. J. 507 :
72 I. C. 971 : A. I. R. 1923 Pat. 31.

—Prosecution of witnesses.

District Magistrate ordering witnesses in a case before a Subordinate Magistrate to be made co-accused—Witnesses not to be prosecuted ordinarily before close of case. *Umed Raja v. Emperor.*

15 Cr. L. J. 428 :
24 I. C. 164 : 16 Bom. L. R. 259 :
A. I. R. 1914 Bom. 21.

—Prosecution of witness for perjury.

While a case is pending, it is undesirable to start prosecution of a witness for perjury or other offence which the witness appears to have committed in connection with the case. *Ahmad Yar Khan v. Emperor.*

11 Cr. L. J. 171 :
5 I. C. 602 : 1 P. W. R. 1910 Cr.

—Reception of private communication by Magistrates.

Magistrates should not receive any private communications from the parties or their Counsel relating to cases pending before them. *Dayawanti v. Bita Nand.*

30 Cr. L. J. 1048 :
119 I. C. 327 : I. R. 1929 Lah. 871 :
30 P. L. R. 657 : A. I. R. 1929 Lah. 702.

—Reconstruction of statement.

Reconstruction, if conducted with care, is likely to be a useful test of the veracity of the witness, but it is nothing more, and the Court's note regarding reconstruction is not evidence and cannot take the place of evidence. *Emperor v. Balochkhan.*

11 Cr. L. J. 498 :
7 I. C. 601 : 4 S. L. R. 38.

—Renewal of complaints—Cr. P. C., S. 253—Discharge—Dismissal of complaint—Judicial discretion.

The petitioners were prosecuted by A for robbery of his mare under cover of levying from him a debt due to him. The complaint was dismissed under S. 253, Cr. P. C. Subsequently, the petitioners were prosecuted by A for cheating him by refusing to hand over to him his mare and a receipt for the debt. This prosecution also failed and then A prosecuted the petitioners for the robbery of his mare under cover of levying from him the debt. The Magistrate ordered process to issue on this renewed complaint: *Held*, that the Magistrate failed to exercise sound judicial discretion in proceeding with

PRACTICE

the renewed complaint and that the proceedings should be quashed. *Mahomed Hashim v. Emperor.*

11 Cr. L. J. 582 :
8 I. C. 202 : 4 S. L. R. 52.

—Security proceedings—Retrial by Appellate Court.

Where in an appeal against an order directing an accused person to furnish security, the Appellate Court comes to the conclusion that the evidence on the record is not sufficient to justify an order demanding security, the order must be set aside. The Appellate Court has no power to direct a retrial. *Khem Chand v. Emperor.*

26 Cr. L. J. 1339 :
89 I. C. 315 : 1 L. C. 66 :
A. I. R. 1925 Lah. 625.

—Retrial not asked—Conviction by High Court.

Where a case might properly have been tried under the Arms Act, or the Explosive Substances Act, and the Public Prosecutor did not ask for an order for a retrial: *Held*, that the High Court could not convict under either of the enactments without a fresh trial. *Emperor v. Joseph Kangani.*

11 Cr. L. J. 645 (a) :
8 I. C. 397 : 8 M. L. T. 296.

—High Court Bench, power of—Rule, issue of, by High Court—Hearing before another Bench.

The fact that one Bench of a High Court has issued a rule *ex parte* to the opposite party to show cause why an application should not be granted, does not preclude another Bench hearing the rule from dismissing the application on the ground of limitation. *Kishen Dayal v. Darjeeling Municipality.*

28 Cr. L. J. 639 (b) :
103 I. C. 63 : 54 Cal. 394 :
A. I. R. 1927 Cal. 574.

—Rules of prudence, value of.

Where a rule of practice or prudence conflicts with the law as laid down by the Legislature, Courts are bound to follow the law. *Emperor v. C. A. Mathews.*

31 Cr. L. J. 809 :
125 I. C. 281 : A. I. R. 1929 Cal. 822.

—Sentence—Offence under different sections.

Where there are different definitions of the same offence or where the same offence is provided for in different sections or by separate and different provisions in the Code, under no circumstances, should the accused be sentenced to a greater punishment than the highest penalty contained in one of the provisions under which he may be convicted. *Dharamdeo Singh v. Emperor.*

17 Cr. L. J. 418 :
35 I. C. 978 : 14 A. L. J. 738 :
A. I. R. 1916 All. 49.

—Sessions trial—Cross-examination of witnesses—Necessity of.

Counsel for an accused applied for permission to cross-examine witnesses on the day following as he was not prepared to cross-examine them that day, but the Court refused permission,

PRACTICE

Upon this, the Counsel did not appear, and a number of witnesses were consequently not cross-examined: *Held*, that the application was a reasonable one and should have been granted: *Held*, further, that the trial should commence *de novo* before another Judge. *Sadasiv Singh v. Emperor*. 15 Cr. L. J. 596 : 25 I. C. 348 : 41 Cal. 299 : A. I. R. 1914 Cal. 834.

—————*Single Judge differing from decision of Division Bench—Procedurc.*

The only course open to a single Judge, if he doubts the correctness of a decision of a Division Bench of the High Court, is to refer the matter for decision to a larger Bench. *Emperor v. Heman Gope*. 21 Cr. L. J. 779 : 58 I. C. 459 : 1 P. L. T. 349 : A. I. R. 1920 Pat. 232.

—————*Stay of criminal case pending civil case.*

Where the main question involved in the criminal case is also involved in the civil suit, the criminal case should not be proceeded with. *Dasai Singh v. Emperor*. 31 Cr. L. J. 446 : 122 I. C. 719 : A. I. R. 1929 Pat. 513.

—————*Stay of criminal case pending civil case.*

The stay of criminal suit pending a civil one, is a matter for the discretion of the trial Court, and if that Court has exercised a judicial discretion, the High Court will not interfere in revision. *Hirday Narain Singh v. Emperor*.

30 Cr. L. J. 1101 :
119 I. C. 888 : I. R. 1929 Pat. 616 :
10 P. L. T. 889 : A. I. R. 1929 Pat. 500.

—————*Stay of criminal proceedings pending civil suit.*

When the subject-matter for adjudication before a Civil Court is the same as before a Magistrate, the Magistrate would be exercising a wise discretion in staying criminal proceedings pending the decision of the Civil Court even though the civil suit is filed during the pendency of the criminal proceedings. *Phuman Singh v. Emperor*. 29 Cr. L. J. 47 : 106 I. C. 463.

—————*Stay of criminal proceedings pending civil case.*

Where a civil suit is lodged before criminal proceedings regarding the same transaction, it is proper, civil proceedings should have precedence, but in order that the evidence in the criminal cases might not disappear by delay, it might be recorded. *Jhumaklatsingh Puransingh v. Sundarlal Sharma*. 34 Cr. L. J. 119 : 140 I. C. 629 : 15 N. L. J. 21 : I. R. 1933 Nag. 5 : A. I. R. 1932 Nag. 86.

—————*Staying of Criminal case pending civil case—Requisites for—Criminal proceeding, stay of—Pendency of civil suit between same parties—Substantially same issues—Nced not be absolutely identical.*

Where the issues between the parties to two proceedings, civil and criminal, are not absolutely identical, but it is clear that if the accused who is the plaintiff in the civil suit succeeds in that suit, the prosecution which

PRACTICE

is private, must fall to the ground, the rule will apply and the prosecution should be stayed. *Kalina Bibi v. Macbul Ahmad*.

15 Cr. L. J. 488 :
24 I. C. 576 (b) : 7 Bur. L. T. 73 :
A. I. R. 1914 U. Bur. 18.

—————*Concurrent jurisdiction—Procedurc.*

Where an inferior Court has jurisdiction, to entertain an application, the application must be made to that Court first and its order obtained thereon before a superior Court is asked to exercise such jurisdiction in the matter as it may think fit. *Kamlapati Punth v. Emperor*.

27 Cr. L. J. 19 :
91 I. C. 51 : 23 A. L. J. 897 :
48 All. 23 : A. I. R. 1926 All. 27.

—————*Sessions Judge—Taking evidence in absence of Jury and accused—Legality of.*

It is not competent to a Sessions Judge to examine witnesses in a Jury trial after the Jury has gone and in the absence of the accused, and then to act on the evidence in determining whether or not he should differ from the Jury and refer the matter to the High Court. *Emperor v. Ningappa Sayaduppa*.

3 Cr. L. J. 42 :
7 Bom. L. R. 979

—————*Taking up cases late in the afternoon, condemned.*

Under the circular issued by the Lahore High Court to the subordinate Courts, no cases should be taken up by subordinate Courts after 4 p. m. Sub-divisional Officers should take criminal work first and the miscellaneous work as Sub-Divisional Officer and Collectors afterwards, as this procedure is calculated to save the parties, and their witnesses in criminal cases a great deal of inconvenience and trouble. *Dayawanti v. Bita Nand*.

30 Cr. L. J. 1048 :
119 I. C. 327 : I. R. 1929 Lah. 871 :
30 P. L. R. 657 : A. I. R. 1929 Lah. 702.

—————*Transfer of case—Muhammadian Magistrate ordering closing of Jhatka shop—Trial of case by such Magistrate.*

A Muhammadian Magistrate, whose order for the closing of a Jhatka shop by a person has been set at defiance by the accused, ought not to try the complaint on behalf of other Muhammadans against such person, especially when the dispute had been magnified into one of a religious nature and the religious feelings of Muhammadans were supposed to have been outraged. *Kirpa Singh v. Emperor*. 13 Cr. L. J. 601 : 16 I. C. 169 : 26 P. W. R. 1912 Cr.

—————*Trial by Jury.*

In a charge to the Jury it would amount to misdirection either to omit to give the Jury a suitable warning or to tell the Jury that an approver's evidence against a particular accused has received independent corroboration when this is not in fact the case. *Raghunath Pandey v. Emperor*. 34 Cr. L. J. 421 : 142 I. C. 809 : 13 P. L. T. 802 : I. R. 1933 Pat. 176 : A. I. R. 1933 Pat. 96.

PRACTICE

— *Trial of accused in his absence, legality of.*

The trial and conviction of an accused in his absence is wholly illegal and liable to be set aside. *Abdullah v. Emperor.*

28 Cr. L. J. 971 :
105 I. C. 683 (a) : 26 P. L. R. 239 :
A. I. R. 1927 Lah. 870.

— *Trying Magistrate witness for defence*
— *Trial, whether vitiated.*

The examination of a Magistrate as a witness does not in any way prevent him from deciding the case and the trial is not in any way vitiated by the fact that the trying Magistrate is himself examined as a witness for the defence. *Jawad Husain v. Emperor.*

28 Cr. L. J. 673 :
103 I. C. 401 : 1 Luck. Cas. 159 :
2 Luck. 503 : A. I. R. 1927 Oudh 296.

— *Non-compoundable case—Withdrawal of complainant—Effect.*

In a warrant case in respect of a non-compoundable offence, it is not competent to a Magistrate to enter an order of acquittal on a private complainant's offering to withdraw from the prosecution. *Emperor v. Ranchhod Bawla.*

14 Cr. L. J. 77 :
18 I. C. 413 : 15 Bom. L. R. 61 :
37 Bom. 369.

— *Witness improving on his former statement—Evidence—Colouring matter of blood on clothes and nail parings of accused—Murder.*

It is very unsafe to rely upon a witness who materially improves on his former statement. In the absence of reasonable proof of guilt, the presence of colouring matter of blood on certain articles of clothing of a person accused of murder or of mammalian blood on his nail parings is not of much consequence and can be explained in various ways. *Nadir v. Emperor.*

16 Cr. L. J. 75 :
26 I. C. 667 : 212 P. L. R. 1915 :
43 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 574.

— *Written arguments by Counsel—Right of accused's Counsel to be heard last.*

In matters where Counsel on behalf of the accused is entitled to be heard, he is entitled generally to be heard by an oral address and not by a written speech. Where Counsel on behalf of his client has the right of being last heard in the matter, Counsel is entitled to an opportunity to be so heard. *Vinayak Lakshman Bhatkhande v. Emperor.*

30 Cr. L. J. 185 :
113 I. C. 612 : 53 Bom. 119 :
30 Bom. L. R. 1530 :
I. R. 1929 Bom. 180 :
A. I. R. 1928 Bom. 557.

— *Wrong date of hearing—Party absent on date of hearing—Effect of.*

When a wrong date of hearing is notified to a party, and the matter proceeded with in his absence, at the next hearing when such party appears, he should be allowed to

PRECEDENTS

examine and cross-examine the witnesses examined in his absence. *Haji v. Emperor.*

30 Cr. L. J. 1124 :
120 I. C. 90 : I. R. 1929 Sind 234 :
A. I. R. 1930 Sind 52.

— *Privy Council—Interference in Criminal case of Judicial Committee in Criminal Appeals.*

The general principle is established that the Sovereign in Council does not act, in the exercise of the prerogative right to review the course of justice in criminal cases, in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only when it is shown that injustice of a serious and substantial character has occurred. An error in procedure may be of a character so grave as to warrant the interference of the Sovereign. Such error may, for example, deprive a man of a constitutional or statutory right to be tried by a Jury, or by some particular Tribunal. But where the error consists only in the fact that evidence has been improperly admitted, which was not essential to a result which might have been come to wholly independently of it, the case is different. The dominant factor is the broad one whether substantial justice has been done, and if substantial justice has been done, it is contrary to the general practice of the Board to advise the Sovereign to interfere with the result. *Dalsingh v. Emperor.*

18 Cr. L. J. 471 :
9 I. C. 311 : 15 A. L. J. 475 :
1 P. L. W. 661 : 19 Bom. L. R. 510 :
21 C. W. N. 818 : 26 C. L. J. 13 :
6 L. W. 71 : 22 M. L. T. 31 :
1917 M. W. N. 522 :
86 L. J. P. C. 140 :
33 M. L. J. 555 : 44 Cal. 876 :
113 N. L. R. 100 : 11 Bur. L. T. 54 :
A. I. R. 1917 P. C. 25.

PRECEDENTS

— *Calcutta rulings if binding on Patna High Court.*

Where there is a long course of decisions by the High Court of Calcutta upon a particular point, the Patna High Court will not depart from that settled course. *Paltu Singh v. Emperor.*

20 Cr. L. J. 37 :
48 I. C. 677 : 3 P. L. J. 641 :
A. I. R. 1918 Pat. 227.

— *Court's duty to follow ruling of its own High Court.*

A subordinate Court is bound to follow the rulings of the High Court to which it is subordinate in preference to rulings of other High Courts. *U Po Shein v. Ma Sein Mya.*

32 Cr. L. J. 114 :
128 I. C. 353 : 8 Rang. 460 :
I. R. 1931 Rang. 1 :
A. I. R. 1931 Rang. 89.

— *Duty of subordinate Courts to follow their own High Court.*

It is the duty of subordinate Courts to be guided by the decisions of the High Court

PRECEDENTS

to which they are subordinate rather than by the decisions of other High Courts. *In re: Thadi Subbi Reddi.*

32 Cr. L. J. 219 :
129 I. C. 72 : 59 M. L. J. 229 :
32 L. W. 273 : 1930 M. W. N. 689 :
I. R. 1931 Mad. 216 :
A. I. R. 1930 Mad. 869.

-----English precedents, use of.

Reliance on cases decided under the Criminal Law of England is liable to mislead, though such cases may sometimes be useful as illustrating principles. *Ram Subhag Singh v. Emperor.*

16 Cr. L. J. 641 :
30 I. C. 465 : 19 C. W. N. 972 :
A. I. R. 1916 Cal. 693.

-----Courts to follow rulings of their own High Court.

A Magistrate should not follow a ruling of a High Court to which he is not subordinate, when he has a ruling of the High Court to which he is subordinate before him. *Azizur Rahman v. Hansa.*

19 Cr. L. J. 925 :
47 I. C. 441 : 16 A. L. J. 715 : 40 All. 670 :
A. I. R. 1918 All. 417.

-----Oudh Chief Court — Decisions of late Judicial Commissioner's Court, whether binding.

The decisions of the late Judicial Commissioner's Court although they deserve all respect and should not be brushed away or treated lightly, are in no way authoritative after the establishment of the Chief Court. *Sheo Balak v. Emperor.*

27 Cr. L. J. 763 :
95 I. C. 283 : 3 O. W. N. 411 :
13 O. L. J. 615 : A. I. R. 1926 Oudh 367.

-----Courts to follow their own High Court.

It is the duty of subordinate Courts to be guided by the decisions of the High Court to which they are subordinate rather than by the decisions of other High Courts. *In re: Thodi Subbi Reddi.*

32 Cr. L. J. 219 :
129 I. C. 72 : 59 M. L. J. 229 :
32 L. W. 273 : 1930 M. W. N. 689 :
I. R. 1931 Mad. 216 :
A. I. R. 1930 Mad. 869.

-----Privy Council, rulings of.

The authority of the Judicial Committee on Indian Courts is far greater than that of any other Court in the British Isles. Decisions of the Privy Council, though entitled to very great weight everywhere, are not binding on King's Bench Division. A dictum of the Judicial Committee even if *obiter* is entitled to the highest respect from all Indian Courts. *In the matter of: Tushar Kanti Ghosh, Editor, "Amrita Bazar Patrika."* (F. B.)

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

-----Precedents—Privy Council ruling.

When the Privy Council interprets a section or lays down a principle of law, High Court

PREROGATIVE

is bound to follow the interpretation or principle whether it is *obiter* or not. *K. Hoshiele v. Emperor.*

41 Cr. L. J. 329 :
186 I. C. 486 : 44 C. W. N. 82 :
12 R. C. 510 : I. L. R. 1940, 1 Cal. 231 :
A. I. R. 1940 Cal. 97.

-----Privy Council ruling.

In order of reference—Even the *obiter dicta* of the Privy Council are entitled to the greatest respect. *Hakam Khuda Yar v. Emperor.* (F. B.)

41 Cr. L. J. 591 :
188 I. C. 498 : 13 R. L. 1 :
I. L. R. 1940 Lah. 242 :
A. I. R. 1940 Lah. 129.

-----Reference to Full Bench—When necessary.

Division Bench laying down law—Another Division Bench of same High Court. not agreeing with it—It should refer the matter to Full Bench. *Emperor v. Nga Hun Thaung.* (F. B.)

36 Cr. L. J. 1487 :
158 I. C. 784 : 13 Rang. 510 :
8 R. Rang. 202 : A. I. R. 1935 Rang. 370.

-----Statute susceptible to more than one interpretation—Authority of precedence.

Where there is authority for the interpretation of some part of a statute which is susceptible of more than one interpretation, authority must be followed, but where there is no ambiguity, dicta which might suggest that a meaning is imputed to a statute which it cannot bear, must be read in connection with the facts of the case in which they are expressed. *Zahid Beg v. Emperor.*

39 Cr. L. J. 364 :
173 I. C. 838 : 1937 A. L. J. 1253 :
10 R. A. 508 : 1937 A. W. R. 1099 :
A. I. R. 1938 All. 91.

-----Subordinate Courts, duty of.

A Subordinate Court is bound by the ruling of a superior Court, however unsound it may appear to it, unless it is expressly contrary to any statutory provision of law which was not brought to the notice of the superior Court, or unless it has been overruled. *Beni Ram v. Emperor.*

27 Cr. L. J. 310 :
92 I. C. 694 : A. I. R. 1926 All. 237.

-----Value of.

Right of private defence, proof of. *Nur Mahomed v. Emperor.*

26 Cr. L. J. 817 :
86 I. C. 465 : 6 L. L. J. 625 :
A. I. R. 1925 Lah. 276.

PREMISES

See also City of Bombay Municipal Act, 1888, S. 248.

PREROGATIVE

-----King's prerogative, how qualified—Qualification by Dominion or Colonial Act, when valid.

The King's prerogative cannot be restricted or qualified save by express words or by necessary intendment. In connection with Dominion or Colonial matters that principle

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)

involves that if the limitation of the prerogative is by a Dominion or Colonial Act, not only must that Act itself deal with the prerogative either by express terms, or by necessary intendment, but it must be the Act of the Dominion or Colonial legislature which has been endowed with the requisite power by an Imperial Act likewise giving the power either by express terms or by necessary intendment. *British Coal Corporation v. The King*.

157 I. C. 571 (P. C.) : 8 R. P. C. 38 :
A. I. R. 1935 P. C. 158.

PRESCRIPTION

———*Right to private ferry.*

A person is not entitled to claim a monopoly to a right of ferry by prescription or by any other means than a grant from the Crown. *Anwar Ali v. Emperor*.

27 Cr. L. J. 1291 :
98 I. C. 187 : A. I. R. 1927 Pat. 96.

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)

———S. 37—*Power of Full Court to cancel order of single Judge.*

The Full Court of the Presidency Small Cause Court, Bombay, has no power to grant or revoke a sanction refused or granted by a single Judge of that Court. *In re : Shiv Lal*.

11 Cr. L. J. 271 :
5 I. C. 862 : 12 Bom. L. R. 130.

———Ss. 37, 38—*Scope.*

In construing Ss. 37, 38, Presidency Small Cause Courts Act, the language used by the legislature of the Government of India in the other Acts as to the right of appeal, may be called in aid. The jurisdiction conferred by S. 38 is not appellate, but revisional only. *In re : Shiv Lal*.

11 Cr. L. J. 271 :
5 I. C. 862 : 12 Bom. L. R. 130.

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)

———*Amendments, whether retrospective.*

The amendment introduced to the Presidency Towns Insolvency Act, by Act IX of 1926, is really an amendment affecting procedure and consequently is retrospective. *Mati Lal Biswas v. Emperor*.

30 Cr. L. J. 246 :
113 I. C. 851 : 48 C. L. J. 534 :
32 C. W. N. 1140 : I. R. 1929 Cal. 163.
A. I. R. 1929 Cal. 80.

———Ss. 10, 102—*Borrowing by undischarged bankrupt.*

S. 102, Presidency Towns Insolvency Act, applies only to a person who has been adjudicated as an insolvent under that Act. S. 72, Sub-s. (2), Provincial Insolvency Act, 1920, lays down the only mode of prosecution and no prosecution for an offence under the first sub-section can, therefore, be initiated without the Insolvency Court making a preliminary inquiry and sending the case for trial to the nearest Magistrate of the First Class. S. 72 (2), Provincial Insolvency Act,

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)

1920, does not take away the right of a private party to prosecute on his own motion, if he is aggrieved by what has occurred. *A. T. Ganguly v. E. L. Watson*.

27 Cr. L. J. 1268 :
98 I. C. 116 : 44 C. L. J. 350 :
53 Cal. 929 : A. I. R. 1927 Cal. 149.

———Ss. 27, 36, 103—*Deposition under Ss. 27, 36—Admissibility of.*

The record of an insolvent's deposition under S. 27, Presidency Towns Insolvency Act, can be admitted in evidence in a subsequent criminal proceeding against the insolvent under S. 103 of the said Act, but the record of a deposition under S. 36 of the Act, cannot be admitted in evidence. *Mati Lal Biswas v. Emperor*.

30 Cr. L. J. 241 :
113 I. C. 851 : 32 C. W. N. 1140 :
48 C. L. J. 534 : I. R. 1929 Cal. 163 :
A. I. R. 1929 Cal. 80.

———S. 36—*Deposition by insolvent—Admissibility.*

The deposition of an insolvent reduced into writing taken under S. 36, Presidency Towns Insolvency Act, may be put in evidence against him in a criminal proceeding. *In re : Joseph Perry*.

21 Cr. L. J. 78 :
54 I. C. 478 : 46 Cal. 916 :
A. I. R. 1920 Cal. 170.

———S. 36 — *Examination of insolvent—Admissibility in criminal proceedings.*

The examination of an insolvent purporting to be made under S. 36, Presidency Towns Insolvency Act, and without any objection on the part of the insolvent, is voluntary and is admissible in evidence in a criminal proceeding against him under S. 103 of the Act. *Perry v. Official Assigner of Calcutta*.

21 Cr. L. J. 522 :
56 I. C. 778 : 31 C. L. J. 209 :
24 C. W. N. 425 : 47 Cal. 254 :
A. I. R. 1920 Cal. 941.

———Ss. 49 (4), 103 — *Offence, what is—Offence under S. 103, essential element of.*

In order to constitute an offence under S. 103, Presidency Towns Insolvency Act, the intent to give undue preference or diminish the divisible assets is essential and unless it is shown that that is the natural result of an accused person's action, such an intent cannot be inferred. *Abdur Rahiman Sahib v. Official Assignee*.

16 Cr. L. J. 193 :
27 I. C. 753 : A. I. R. 1915 Mad. 853.

———S. 102—*Object.*

The object of the section is to protect the unwary public from undischarged insolvents. Consequently, obtaining goods on *jagad* by an undischarged insolvent without informing the giver that he is an undischarged insolvent, amounts to 'obtaining credit.' *Phirozshah Manekji Gandhi v. Emperor*.

36 Cr. L. J. 134 :
152 I. C. 706 : 36 Bom. L. R. 731 :
58 Bom. 646 : 7 R. B. 164 :
A. I. R. 1934 Bom. 360.

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)

—S. 102.

Obtaining credit by a trick is within the purview of S. 102 when the fact of the person obtaining it being an undischarged insolvent is not disclosed. *L. W. Nasse v. Emperor*.

26 Cr. L. J. 485 :
85 I. C. 229 : 3 Bur. L. J. 329 :
A. I. R. 1925 Rang. 176.

—S. 103—*Fine*.

An insolvent who has been convicted under S. 103 cannot be fined. *Muti Lal Biswas v. Emperor*.

30 Cr. L. J. 241 :
113. I. C. 851 : 48 C. L. J. 534 :
32 C. W. N. 1140 : I. R. 1929 Cal. 163 :
A. I. R. 1929 Cal. 80.

—S. 103—*Cognizance of offences*.

Proceedings against an insolvent are in motion only if the insolvent Court is satisfied that there is ground to believe that he is guilty of any offence under S. 103. It is not open to any creditor to initiate proceedings by a complaint before another Court. *Lakshmi Narasayya v. Narasinhaachari*.

14 Cr. L. J. 637 :
21 I. C. 685 : 25 M. L. J. 577 :
1913 M. W. N. 1000.

—S. 104—*Offence under S. 103—Procedure*.

The rule that a charge under S. 103 cannot be maintained if the charge is not framed in pursuance of the notice under S. 104, is subject to the principle that no error or irregularity in a charge will call for a reversal of an order unless it in fact has occasioned a failure of justice. It is generally necessary that an insolvent should have notice of the charge which it is proposed to make against him. A notice having reference removing or causing to remove certain documents is a sufficient notice. *Perry v. Official Assignee of Calcutta*.

21 Cr. L. J. 522 :
56 I. C. 778 : 31 C. L. J. 209 :
24 C. W. N. 425 : 47 Cal. 254 :
A. I. R. 1920 Cal. 941.

—Ss. 103, 104—*Charge, notice of—Form of charge—Prosecution, duty of—“Alleged creditor,” undue preference to, whether offence—Transfer for valuable consideration—Good faith*.

Where in a proceeding under Part VIII, Presidency Towns Insolvency Act, the charge framed against the insolvent does not correspond with the notice issued to him, his conviction thereunder cannot be maintained. Where an insolvent is charged with purposely withholding books, it is the duty of the prosecution to establish that such books do in fact exist, mere suspicion cannot be allowed to pose as proof. In order to constitute the offence of undue preference under S. 108 (b) against an insolvent, the payment must be to a creditor, and not to an “alleged creditor.” Where an insolvent transfers property, and the question is whether in so doing he acted in good faith, the fact that there was valuable consideration for the transfer adequate to the occasion would negative the inference that there was an

PRESS ACT (I OF 1910)

absence of good faith in spite of the fact that the transfer was in favour of a relative. *Lucas v. Official Assignee of Bengal*.

21 Cr. L. J. 481 :
56 I. C. 577 : 24 C. W. N. 418 :
A. I. R. 1920 Cal. 642.

PRESIDENT OF MUNICIPALITY

It is highly undesirable that the President of Municipal Committee should try Municipal cases. *Deendayal v. Emperor*.

18 Cr. L. J. 1017 :
42 I. C. 76 : 14 N. L. R. 14 :
A. I. R. 1917 Nag. 64.

PRESS ACT (XXV OF 1867)

—S. 4—*Declaration under, object of*.

A declaration, made under S. 4, Press Act, is intended by the Legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on the person declaring in respect of matters where public interests are involved. Therefore, when a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. The presumption is not one of law but of fact, and it is open to the accused to rebut it. *Emperor v. Shankar Shrikrishnan*.

11 Cr. L. J. 546 :
7 I. C. 937 : 12 Bom. L. R. 675.

—S. 7—*Liability of registered printer*.

Under S. 7, Printing Presses Act, 1867, the burden of proving that the registered printer is not the printer, lies on such printer. A registered printer cannot escape responsibility even if he proves his temporary absence and want of knowledge of the seditious matter. *Ram Nath v. Emperor*.

2 Cr. L. J. 31 :
1 P. R. Cr. 1905 : 6 P. L. R. 259.

PRESS ACT (I OF 1910)

—*Whether ultra vires in whole or part*.

The question whether the Press Act or any portion of it is *ultra vires* of the Indian Legislature, as contravening the spirit of S. 65 (2), Government of India Act, is not a matter which can be considered by the High Court sitting as a Special Tribunal under Ss. 18 and 19, Press Act. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916, 2 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
A. I. R. 1918 Mad. 1210.

—S. 3—*Inference by High Court, powers of*.

Per Curiam.—It is not competent to a High Court to interfere with the order of a Magistrate under S. 3, Press Act, requiring security from the owner of a Printing Press either in the first instance or in variance of an order dispensing with security, either under Ss. 100

PRESS ACT (I OF 1910)

and 107, Government of India Act, or under S. 435, Cr. P. C. *Annie Besant v. Emperor*.

18 Cr. L. J. 239 :
37 ' C. 607 : 4 L. W. 625 :
1916, 2 M. W. N. 497 :
32 M. L. J. 151 : 39 Mad. 1164 :
21 M. L. T. 190 : A. I. R. 1918 Mad. 1266.

—S. 3—*Press exempted from depositing security—Subsequent order requiring security, validity of—Procedure if proper.*

The keeper of an old press on the passing of the Press Act, made the necessary declaration but was exempted from depositing security under S. 3 (1). Subsequently the District Magistrate directed him to deposit security within fifteen days : *Held*, (1) that the District Magistrate had no power to issue such an order. *Ganesh Lal v. Emperor*.

19 Cr. L. J. 355 :
44 I. C. 579 : 4 P. L. W. 155 :
A. I. R. 1918 P. 236.

—S. 3—*Taking security.*

The Indian Press Act contemplates that in ordinary cases, security shall be deposited by the owner of a Printing Press used for printing a newspaper, and the only duty of the Magistrate is to fix the amount and to receive it. The proviso to S. 3 (1), gives him the power, for special reasons, to dispense with deposit, but the same proviso also gives him the power to cancel any such order of dispensation. *Annie Besant v. Advocate-General, Madras*.

20 Cr. L. J. 593 :
52 I. C. 209 : 37 M. L. J. 139 :
17 A. L. J. 925 : 23 C. W. N. 986 :
21 Bom. L. R. 867 : 10 L. W. 451 :
1919 M. W. N. 555 :
46 I. A. 176 : 26 M. L. T. 408 :
1 U. P. L. R. P. C. 74 :
43 Mad. 146 : A. I. R. 1919 P. C. 31.

—S. 3—*Time for paying deposit.*

S. 3 must be construed to mean that the deposit ordered should be made within a reasonable time. *Fulchand Bapuji v. Emperor*.

14 Cr. L. J. 448 :
20 I. C. 608 : 37 Bom. 555 :
15 Bom. L. R. 580.

—Ss. 3, 4, 17, 19, 20, 22—*Deposit of security, order for—Order dispensing with security, cancellation of—High Court, interference by under Press Act Jurisdiction.*

The High Court has no jurisdiction, sitting as a Special Tribunal under the Press Act, to consider any other matter, save whether certain words contained in a newspaper and specified in the order of forfeiture by Government under S. 4 are or are not of the nature prescribed in Cl. (1) of the section. Proceedings under S. 3, i. e., the imposition of security or the cancellation of an order dispensing with security are not subject to the revisional jurisdiction of the High Court under Ss. 17 and 22 of the Act. The provisions of the Press Act are applicable to all Printing Presses, even those which were in existence before the passing of the Act and for which fresh declaration is necessary under the Act under certain conditions. The words 'Government estab-

PRESS ACT (I OF 1910)

lished by law in British India' are not restricted to the supremacy of the King and the British connection, but include the composite body of persons that constitute the Government of India. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916, 2 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
21 M. L. T. 124 : A. I. R. 1918 Mad. 1210.

—S. 3 (1)—*Revision of order requiring security.*

An order of a District Magistrate calling upon the keeper of a Press to deposit security under S. 3 (1), Press Act, cannot be questioned by the High Court, inasmuch as it is a purely ministerial proceeding, and is in no sense judicial. *Gulzat Muhammad v. Emperor*.

19 Cr. L. 740 :
46 I. C. 516 : 20 P. R. 1918 Cr. :
32 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 219.

—S. 4—*Order of forfeiture—Article in newspaper, objectionable—Good faith of Editor or writer, when material—"The Government established by law in British India," meaning of—"Section of His Majesty's subjects," meaning of.*

In deciding the question whether the words of an article published in a newspaper may or may not have the tendency to produce the objectionable effect described in the various clauses of Sub-s. (1) of S. 4, Press Act, it is immaterial whether the Editor or writer acted in good faith or what was the motive of the writer. The phrase "the Government established by law in British India" includes the collective body of men authorised by law to administer executive Government in British India as distinguished from any particular set of administrators or individuals administering the country, for the time being. The expression "section of His Majesty's subjects" in Cl. (c) of S. 4, Press Act, signifies a distinct portion of His Majesty's subjects. *Raj Pal v. Emperor*.

24 Cr. L. J. 167 :
71 I. C. 519 : 3 Lah. 405 :
5 P. W. R. 1923 Cr. :
A. I. R. 1923 Lah. 61.

—S. 4—*Order of forfeiture—Principles.*

In considering whether a document offends against Cls. (a) to (f) of S. 4 (1), the Court has nothing to do with the intention of the author, it has to look at the document, and after a fair reading, ascertain what is its meaning. The intention of the author is material only where the Court has to deal with comments on the measures or actions of Government, or the administration of justice, such comments are protected if they are made with a view to obtain an alteration by lawful means of the measures of Government, or if they are made on the actions of Government or administration of justice, and there is no attempt to excite hatred, contempt or disaffection. The Press Act is essentially a preventive measure with a view to prevent crime, that is, crime imperiling the existence of the State, the safety of its officers, public order and the like. In distinguishing between the meaning of an

PRESS ACT (I OF 1910)

article and the intention of its author, the article must be construed by grammar and logic the primary organs of interpretation, and, when necessary, by evidence to make the words which are used fit the external things to which the words are appropriate. *In the matter of: Amrita Bazar Patrika.* (S. B.)

21 Cr. L. J. 98 :
54 I. C. 578 : 23 C. W. N. 1057 :
30 C. L. J. 289 : 47 Cal. 190 :
A. I. R. 1920 Cal. 478.

———S. 4—Order of forfeiture—Principles.

The language used in S. 4, Press Act, is very comprehensive. It is quite sufficient if the words have this effect of creating hatred with regard to any class or section of His Majesty's subjects in British India complained of. If they are likely or may have a tendency, either directly or indirectly to do so, then they are included within the mischief aimed at by this section. *Purusottam Narayan Nande v. Chief Secretary to Government.* (S. B.)

20 Cr. L. J. 177 :
49 I. C. 593 : 1919 Pat. 65 : 4 P. L. J. 174 :
A. I. R. 1919 Pat 84.

———S. 4—Order of forfeiture—Principles.

The terms 'Government established by law in British India' used in S. 4 (1) (c) of the Press Act include Local Government as well as the Government of India. Court is not concerned with motives but with results. Whatever the ostensible motives for an article in a newspaper may have been, if the effect of the article would be to excite either hatred or contempt against any class or section of subjects of His Majesty in British India, the Government cannot be said to have misapplied the Press Act in forfeiting the security of the Press publishing the paper. *Ghulam Qadir Khan v. Emperor.*

15 Cr. L. J. 490 :
24 I. C. 578 : 210 P. L. R. 1914 :
36 P. W. R. 1914 Cr. : 27 P. R. 1914 Cr. :
A. I. R. 1914 Lah. 1.

———S. 4 (1)—Order of forfeiture—"Government established by law in British India," meaning of.

The phrase "Government established by law in British India" means the established authority which governs the country and administers its public affairs, and includes the representatives to whom the task of Government is entrusted. Where the general tone of articles in a newspaper shows a set purpose to cause "the ruling class in India" to be hated and despised, the Local Government would be justified in exercising the powers conferred upon it by S. 4, Press Act. *In the matter of the application of: Sundar Lal.*

21 Or. L. J. 238 :
55 I. C. 110 : 18 A. L. J. 11 :
42 All. 233 : 2 U. P. L. R. All. 1 :
A. I. R. 1919 All. 91.

———S. 4 (1)—Order of forfeiture.

Order made by Governor-General in Council

PRESS ACT (I OF 1910)

in Delhi—Jurisdiction of High Court of Calcutta. *In re: Abul Kalam Azad.*

16 Cr. L. J. 698 :
30 I. C. 746 : 42 Cal. 730 :
A. I. R. 1915 Cal. 770.

———S. 4 (1), Expl. II, 20—Order of forfeiture—Particular passages, whether to be specified in notice—Evidence—Proof—Other articles in paper, admissibility of.

The particular passage objected to in an article need not be specified in a notice issued under S. 4 (1). Explanation II to S. 4 does not apply to a case where the gravamen of the charge made by Government against the article is not so much that it contains 'comments' on the acts of the authorities, as that it consists of an account of certain events so inaccurate, so misleading and so unfair to those authorities as to be likely, apart from all 'comments,' to excite the feelings mentioned in the notice. Other articles from other issues of the paper containing the article in question are admissible for the purpose specified in S. 20 alone, i. e., in aid of the proof of the nature or tendency of the said article. *Amar Singh v. Emperor.*

16 Cr. L. J. 555 :
29 I. C. 827 : 15 P. R. 1915 Cr. :
33 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 383.

———S. 4 (1) (c)—Order of forfeiture.

An attack upon a school of opinion does not necessarily involve an imputation upon the class who hold or give effect to that opinion. But one is apt to lead to the other, and in judging whether the second exists, regard must be had to the fact that the words in Cl. (c), which refer to the hatred or contempt of a class or section, are not limited by Explanation 2. In this respect, the Press Act differs from the Penal Code. *Annie Besant v. Advocate-General, Madras.*

20 Cr. L. J. 593 :
52 I. C. 209 : 37 M. L. J. 139 :
17 A. L. J. 925 : 23 C. W. N. 986 :
21 Bom. L. R. 867 : 1919 M. W. N. 555 :
10 L. W. 451 : 46 I. A. 176 :
26 M. L. T. 408 : 1 U. P. L. R. (P. C.) 74 :
43 Mad. 146 (P. C.) :
A. I. R. 1919 P. C. 31.

———Ss. 4 (1), (c), 9, 17—Order of forfeiture—Notice—Specification of words—Service of notice—Charges against Government or individual.

Where a notice under S. 9, specifies the name of the correspondent and the headings of the objectionable letters and communications, this is a sufficient compliance of the law as to specification. The Press Act does not provide for an opportunity being given to the publisher of showing cause against the notice. It is sufficient if every effort is made to serve the notice, without delay, on the petitioner, who was absent from his place of business. Charges made against the Government of the Frontier Province and attacks on the Frontier Government *ex nomine* involve forfeiture of security under the Press Act. All that the Court has to

PRESS ACT (I OF 1910)

decide is whether the copies of the newspaper in question did or did not contain passages of the nature specified in S. 4 (1). *Karam Chand v. Emperor*. 14 Cr. L. J. 59 :

18 I. C. 347 : 6 P. W. R. 1913 Cr. :
37 P. L. R. 1913 ; 14 P. R. 1913 Cr.

———S. 4 (1) (c). 17, 19, 20—*Order of forfeiture—High Court, power of—Motive or intention of writer—“Government established by Law in British India,” meaning of—Seditious intentions.*

The words “disaffection includes disloyalty and all feelings of enmity” in S. 4 are wide words, and the duty of a High Court under S. 19 is strictly limited to consideration of the question whether the Government order of forfeiture of an article is justified by the words and tendencies of the article. The writer's intentions or motives in writing an article are irrelevant and even if the article be unobjectionable in itself, it is the possible results and not the intention which have to be considered. In order that an application under S. 17, Press Act, be successful, it is necessary for the petitioner to show that the article in question did not, as a matter of fact, contain “any words, signs or visible representations” likely or having a possible tendency to excite disaffection towards His Majesty or the Government established by law in British India. The Supreme Government in India is in the last resort the Government in England. Therefore, anything which tends in India to excite disaffection against the Government as represented by the British Cabinet must be taken as tending to excite disaffection against the Government established by law in British India. *Farooq Ali v. Emperor*. 16 Cr. L. J. 274 :

28 I. C. 322 : 21 P. W. R. 1915 Cr. :
19 P. R. 1915 Cr. : A. I. R. 1915 Lah. 1.

———S. 8—*Order under—High Court's power of revision.*

The petitioner was the declared proprietor of a Press and the declared Printer and Publisher of a Weekly Persian Journal. He had been issuing what were described as daily supplementary editions of the Persian Journal in Bangalee and Urdu, and for such productions from his Press as well as for any English edition that may hereafter be issued, he was ordered by the Magistrate to furnish security: *Held*, that the order of the Magistrate could be passed under S. 8, Press Act only, and therefore, the order could not be revised by the High Court. *Jalal-ud-Din v. Emperor*. 15 Cr. L. J. 145 :

22 I. C. 721 : 17 C. W. N. 1245 :
A. I. R. 1914 Cal. 526.

———Ss. 12, 22—*Forfeiture of document by Local Government—Grounds for—Necessity of—Interference by High Court.*

The provision in S. 12 that the grounds of the opinion on which the Local Government have acted in declaring any document to be forfeited to His Majesty must be stated, is

PRESS ACT (I OF 1910)

mandatory and not directory; and the Legislature has imposed on the Local Government an imperative obligation to state the grounds of its opinion. A notification under S. 12. was to the effect that “whereas it appeared to the Local Government that a certain pamphlet contained words of the nature described in S. 4 (1), inasmuch as they are likely to bring into hatred or contempt certain classes of His Majesty's subjects in British India, therefore, the Government declared all copies of the pamphlet forfeited to His Majesty”: *Held*, (1) that no grounds of the Local Government's opinion were stated in the notification; (2) that the notification was, insufficient and defective in form and not in compliance with the Act: (3) that the High Court was barred under S. 22 from questioning the legality of the forfeiture which the notification purported to declare. *Mohamed Ali v. Emperor*. 14 Cr. L. J. 497 :

20 I. C. 977 : 18 C. W. N. 1 : 41 Cal. 466.

———S. 17—*Application to set aside order of forfeiture.*

In dealing with an application under S. 17 to set aside an order directing the forfeiture of security, the Court has to see that the matter which is the subject of the order is not obnoxious to the provisions of S. 4 (1). *In the matter of: Amrita Bazar Patrika*. (S. B.)

21 Cr. L. J. 98 :
54 I. C. 578 : 23 C. W. N. 1057 :
30 C. L. J. 289 : 47 Cal. 190 :
A. I. R. 1920 Cal. 478.

———S. 17—*Interpretation—“Within two months from the date of such order,” meaning of.*

The words “within two months from the date of such order” in S. 17 mean within two months from the date of the order of forfeiture and cannot be read as meaning within two months from the date on which notice of the order was served. Under this Act, the remedy given is by way of application, and not of appeal and in the absence of any specific provision in the Act giving the benefit of S. 5, Limitation Act, to that application, it is not in the power of the High Court to extend the prescribed period. *Abdul Haq v. Emperor*.

15 Cr. L. J. 222 :
22 I. C. 1006 : 126 P. L. R. 1914 :
16 P. R. 1914 Cr. : 32 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 8.

———Ss. 17, 19, 22—*Interference by High Court with order under S. 4.*

S. 22 read with Ss. 17 and 19 debars the High Court, from interfering with an order of forfeiture under S. 4 except on one ground, namely, that the writing in question is not of the nature described in sub-section (1) of S. 4. *Purusottam Narayan Nandke v. Chief Secretary to Government*. (S. B.) 20 Cr. L. J. 177 :

49 I. C. 593 : 1919 Pat. 65 :
4 P. L. J. 174 :
A. I. R. 1919 Pat. 84 ;

PRESS ACT (I OF 1910)

———S. 19—*Interference by High Court with order of forfeiture.*

Where the whole tone of an article in a newspaper and the nature of the allegations made went much beyond any legitimate comment on the action of Government and was directly intended to bring Government into hatred and contempt, the Chief Court refused to interfere with the order of forfeiture of security. *Ghulam Qader Khan v. Emperor.*

15 Cr. L. J. 490 :
24 I. C. 578 : 210 P. L. R. 1914 :
36 P. W. R. 1914 Cr. :
27 P. R. 1914 Cr. :
A. I. R. 1914 Lah. 1.

———S. 19—*Interference by High Court with order of forfeiture of document by Local Government under S. 12.*

The object of the writers of a prescribed pamphlet was to put an end to the horrible atrocities which they alleged to have been committed by the Christian Balkan States on Mahomedans. They told Englishmen what was being done by their fellow Christians and appealed to them as Christians to stop it. The object of pamphlet was to excite the indignation of Christians in England against the conduct of Christians in Macedonia so as to induce them to bring it to an end: *Held*, that under S. 19, the High Court could not set aside the order of forfeiture. *Mohammad Ali v. Emperor.*

14 Cr. L. J. 497 :
20 I. C. 977 : 18 C. W. N. 1.

———S. 19—*Interference by High Court with order under S. 4.*

Where it appears impossible for the Chief Court to say that the Local Government, with which the responsibility rests for determining how far real danger arises from articles of the kind in question, has acted wrongly in taking those articles as ground for issuing orders of forfeiture, it will not set aside the order under S. 19. According to the terms of S. 19 it is not open to the Chief Court, even if it should desire to do so, to do anything more than either reject the application or set aside the order of forfeiture as a whole. *Ghulam Qadir Khan v. Emperor. (S.B.)*

15 Cr. L. J. 493 :
24 I. C. 581 : 211 P. L. R. 1914 :
37 P. W. R. 1914 Cr. : 28 P. R. 1914 Cr. :
A. I. R. 1914 Lah. 4.

———S. 22—*High Court's power to issue writ of certiorari, if taken away.*

The power to issue writ of certiorari to inferior tribunals is not taken away from the High Court by the Press Act, S. 22. *Annie Besant v. Government of Madras.*

18 Cr. L. J. 239 :
37 I. C. 607 : 1916, 2 M. W. N. 497 :
4 L. W. 625 : 39 Mad. 1164 :
32 M. L. J. 151.

———S. 22—*Power of High Court to issue writ of certiorari.*

The power of High Court, which have inherited the ordinary or extraordinary jurisdiction of the Supreme Court, to issue writ of certiorari has not been taken away by the

PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867)

provisions of S. 435, Cr. P. C., and S. 115, C. P. C. But, *semble* that, assuming the order of the Magistrate to be a judicial order, the power to issue a writ of certiorari against any such order would be taken away by S. 22, Press Act. *Annie Besant v. Advocate-General, Madras.*

20 Cr. L. J. 593 :
52 I. C. 209 : 37 M. L. J. 139 :
17 A. L. J. 925 : 23 C. W. N. 986 :
21 Bom. L. R. 867 :
1919 M. W. N. 555 : 10 L. W. 451 :
46 I. A. 176 : 26 M. L. T. 408 :
1 U. P. L. R. P. C. 74 :
43 Mad. 146 :
A. I. R. 1919 P. C. 31 P. C.

———S. 22—*Scope.*

S. 22 bars the jurisdiction of the Courts as regards all proceedings purporting to be taken under the Act, except declarations of forfeiture under Ss. 6, 9, 11 or 12, as regards which S. 17 provides that any person having an interest in the property in question may apply within two months from the date of the forfeiture order to the High Court, to set aside such order on the ground specified in the section. *Gulzar Muhammad v. Emperor.*

19 Cr. L. J. 740 :
46 I. C. 516 : 20 P. R. 1918 Cr. :
32 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 219.

———S. 23—*Offence under, what is.*

Clause (1) of S. 23 covers only the disobedience of an order under S. 3 or S. 5, Press Act. *Pandurang Balkrishna Pathak v. Emperor.*

15 Cr. L. J. 297 :
23 I. C. 505 : 16 Bom. L. R. 87 :
A. I. R. 1914 Bom. 2.

———S. 23—*Offence under—What is.*

The keeper of a certain printing press was served with a notice on the 28th September under S. 3 to deposit security, but by the 3rd October he relieved himself of all responsibility in the matter by withdrawing his declaration and disposing of the press to another person: *Held*, that he could not be convicted under S. 23 (1). *Fulchand Bapuji v. Emperor.*

14 Cr. L. J. 448 :
20 I. C. 608 : 15 Bom. L. R. 580 :
37 Bom. 555.

PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867)

———S. 3—*Interpretation.*

The word 'papers' in Ss. 3 and 4 is, practically if not exactly, synonymous with newspaper as defined in S. 1 of the Act. *Rameshwar Prashad v. Emperor.*

32 Cr. L. J. 1063 :
133 I. C. 682 : 12 P. L. T. 767 :
10 Pat. 492 : I. R. 1931 Pat. 394 :
A. I. R. 1931 Pat. 351 (2).

———S. 4—*Declaration under, whether evidenced on contents of book.*

A declaration under S. 4, is no evidence of the knowledge of the printer of the contents

PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867)

of a book printed by him, though it is a fact which, along with other evidence in the case, must be considered in deciding the question of fact. *Pitre v. Emperor*.

25 Cr. L. J. 150 :
76 I. C. 294 : 47 Bom. 438 :
25 Bom. L. R. 97 :
A. I. R. 1923 Bom. 255.

—S. 4—Fresh declaration—Necessity of.

No fresh declaration need be filed in the case of any press which has once been declared and which continues at the same address though there is a change in the person of the keeper of the press. *Raghubar Singh v. Emperor*.

32 Cr. L. J. 545 :
130 I. C. 380 : 8 O. W. N. 25 :
A. I. R. 1931 Oudh 81.

—Ss. 4, 3, 7—Presumptions.

There is no provision in the Act, as to the presumption to be drawn from a declaration made under S. 4, and from the names of the printer and publisher printed under S. 3, as there is, under S. 7, as regards declarations made under S. 5 of the Act. *Pitre v. Emperor*.

25 Cr. L. J. 150 :
76 I. C. 294 : 47 Bom. 438 :
25 Bom. L. R. 97 :
A. I. R. 1923 Bom. 255.

—Ss. 4, 14—False statement in making declaration, what constitutes.

A false statement in a declaration which is not made and subscribed before a Magistrate as provided by S. 4, cannot be said to have been made "in making a declaration" within the meaning of S. 14. Therefore, it is no offence to merely present a false written statement or declaration to a Magistrate. *Emperor v. Inoyot*.

24 Cr. L. J. 657 :
73 I. C. 689 : A. I. R. 1923 Lah. 440.

—Ss. 3, 5, 12—Publisher, who is.

The publisher of the paper referred to in S. 3 and S. 5, is the man who publishes it in the ordinary sense of the term, and a mere seller or distributor of the paper is not a publisher under either of those sections. The only person who can be guilty of publishing under S. 12 is the person who is performing the act of a publisher within S. 3 and S. 5. *Dattatraya Malhar Bidkar v. Emperor*.

38 Cr. L. J. 145 :
166 I. C. 263 : 9 R. B. 230 :
38 Bom. L. R. 1115 :
A. I. R. 1937 Bom. 28.

—S. 6—Refusal of District Magistrate to authenticate declaration—Revision.

A District Magistrate, in acting or purporting to act under S. 6, cannot be said to exercise jurisdiction as a Court, Criminal or Civil, nor can his proceedings be said to be in any sense judicial. Where, therefore, a District Magistrate refused to authenticate a declara-

PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867)

tion under S. 2 of the Act, his act is purely ministerial. *Ahad Shah v. Emperor*.

19 Cr. L. J. 621 :
45 I. C. 525 : 21 P. R. 1918 Cr. :
27 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 302.

—S. 7, as amended by Press Law Repeal and Amendment Act (XIV of 1922)—Editor, effect of.

Under S. 7, as amended by the Press Law Repeal and Amendment Act, 1922, the entry of the name of the Editor as such on a newspaper is sufficient evidence that on the day that newspaper was published, the person bearing that name was Editor of the paper. *Nageshwar Prasad Sharma v. Emperor*.

26 Cr. L. J. 78 :
83 I. C. 638 : 1924 Pat. 283 :
A. I. R. 1925 Pat. 99.

—S. 7—Identity of accused.

At the trial of a person for publishing a libel contained in a newspaper, the presumption permitted to be raised by S. 7, as to his identity with the publisher of the offending matter, on production of the copy of his declaration given under S. 5 (2) is restricted to the *prima facie* proof that he was the publisher only at the place specified in the declaration. *Sardar Divan Singh Masfoon v. Emperor*.

36 Cr. L. J. 744 :
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

—S. 7—Liability of keeper of press for publications in his press.

The fact that the accused is the declared keeper of a press would not by itself be sufficient to prove that he had knowledge of all the matter printed at the press. In the case of periodicals, an initial presumption as regards such knowledge might be raised under S. 7. But in the case of mere pamphlets, no such presumption arises. *Chuni Lal v. Emperor*.

32 Cr. L. J. 681 :
131 I. C. 273 : 12 Lah. 483 :
32 P. L. R. 740 : I. R. 1931 Lah. 401 :
A. I. R. 1931 Lah. 182.

—S. 12—Onus of proof of place of publication.

Circulation of leaflets without printer's name—Onus of proving that leaflet was printed in British India is on prosecution. *Annory Kumar Bhattacharjee v. Emperor*.

33 Cr. L. J. 91 :
134 I. C. 1197 : 35 C. W. N. 778 :
I. R. 1932 Cal. 77 : A. I. R. 1931 Cal. 641.

—Publication, what is.

A person distributing in streets certain pamphlets or papers giving notice of a certain meeting, cannot be made liable under S. 12 on the ground that such distribution amounted to publication. *Dattatraya Malhar Bidkar v. Emperor*.

38 Cr. L. J. 145 :
166 I. C. 263 : 38 Bom. L. R. 1115 :
9 R. B. 230 : A. I. R. 1937 Bom. 28.

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

-----S. 13—Offence under—What is.

Keeping cyclostyle machine for printing newspaper without conforming to rules, is punishable under S. 13. *Rameshwar Prasad Verma v. Emperor*.

32 Cr. L. J. 1063 :
133 I. C. 682 : 12 P. L. T. 767 :
10 Pat. 492 : I. R. 1931 Pat. 394 :
A. I. R. 1931 Pat. 351 (2).

-----S. 16—Offence under—What is Failure to deliver copies—Time within which copies to be delivered—Offence.

Under Cl. (a) of S. 9 a printer has to deliver copies of a book printed by him within one calendar month after the day on which the book is first delivered out of the press and not within one month of the day on which the printing of the book is completed. Therefore as long as the copies are delivered within one month of the former date, the printer cannot be held to be guilty of an offence under S. 16 of the Act. *Kishan Lal v. Emperor*.

28 Cr. L. J. 232 :
99 I. C. 1032 : 25 A. L. J. 105 :
49 All. 315 : A. I. R. 1927 All. 237.

-----S. 18—Author of book—Proof of—What is.

The statement of the Manager of a press presumably made under S. 18 that a certain person is the author of a book is no evidence of the fact, and for the purposes of a proceeding under S. 108 of the Cr. P. C., the fact of authorship must be proved like any other fact. *Pitre v. Emperor*.

25 Cr. L. J. 150 :
76 I. C. 294 : 25 Bom. L. R. 97 :
47 Rang. 438 : 1923 A. I. R. Bom. 255.

PRESS (EMERGENCY) POWERS ACT, (XXIII OF 1931).

-----Construction of.

The provisions of the Act, are of a penal character, and according to the ordinary rules of interpretation, they should be construed strictly and in such a manner as to protect the liberties of the subject. *Des Raj v. Emperor*.

35 Cr. L. J. 1447 (2) :
151 I. C. 943 : 7 R. L. 227 :
A. I. R. 1934 Lah. 264.

-----Ss. 2 (1) (6), 4 (1) (d)—Pamphlets within—Scope.

Sub-ss. (1) and (6) in S. 2 are not mutually exclusive and although the pamphlets in question come within Sub-s. (1) they will also come within Sub-s. (6) if they contain any matter described in S. 4 (1) as amended. The rich as more definitely described as zamindars, mill-owners and land-owners, form a sufficiently ascertained class to satisfy the requirements of the Act. The attack upon this class is clearly one which would tend in the minds of uneducated readers amongst whom the pamphlets were distributed, to bring His Majesty's subjects into hatred and contempt. *Jonnalagadda Ramalingayya v. Emperor*.

38 Cr. L. J. 5 :
165 I. C. 860 1936 M. W. N. 614 :
71 M. L. J. 357 : 44 L. W. 381 :
I. L. R. 1937 Mad. 14 : 9 R. M. 307 :
A. I. R. 1936 Mad. 835.

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

-----S. 2 (6)—Unauthorised news-sheets—What is.

Painting the words "Boycott British Goods" on the roadway does not amount to making an unauthorized news-sheet as defined in S. 2 (6). *In re : M. K. Panduranga Mudali*.

34 Cr. L. J. 90 :
140 I. C. 767 : 63 M. L. J. 906 :
1932 M. W. N. 1357 :
I. R. 1933 Mad. 35 :
A. I. R. 1933 Mad. 123.

-----S. 2 (6), 18—Objectionable publication—What is—Punishments.

A leaflet in question purported to be an exhortation to the public to strive for freedom. Matters of historical importance were referred to. It also stated that an agrarian revolution was coming. Then, again, it is said: The invincible desire of the nation for the attainment of independence did not weaken..... "The people, disabled and dying through famine, flood and starvation are again waking up. The invincible desire for the attainment of independence is making the whole country restive; even to-day thousands of young men and women without trial are passing the moments that are not in their control behind the prison walls." In conclusion, happening in Spain, from which a moral was sought to be drawn was expressly referred to: *Held*, that the matters contained in the leaflet could be described as news in the sense of information on definite events of topical interest. Persons who merely help in distributing unauthorised news-sheet in public meetings should not be punished as severely as those who actually help in the preparation of the news-sheet, when no connection between them from before is shown. *Shamsul Huda v. Emperor*.

39 Cr. L. J. 446 :
174 I. C. 393 : 10 R. C. 672 :
I. L. R. 1937, 2 Cal. 670 :
A. I. R. 1938 Cal. 222.

-----S. 3—Forfeiture of press — Notice on joint keeper — Joint keeper purchasing share of partner—Use of press continued under different name—Whether can escape liability to have press forfeited.

A joint keeper of a press on whom a notice has been served under S. 3 of the Press Act, cannot, by purchasing the share of his partner, escape liability to have his press forfeited when he continues to use the press under a different name by pleading that he, the present keeper, had not been given notice as required by the Act. *Mahbub Ahmad v. Emperor*. (F. B.)

38 Cr. L. J. 841 :
169 I. C. 1008 : 39 P. L. R. 894 :
10 R. L. 73 : I. L. R. 1937 Lah. 65 :
A. I. R. 1937 Lah. 482.

-----S. 4, as amended by Criminal Law Amendment Act (XXIII of 1932)—Order to deposit security—Offending article published during office of previous publisher—Successor-in-office if can be ordered to deposit security.

It does not matter who the publisher happens to be at the time of the notice, if

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

the newspaper contains words coming within the mischief of S. 4. A change of publisher after the newspaper has inserted the offending article makes no difference; and the new publisher can be required by the Local Government to deposit the amount. *Mahammad Habib, Publisher of "Daily Siyasaat," Lahore v. Emperor.* (S. B.) 39 Cr. L. J. 865 :

172 I. C. 200 : 39 P. L. R. 842 :
10 R. L. 283 : I. L. R. 1937 Lah. 438 :
A. I. R. 1937 Lah. 844.

—S. 4—Offence under—What is.

Per Young, C. J. and Addison, J.—(Tck Chand, J. contra.)—The passages in question in the book entitled: "Report of the Enquiry Committee appointed by the Provincial Hindu Sabha, Lahore, to enquire in the Bahawalpur Affairs" came within the mischief of S. 4 (1) (j) of the Act. *Parkash Chand v. Emperor.* (S. B.) 38 Cr. L. J. 898 :

170 I. C. 439 : I. L. R. 1937 Lah. 445 :
39 P. L. R. 782 : 10 R. L. 116 :
A. I. R. 1937 Lah. 513.

—S. 4—Proof of malice—Necessity of.

Per Young, C. J.—When there is an attempt to excite hatred and contempt against an administration, malicious intention need not be proved as normally the attempt is moved out of malice. *Parkash Chand v. Emperor.* (S. B.) 38 Cr. L. J. 898 :

170 I. C. 439 : I. L. R. 1937 Lah. 445 :
39 P. L. R. 782 : 10 R. L. 116 :
A. I. R. 1937 Lah. 513.

(As amended in 1932), S. 4, Expl. 4—*Objectionable matter—What is—Article in newspaper stating that Chettiyars possess the same essential characteristics as the crow—Motive—Malicious intention—Held, article was outside pale of Expl. 4.*

In a newspaper article reference was made to the alleged fact that Chettiyars possess the same characteristics as the crow. This appeared in the forefront of the article and was the motive that ran through it: *Held*, that deliberately to ascribe in a Burmese newspaper the attributes of the crow to the Chettiyars necessarily tended to engender ill-feeling between the Burmans and the Chettiyars and that the article was outside the pale of Explanation 4 to S. 4, Press Emergency Powers Act, because the object with which it was published plainly was not to remove the sources of any ill-feeling that might exist between the Chettiyars and the Burmans, but to remove the Chettiyars themselves by making their residence in Burma unprofitable, if not intolerable, and hence the order to furnish security would not be interfered with. *In re: "The New Light of Burma."* (F. B.) 157 I. C. 118 (1) :

8 R. Rang. 79 : A. I. R. 1935 Rang. 219 (1) :

—S. 4 (1)—Contempt of administration of justice—What is.

Where an article alleged that the Special Court was acting in co-operation with the executive and that Magistrates and Judges were not in a position to defend themselves: *Held*,

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

that such a charge tended to bring into contempt the administration of justice under the Ordinances: *In re: Pothan Joseph.* (S. B.)

33 Cr. L. J. 749 :
139 I. C. 262 : 34 Bom. L. R. 917 :
56 Bom. 472 : I. R. 1932 Bom. 492 :
A. I. R. 1932 Bom. 468.

—S. 4 (1)—Hatred and contempt of Government—What is.

Newspaper articles asserting that Government were abusing and misusing their powers, bring Government into hatred and contempt. Court is not concerned with truth or falsity of facts asserted. *In re: Pothan Joseph.* (S. B.)

33 Cr. L. J. 749 :
139 I. C. 262 : 34 Bom. L. R. 917 :
56 Bom. 472 : I. R. 1932 Bom. 492 :
A. I. R. 1932 Bom. 468.

—S. 4 (1), (as amended by Emergency Powers Ordinance, 1932)—Objectionable matter, what is.

Words containing accusations against nine Police Officers below the rank of Inspector but containing no comment as to their misconduct, can be said to be conveyed by S. 4 (1)—Police Officers and satyagrahis cannot be said to be "different classes of His Majesty's subjects" within Cl. (b). *In the matter of: "Janasakti of Sylhet."*

138 I. C. 849 : 36 C. W. N. 962 :
I. R. 1932 Cal. 537 :
A. I. R. 1932 Cal. 649.

—S. 4 (1)—Offence under—Intention is immaterial.

In cases under the Act, no question of intention arises. What has to be seen is whether the words complained of directly or indirectly do what is set out in Cls. (d), (h) and (i) of S. 4 (1) as amended by S. 77, Special Powers Ordinance. *In the matter of: "The Zamindar."* (S. B.) 35 Cr. L. J. 966 :

149 I. C. 370 : 35 P. L. R. 40 :
6 R. L. 669 : A. I. R. 1934 Lah. 219.

—S. 4 (1)—Reprisal.

Divested from the context and used with reference to an act by the Government towards the people, the word would be objectionable inasmuch as it implies an idea of retaliation. "Reprisals" are admissible for international delinquencies only. *In re: Anandabazar Patrika.* (S. B.) 36 Cr. L. J. 432 :

153 I. C. 872 : 38 C. W. N. 674 :
61 Cal. 827 : 7 R. C. 406 :
A. I. R. 1935 Cal. 74.

—S. 4 (1) (b), explanation—Scope.

The explanation to S. 4 (1) (h), as amended, expressly provides that certain words published without malicious intention and with a certain definite and honest purpose are not to be regarded as words tending to promote feelings of enmity between different classes though

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

they might actually tend to promote such feelings. *P. Mohan Lal Gautam v. Emperor.*

36 Cr. L. J. 1019 :
156 I. C. 908 : 8 R. A. 49 :
1935 A. L. J. 321 :
A. I. R. 1935 All. 369.

————S. 4(1) (d)—“Class or section”, what is.

The words “class or section” in Cl. (d) of S. 4 (1), Press (Emergency) Powers Act, must mean a definitely ascertainable body of individuals, not an indeterminate body or group having no clearly defined and non-variable characteristics or criteria by which they may be distinguished from any other body or group. Exploiters or capitalists as such, any more than, say, literates or illiterates, or the rich or the poor, do not constitute a “class” or a “section” within the meaning of this clause. *Kamal Sircar (Ajit Ghose) v. Emperor.*

39 Cr. L. 190 :
172 I. C. 906 : 41 C. W. N. 1217 :
10 R. C. 466 : I. L. R. 1938, 1 Cal. 455 :
A. I. R. 1937 Cal. 691.

————S. 4 (1), (d) (f)—Poster containing matter coming under Cls. (d) and (f)—Common sense interpretation should be put.

In dealing with a document like a poster under S. 4 (1), Cls. (d) and (f), Press (Emergency) Powers Act, it is worse than useless to try and extract a meaning out of it by a laboured commentary. It is not a writing intended to be read and re-read at leisure, dotting the i's and crossing the t's till it yields up its secret meaning nor even a work of art like high-class painting to be studied and pondered over to find its true interpretation, but it is at best a mere caricature or cartoon which from the nature of things must wear its heart on the sleeve, as it were. The “common sense interpretation” of such a document must be the impression it gives to a man of ordinary common sense. *Kamal Sircar (Ajit Ghose) v. Emperor.*

39 Cr. L. J. 190 :
172 I. C. 906 : 41 C. W. N. 1217 :
10 R. C. 466 : I. L. R. 1938 1, Cal. 455 :
A. I. R. 1937 Cal. 691.

————S. 4 (1), Cls. (d) and (h)—Objectionable matter—What is—Article published in newspaper—Writer pointing out that people of certain community were constantly kidnapped by outlaws residing in tribal territories and requesting Government to take drastic action to stop kidnapping and raids—Article held did not fall either under Cl. (d) or Cl. (h) of S. 4 (1).

Where in an article published in a newspaper, the writer pointed out that people of a community were being tortured, harassed and constantly kidnapped into tribal territories by outlaws who absconded into such territories, and further suggested that if a man committed cruelty he should be bombed without warning so that it may serve as

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

a deterrent to cruel persons and he concluded the article by requesting the Government that the area where the outlaws took shelter should be razed to the ground by bombing: *Held*, that the article did not fall under S. 4 (1), Cl. (d) or Cl. (h) as it was only an honest criticism offered with a view to persuade Government to take drastic action to stop kidnapping and raids, and it could not be said that the writer in doing so had any malice or was trying to bring the Government in disrepute. *In re: Sardar Sant Singh, Sardar Rattan Singh, Printer, Editor & Publisher of “Sarhadi Sikh Samachar,” Peshawar.*

180 I. C. 252 : 11 R. Pesh. 65 :
A. I. R. 1939 Pesh. 6.

————S. 4 (1) (f)—Objectionable matter—What is—Existence of Union Jack in poster—Whether can have reference to Government of British India.

Union Jack is not the emblem of the Government established by law in British India but the national flag of the British Empire, in which are combined in union Crosses of St. George, St. Andrew and St. Patrick. Where, therefore, a poster contains a pictorial representation describing the exploitation of labour by capital, having a Union Jack on the sleeve of the exploiter, it cannot be inferred, merely from the Union Jack that it has a reference to the Government established by law in British India. And where such pictorial representation also contains slogans such as “unity and struggle” “the rich become richer” and “the poor become poorer,” they cannot come under the mischief of S. 4 (1), Cl. (d) or (f), of the Act. *Kamal Sircar (Ajit Ghose) v. Emperor.*

39 Cr. L. J. 190 :
172 I. C. 906 : 41 C. W. N. 1217 :
10 R. C. 466 : I. L. R. 1938, 1 Cal. 455 :
A. I. R. 1937 Cal. 691.

————S. 4 (h)—Mere publication of news relating to riot by newspaper in temperate and inoffensive language, whether comes within mischief of cl. (h).

What is intended to be penalized by Cl. (h), S. 4, Press (Emergency) Powers Act, is language which in itself has a tendency to promote class-hatred and thus reveals *prima facie* an intention to promote class-hatred. Clause (h), was never intended to and does not cover the mere publishing of news relating to a Hindu-Muslim riot by a newspaper in the ordinary course of its business when the authenticity or the good faith of the report is not challenged and when there is nothing else to show any intention to promote class-hatred thereby. *Parmanand v. Emperor. (F. B.)*

40 Cr. L. J. 497 :
180 I. C. 835 : 41 P. L. R. 137 :
11 R. L. 721 :
A. I. R. 1939 Lah. 81.

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

—S. 7, as amended by Criminal Law Amendment Act (XXIII of 1932)—Magistrate not taking security under S. 7 (1)—Local Government, if debarred from taking action under S. 7 (3).

The Magistrate and the Local Government are completely independent of each other with respect to the functions exercised by each under the Press (Emergency) Powers Act. It is for the Magistrate and for him alone to decide what he is to do and it is for the Local Government to decide what it is to do each acting within the respective powers conferred upon them within the Act. The fact, therefore, that the Magistrate does not require security under S. 7 (1), does not debar the Local Government, from taking action under Sub-s. (3) if it considers it proper to take action under the powers given to it under that subsection. The Magistrate may not be aware of the article at the time and the hands of the Local Government cannot be tied by his action if the Local Government takes action under sub-s. (3) of S. 7. *Muhammad Habib, Publisher of "Daily Siyasat," Lahore v. Emperor.* (S. B.) 39 Cr. L. J. 86 : 172 I. C. 200 : I. L. R. 1937 Lah. 438 : 39 P. L. R. 842 : 10 R. L. 283 : A. I. R. 1937 Lah. 844.

—Ss. 7 (3), 4, as amended by Criminal Law Amendment Act (XXIII of 1932)—Notice under S. 7 (3)—Compliance with—What is.

Where a translation of the whole article is annexed to the notice under S. 7 (3), Press (Emergency) Powers Act, as amended by the Criminal Law Amendment Act, this is sufficient compliance with the requirements of the law in this respect. It need not describe the words, signs or visible representations coming within the mischief of S. 4 (1) (d). *Muhammad Habib, Publisher of "Daily Siyasat" Lahore v. Emperor.* (S. B.) 39 Cr. L. J. 86 : 172 I. C. 200 : I. L. R. 1937 Lah. 438 : 39 P. L. R. 842 : 10 R. L. 283 : A. I. R. 1937 Lah. 844.

—S. 12—Forfeiture of press.

Keeper asked to deposit security—Keeper severing connection with press—Another depositing security—Forfeiture of Press due to failure of original keeper to furnish security—Forfeiture is illegal. *In the matter of : Virjanand Printing Press, Lahore* (S. B.) 36 Cr. L. J. 971 : 156 I. C. 674 : 16 Lah. 270 : 37 P. L. R. 107 : 8 R. L. 13 : A. I. R. 1935 Lah. 338.

—S. 2 (6), 18—Misjoinder of charges.

Per *Henderson, J.*—Such persons should not be tried together, and where there has been such a misjoinder by their joint trial, but the accused do not desire the harassment of a new trial, the Court would not be justified in ordering a new trial. *Shamsul Huda v. Emperor.* 39 Cr. L. J. 446 : 174 I. C. 393 : 10 R. C. 672 : I. L. R. 1937, 2 Cal. 670 : A. I. R. 1938 Cal. 222.

PRESS (EMERGENCY) POWERS ACT (XXIII OF 1931)

—S. 17—Forfeiture of press seized under illegal warrant—Legality of.

Where the Police Officer for the purpose of seizing the press under S. 17, is not armed with a search warrant, the search and the seizure of the press are illegal and the Magistrate cannot make the order forfeiting the press under S. 17 (3). *Nrisingha Chandra Ghose v. Emperor.*

35 Cr. L. J. 84 : 146 I. C. 464 : 37 C. W. N. 821 : 60 Cal. 1103 : 6 R. C. 227 : A. I. R. 1933 Cal. 792.

—S. 18—Objectionable publication—What is.

Where pamphlet is addressed to labourers saying that they have been troubled by the rich, and it appeared that feelings of the assembly would be inflamed against the rich, the publication of the pamphlet is punishable under S. 18. *Ramsarandas Johri v. Emperor.*

35 Cr. L. J. 1000 : 149 I. C. 710 : 3 A. W. R. 831 : 6 R. A. 960 : A. I. R. 1934 All. 717.

—S. 18 (1)—Leaflet—Construction of.

Publication of leaflet—In construing it, it should be regarded as a whole—Intention of writer can be inferred from language, style and mode of expression adopted. *P. Mohan Lal Gantam v. Emperor.* 36 Cr. L. J. 1019 : 156 I. C. 908 : 1935 A. L. J. 321 : 8 R. A. 49 : A. I. R. 1935 All. 369.

—S. 23—Application to set aside orders under S. 4.

In considering applications under S. 23, to set aside orders passed under S. 4 (1) (i), the Court should bear in mind the undesirability of anything tending to excite sedition or to excite strife between classes, and the undesirability of preventing any bona fide argument for reform. It is the effect of the words as published in the newspaper, and not merely the meaning of the words taken by themselves, that has to be considered. The motive or intention of the person against whom the order has been passed is *nihil ad rem* except in cases falling within Expl. 4 to S. 4. *In the matter of the : Sun Press, Ltd.* (S. B.)

36 Cr. L. J. 871 : 156 I. C. 135 : 13 Rang. 98 : 7 R. Rang. 377 : A. I. R. 1935 Rang. 120.

—S. 23—Interference by High Court.

District Magistrate when dealing with the Press Act, is not a Court but an executive officer and not subject to High Court's appellate jurisdiction. High Court's power of interference is confined to deciding whether publication does or not come within S. 4 (1). *Murali Manohar Prasad v. Emperor.* (F. B.)

35 Cr. L. J. 1022 : 149 I. C. 841 : 15 P. L. T. 291 : 13 Pat. 547 : 6 R. P. 669 : A. I. R. 1934 Pat. 344.

PRESS ORDINANCE

—S. 23—*Limitation—Application under S. 23, is civil miscellaneous application—Period of two months expiring when High Court closed for civil work—Application presented on day when Court opens is in time.*

Applications under S. 23, being in the nature of civil proceedings, are treated as civil miscellaneous applications. Therefore when the period of two months for applying under S. 23, to set aside an order made under S. 7, expires on a day when the High Court is closed so far as civil work is concerned, such application if made on the day when the High Court re-opens, will be deemed to have been presented in time. *In re : Sardar Sant Singh, Sardar Rattan Singh, Printer, Editor and Publisher of "Sarhadi Sikh Samachar," Peshawar.*

180 I. C. 252 : 11 R. Pesh. 65 :
A. I. R. 1939 Pesh. 6.

—S. 23—*Objectionable matter—What is.*

Newspaper describing agency which has opposed and humiliated India and has been persecuting her by keeping her under subjection—These expressions can refer only to Government—These expressions are, therefore, objectionable under S. 23. *In the matter of : Dainik Nayak and Swadesh Press, (F. B.)*

34 Cr. L. J. 316 :
142 I. C. 225 : I. R. 1933 Cal. 257 :
A. I. R. 1933 Cal. 278.

PRESS LAW REPEAL AND AMENDMENT ACT (XIV OF 1922)

See Press and Registration of Books Act, 1867.

PRESS ORDINANCE

—S. 4—*Forfeiture of security.*

Printing of photograph of a *satyagraha* volunteer imprisoned for an offence under Ordinance with a description to identify it unaccompanied by any objectionable remarks, is no ground for forfeiting security. *Prithvi Dass Sharma v. Emperor. (S. B.)*

32 Cr. L. J. 997 :
132 I. C. 889 : 12 Lah. 345 :
32 P. L. R. 676 : I. R. 1931 Lah. 713 :
A. I. R. 1931 Lah. 283.

—S. 4 (1)—*Forfeiture of security.*

Even a single sentence, if obnoxious to S. 4, Sub-s. (1), would entail forfeiture of the security. *Prithvi Dass Sharma v. Emperor. (S. B.)*

32 Cr. L. J. 997 :
132 I. C. 889 : 12 Lah. 345 :
32 P. L. R. 676 : I. R. 1931 Lah. 713 :
A. I. R. 1931 Lah. 283.

—S. 4 (1) — *Publication — Construction of.*

The Court should, in every case, consider the book or newspaper article as a whole, and in a fair, free and liberal spirit, not dwelling too much upon isolated passages. *Prithvi Dass Sharma v. Emperor. (S. B.)*

32 Cr. L. J. 997 :
132 I. C. 889 : 12 Lah. 345 :
32 P. L. R. 676 : I. R. 1931 Lah. 713 :
A. I. R. 1931 Lah. 283.

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)

—S. 4 (1) (d)—*Publication within scope.*

Publishing report of a speech advocating social boycott of persons taking part in elections to legislative bodies comes within S. 4 (1) (d). *Prithvi Dass Sharma v. Emperor. (S. B.)*

32 Cr. L. J. 997 :
132 I. C. 889 : 12 Lah. 345 :
32 P. L. R. 676 : I. R. 1931 Lah. 713 :
A. I. R. 1931 Lah. 283.

PRESUMPTION

—*Establishment of suit against accused.*

Subsequent conduct—Offence partly seen—Probabilities of case—Knowledge immediately imparted to others by eye-witness—Corroborative evidence—Negative evidence—Motive—Only one eye-witness in murder case, a ground for lesser penalty—Penal Code (Act XLV of 1860), S. 302. *Emperor v. Ramji Jetha.*

10 Cr. L. J. 274.

—*Presumption of possession of weapon.*

In the absence of evidence connecting the accused with a weapon found in a house in which people besides him reside or to which others have access, no presumption can be drawn against the accused. *Diwan Dhimar v. Emperor.*

27 Cr. L. J. 186 :
91 I. C. 1002 : 9 N. L. J. 80 :
A. I. R. 1926 Nag. 229.

—*Presumption of regularity of Judicial Acts.*

The presumption is that all proceedings taken by a Court in execution are in proper form, and if a person challenges the legality of a warrant in execution of a decree, he must advance and prove the facts on which he wishes to rely. *In re : N. M. Rama Raja.*

28 Cr. L. J. 2 :
99 I. C. 33 : 24 L. W. 484.

PREVENTION OF CRUELTY TO ANIMALS

—*Sealing of eyes.*

Obiter—It may well be that the process of sealing up the eyes of cranes or hawks is in itself a cruel practice. *Ibrahim Mir Shikari v. Emperor.*

18 Cr. L. J. 826 :
41 I. C. 650 : 19 Bom. L. R. 524 :
41 Bom. 654 : A. I. R. 1917 Bom. 199.

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)

—*Applicability.*

Prevention of Cruelty to Animals has no application to Saran in the Province of Bihar. *In the matter of : Senchi Singh.*

23 Cr. L. J. 87 :
65 I. C. 439.

—S. 3 (A)—*Abandonment of animal, whether ill-treatment.*

An owner who abandons an animal, with the result that the animal is left to starve in the

PREVENTION OF CRUELTY TO ANIMALS ACT (IX OF 1890)

streets, is not guilty under S. 3 (a). *Nasir Wazir v. Emperor*. 21 Cr. L. J. 81 :

54 I. C. 481 : 21 Bom. L. R. 1096 :

44 Bom. 159 : A. I. R. 1920 Bom. 221.

—S. 3 (a)—Cruelty—Determination of.

The determination by the Local Government of the maximum weight to be carried by pack ponies, and publication of the District Magistrate's orders in the local *Gazette* to that effect are not necessary requirements of a determination of the case under S. 3 (a), on the merits. It is for the Magistrates to decide whether as a matter of fact there was overloading or not. *Public Prosecutor v. Chikka Rangan*.

40 Cr. L. J. 172 :

179 I. C. 159 : 1938 M. W. N. 912 :

48 L. W. 382 : 1938, 2 M. L. J. 659 :

11 R. M. 532 : A. I. R. 1938 Mad. 949.

—S. 3, Cl. (a), (c)—Ill-treatment, if includes starvation.

The mere starving a calf to death is not an offence under S. 3 (c) which applies only where a person offers, exposes or has in his possession for sale any live animal. Starvation, however, is, in view of the collocation of words in the said section, one kind of ill-treatment, and the words, "otherwise ill-treats any animal" in S. 3 (a) include starvation of an animal. *Maluka Goala v. Emperor*. 3 Cr. L. J. 116 :

2 C. L. J. 624.

—S. 3 (B)—Cruelty, every form of, not punishable.

The real intention of the language used in S. 3 (b) is not to punish any form of cruelty but to punish only such cruelty as is inflicted on an animal by causing it unnecessary pain or suffering by reason of the manner or position in which the animal is bound or carried. The applicant purchased certain cranes whose eyes were sealed or stitched up prior to the applicant's purchase of them. While the applicant was conveying them by rail it was noticed at a station that the birds' eyes were stitched up and were bleeding : *Held*, that the cruelty, if any, was caused by the antecedent stitching up of the eyes and not by the manner or position in which the birds were carried in the luggage van of the train. *Ibrahim Mir Shikari v. Emperor*.

18 Cr. L. J. 826 :

41 I. C. 650 : 19 Bom. L. R. 524 :

41 Bom. 654 : A. I. R. 1917 Bom. 199.

—S. 6—Act done in spite of reasonable precautions—Liability.

Where a man takes all reasonable precautions to prevent the doing of an act, and in spite of his precautions such act is done, it cannot be said that he has permitted the doing of that act. *Baijnath v. Emperor*. 13 Cr. L. J. 274 :

14 I. C. 658 : 9 A. L. J. 262.

—S. 6—Offence by servant—Effect.

The fact that the accused was absent and

PREVENTION OF INTIMIDATION ORDINANCE (V OF 1930)

ignorant of the use of the animal by his servant, is no defence to a charge under S. 6. *Bindeshwar Prasad v. Emperor*.

33 Cr. L. J. 232 :

136 I. C. 59 : 10 Pat. 847 :

13 P. L. T. 44 : I. R. 1932 Pat. 59 :

A. I. R. 1932 Pat. 65.

—Ss. 3, 6—Application of.

Working a lean pony and using bridles with leather disc studded with nails deserves conviction under S. 3 in preference to S. 6. *Emperor v. Brjai*. 3 Bur. L. J. 155 :

A. I. R. 1924 Rang. 373.

PREVENTION OF GAMBLING ACT (BOM. ACT IV OF 1887)

—S. 3 (6)—Instruments of gaming—What are.

The words 'means of gaming' in S. 3 (6), are very wide, and money is generally a means of gaming, though all moneys are not instruments of gaming. *Pyarelal Gokulprasad v. Emperor*.

33 Cr. L. J. 385 :

137 I. C. 181 : 34 Bom. L. R. 278 :

56 Bom. 192 : I. R. 1932 Bom. 238 :

A. I. R. 1932 Bom. 194.

PREVENTION OF INTIMIDATION ORDINANCE (V OF 1930)

—Effect of.

Ordinance No. V of 1930 and the notification thereunder making the offence under S. 188, Penal Code, cognizable and non-bailable, do not get rid of the requirements imposed by S. 105, Cr. P. C. *Lachmi Devi v. Emperor*.

32 Cr. L. J. 511 :

130 I. C. 241 : 35 C. W. N. 257 :

53 C. L. J. 461 : I. R. 1931 Cal. 369 :

A. I. R. 1931 Cal. 122.

—S. 3—Gravity of offence under.

Gravity of the offence under S. 3 depends upon the circumstances existing at the time when the offence is committed and the Magistrate is the best Judge of this matter. *Jugal Kishore Dhar v. Emperor*.

33 Cr. L. J. 28 :

134 I. C. 1129 : 35 C. W. N. 436 :

I. R. 1932 Cal. 41 : A. I. R. 1931 Cal. 633.

—S. 3—Interpretation.

The word "cause" in S. 3 cover the operation known as peaceful picketing. *Jugal Kishore Dhar v. Emperor*.

33 Cr. L. J. 28 :

134 I. C. 1129 : 35 C. W. N. 436 :

I. R. 1932 Cal. 41 : A. I. R. 1931 Cal. 633.

—S. 3—Molestation, what is.

Loitering at a liquor shop with a view to cause persons to abstain from purchasing liquor comes within the definition of 'molestation' as given in S. 3. *Pindi Das v. Emperor*.

32 Cr. L. J. 878 :

132 I. C. 393 : I. R. 1931 Lah. 585 :

A. I. R. 1931 Lah. 469.

PREVENTION OF MOLESTATION AND BOYCOTTING ORDINANCE (V OF 1932)

—S. 4—Liability under.

The mere fact that a person is the Dictator of the District Congress Committee and that ordinarily picketing takes place under his directions, is not sufficient to prove an offence under Ordinance V of 1932. *Vishnu Datta v. Emperor*.

34 Cr. L. J. 587 :
143 I. C. 356 (1) : I. R. 1933 Lah. 350 (1) :
A. I. R. 1933 Lah. 233.

—S. 5—Scope.

Under S. 5 a Magistrate may only take cognizance of an offence punishable under S. 4 on a report in writing of facts which constitute such offence made by a Police Officer. *Basudeo Narain v. Emperor*.

34 Cr. L. J. 303 :
142 I. C. 180 : 13 P. L. T. 753 :
I. R. 1933 Pat. 130 : A. I. R. 1933 Pat. 50.

PREVIOUS CONVICTION

—Duty of Court to be cautious.

A man with several previous convictions is singularly liable to be the victim of a false case, and it is both easier to obtain a conviction against such a man, and his punishment is heavier. These are facts well-known to the people, and they are apt to take advantage of them. Courts should be on their guard against being abused by such procedure. *Gokha Singh v. Emperor*.

2 Cr. L. J. 692 :
6 P. L. R. 434 : 32 P. R. 1905 Cr.

PRINCIPAL AND AGENT

—Liability of principal for acts of agent.

The principal can be made responsible for and found guilty of the acts of his agents under the Criminal Code only where it is proved that he has instigated or otherwise abetted the acts of the person who actually committed the crime. The law of abetment was enacted to deal with such cases. *Maung New v. Maung Po Hla*.

38 Cr. L. J. 764 :
169 I. C. 293 : 9 R. Rang. 393 (2) :
1937 Rang. 246 : A. I. R. 1937 Rang. 117.

—Negligence.

Agent entrusted with investment of principal's moneys, must have a proper valuation made of the property upon the security of which money is invested. Before he is made liable for breach of duty, it must be proved that the loss was the result of his negligence. *William Abercrombie Shaw v. Fredrick Chater Jack*.

137 I. C. 531 :
I. R. 1932 P. C. 207 P. C. :
A. I. R. 1932 P. C. 194.

—Principal and agent — Principles of liability.

It is the duty of an agent who has been entrusted with the investment of moneys belonging to his principal to have a proper valuation made of the property upon the security of which the money is invested. If he chooses to rely mainly upon his own general knowledge

PRINTING PRESSES AND BOOKS ACT (XXV OF 1867)

of the value of lands in the locality, he does so at his own risk. But before the agent is made liable for such breach of duty, it must be proved that the loss was the result of the agent's negligence. Auction sales are no indication of the value of land, and this must specially be applicable to a forced sale under a mortgage decree. If the security was adequate, the consideration that the agent was actuated more by a desire to meet the necessities of the mortgagor than by a regard for the interests of his principal is immaterial. *William Abercrombie Shah v. Frederick Chater Jack*.

137 I. C. 531 P. C. :
I. R. 1932 P. C. 207 : A. I. R. 1932 P. C. 194.

PRINTING PRESSES AND BOOKS ACT (XXV OF 1867)

—Ss. 1, 3—"Book," what is, offence under S. 3, what is.

The word 'book' as defined in S. 1 includes part of a volume or pamphlet. Therefore, the printer of a portion of a pamphlet is bound to print thereon his name and the place of printing, and failure to do so, constitutes a breach of S. 3. *Emperor v. Hari Govind*.

13 Cr. L. J. 139 :
13 I. C. 827 : 14 Bom. L. R. 40.

—Ss. 3, 12—Printing names of printer and publisher—Newspaper—Names of printer and publisher should be printed as such.

The correct interpretation of the rule in S. 3 is that the name of the printer as such and the name of the publisher as such must be printed. The object of the rule is that the paper should clearly intimate who is liable as printer and who is liable as publisher. Printers and publishers cannot be allowed to select for themselves their own description, they must use the description prescribed by the Act, and a publisher cannot be described as "manager," merely because the manager and publisher of many papers are identical. *Emperor v. Bhawni Das*.

10 Cr. L. J. 195 :
12 I. C. 978 : 5 P. R. 1909 Cr. :
15 P. W. R. 1909 Cr.

—S. 7—Declaration by Printer—Liability of Printer.

The person who subscribes to the declaration under the Printing Press and Newspapers Act, must be presumed under S. 7 to be cognizant of all that he was printing and publishing, and in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. *Apurba Krishna Bose v. Emperor*.

7 Cr. L. J. 10 :
7 C. L. J. 49 : 35 Cal. 141 :
2 M. L. T. 500.

—S. 7—Defamatory article in newspaper—Liability of declared printer—Bona fide absence, effect of.

A declared printer of a newspaper is not liable for seditious or defamatory articles published in the newspapers without his

PRISONERS ACT, 1894

knowledge during his *bona fide* absence. *Emperor v. Muhammad Siraj*. 30 Cr. L. J. 201 : 113 I. C. 742 : 26 A. L. J. 746 : 50 All. 806 : I. R. 1929 All. 166 : A. I. R. 1928 All. 400.

———S. 7—*Printer and publisher—Responsibility for seditious article—Absence.*

The declared printer of a newspaper is responsible for seditious articles published therein unless he can establish that in fact he had nothing to do with them. *Surendra Prasad v. Emperor*. 12 Cr. L. J. 354 : 10 I. C. 954 : 38 Cal. 227.

———S. 13.—*Prosecution for omission to make declaration—Duty of prosecution.*

To sustain a conviction under S. 13, it is necessary to find that the press was in a sufficiently fit condition to enable the printing of books or papers thereby, and the onus is on the prosecution to show that the press was in workable order. *Benoy Kumar Sen v. Emperor*. 31 Cr. L. J. 672 : 124 I. C. 490 : 34 C. W. N. 143 : 57 Cal. 460 : A. I. R. 1929 Cal. 635.

PRISONERS ACT (III OF 1900)

———S. 3—*Scope.*

Court has jurisdiction to enquire into treatment of under-trial prisoners and give direction to jail authority. But a public inquiry cannot be insisted on. *Sukh Dev Raj v. Emperor*. 32 Cr. L. J. 988 : 133 I. C. 59 : 32 P. L. R. 586 : I. R. 1931 Lah. 731 : A. I. R. 1931 Lah. 562.

———S. 11.

See also (i) Coroners Act, 1871, ss. 24, to 27 and 29.

———S. 40—*Extradition of prisoner.*

The High Court of Bombay refused to address a letter to the Government of Bombay, under S. 40 of the Prisoners Act, requesting them to ask the Kolhapur Durbar to permit a prisoner who was in prison in that State to come out of jail to answer charges in a criminal proceeding pending against him in the British territory. *Emperor v. Rajesahab Imamsahab*. 2 Cr. L. J. 504 : 7 Bom. L. R. 566.

PRISONERS ACT, 1894

———S. 3.

The terms "prison" and "jail" do not include any place for the confinement of prisoners who are exclusively in the custody of the Police. *Emperor v. Po Thin*. 15 Cr. L. J. 10 : [22 I. C. 154 : 7 L. B. R. 62 : A. I. R. 1914 L. Bur. 156.

———S. {3.

The Borstal Institute and Training School at Thayetmye are prisons, within the meaning of the definition in S. 3, Prisons Act of 1894. *Emperor v. Nga Pyu*. (F. B.) 38 Cr. L. J. 33 : 165 I. C. 575 : 14 Rang. 625 : 9 R. Rang. 215 : A. I. R. 1936 Rang. 485.

PRIVATE DEFENCE

———S. 40.

Courts have no jurisdiction to go into the question whether Jail Superintendent has or has not observed provisions of S. 40. Prisoner's redress is to the superior executive authority. *Sukh Dev Raj v. Emperor*. 33 Cr. L. J. 531 : 137 I. C. 851 : 33 O. L. R. 722 : I. R. 1932 Lah. 359 (2) : A. I. R. 1932 Lah. 390.

PRISONS ACT (BOMBAY) 1894

———S. 42—*Offence under—When constituted.*

A convict warder who takes an article from a prisoner to deliver it outside the Jail premises, is guilty of an offence under S. 42 read with Art. 485, Bombay Jail Manual, 1911. *Sofin Rasul v. Emperor*. 25 Cr. L. J. 1382 : 83 I. C. 342 : 26 Bom. L. R. 267 : A. I. R. 1924 Bom. 385.

———S. 42 (3)—*Communicating with prisoner—Abetment by prisoner.*

A prisoner who, by his active co-operation aids a stranger outside the Jail in communicating with himself abets the former in the commission of an offence under S. 42 (3), Prisons Act, and is himself guilty of an offence under the section. *Stretnivasa Chetty v. Emperor*. 24 Cr. L. J. 449 : 72 I. C. 609 : 1923 M. W. N. 274 : 44 M. L. J. 585 : 18 L. W. 80 : A. I. R. 1923 Mad. 596.

———S. 52.

Neither of the terms "District Magistrate," or "Magistrate of the First Class," as used in S. 52 includes a Presidency Magistrate for the purposes of the Act. Consequently, a Presidency Magistrate has no jurisdiction to try prisoners for offences under S. 52. *Emperor v. Chota Singh*. 10 Cr. L. J. 393 : 3 I. C. 885 : 32 Mad. 303.

———S. 54—*Penal Code (Act XLV of 1860), S. 186—Unauthorised delivery of thing to prisoner—Offence.*

A Jailor suspected a Subordinate Medical Officer of having conveyed a letter to the relation of a prisoner and ordered him to submit to be searched, but the Subordinate Medical Officer refused to do this: Held, that the offence committed by the accused was punishable under S. 186, I. P. C., and not under S. 54, Prisons Act. *Imperator v. Gobindram*. 14 Cr. L. J. 612 : 21 I. C. 667 : 7 S. L. R. 49.

PRIVATE DEFENCE

———*Alternative plea.*

It is open to an accused person to plead the right of private defence either specifically, or as an alternative defence. *Faudi Keot v. Emperor*. 21 Cr. L. J. 799 : 58 I. C. 527 : 1 P. L. T. 79 : 5 P. L. J. 64 : A. I. R. 1920 Pat. 843.

———*Exceeding right of private defence.*

When a Court finds that an accused had the right of private defence in any case, it

PRIVY COUNCIL

to entertain appeals in criminal matters is only exercised when there has been a gross denial of the principles of natural justice. *Muruga Goundan v. Emperor*.

23 Cr. L. J. 743 (a) :
69 I. C. 631 : 14 L. W. 558 :
26 C. W. N. 57 : 30 M. T. 180 :
1 P. L. R. 31 : A. I. R. 1922 P. C. 162.

—————Interference by—Grounds for.

The power to entertain criminal appeals in the Privy Council arises not from the relation of the Privy Council to the Court below, as a Court of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative. The prerogative is the remnant of the power of the Crown which remains to the Crown to interfere with Tribunals of Justice, which does not exist in England at all; it has passed away in the historic development of the constitution. India is not yet a self-governing dominion, but it has been publicly said that India has been recognized by the Imperial Government as being on the way to becoming a self-governing dominion, and therefore, even with regard to India it is, with the utmost care, that the Privy Council should pronounce any proposition that that disappearing fragment of the prerogative remains. Unless, therefore, it can be proved that there was no proper trial at all, that the forms of all judicial procedure were disregarded, not merely according to local ordinances, but according to the unvarying character which is common to all, the Privy Council will not interfere. *Hanmant Rao v. Emperor*.

26 Cr. L. J. 1419 :
89 I. C. 843 : 27 Bom. L. R. 704 :
49 Bom. 455 : 1926 M. W. N. 32 :
A. I. R. 1925 P. C. 180.

—————Interference by—Grounds for.

The Privy Council is empowered to interfere, only when it finds "that what has been done has been grossly contrary to the forms of justice or violates fundamental principles." *Clifford v. Emperor*.

15 Cr. L. J. 144 :
22 I. C. 496 : 1914 M. W. N. 11 :
40 I. A. 241 : 16 Bom. L. R. 1 :
12 A. L. J. 75 : 15 M. L. T. 84 :
19 C. L. J. 107 : 18 C. W. N. 374 :
7 Bur. L. T. 37 : 41 Cal. 568.

—————Interference by—Grounds for.

The Privy Council will not concern itself with the administration of criminal justice in India unless there has been some violation of the principles of justice or some disregard of legal principles. *Rustom v. Emperor*.

26 Cr. L. J. 391 :
84 I. C. 935 : 26 Bom. L. R. 692 :
48 Bom. 515 :
1 O. W. N. 490 : 2 L. C. 1 :
22 L. W. 57 :
A. I. R. 1925 P. C. 59.

—————Interference by—Grounds for.

The Privy Council will not review or interfere with the course of criminal proceedings, unless it is shown that by a disregard of the forms of legal process or by some violation of the

PRIVY COUNCIL

principles of natural justice, or otherwise, substantial and grave injustice has been done. *Abdul Rahman v. Emperor*,

28 Cr. L. J. 259 :
100 I. C. 227 : 31 C. W. N. 271 :
25 A. L. J. 117 : 1927 M. W. N. 103 :
38 M. L. T. 64 : 8 P. L. T. 155 :
4 O. W. N. 283 : 6 Bur. L. J. 65 :
5 Rang. 53 : 52 M. L. J. 585 :
29 Bom. L. R. 813 :
45 C. L. J. 441 : 54 I. A. 96 :
A. I. R. 1927 P. C. 44.

—————Interference by—Grounds for.

The Privy Council do not sit as a Court of Criminal Appeal. For them to interfere with criminal sentence, there must be something so irregular or so outrageous as to shock the very basis of justice. *H. W. Scott v. Emperor*.

36 Cr. L. J. 1232 :
157 I. C. 821 : 13 Rang. 141 :
8 R. Rang. 116 : A. I. R. 1935 Rang. 214.

—————Interference by—Grounds for.

Where there are really no materials for a conviction for murder as opposed to manslaughter, and in addition the trial was so conducted as in three separate respects, namely, the exclusion of the statements, restriction of the address by Counsel, and the neglect of the rule requiring corroboration, to exhibit a neglect of fundamental rules of practice necessary for the due protection of prisoners and the safe administration of criminal justice, their Lordships will allow the appeal and set aside the convictions. *Mahadeo v. Emperor*.

37 Cr. L. J. P. C. 914 :
163 I. C. 681 : 44 L. W. 253 :
1936 A. L. J. 869 : 40 C. W. N. 1164 :
1936 M. W. N. 889 : 9 R. P. C. 51 :
38 Bom. L. R. 1101 P. C. :
A. I. R. 1936 P. C. 242.

—————Interference by Privy Council—Grounds for.

Where, the Governor-General refuses to make an order of transfer of the case, the refusal cannot be held to amount to a violation of the principles of natural justice so as to enable the Privy Council to interfere with the result of the trial. *Shafi Ahmad Nabi Ahmad v. Emperor*.

27 Cr. L. J. 228 :
92 I. C. 212 : 49 M. L. J. 834 :
23 L. W. 1 : 1926 M. W. N. 62 :
43 C. L. J. 67 : 3 O. W. N. 165 :
28 Bom. L. R. 158 : 30 C. W. N. 557 :
A. I. R. 1925 P. C. 305.

—————Interference by Privy Council—Grounds for.

The Privy Council will not act as a Court of Criminal Appeal and will not review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice, or otherwise, substantial

PRIVY COUNCIL

and grave injustice has been done. *Shafi Ahmad Nabi Ahmad v. Emperor.*

27 Cr. L. J. 221 :
92 I. C. 212 : 49 M. L. J. 834 :
23 L. W. 1 : 1926 M. W. N. 62 :
43 C. L. J. 67 : 3 O. W. N. 165 :
28 Bom. L. R. 158 : 30 C. W. N. 557 :
A. I. R. 1925 P. C. 305.

———Interference in criminal matters—
Grounds for.

The Privy Council is not a Court of Criminal Appeal. When there has been evidence before the Court of Appeal, and the Court of Appeal has come to a conclusion upon that evidence, their Lordships will not disturb that conclusion, unless there has been a gross miscarriage of justice and gross abuse of the forms of legal process. *Begu v. Emperor.*

26 Cr. L. J. 1059 :
88 I. C. 3 : 2 O. W. N. 447 :
48 M. L. J. 643 : 41 C. L. J. 437 :
27 Bom. L. R. 707 : 3 Pat. L. R. 95 Cr. :
6 Lah. 226 : 23 A. L. J. 636 :
1925 M. W. N. 418 :
7 L. L. J. 324 : 52 I. A. 191 :
30 C. W. N. 581 : A. I. R. 1925 P. C. 130.

———Interference with verdict of jury.

It is not for this Board to interfere with the verdict of the jury because its conclusion as to guilt or innocence might differ from that of the jury. But where there are no grounds on the evidence taken as a whole, upon which any Tribunal could properly, as a matter of legitimate inference, arrive at a conclusion that the accused was guilty, the verdict cannot stand. *Stephen Seneviratne v. The King.*

37 Cr. L. J. P. C. 963 :
164 I. C. 545 : 9 R. P. C. 83 :
44 L. W. 661 : 41 C. W. N. 65 :
1936 M. W. N. 1340 : 39 Bom. L. R. 1 P. C. :
A. I. R. 1936 P. C. 289.

———Jurisdiction, if can be invoked on subsidiary matters.

The Privy Council will not review or interfere with the course of criminal proceedings unless it is shown by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done. These ordinary rules limiting the exercise of this jurisdiction do not cease to apply, even where special leave to appeal has been granted on one point and the party wants to take recourse to the jurisdiction on subsidiary points. *Babulal Choukhani v. Emperor.*

39 Cr. L. J. 452 P. C. :
174 I. C. 1 : 1938 A. L. J. 382 :
19 P. L. T. 343 : 1938, 1 M. L. J. 647 :
42 C. W. N. 621 : 1938 O. W. N. 416 :
1938 O. L. R. 189 : 1938 M. W. N. 505 :
4 B. R. 490 : 67 C. L. J. 161 :
40 Bom. L. R. 787 :
65 I. A. 158 : 32 S. L. R. 476 :
I. L. R. 1938, 2 Cal. 295 :
10 R. P. C. 250 P. C. :
1938 A. W. R. 116 : A. I. R. 1938 P. C. 130.

PRIVY COUNCIL

———Leave to appeal to P. C.—When cannot be granted.

Practice—Appeal from Federal Court of India—Leave to appeal—Point technical and of no use in future—Leave refused. *Hori Ram Singh v. King-Emperor.*

41 Cr. L. J. 413 P. C. :
187 I. C. 1 : 1940 O. W. N. 244 :
1940 A. L. J. 205 : 6 B. R. 452 :
1940 O. L. R. 190 :
51 L. W. 407 : 21 P. L. T. 327 :
1940 M. W. N. 360 :
44 C. W. N. 401 : 71 C. L. J. 307 :
1940, 1 M. L. J. 706 :
1940 Kar. P. C. 132 Sup. 67 I. A. 122 :
42 P. L. R. 392 : 42 Bom. L. R. 619 :
I. L. R. 1940 Lah. 443 : 12 R. P. C. 135 :
A. I. R. 1940 P. C. 54.

———Leave to appeal—When granted.

It is very difficult to induce the Judicial Committee to advise the granting of special leave to appeal in a criminal case. *Chung Chuck v. Rex.* 123 I. C. 731 : I. R. 1930 P. C. 219 :
A. I. R. 1930 P. C. 291.

———Leave to appeal—When granted.

Leave to appeal is not granted except where some clear departure from the requirements of justice exists: nor unless 'by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done'. Applications for leave to appeal and the hearing of criminal appeals are upon the same footing. *Stephen Seneviratne v. The King.*

37 Cr. L. J. P. C. 963 :
164 I. C. 545 : 9 R. P. C. 83 :
44 L. W. 661 : 41 C. W. N. 65 :
1936 M. W. N. 1340 : 39 Bom. L. R. 1 P. C. :
A. I. R. 1936 P. C. 289.

———Leave to appeal—When granted.

Practice—Special leave in criminal cases—Interpretation of section of Cr. P. C., of vital importance—Difference of opinion between High Courts—Special leave will be granted. *Nazir Ahmad v. Emperor.*

38 Cr. L. J. 415 :
166 I. C. 793 : 17 P. L. T. 593 :
38 Bom. L. R. 698 : 44 L. W. 213 :
38 P. L. R. 802 : 1937 O. L. R. 99 :
9 R. P. C. 174 (1) :
1936 A. W. R. 754 : 3 B. R. 322 P. C. :
A. I. R. 1936 P. C. 253 (1).

———Leave to appeal to Privy Council, who can grant.

The Court of Appeal of British Columbia has no right to give leave to appeal to the Privy Council in a criminal case. *Chung Chuck v. Rex.* 123 I. C. 731 :
I. R. 1930 P. C. 219 : A. I. R. 1930 P. C. 291.

———Petition for leave to appeal to Privy Council.

An applicant for special leave ought to show the materials upon which one of those propositions can be established, and ought

PROBATE AND ADMINISTRATION ACT (V OF 1881)

fully to inform the Board of the Judicial Committee of the facts. *Birch v. Emperor*.

12 Cr. L. J. 100 :
69 I. C. 581 : 13 C. L. J. 129 :
18 A. L. J. 147 : 13 Bom. L. R. 9 :
9 M. L. T. 200 : 4 Bur. L. T. 33 :
1911, 2 M. W. N. 159 : 21 M. L. J. 374.

—Sentence, decision—Interpretations.

Although the word "sentence" in the minds of some people is peculiarly appropriate to criminal cases and is chiefly heard in criminal trials, there is a great difference between a verdict and a sentence. *Obiter*.—The word 'decision,' standing merely by itself might be sufficient to cover a decision either in a civil or in a criminal case. *Chung Chuck v. Rex*.

123 I. C. 731 :
I. R. 1930 P. C. 219 :
A. I. R. 1930 P. C. 291.

—Violation of natural justice — What is.

Questions as to the sufficiency of evidence or the adequacy of the Judge's charge to the Jury cannot come within the ambit of the rule laid down as to the disregard of the forms of legal process or violation of the principles of natural justice. *Shafi Ahmad Nabi Ahmad v. Emperor*.

27 Cr. L. J. 228 :
92 I. C. 212 : 49 M. L. J. 834 :
23 L. W. 1 : 1926 M. W. N. 62 :
43 C. L. J. 67 : 3 O. W. N. 165 :
28 Bom. L. R. 158 : 30 C. W. N. 557 :
A. I. R. 1925 P. C. 305.

—Whether Court of Criminal Appeal.

Criminal appeal—Their Lordships do not constitute a Court of Criminal Appeal. *Inayat Khan v. Emperor*.

37 Cr. L. J. 833 P. C. :
163 I. C. 7 : 40 C. W. N. 1101 :
44 L. W. 125 : 1936 M. W. N. 743 :
2 B. R. 637 : 1936 O. L. R. 357 :
9 R. P. C. 1 : 38 P. L. R. 824 :
63 C. L. J. 486 : 38 Bom. L. R. 764 :
17 Lah. 488 P. C. : 1936 A. W. R. 751 :
A. I. R. 1936 P. C. 199.

PROBATE AND ADMINISTRATION ACT (V OF 1881)

—S. 89—Applicability and scope.

S. 89 has no reference to criminal prosecutions but is confined to civil actions only. *Muhammad Ibrahim Sahib v. Shaik Dawood*.

23 Cr. L. J. 117 :
65 I. C. 549 : 40 M. L. J. 351 :
13 L. W. 379 : 1921 M. W. N. 227 :
44 Mad. 417 : 30 M. L. T. 349.

See also *Emperor v. Mauj Din*.

24 Cr. L. J. 29 :
71 I. C. 77 : 4 Lah. 7 :
A. I. R. 1924 Lah. 72.

—S. 89—Applicability to criminal proceedings.

S. 89, Probate and Administration Act, has no application whatever to a criminal prosecution. Criminal proceedings once legally insti-

PROCEDURE

tuted, whether upon a complaint or otherwise, do not terminate or abate merely by the death of the complainant or the person injured. *Hazara Singh v. Emperor*.

22 Cr. L. J. 166 :
59 I. C. 918 : 2 Lah. 27 :
A. I. R. 1922 Lah. 227.

PROCEDURE

—Joint Appeal.

In Oudh, persons convicted together and not in jail, can appeal on one petition of appeal and on one copy of judgment. *Batasha v. Emperor*.

18 Cr. L. J. 512 :
30 I. C. 480 : 4 O. L. J. 82 :
A. I. R. 1917 Oudh 329.

—Civil dispute—Jurisdiction of Criminal Courts.

The criminal law ought not to be set in motion for the purpose of adjudicating upon an issue which clearly is within the province of a Civil Court to decide. In such a case, the civil adjudication should precede, and not succeed, an adjudication by a Criminal Court. *Khem Chand v. Emperor*.

24 Cr. L. J. 245 :
71 I. C. 780.

—Confessions—Duty of Courts to consider.

If some of the accused in a Sessions trial plead guilty to the charge, their conviction should be recorded then and there ; but if the Sessions Judge convicts them after he has taken evidence against the other accused and does not take into account their confession in passing sentence upon the others, he commits only a curable irregularity. *Surjan Singh v. Emperor*.

16 Cr. L. J. 103 :
27 I. C. 151 : 12 A. L. J. 1239 :
A. I. R. 1914 All. 558.

—Conviction by Magistrate of lighter offence than warranted by facts—Interference by High Court.

Where a Magistrate convicts an accused person of an offence falling within his jurisdiction, though the facts found would also constitute a more serious offence not within his jurisdiction, the proceedings are not void *ab initio* and the High Court will not ordinarily interfere unless the sentence appears to be inadequate or unless the accused has been deprived of the right of appeal. *Barhamdeorai v. Emperor*.

26 Cr. L. J. 1539 :
90 I. C. 439 : 7 P. L. T. 272 :
A. I. R. 1926 Pat. 36.

—Counter-complaints—Procedure.

Where, of two counter-complaints filed before a Magistrate, process is issued in one, while the other is ordered to be put up after its disposal, the Magistrate does not contravene any rules of procedure. *Lalji Singh v. Naurangi Lal*.

24 Cr. L. J. 120 :
71 I. C. 248 : 3 P. L. T. 764 :
1922 Pat. 304 : 4 U. P. L. R. Pat. 112 :
A. I. R. 1922 Pat. 618.

PROCEDURE

———*Court witness, examination of, after arguments.*

Where after the close of a case by both parties, the Magistrate examines a Court witness, and neither party asks the Magistrate to allow further arguments, no objection can be taken in revision. *Abdul Jabbar v. Mafizuddin*.

25 Cr. L. J. 1107 :
81 I. C. 931 : 28 C. W. N. 783 :
A. I. R. 1924 Cal. 980.

———*Cross-cases—Trial by one Magistrate.*

It is desirable that cross-cases arising out of the same occurrence should be tried by the same Magistrate. *Samir v. Beni Madhab Gope*.

24 Cr. L. J. 940 :
75 I. C. 394 : 37 C. L. J. 410 :
27 C. W. N. 700 : A. I. R. 1923 Cal. 644.

———*Appeal with wrong description of Court—Effect.*

If an appeal which lies to the Collector of a District is presented to the District Magistrate who is also the Collector, it should be returned for substituting the word "Collector" for the word "Magistrate." But if the appeal is not returned for the amendment and the Collector treating the defect in form as a mere clerical error deals with it, the orders passed by him will not be invalid. *Hub Lal v. Emperor*.

27 Cr. L. J. 523 :
93 I. C. 986 : A. I. R. 1926 All. 402.

———*Hearing of case concluded—Delivery of judgment, date fixed for—Accused, absence of—Order of deposit of process fee by complainant.*

Held, after the hearing of a summons case has been concluded, the Court cannot direct the complainant to deposit process fees for securing the attendance of the accused who happens to be absent. On the other hand, the Court should cancel the bond of the accused and issue a warrant for his arrest and the case must, be remanded to the trial Court with the direction that it should fix a fresh date for delivery of judgment. *Bhimmi v. Pershadi*.

26 Cr. L. J. 963 :
87 I. C. 419 : A. I. R. 1925 All. 392.

———*Dispute of civil nature.*

Where the dispute between the parties is of a civil nature, the Magistrate would exercise a better discretion if he directs the complainant to seek his remedy from a Civil Court. *Tulsi v. Emperor*.

27 Cr. L. J. 231 :
92 I. C. 215 : 7 L. L. J. 389 :
A. I. R. 1925 Lah. 599.

———*Local inspection—Record of—Necessity of—Inspection by Magistrate—Note of inspection, record of—Prejudice to accused.*

Though there is no provision in Cr. P. C. for making a local inspection, or for keeping a note of such inspection, if made, a Magistrate must invariably put on record a note of his inspection. An accused is prejudiced in his trial, if the Magistrate uses knowledge derived from a local inspection, without putting a note of such inspection on the record. In such a

PROCEDURE

case, the conviction of the accused must be set aside. *Athar Hussain v. Emperor*.

24 Cr. L. J. 234 :
71 I. C. 698 : 1922 Pat. 27 :
A. I. R. 1922 Pat. 51.

———*Mode of passing sentences.*

Where an accused person is convicted at separate trials and is sentenced to undergo imprisonment in each, the sentences cannot be ordered to run concurrently. *Emperor v. Nga Sein Po*.

25 Cr. L. J. 85 :
76 I. C. 21 : 2 Bur. L. J. 92 :
1 Rang. 306 : A. I. R. 1923 Rang. 197.

———*Mode of trial—Cross-cases—Mode of trial.*

Where there are cross-cases arising out of the same incident, they should not be heard at one and the same time and the evidence in one case should not be considered in coming to a conclusion in the other. *Garibulla Akanda v. Sadar Akanda*.

25 Cr. L. J. 941 :
81 I. C. 557 : 39 C. L. J. 531 :
A. I. R. 1924 Cal. 813.

———*Mode of trial.*

Joint and separate trials—Evidence recorded once only—Irregularity. *Narain Singh v. Emperor*.

24 Cr. L. J. 415 :
72 I. C. 527 : A. I. R. 1924 Lah. 228.

———*Petition to Police reported false—Subsequent petition to Magistrate—Magistrate, duty of.*

When a charge made by a person is designated in a Police report as false, he is entitled to file a petition before a Magistrate impugning the correctness of the report. The Magistrate must regard this petition as a complaint and the complainant is entitled to have the persons complained against tried on the charge, or else his statement must be recorded on oath and his complaint dismissed. *Nand Kishore Missir v. Kalika Missir*.

24 Cr. L. J. 845 :
74 I. C. 957 : A. I. R. 1923 Pat. 539.

———*Sessions case—Inquiry by Magistrate—Evidence—Framing of charge—Cross-examination.*

In every inquiry into a Sessions case a Magistrate is bound, before he draws up a charge, to take all such evidence as may be produced (1) in support of the prosecution, (2) on behalf of the accused, and (3) as may be called for by the Magistrate. A Magistrate is further bound, if the complainant or the officers conducting the prosecution or the accused applies to him, to issue process to compel the attendance of witnesses, to issue such process and as a matter of consequence to take the evidence thus caused to be produced unless the Magistrate records reasons to show that it is unnecessary to compel the attendance of the witnesses. *Durga Dutt v. Emperor*.

13 Cr. L. J. 443 :
15 I. C. 75 : 10 A. L. J. 144.

PROSECUTION

———*Sessions trial—Witnesses examined before Committing Magistrate, production of duty of prosecution.*

An accused person is entitled in a Sessions trial to have all the witnesses examined before the Committing Magistrate put in the witness-box for cross-examination, unless the Public Prosecutor, discards any particular witness on the ground, that if examined, he will not tell the truth. *Nagendra Chandra Dhar v. Emperor.*

25 Cr. L. J. 190 :
76 I. C. 430 : 27 C. W. N. 820 :
38 C. L. J. 203 : A. I. R. 1923 Cal. 717.

———*Single Judge, power of.*

On an appeal from a conviction under S. 304, Penal Code, by a Magistrate, First Class, exercising powers under S. 30, Cr. P. C., a Judge sitting alone in Chambers, if he is of opinion that the appellants should have been convicted of an offence under S. 302, can set aside the trial and order the accused persons to be committed and tried by the Court of Sessions. *Dalip Singh v. Emperor.*

26 Cr. L. J. 757 :
86 I. C. 341 : 7 L. L. J. 44 :
A. I. R. 1925 Lah. 318.

PROFESSIONAL MISCONDUCT

Pleader accepting fees for whole case and failing to appear after few hearings, is guilty of misconduct. *In the matter of : A First Grade Pleader.*

16 Cr. L. J. 707 :
30 I. C. 995 : A. I. R. 1915 L. B. 29.

PROPERTY

———*Property found—Finder entitled in absence of lawful claimant.*

When a person finds property and makes it over to the Police and no owner is forthcoming, although advertised for, the property or its value, if it has been sold, should be restored to the finder. *In re : Maruti Bapuji Sonar.*

23 Cr. L. J. 656 :
69 I. C. 96 : 24 Bom. L. R. 707 :
A. I. R. 1922 Bom. 240.

PROSECUTION

———*Criminal prosecution—Abatement of.*

A criminal prosecution cannot abate merely on account of the death of the injured party. *Emperor v. Mauj Din.*

24 Cr. L. J. 29 :
71 I. C. 77 : 4 Lah. 7 :
A. I. R. 1924 Lah. 72.

———*Search by Police—Duty of prosecution.*

The prosecution is in duty bound to call as witnesses the persons who were present at Police search, unless it is of opinion that those persons would misrepresent facts and would mis-state what had happened. It is not an adequate reason for keeping back witnesses that they had formed an opinion unfavourable to the prosecution. *Muni Sonar v. Emperor.*

2 Cr. L. J. 176 :
9 C. W. N. 438.

———*Duty of.*

The duty of the prosecution is, not to secure a

PROSECUTION

conviction, but to assist the Court in arriving at the truth. *Fatch Chand v. Emperor.*

18 Cr. L. J. 385 :
38 I. C. 945 : 24 C. L. J. 400 :
21 C. W. N. 33 : 44 Cal. 477 :
A. I. R. 1917 Cal. 123.

———*Duty of, to call all material witnesses.*

It is the duty of the prosecution to call all witnesses who can throw any light on the enquiry, whether they support the prosecution theory or the defence theory. It is for the Court to choose which theory is correct, not for the prosecution. *Brahamdeo Singha v. Emperor.*

21 Cr. L. J. 33 (b) :
54 I. C. 241 : 1920 Pat. 24 :
1 P. L. T. 161 : 2 U. P. L. R. Pat. 10 :
A. I. R. 1920 Pat. 366.

———*Omission to examine material witness—Inference.*

Failure of the prosecution to examine a material witness, justifies an inference that the witness, if examined, would have deposed against the prosecution. *Taj Mohammad v. Emperor.*

29 Cr. L. J. 212 :
107 I. C. 100 : 29 P. L. R. 14 :
A. I. R. 1928 Lah. 125.

———*Proof—False line of defence.*

The case for the prosecution must always be established without reasonable doubt and the fact that the accused may have adopted a false line of defence is no reason for convicting him if there is serious doubt as to any element of the offence with which he is charged. *Kyaw Hla U v. Emperor.*

12 Cr. L. J. 584 :
12 I. C. 848 : 4 Bur. L. T. 136.

Prosecution evidence weak and biased—Benefit of doubt. *Ram Jas v. Emperor.*

17 Cr. L. J. 303 :
35 I. C. 175 : 66 P. L. R. 1916 :
27 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 433.

———*Prosecution to be fairly conducted.*

Prosecutions should be conducted fairly and squarely and nothing should be done to give grounds for complaints on the part of the accused of unfairness. *Batasi Moni Dasi v. Emperor.*

27 Cr. L. J. 1329 :
98 I. C. 401 : 30 C. W. N. 854 :
53 Cal. 706 : A. I. R. 1926 Cal. 1163.

———*Seat of prosecuting Inspector on dais—Propriety of.*

No person conducting the prosecution or defence in a case should, under any circumstances, be allowed to occupy a seat on the dais of the Court. *Mukta Pershad v. Emperor.*

1 Cr. L. J. 273 :
7 O. C. 82.

———*Withholding evidence—Validity of.*

Prosecution witnesses can be kept back only when the Court is satisfied that they would not speak the truth. They cannot be kept back because they would not speak in favour of the prosecution. *Emperor v. Bal Gangadhar Tilak.*

1 Cr. L. J. 305 :
6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

PROVIDENT FUNDS ACT (XIX OF 1925)

—S. 3 (1)—Protection under.

An Official Assignee has no claim to money deposited to the credit of an undischarged insolvent in the Provident Fund of a District Council, unless and until protection of S. 3 (1), Provident Funds Act, has been extended to such fund by the Local Government. *Solomon David v. The King*.

39 Cr. L. J. 754 :
176 I. C. 460 : 11 R. Rang. 65 :
A. I. R. 1938 Rang. 245.

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912)

—Registration under—Necessity of.

Insurance Company, whether corporate or share-capital divided into shares—Registration under the Act is necessary before carrying on business. *Dy. Supdt. and Remembrancer of Legal Affairs v. Sital Chandra Pal*.

16 Cr. L. J. 149 :
27 I. C. 213 : 18 C. W. N. 1182 :
A. I. R. 1915 Cal. 115.

—S. 22—Offence under.

Revenue account and balance-sheet of company filed with Registrar under S. 14, containing false statements—Such of the persons signing accounts as were aware of true state of facts are guilty under S. 22 even if they have acted with best intention. *The Public Prosecutor, Madras v. D. S. Raju Gupta*.

41 Cr. L. J. 956 :
190 I. C. 628 : 13 R. M. 453 :
1940 M. W. N. 385 :
A. I. R. 1940 Mad. 682.

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—S. 43—Appeal from order under—Nature of.

An appeal from an order under S. 43 is a civil appeal. *Chiranji Lal v. Emperor*.

15 Cr. L. J. 658 :
25 I. C. 986 : 12 A. L. J. 1105 :
36 All. 576 : A. I. R. 1914 All. 276.

—S. 43.

An insolvent cannot be punished under S. 43, on evidence given on behalf of creditors when they were opposing his application for an adjudication of insolvency. *Patan Din v. Emperor*.

18 Cr. L. J. 618 :
39 I. C. 986 : 20 O. C. 123 :
A. I. R. 1917 Oudh 207.

—S. 43.

Proceedings under S. 43, are in the nature of criminal proceedings, in which there ought to be definite charges made against the person whom it is proposed to deal with and evidence ought to be taken in support of the charges as well as defence evidence. *Patan Din v. Emperor*.

18 Cr. L. J. 618 :
39 I. C. 986 : 20 O. C. 123 :
A. I. R. 1917 Oudh 207.

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—S. 43.

Proceedings under S. 43, Provincial Insolvency Act, are in the nature of criminal proceedings and it is necessary that there should be a charge, a finding and a conviction as a foundation for a sentence. *Nawab v. Topan Ram*.

17 Cr. L. J. 318 :
35 I. C. 494 : 62 P. W. R. 1916 :
110 P. R. 1916 : 145 P. L. R. 1916 :
A. I. R. 1916 Lah. 182.

—S. 43.

Proceedings against insolvents under S. 43, are in the nature of criminal proceedings, and it is necessary that there should be a charge, a finding and a conviction as a foundation for the sentence, and these should be strictly and accurately pursued. *Harihar Singh v. Moheshnar Prashad*.

16 Cr. L. J. 135 :
27 I. C. 199 : 18 C. W. N. 692 :
A. I. R. 1915 Cal. 117.

—S. 43.

Where in an insolvency matter proceedings have to be taken which may result in an order being made under S. 43, the proceedings should be carried on in analogy with the provisions of Cr. P. C., and something in the nature of a charge should be drawn up and a day or time fixed for defence. *Muhammad Ahsan-Ullah v. Emperor*.

18 Cr. L. J. 409 :
38 I. C. 969 : A. I. R. 1917 All. 354.

—S. 43.

A court is not bound to defer punishment in respect of acts and omissions mentioned in S. 43, until the insolvent applies for his order of discharge. *Ram Behary Lal v. Jagan Nath*.

18 Cr. L. J. 270 :
37 I. C. 638 : 19 O. C. 89 :
A. I. R. 1917 Oudh 386.

—Ss. 43, 46 (1).

The Court of an Additional Judge is not subordinate to a District Court within the meaning of S. 46 (1) and that, therefore, when the Additional Judge in exercise of the jurisdiction conferred by S. 43 convicts and sentences a debtor, an appeal from the order of conviction lies to the High Court. *Chiranji Lal v. Emperor*.

15 Cr. L. J. 658 :
25 I. C. 986 : 12 A. L. J. 1105 :
36 All. 576 : A. I. R. 1914 All. 276.

—S. 43 (2).

Where an insolvent, not knowing or forgetting that an equity of redemption is valuable asset, failed to show in his schedule of assets certain land belonging to him but mortgaged with possession to two of his scheduled creditors : Held, that he was not guilty of an offence under S. 43 (2). *Wadhawa Singh v. Emperor*.

19 Cr. L. J. 272 :
44 I. C. 128 : 2 P. W. R. 1918 Cr. :
158 P. L. R. 1917 : A. I. R. 1918 Lah. 247.

PROVINCIAL INSOLVENCY ACT, 1920

———S. 43 (2) (b).

In a proceeding under S. 43 (2), it is not essential that there should be a definite charge, finding and a conviction as a foundation for a sentence under the said provisions. All that the law requires is that the principles underlying a criminal trial should be observed in essentials. *Ganpaty v. Ohimnaji*.

19 Cr. L. J. 627 :
45 I. C. 675 : A. I. R. 1918 Nag. 214.

PROVINCIAL INSOLVENCY ACT, 1920

———S. 22.

First part of S. 22 does not apply when order has been made on creditor's petition. Second part applies to both classes and to all stages of proceedings following order admitting petition. *Akhoy Chand Begwani v. Emperor*.

35 Cr. L. J. 937 :
149 I. C. 352 : 38 C. W. N. 642 :
61 Cal. 537 : 6 R. C. 564 :
A. I. R. 1934 Cal. 409.

———Ss. 23, 31.

Court has no power to grant protection to an insolvent before his adjudication, though after adjudication it has power to do so under S. 31 and before adjudication under S. 23 the Court may, if he is under arrest in execution of the decree of any Court, order his release. *Mariam Bibi v. A. E. Motala*.

33 Cr. L. J. 435 :
137 I. C. 36 : 10 Rang. 71 :
I. R. 1932 Rang. 90 : A. I. R. 1932 Rang. 51.

———S. 28.

S. 28 does not operate as any protection from arrest of a judgment-debtor who has been adjudicated an insolvent. *Ali Husain v. Lachhmi Narain Mahajan*. 34 Cr. L. J. 18 (2) :
140 I. C. 150 (2) : 1932 A. L. J. 168 :
54 All. 416 : I. R. 1932 All. 639 :
A. I. R. 1932 All. 188.

———S. 31.

Under S. 31 a discretion is granted to the Court either to make a protection order, or make a limited order or not to make a protection order at all. *Ali Husain v. Lachhmi Narain Mahajan*.

34 Cr. L. J. 18 (2) :
140 I. C. 150 (2) : 1932 A. L. J. 168 :
I. R. 1932 All. 639 : 54 All. 416 :
A. I. R. 1932 All. 188.

———S. 31.

The term "arrest or detention" used in S. 31 does not include arrest in execution of a Criminal Court process or detention under a sentence of imprisonment passed by a Criminal Court. Arrest or detention must mean arrest or detention in pursuance of an order of a Civil Court passed in execution of a decree of such Court. *Shayama Charan v. Anguri Devi*.

39 Cr. L. J. 553 :
175 I. C. 235 : 1938 A. L. J. 225 :
10 R. A. 652 : I. L. R. 1938 All. 486 :
1938 A. W. R. 157 : A. I. R. 1938 All. 253.

———S. 44.

Under S. 44 (1) (d), an order of discharge

PROVINCIAL INSOLVENCY ACT, 1920

shall not release the insolvent from any liability under an order for maintenance made under S. 488, Cr. P. C. *Emperor v. Sardar Muhammad*.

37 Cr. L. J. 207 :
159 I. C. 939 : 36 P. L. R. 191 :
8 R. L. 437 : A. I. R. 1935 Lah. 758.

———S. 69.

An insolvent who has the means of ascertaining where property of his has been disposed of, even if he has not been actually a party to the making away with it, and who does not use the means, is just as guilty of concealment within the meaning of S. 60, as if he actively concealed the locality in which the property actually is. *Qasim Ali v. Emperor*.

22 Cr. L. J. 725 :
64 I. C. 37 : 19 A. L. J. 378 :
43 All. 406 : A. I. R. 1921 All. 87.

———S. 69—Conviction under—Legality of.

Petitioner having deposit in bank withdrawing part and re-depositing in wife's name—Suit by wife for money and settlement decree—Nothing further known of amount—Insolvency petition by petitioner—Above amount not shown in schedule—Conviction under S. 69 cannot be ordered. *Hari Pada Moitra v. Emperor*.

38 Cr. L. J. 710 :
169 I. C. 101 : 9 R. C. 897 :
A. I. R. 1937 Cal. 234.

———Ss. 69 (1), 22.

The Insolvency Court has power to issue such processes as prohibition and injunction in order to prevent alienation of his property by the debtor. The debtor is not liable under S. 22, on a creditor's petition at least until he has due notice of the same. Where the processes issued are full of defects and do not purport to give notice to the debtor of the admission of an insolvency petition at all, the debtor cannot be fixed with liability under S. 60 (a) for failure to comply with them. The fact that he might have had a shrewd idea of what the proceedings really were is not sufficient to fix him with liability. *Santiago v. Emperor*.

38 Cr. L. J. 230 :
166 I. C. 303 : 9 R. N. 120 :
I. L. R. 1937 Nag. 185 :
A. I. R. 1936 Nag. 237.

———S. 69 (c) (ii)—Offence under—What is.

Judgment-debtor applying to be adjudged insolvent—Insolvency Court putting to sale flour mill of insolvent—Mill purchased by one M but no delivery made—Insolvent subsequently removing essential parts of machinery—Insolvent can be convicted under S. 60 (c) (ii). *Ganesh v. Emperor*.

40 Cr. L. J. 357 :
180 I. C. 230 : 1938 A. L. J. 1217 :
11 R. A. 434 : 1935 A. W. R. 69 :
A. I. R. 1939 All. 166.

———S. 69.

Where a District Judge sitting in insolvency has made a preliminary enquiry, and consequent on that, a complaint to the Magistrate, so that the Magistrate should deal with

PUBLIC CONVEYANCE ACT (BOMBAY ACT VI OF 1963)

it under S. 69 of the Act, no appeal lies. *Madan Mohan Sarkar v. Emperor*.

40 Cr. L. J. 335 :
180 I. C. 237 : I. L. R. 1938, 2 Cal. 478 :
42 C. W. N. 787 : 11 R. C. 654 :
A. I. R. 1939 Cal. 264.

———S. 75—*Appeal under from order under S. 70—Requisites of.*

Appeal against order by District Magistrate under S. 70, must be under S. 75 (3), and only by leave of either the District Court or the High Court and a very strong case will be needed to justify the granting of such leave because it would be tantamount to stopping the proceedings under S. 69 and S. 70 *in limine* and before the facts have been fully enquired into by a Magistrate. Where no such leave has been obtained, the appeal is incompetent, nor does an appeal lie from the order under S. 476-B, Cr. P. C. *Madan Mohan Sarkar v. Emperor*.

40 Cr. L. J. 335 :
180 I. C. 237 : I. L. R. 1938, 2 Cal. 478 :
42 C. W. N. 787 : 11 R. C. 654 :
A. I. R. 1939 Cal. 264.

PROVISO TO SECTION

———*Interpretation.*

A proviso may at times serve to introduce an exception. It is often in the nature of a condition precedent to the enforcement of the operative clause. A proviso annexed to a section should not be read as enlarging the scope of that section. *Annie Besant v. Emperor*.

18 Cr. L. J. 239 :
37 I. C. 607 : 1916, 2 M. W. N. 497 :
4 L. W. 625 : 32 M. L. J. 151 :
39 Mad. 1164 : A. I. R. 1918 Mad. 1266.

———*Interpretation.*

A proviso to a section is something subordinate to the main clause and the general rule is that what is contained in the proviso is not to be imported by implication into the clause. *Annie Besant v. Government of Madras*.

18 Cr. L. J. 157 :
37 I. C. 525 : 1916, 2 M. W. N. 385 :
5 L. W. 1 : 39 Mad. 1085 :
A. I. R. 1918 Mad. 1210.

PROVOCATION

———*What is.*

The prisoner saw the deceased having sexual intercourse with his married sister and struck him one blow on the head with a stick which killed him by fracturing his skull : *Held*, that the prisoner undoubtedly acted under grave and sudden provocation. *Fazal Dad v. Emperor*.

1 Cr. L. J. 501 :
4 P. R. Cr. of 1904.

PUBLIC CONVEYANCES ACT (BOMBAY ACT VI OF 1863)

———Ss. 1, 7—*Public conveyance.*

A hand-drawn lorry, plied for hire, is a public conveyance within Public Conveyance Act. A public conveyance need not necessarily

PUBLIC GAMBLING ACT (III OF 1867)

be a conveyance drawn by horses or other animals. *Emperor v. Banubhai Hadubhai*.

14 Cr. L. J. 78 :
18 I. C. 414 : 15 Bom. L. R. 66 :
37 Bom. 374.

———S. 18—*Penalty under—When levied.*

The provisions of S. 18 are framed solely for the benefit of the hirer or the passenger, and it is when the list of fares is not produced on demand by the hirer or the passenger that the penalty provided in the section can be imposed. The penalty cannot be imposed on the licensee for failure to produce the list of fares when required to do so by a Police Officer at the carriage stand. *Emperor v. Alibhai Miabhai*.

13 Cr. L. J. 787 (a) :
17 I. C. 531 : 14 Bom. L. R. 875.

PUBLIC GAMBLING ACT (III OF 1867)

———Cr. P. C. (Act V of 1898), S. 562, *applicability of—Warrant of arrest and search not addressed to any person—Irregularity.*

S. 562, Cr. P. C., has no application to offences committed under the Public Gambling Act, III of 1867. A warrant issued under the Public Gambling Act, for search and arrest which does not contain the name of the person to whom it is issued, and to whom authority to make the search and arrest is given is irregular. *Emperor v. Shankar Dayal*.

24 Cr. L. J. 14 :
71 I. C. 62 : 25 O. C. 111 :
9 O. L. J. 667 : A. I. R. 1922 Oudh 224.

———*Instruments of gaming.*

Documents which cannot be deciphered, cannot be held to be implements of gaming within the meaning of the Public Gambling Act. *Sri Ram v. Emperor*.

25 Cr. L. J. 92 :
76 I. C. 28 : 21 A. L. J. 318 :
A. I. R. 1923 All. 386.

———*Irregular search—Effect of.*

Any irregularity or illegality in the search can neither vitiate the trial nor affect the conviction of the accused, where the accused has not been prejudiced by the defect. *Rure Mal v. Emperor*.

31 Cr. L. J. 35 :
120 I. C. 266 : 1930 A. L. J. 229 :
A. I. R. 1929 All. 937.

———*Legislature—Intention of.*

In enacting the Public Gambling Act, the Legislature had in view the prevention of public injury to moral standards and cannot be conceived of as having been even remotely concerned with the protection of public title to any particular property. *Tulshi Das v. Emperor*.

25 Cr. L. J. 1308 :
82 I. C. 476 : 22 A. L. J. 741 :
46 All. 787 : A. I. R. 1924 All. 768.

———S. 1—*Common gaming house.*

The definition of "common gaming house" in S. 1, Public Gambling Act, as amended by C. P. Act III of 1927, falls

PUBLIC GAMBLING ACT (III OF 1867)

under two heads according to the nature of the gaming. *Chhabilal v. Emperor*.

37 Cr. L. J. 586 :
162 I. C. 268 : 8 R. N. 257 :
A. I. R. 1936 Nag. 138.

—S. 1—Common gaming house—Meaning of—Amendment—Effect of.

The definition of 'common gaming house' in the Public Gambling Act, as amended by the C. P. Amending Act III of 1927, is wide enough to include a public road. *Bapulal v. Emperor*.

37 Cr. L. J. 588 :
162 I. C. 332 : 8 R. N. 259 :
I. L. R. 1936 Nag. 89 :
A. I. R. 1936 Nag. 78.

—S. 1—Instruments, what are.

Anything which assists gaming or which is used for the furtherance of gaming, would be instruments of gaming and, it is not possible to give an exhaustive list of such articles. *Lachhi Ram v. Emperor*.

34 Cr. L. J. 1244 :
146 I. C. 293 : 6 R. A. 286 :
1933 A. L. J. 1254 :
A. I. R. 1933 All. 554.

—S. 1—Scope.

Where on raiding a house besides recovering certain slips of paper which were found to be instruments of gaming, two witnesses deposed to the effect that they staked money and the stakes had been accepted by the accused, it can be concluded that the instruments of gaming were kept or used for such purpose. *Lachhi Ram v. Emperor*.

34 Cr. L. J. 1244 :
146 I. C. 293 : 6 R. A. 286 :
1933 A. L. J. 1254 :
A. I. R. 1933 All. 554.

—Ss. 1, 3—Common gaming house—Meaning of.

Public Office used by menial servants for gambling, held 'common gaming house', and persons held guilty. *Bhagwan Din v. Emperor*.

29 Cr. L. J. 448 :
108 I. C. 568 : 26 A. L. J. 400 :
A. I. R. 1928 All. 215.

—Ss. 1, 3—Conviction of person keeping gaming house—Requisites for.

Before convicting a person found in possession of instruments of gaming for keeping a "common gaming house," it must be established that the owner or occupier takes a fixed commission which is irrespective of the result of the gaming, or that he manipulates the conditions in such a manner that he cannot possibly lose. *Lachhi Ram v. Emperor*.

23 Cr. L. J. 196 :
65 I. C. 852 : 20 A. L. J. 218 :
A. I. R. 1922 All. 61.

—Ss. 1, 3—Interpretation.

The words "common gaming house" do not mean simply a house in which instruments of gaming are kept or used for the purpose of

PUBLIC GAMBLING ACT (III OF 1867)

carrying on or facilitating gaming. *Lachhi Ram v. Emperor*.

23 Cr. L. J. 196 :
65 I. C. 852 : 20 A. L. J. 218 :
A. I. R. 1922 All. 61.

—Ss. 1, 3—'Place,' meaning of.

Round the sides of a bullock-run, in the shape of a semicircle, there had been raised a low wall of loose bricks and it was within the shelter of this low brick-wall that gambling took place; *Held*, that the enclosure was a place. *Emperor v. Mian Din*.

16 Cr. L. J. 826 :
31 I. C. 1002 : 13 A. L. J. 1070 :
38 All. 47 : A. I. R. 1915 All. 424.

—Ss. 2, 13—'Limits aforesaid,' meaning of.

Gambling on a *kachcha* public road outside the limits of a Municipality, to which the provisions of the Gambling Act have been extended, is an offence under S. 18 because the words "limits aforesaid" in that section refer to the whole of the territories under the administration of a Lieutenant-Governor. *Radhe v. Emperor*.

12 Cr. L. J. 107 :
9 I. C. 630.

—S. 3, as amended by C. P. Act III of 1927—'Place' whether can be a public road.

Under S. 3, Public Gambling Act, as amended by the C. P. Act No. III of 1927, an attempt has been made to bring that section into conformity with the definition of "common gaming house" in S. 1 and the word 'place' in S. 3, Public gambling Act, cannot be so construed as to embrace the whole of a public thoroughfare. 'A place' must be a definite area so marked out that it can be found and recognized. Public street is not such a place. *Emperor v. Basantilal Juthalal*.

38 Cr. L. J. 694 :
169 I. C. 36 : 9 R. N. 294 :
A. I. R. 1937 Nag. 102.

—S. 3—Common gaming housekeeper—Liability of.

When it is found that the owner or occupier, etc., of a gaming house manipulates the conditions of gaming in such a manner that it inevitably results in a profit or gain to him, he can be convicted for keeping a common gaming house. *Ama Ram v. Emperor*.

25 Cr. L. J. 902 :
81 I. C. 438 : 22 A. L. J. 249 :
46 All. 447 : A. I. R. 1924 All. 338.

—S. 3—Common gaming housekeeper—proof for.

Quare.—Whether for the purpose of a conviction for keeping a common gaming house it is necessary to prove that profit actually resulted to the owner of the house, or it is sufficient that profit was the probable and expected result of the game? *Ama Ram v. Emperor*.

25 Cr. L. J. 902 :
81 I. C. 438 : 22 A. L. J. 249 :
46 All. 447 : A. I. R. 1924 All. 338.

—S. 3—Conviction for keeping gaming house—Proof for.

In order to convict a person for keeping a common gaming house, it is not neces-

PUBLIC GAMBLING ACT (III OF 1867)

sary to prove that profit was certain to result, a mere expectation of profit being quite sufficient. *Ismail v. Emperor*.

28 Cr. L. J. 442 :
101 I. C. 474 : 25 A. L. J. 346 :
49 All. 568 : A. I. R. 1927 All. 480.

S. 3—Instruments, what are.

Slips of paper on which certain numbers are written and which are then rolled into balls for the purpose of drawing lots and deciding bets are instruments of gaming. *Ama Ram v. Emperor*.

25 Cr. L. J. 902 :
81 I. C. 438 : 22 A. L. J. 249 :
46 All. 447 : A. I. R. 1924 All. 338.

S. 3—Instruments, what are.

Where *Satta* gambling is going on, the bits of paper on which the figures are written are instruments of gaming. *Ismail v. Emperor*.

28 Cr. L. J. 442 :
101 I. C. 474 : 25 A. L. J. 346 :
49 All. 568 : A. I. R. 1927 All. 480.

S. 3—Keeping common gaming house, conviction for, requisites for.

In order that a man may be convicted of keeping a common gaming house, it must be established that he, either takes a fixed commission which is irrespective of the result of the gaming, or manipulates the conditions of gaming in such a manner that he cannot possibly lose. *Natau Mal v. Emperor*.

26 Cr. L. J. 872 :
86 I. C. 808 : 23 A. L. J. 185 :
47 All. 405 : A. I. R. 1925 All. 309.

S. 3—Keeping common gaming house, what constitutes.

In order to convict a person under S. 3, it is not sufficient to prove that he used a house for the purpose of gambling. It has to be proved that the accused is the owner or occupier or a person having the use of the place alleged to be kept as a common gaming house. *Jamna Prasad v. Emperor*.

30 Cr. L. J. 557 :
116 I. C. 57 : 6 O. W. N. 45 :
I. R. 1929 Oudh 297 :
A. I. R. 1929 Oudh 151.

As amended by U. P. Act I of 1917, Ss. 3, 4—Gambling in public place—What is.

Accused were found in a market-place, which was open to the public; betting on the price of cotton : *Held*, that they were guilty of gaming in a public place within the meaning of the Public Gambling Act. *Sri Ram v. Emperor*.

25 Cr. L. J. 92 :
76 I. C. 28 : 21 A. L. J. 318 :
A. I. R. 1923 All. 386.

Ss. 3, 4—Keeping common gambling house—Being found in gaming house—Proof—Presumption.

In order to sustain the conviction of an accused person for keeping a common gambling house, it is necessary for the prosecution not only to prove that the accused owned the house

PUBLIC GAMBLING ACT (III OF 1867)

or was the occupier of it, and that instruments of gambling were kept or used in it, but that they were kept or used for the profit of the accused. Where it is not established that a particular house is a common gaming house, the presence of the accused in that house can raise no presumption against them. *Raghu-nath v. Emperor*.

19 Cr. L. J. 958 :
47 I. C. 810 : 16 A. L. J. 760 :
A. I. R. 1918 All. 100.

Ss. 3, 4—Common gaming house—Proof for.

On a Police raid of a house, a number of persons were found in the house making wagers on *satta* and a number of books were found in which bets were recorded. The owner himself was engaged in betting, and also charged a small commission from the winners. He bet Rs. 9-8-0, to one against the last digit of the price of opium at the monthly sale being rightly guessed and Rs. 100 to 2 against the last two digits. On a search of the house, cards, dice and *cowries* were found which, however, were not being used at the time : *Held*, (1) that the commission charged by the owner of the house amounted to nothing more than a discount on the odds which he laid, and did not come within the meaning of "commission" so as to make it an offence under the Gambling Act : (2) that the mere fact that cards, dice and *cowries* were found in the house, which were not being used, did not constitute the house a common gaming house. *Durga Prasad v. Emperor*.

25 Cr. L. J. 297 :
76 I. C. 969 : 21 A. L. J. 36 :
45 All. 258 :
1937 A. I. R. All. 192.
A. I. R. 1923 All. 192.

Ss. 3, 4—Common gaming housekeeper—Proof for.

In order to constitute a house a common gaming house, it must be established that the owner or occupier takes a fixed commission, which is irrespective of the result of the gaming, or, at the outside, that he manipulates the conditions in such a manner that he cannot possibly lose. *Durga Prasad v. Emperor*.

25 Cr. L. J. 297 :
76 I. C. 969 : 21 A. L. J. 36 :
45 All. 258 : A. I. R. 1923 All. 192.

Ss. 3, 4—Confiscation of money—Legality of.

The Law does not contemplate the confiscation of money found on the persons of the accused in a case under S. 3 and 4. *Tula v. Emperor*.

21 Cr. L. J. 42 :
54 I. C. 250 : 17 A. L. J. 368 :
41 All. 366 : 1 U. P. L. R. All. 161 :
A. I. R. 1919 All. 72.

Ss. 3, 4—Cr. P. C., S. 239—Joint.

The Joint trial of a person accused of keeping a gaming house and others for being present in it at the time of a Police raid, is not warranted by S. 239, Cr. P. C. *Emperor v. Fazal Din*.

16 Cr. L. J. 220 :
127 I. C. 844 : 35 P. R. 1914 Cr. :
225 P. L. R. 1915 :
A. I. R. 1914 Lah. 566.

PUBLIC GAMBLING ACT (III OF 1867)

—Ss. 3, 4—*Gambling on Dewali day in private house, whether punishable.*

The law will not countenance gambling even at *Dewali* if it is in contravention of the Gambling Act, but the ordinary case of *Dewali* gambling in a private house is not an offence under the Gambling Act. *Lachhman v. Emperor.*

32 Cr. L. J. 82 (b) :
128 I. C. 65 : 7 O. W. N. 757 :
I. R. 1931 Oudh 1 : 6 Luck. 208 :
A. I. R. 1930 Oudh 403.

—Ss. 3, 4—*Joint trial.*

The trial of a person under S. 3 along with a number of other persons who were found in the alleged gaming house charged under S. 4 is not illegal. *Meran Bakhsh v. Emperor.*

28 Cr. L. J. 825 :
104 I. C. 441 : A. I. R. 1927 Lah. 699.

—Ss. 3, 4—*Friendly game during Diwali festival—Offence.*

Accused Nos. 2 to 16 were found gaming with *cowries* on the first night of the *Diwali* festival in the house of accused No. 1. It was not proved that there was any idea of paying a percentage on the winnings to accused No. 1, or of the latter deriving any sort or kind of profit from the use which was being made of his room, or that the room had on previous occasions been used for the purpose of gaming : *Held*, that the accused could not be convicted of any offence. *Jai Narain v. Emperor.*

20 Cr. L. J. 283 :
50 I. C. 171 : 1 U. P. L. R. All. 22 :
A. I. R. 1919 All. 345.

—Ss. 3, 4—*Offences under, ingredients of.*

Offences under Ss. 3 and 4, have for their foundation as one of the ingredients, the fact that the place where gaming goes on is a common gaming house. *Ganga Das Benerjee v. Emperor.*

31 Cr. L. J. 999 :
126 I. C. 134 : 51 C. L. J. 224 & 396 :
A. I. R. 1930 Cal. 365.

—Ss. 3, 4—*Offences under—Trial of.*

The offences defined in S. 3 and 4 are distinct offences, and a man may be convicted separately under each of those sections. *Chotay Lal v. Emperor.*

25 Cr. L. J. 698 :
81 I. C. 186 : 11 O. L. J. 347 :
A. I. R. 1924 Oudh 403.

—Ss. 3, 4.

Gambling beyond notified area—No offence. *Kashi Nath v. Emperor.* 26 Cr. L. J. 1061 (a) :
88 I. C. 5 : 23 A. L. J. 457 :
A. I. R. 1925 All. 518.

—Ss. 3, 4—*Search warrant—Defect in—Effect of.*

The only effect of a search being illegal on account of defects in the warrant is that no presumption under S. 6 can be made in favour of the prosecution. A conviction under S. 3 which is based on legal evidence cannot, therefore, be set aside merely because there were defects in the search warrant. *Miran Bakhsh v. Emperor.*

28 Cr. L. J. 825 :
104 I. C. 441 : A. I. R. 1927 Lah. 699.

PUBLIC GAMBLING ACT (III OF 1867)

—Ss. 3, 4—*Search warrant illegal—Presumption.*

A warrant issued for the search of any house, which the Police Officer to whom the warrant was issued might think proper to search, is illegal. The result of such illegal search is that no presumption whatsoever, can be drawn. *Hargovind v. Emperor.*

13 Cr. L. J. 832 :
17 I. C. 576 : 10 A. L. J. 355.

—Ss. 3, 4—*Search warrant, legality of—Magistrate issuing warrant, whether competent to try case.*

A Magistrate signed the printed form of a warrant for the search of a house and gave it to a Sub-Inspector of Police. The place to be searched was not specified in the body of the warrant when the Magistrate signed it, but the Sub-Inspector subsequently noted down at the bottom of the warrant the boundaries of the house to be searched : *Held*, that as the warrant when signed by the Magistrate was not for the search of any particular place, it was illegal. A Magistrate issuing a search warrant under the Gambling Act, should not himself try any case which results from the search as the accused persons have the right to examine the Magistrate as a witness as to the circumstances under which the warrant was issued. *Raja Ram v. Emperor.*

24 Cr. L. J. 633 :
73 I. C. 521 : 5 L. L. J. 429 :
A. I. R. 1924 Lah. 247.

—Ss. 3, 4, 5—*Jurisdiction of Magistrate issuing warrant to try case.*

The mere fact that a Magistrate has issued a search warrant under S. 5 does not disqualify him from trying the case within the meaning of S. 556, Cr. P. C. *Muhammad Ali Khan v. Emperor.*

27 Cr. L. J. 713 :
95 I. C. 319 : 24 A. L. J. 568 :
A. I. R. 1926 All. 428.

—Ss. 3, 4, 5—*Distinct offences—Mode of trial—Sentence—Nature of.*

A joint trial of two persons for offences under Ss. 3 and 4 is not illegal. The offences under Ss. 3 and 4 are distinct offences though interdependent and it is not proper, where a person has been convicted under both the sections to pass a cumulative sentence on one count only. Where a warrant has been issued for search under S. 5, Public Gambling Act, S. 103, Cr. P. C., is not applicable. *Rure Mal v. Emperor.*

31 Cr. L. J. 35 :
120 I. C. 266 : 1930 A. L. J. 229 :
A. I. R. 1929 All. 937.

—Ss. 3, 4, 5—*Joint trial.*

The joint trial of the keeper of a common gaming house and of other persons for being found in the house is not illegal. *Khilinda Ram v. Emperor.*

23 Cr. L. J. 621 :
68 I. C. 845 : 3 Lah. 359 :
A. I. R. 1922 Lah. 458.

—Ss. 3, 4, 5, 6—*Cauries found in house—Presumption of gaming house—Rebuttal of—Cauries, whether instrument of gaming—Presumption of common gaming house.*

Where on a search under S. 5, Public

PUBLIC GAMBLING ACT (III OF 1867)

Gambling Act, *cauries* are found in a house, there is a presumption that the house was used as common gaming house, and further that the persons found were present there for the purpose of gambling. But when it is shown that the object of the persons was to indulge in a friendly amusement and to pass time, the presumption is rebutted. *Ram Charan v. Emperor*. 26 Cr. L. J. 1609 :

90 I. C. 713 : 2 O. W. N. 638 :
12 O. L. J. 646 : A. I. R. 1925 Oudh 674.

—Ss. 3, 4, 5, 10—*Cr.P.O. (Act V of 1898), S. 239—Mode of trial.*

Keeping a common gaming house, and playing therein—Different offences committed in same transaction—Joint trial valid—Presumption of credible information—Police report a credible information—Police not chalaning some persons found in the house and producing them as witnesses—S. 10 inapplicable—Fine primarily to be the punishment—Offence under S. 3 more serious than offence under S. 4. *Sheikh Moti v. Emperor*.

14 Cr. L. J. 293 :
19 I. C. 949 : 9 N. L. R. 68.

—Ss. 3, 4, 10—*Persons found in gaming house—Competency as witnesses.*

Where a person is on his trial for an offence under the Gambling Act, it is not unlawful for the Magistrate to examine all or any of the remaining persons found by the Police inside a house when it was entered under a search warrant lawfully issued under the provisions of the Act. The fact that the persons are before the Magistrate within S. 10 of the Act, and that if they made a true statement, it would tend to incriminate them, would not render their examination illegal or their statements inadmissible in evidence. *Mahadeo v. Emperor*.

21 Cr. L. J. 737 :
58 I. C. 241 : 18 A. L. J. 382 :
42 All. 385 : A. I. R. 1920 All. 150.

—Ss. 3, 4, 10—*Search—Legality of.*

The mere fact that an Officer of Police to whom, by virtue of his office, a warrant is issued by a Magistrate authorising a search under the Public Gambling Act, endorses the warrant to another Officer of Police of rank qualifying him to conduct searches under the Act, does not render a search conducted by that officer irregular and invalid in law. *Mahadeo v. Emperor*.

21 Cr. L. J. 737 :
58 I. C. 241 : 18 A. L. J. 382 :
42 All. 385 : A. I. R. 1920 All. 150.

—Ss. 3, 4, 16—*Persons gambling in tent—Offence—Conviction under wrong section—Distribution of fine among witnesses and Police Officers, legality of.*

A number of persons were charged with gambling in a tent on the banks of the Ganges where they had gone temporarily for bathing. The Magistrate convicted seven of them under S. 3 and one under S. 4. He further ordered the fine to be distributed among the prosecution witnesses and a number

PUBLIC GAMBLING ACT (III OF 1867)

of the Police force including the Prosecuting Inspector : *Held*, (1) that the convictions under Ss. 3 and 4 were irregular ; (2) that the Magistrate had no jurisdiction to distribute the fine among the witnesses and the Police. *Banwari Lal v. Emperor*.

20 Cr. L. J. 303 (b) :
50 I. C. 351 : A. I. R. 1919 All. 374.

—Ss. 3, 6—*Presumption as to occupation—Warrant, issue of, legality of.*

Where there is a fair presumption under S. 6 that a person is the occupier, or has the use of a room, within S. 3 as a common gaming house, the issue of a warrant is not illegal. *Bhola Nath v. Emperor*.

21 Cr. L. J. 442 :
56 I. C. 234 : A. I. R. 1920 All. 79.

—S. 4—*Conviction under—Legality of.*

Persons not found in place where gambling is going on cannot be convicted. *Gurbakhsh Singh v. Emperor*.

39 Cr. L. J. 856 :
177 I. C. 298 : 11 R. L. 289 :
40 P. L. R. 916 : A. I. R. 1938 Lah. 631.

—S. 4—*Offence—Proof for conviction—Sufficiency of.*

In order to sustain a conviction under S. 4, it is not necessary that the person proceeded against should have been *actually arrested in the gaming house* in question, but it is incumbent on the prosecution to prove that he was actually seen in that house. Mere proof that the accused was seen going from the direction of the house in question is not enough. *Ali Hussain v. Emperor*.

32 Cr. L. J. 65 :
127 I. C. 864 : 31 P. L. R. 184 :
I. R. 1930 Lah. 896 :
A. I. R. 1930 Lah. 314.

See also *Ude Ram v. Emperor*.

22 Cr. L. J. 508 :
64 I. C. 332 : 17 N. L. R. 59 :
A. I. R. 1921 Nag. 118.

—Ss. 4, 3, 5—*Witnesses, nature of—Evidence, value of.*

S. 108, Cr. P. C., does not apply to searches made under the Gambling Act. This question has a bearing on the character of the witnesses who appear for the prosecution in cases under the Act. They need not be residents of the locality and they need not even be respectable. Such witnesses are not accomplices and their evidence does not require corroboration, though it should be submitted to careful scrutiny; if the evidence, as such, is acceptable, it should not be disregarded. *Ramprasad v. Emperor*.

38 Cr. L. J. 702 :
169 I. C. 42 : 9 R. N. 296 :
A. I. R. 1937 Nag. 251.

—Ss. 4, 5—*Confiscation of money.*

S. 5 does not authorize the seizing and forfeiting of money found on the person of a man arrested in a gaming house. *Misri Lal v. Emperor*.

28 Cr. L. J. 332 :
100 I. C. 716 : 8 Lah. 320 :
28 P. L. R. 521 : A. I. R. 1927 Lah. 338.

PUBLIC GAMBLING ACT (III OF 1867)

———Ss. 4, 5—Warrant signed after certifying that there was "reason to believe," interpretation.

Where a Superintendent of Police issues a warrant under S. 5, and signs it after certifying that he "had reason to believe," etc., the only interpretation to be placed upon the warrant is that the Superintendent of Police "had reason to believe" and that, therefore, he acted upon "credible information." *Ahmad Hassan v. Emperor*. 27 Cr. L. J. 990 : 96 I. C. 654 : 7 Lah. 310 :

27 P. L. R. 466 : A. I. R. 1926 Lah. 459.

———Ss. 4, 5, 6, 10 — Unauthorized search under—Effect of.

Where the search of a house is carried out by an Officer who is not authorized under S. 5, Public Gambling Act, to search without a warrant, the presumption laid down in S. 6 of the Act does not arise. *Nanhe Lal v. Emperor*. 26 Cr. L. J. 896 :

86 I. C. 832 : 23 A. L. J. 137 : A. I. R. 1925 All. 301.

———S. 5—Confiscation—Legality of.

No part of the money found on the person of a man arrested in a gaming house is liable to be seized under S. 5. *Emperor v. Pyarelal*. 31 Cr. L. J. 277 :

121 I. C. 657 : 26 N. L. R. 151 : A. I. R. 1930 Nag. 49.

———S. 5—Confiscation of money found—Legality of.

S. 5 does not authorise the seizing and forfeiture of money found on the persons of individuals in the common gaming house at the time of the search. *Chaturbhuj v. Emperor*. 23 Cr. L. J. 608 :

68 I. C. 832 : A. I. R. 1923 Nag. 66.

———S. 5—Confiscation of money—Legality of.

S. 5 conveys no authority for the seizure and confiscation of money found on the persons of people found in a common gaming house. The authority extends only to money found therein reasonably suspected to have been used or intended to be used for the purposes of gaming. *Ramprasad v. Emperor*. 38 Cr. L. J. 702 :

169 I. C. 42 : 9 R. N. 296 : A. I. R. 1937 Nag. 251.

———S. 5—"Credible information," meaning of.

Credible information includes any information which, in the judgment of the officer to whom it is given, appears entitled to credit in the particular instance and which he believes, and such information need not be sworn information. *Devi Dayal v. Emperor*. 30 Cr. L. J. 625 :

116 I. C. 455 : I. R. 1929 Lah. 519 : A. I. R. 1929 Lah. 720.

———S. 5—Magistrate's power to issue warrant to search house outside his sub-division.

A search warrant, issued under S. 5 by a Magistrate of the First Class, who is also a Sub-Divisional Officer, to search a house situated in

PUBLIC GAMBLING ACT (III OF 1867)

the same District but outside the sub-division of which he is in charge, is not illegal. *Abbu Singh v. Emperor*. 13 Cr. L. J. 716 :

16 I. C. 524 : 10 A. L. J. 169 : 34 All. 597.

———S. 5—Search of—Money on search on person.

The power given to Police in the first part of S. 5 to seize instruments of gaming and money etc., found in the house does not extend to the seizure of money recovered on the search of the persons found in the house. *Khair Din v. Emperor*. 27 Cr. L. J. 951 :

96 I. C. 503 : A. I. R. 1926 Lah. 290.

———S. 5—Scope.

The presumption that persons found on the premises when a house is searched were there for the purpose of gaming only arises when the search is legal. *Bhirug v. Emperor*. 35 Cr. L. J. 878 :

148 I. C. 1128 : 1934 A. L. J. 680 : 6 R. A. 825 : A. I. R. 1934 All. 524 (2).

———S. 5—Search—Nature of.

A search conducted after the issue of a warrant under S. 5 is not search under Chapter VII, Cr. P. C., and S. 103 of the Code has no application to such a search. *Khilinda Ram v. Emperor*. 23 Cr. L. J. 621 :

68 I. C. 845 : 3 Lah. 359 : A. I. R. 1922 Lah. 458.

———S. 5—Search warrant—Legality of.

Warrant not specifying boundaries of house to be searched but house described by name of owner—Warrant held not invalid—Magistrate, is not bound to make inquiries as to credible information. *Radhe Lal v. Emperor*. 39 Cr. L. J. 548 :

175 I. C. 233 : 1938 A. L. J. 222 : 10 R. A. 657 : I. L. R. 1938 All. 422 : 1938 A. W. N. 147 : A. I. R. 1938 All. 252.

———S. 5—Search warrant—Legality of.

Warrant under S. 5—Boundaries of house not given—Warrant not addressed to definite Police Officer—Warrant held not legal. *Jamna Prasad v. Emperor*. 24 Cr. L. J. 630 :

73 I. C. 518 : 21 A. L. J. 602 : A. I. R. 1924 All. 128.

———S. 5—Search warrant—Legality of.

Warrant under S. 5 must not necessarily state that it is issued on credible information. *Khemchand Girdharilal v. Emperor*. 39 Cr. L. J. 55 :

171 I. C. 1007 : 10 R. N. 150 : A. I. R. 1938 Nag. 63.

———S. 6—Applicability.

In order to apply S. 6, the premises must be entered or searched under the provisions of S. 5. *Nemichand v. Emperor*. 22 Cr. L. J. 498 :

62 I. C. 322.

———Ss. 5, 6.

The credible information, which the Police Officer must obtain before he can enter a place, must show that the gambling is being carried

PUBLIC GAMBLING ACT (III OF 1867)

on for the profit of the owner or occupier, and there ought to be evidence to describe either how the game itself was played, or how a toll, if any, was levied. The mere fact that small sums are set aside for remunerating those who minister to the comfort of the persons assembled, does not show that such payments represent any advantage whatsoever to the person occupying or keeping the premises. A Police Officer is not at liberty to raid premises merely because a number of persons are collected to gamble there, and a conviction based on such information cannot be sustained. *Nemichand v. Emperor*. 22 Cr. L. J. 498 : 62 I. C. 322.

Ss. 5, 6—Presumption.

Search warrant under S. 5—Omission of Magistrate to state that premises were used as common gaming house—Presumption under S. 6 does not arise. *Ganga Das Benerjee v. Emperor*. 31 Cr. L. J. 999 : 126 I. C. 134 : 51 C. L. J. 224 & 396 : A. I. R. 1930 Cal. 365.

Ss. 5, 6—Presumption under S. 6.

An irregularity in a warrant issued under S. 5, will not *per se* vitiate a conviction following on a search made under it, if there is evidence on which such conviction can be supported without invoking the presumptions under S. 6. But these presumptions only arise when a search has been duly made under S. 5. A search conducted by a Police Officer, below the rank of Sub-Inspector, under a warrant issued to him by a Magistrate, is irregular and does not raise the presumptions under S. 6. A conviction based on such presumptions, but unsupported by any other evidence, should be set aside. *Emperor v. Umar Khan*. 12 Cr. L. J. 28 : 8 I. C. 1127 : 6 N. L. R. 168.

Ss. 5, 6—Presumption under S. 6.

Warrant under S. 5 not stating that it was issued on credible information—Presumption that Magistrate acted on credible information—Presumption under S. 6 could be raised. *Rahmankhan v. Emperor*. 39 Cr. L. J. 85 : 172 I. C. 182 : 10 R. N. 175 : A. I. R. 1937 Nag. 396.

S. 6—Gaming house—Proof for.

Search under S. 6—Playing cards found—Denial of shopkeeper as to unlawful gaming is sufficient to prove that there was no unlawful gaming. *Maung Shein v. The King*. 39 Cr. L. J. 134 : 172 I. C. 371 : 10 R. Rang. 244. A. I. R. 1937 Rang. 469.

S. 6—Presumption under.

Marked coins are instruments of gaming—Presumption under S. 6 does arise. *Khemchand Girdarilal v. Emperor*. 39 Cr. L. J. 55 : 171 I. C. 1007 : 10 R. N. 150 : A. I. R. 1938 Nag. 63.

PUBLIC GAMBLING ACT (III OF 1867)

S. 6—Presumption under.

When a gambling game is being played, there is a strong presumption that the persons present are taking part in it, but when bets are being made at intervals and legitimate business is being carried on throughout, the presumption is not a strong one, and if persons found there give a reasonable explanation of their presence, it should ordinarily be accepted. *Khemchand Girdharilal v. Emperor*. 39 Cr. L. J. 55 : 171 I. C. 1007 : 10 R. N. 150 : A. I. R. 1938 Nag. 63.

S. 6—Presumption under.

The Police, having obtained a warrant, raided a house in which they found the accused persons, gaming was going on and there were instruments of gaming : *Held*, that the presumption contained in S. 6 applied and dispensed with the necessity of direct evidence. *Sita Ram v. Emperor*. 24 Cr. L. J. 934 : 75 I. C. 358 : 45 All. 671 : A. I. R. 1924 All. 186.

S. 6—Presumption.

The presumption under S. 6 cannot arise where the warrant was an illegal one. *Paras Ram v. Emperor*. 32 Cr. L. J. 141 : 128 I. C. 393 : 1930 A. L. J. 1462 : I. R. 1931 All. 41 : A. I. R. 1930 All. 740.

S. 6—Presumption under.

Before relying on the presumption under S. 6, the prosecution must establish that the place where the accused was found gambling, really was the place named in the search warrant. *Bajinath v. Emperor*. 38 Cr. L. J. 784 : 169 I. C. 303 : 9 R. C. 914 (1) : A. I. R. 1937 Cal. 54.

S. 6—U. P. Public Gambling (Amendment) Act (I of 1917), S. 3—Common gaming house, what is.

Where upon the search of a house, persons are found therein engaged in gambling and instruments of gaming are also found, and there is evidence that the owner made a profit by allowing his house to be used as a place for gambling, it must be presumed under S. 6 of the Public Gambling Act, as amended by the U. P. Public Gambling (Amendment) Act, 1917, in the absence of evidence to the contrary, that the house in question is a common gaming house. *Bhaggi Lal v. Emperor*. 21 Cr. L. J. 438 : 56 I. C. 230 : 18 A. L. J. 562 : 2 U. P. L. R. All. 119 : 42 All. 470 : A. I. R. 1920 All. 200.

S. 8—Confiscation of money found in gaming house.

On a conviction of any person for keeping or using any gaming house or being present therein for the purpose of gaming, the convicting Magistrate is authorized under S. 8 to order the forfeiture of any money seized at the house. *Emperor v. Kifayat*. 20 Cr. L. J. 133 (a) : 49 I. C. 165 : 17 A. L. J. 64 : 41 All. 272 : A. I. R. 1919 All. 188.

PUBLIC GAMBLING ACT (III OF 1867)

—S. 8—*Confiscation of money—Legality of.*

S. 8 says clearly that all money found in a gaming house may be confiscated and there is no question whether money is an instrument of gaming or not. *Radhey Lal v. Emperor.*

39 Cr. L. J. 548 :
175 I. C. 233 : 1938 A. L. J. 222 :
10 R. A. 657 : I. L. R. 1938 All. 422 :
A. I. R. 1938 All. 252.

—S. 8—*Confiscation of money.*

Under S. 8 money found on the persons of gamblers is not liable to confiscation. *Ram Sakhi Ram v. Emperor.*

22 Cr. L. J. 648 :
63 I. C. 408 : 19 A. L. J. 765 :
3 U. P. L. R. All. 127 :
A. I. R. 1921 All. 241.

—S. 10—*Evidence of accomplice under—Value of.*

The evidence of an accomplice, who accepts the pardon tendered to him by the trying Magistrate under S. 10 in order to save his own skin, must be viewed with great care and caution and it is not safe to act on his evidence unless, corroborated in material particulars. *Mahadco Prasad Vishnu v. Emperor.*

35 Cr. L. J. 397 :
147 I. C. 317 : 11 O. W. N. 62 :
6 R. O. 257 : A. I. R. 1934 Oudh 90.

—S. 10—*Illegal warrant - Persons found gaming - Competency as witnesses.*

Persons found in a gambling house cannot be examined as witnesses under S. 10, where the warrant was illegal and no officer of the rank specified in S. 5 was present at the time of search, as the house cannot, in such a case, be said to have been 'entered under the provisions of the Act' within the meaning of S. 10. The fact, however, that S. 10, is not applicable would not prevent the Magistrate from examining such persons in the ordinary way as witnesses. But, so examined, they would be accomplices and their evidence must be corroborated. *Paras Ram v. Emperor.*

32 Cr. L. J. 141 :
128 I. C. 393 : 1930 A. L. J. 1462 :
I. R. 1931 All. 41 : A. I. R. 1930 All. 740.

—S. 10—*Conviction of approver under.*

There is no prohibition in S. 10 against the conviction of an approver who does not depose truthfully. *Rahman Khan v. Emperor.*

39 Cr. L. J. 85 :
172 I. C. 182 : 10 R. N. 175 :
A. I. R. 1937 Nag. 396.

—S. 13, as amended by U. P. Act V of 1919—*Money found on person of accused, confiscation of.*

Money found on the person of the accused cannot be regarded as among the instruments of gambling under S. 13 and cannot, therefore, be confiscated. *Harihar v. Emperor.*

39 Cr. L. J. 227 :
172 I. C. 793 : 10 R. A. 434 (1) :
1937 A. L. J. 973 (1) :
1937 A. W. N. 960 :
A. I. R. 1938 All. 11.

PUBLIC GAMBLING ACT (III OF 1867)

—S. 13—*Confiscation of money—Legality of.*

S. 13 does not justify the seizure of money. Money is not an instrument of gaming within the meaning of that section. But a Magistrate has authority to confiscate money under S. 517, Cr. P. C., where it has been produced before the Court. *Ballu Singh v. Emperor.*

39 Cr. L. J. 441 :
174 I. C. 556 : 10 R. A. 597 (1) :
1938 A. L. J. 102 : 1938 A. W. N. 118 :
I. L. R. 1938 All. 348 :
A. I. R. 1938 All. 209.

—S. 13—*Confiscation of money—Legality of.*

S. 13 justifies only confiscation of instruments of gaming, money is not an instrument of gaming, and therefore, its confiscation under S. 13 of the Act, is not justified. *Radhey Lal v. Emperor.*

39 Cr. L. J. 548 :
175 I. C. 233 : 10 R. A. 657 :
1938 A. L. J. 222 :
I. L. R. 1938 All. 422 :
A. I. R. 1938 All. 252.

—S. 13—*Confiscation of money—Legality of.*

Under S. 13 all that can be confiscated are the instruments of gaming. An order, therefore, confiscating the money found in possession of an accused convicted under the Gambling Act, is illegal and must be set aside. *Maturwa v. Emperor.*

19 Cr. L. J. 700 :
46 I. C. 156 : 16 A. L. J. 428 : 40 All. 517 :
A. I. R. 1918 All. 390.

—S. 13—*Conviction under—Proof for.*

In order to obtain a conviction under S. 13 it must be proved that the accused were found playing for money or other valuable thing with some instrument of gaming *ejusdem generis* with cards, dice or counters used in playing any game not being a game of mere skill. *Gajju v. Emperor.*

19 Cr. L. J. 917 (b) :
47 I. C. 433 : 14 N. L. R. 137 :
A. I. R. 1917 Nag. 154.

—S. 13—*Public place.*

A foot-path running through a private grove is a public place if it is used by the public as of right. *Emperor v. Lalji.*

23 Cr. L. J. 579 :
68 I. C. 611 : 25 O. C. 114 :
A. I. R. 1922 Oudh 196.

—S. 13—*Game of skill played in public place.*

The playing of a game of mere skill for a stake or prize in a public place amounts to gaming but is not such gaming as falls within the purview of S. 13. *Panna Lal v. Emperor.*

27 Cr. L. J. 8 :
91 I. C. 40 : 24 A. L. J. 150 :
48 All. 220 : A. I. R. 1926 All. 187.

—S. 13—*Gambling—What is.*

Recording bets or laying bets about an uncertain event which the recorders and betters

PUBLIC GAMBLING ACT (III OF 1867)

cannot prevent or bring about is not playing a game within S. 13. *Gajju v. Emperor*.

19 Cr. L. J. 917 (b) :
47 I. C. 433 : 14 N. L. R. 137 :
A. I. R. 1917 Nag. 154.

—S. 13—Sentence.

A person who offends against S. 13 can be punished either with imprisonment or with fine but not with both. *Muhammad Khan v. Emperor*.

28 Cr. L. J. 790 :
104 I. C. 230 : 28 P. L. R. 577 :
A. I. R. 1927 Lah. 672.

—S. 13—Instruments—Meaning of.

Instruments of gaming include articles used as a means or appurtenance of, or for the purpose of carrying or facilitating gaming. *Lachchi Ram v. Emperor*.

23 Cr. L. J. 196 :
65 I. C. 852 : 20 A. L. J. 218 :
A. I. R. 1922 All. 61.

—S. 13—Instruments—What are.

A book in which bets are recorded is not an "instrument of gaming" within the meaning of S. 13. *Gajju v. Emperor*.

19 Cr. L. J. 917 (b) :
47 I. C. 433 : 14 N. L. R. 137 :
A. I. R. 1917 Nag. 154.

—S. 13—Private grove on occasion of fair, whether public place.

The accused were convicted of gambling in an area occupied by a large private grove at a time when a fair was in progress there and visitors to the fair had penetrated to all parts of the grove without any interference: *Held*, that the accused were gambling in a public place and were rightly convicted. *Sukhnandan Singh v. Emperor*.

23 Cr. L. J. 67 :
65 I. C. 419 : 20 A. L. J. 80 :
44 All. 265 : A. I. R. 1922 All. 542.

—S. 13—Public place.

A blind alley approachable by a circuitous lane and at a considerable distance from a highway is not a "public place" within S. 13. *Muhammad Ali v. Emperor*.

23 Cr. L. J. 624 :
68 I. C. 848 : A. I. R. 1923 Lah. 278.

—S. 13—Public place.

A place in order to be public within S. 13, must be open to the public, i.e., a place to which the public have lawful access by right, permission, usage or otherwise. When the inference drawn by the lower Courts from proved facts does not seem to be warranted, the High Court will set aside the finding in revision. *Sabimiya v. Emperor*.

25 Cr. L. J. 1073 :
81 I. C. 897 : A. I. R. 1925 Nag. 123.

—S. 13—"Public place."

A place which is in any way dedicated to the use of the public, is a public place. In case, however, of a place which is owned privately and which is not dedicated to the public, the question whether it is a public place depends

PUBLIC GAMBLING ACT (III OF 1867)

upon the character of the place itself and the use actually made of it. A public place within the meaning of the section is a place where the public go, no matter whether they have a right to go there or not. *Nura v. Emperor*.

26 Cr. L. J. 1455 (a) :
89 I. C. 975 : 1 Lah. Cas. 288 :
A. I. R. 1926 Lah. 149.

—S. 13—Public place.

A public place must be a place either open to the public or actually used by the public, the mere publicity of the situation not being sufficient. *Babu Ram v. Emperor*.

28 Cr. L. J. 666 :
103 I. C. 202 : 25 A. L. J. 578 :
49 All. 913.

—S. 13—"Public place."

A public place must be a place which is either open to the public or is used by the public, and the mere publicity of a situation does not make it a public place. *Emperor v. Bashir*.

23 Cr. L. J. 581 :
68 I. C. 613 : 9 O. L. J. 288 :
4 U. P. L. R. Oudh 68 :
A. I. R. 1922 Oudh 275.

—S. 13—Public place—Meaning of.

For the purpose of determining whether a place is a public place, what has to be taken into consideration is not the question of title to the place nor the nature of its metes and bounds but the use to which the place is put. *Tulshi Das v. Emperor*.

25 Cr. L. J. 1308 :
82 I. C. 476 : 22 A. L. J. 741 :
46 All. 787 : A. I. R. 1924 All. 768.

—S. 13—"Public place," meaning of.

It is well-settled that in order that a place should be a 'public place' it is not necessary that the public should have a legal right to go to it. All that is necessary is that the public actually go there whether as of right or on sufferance of the proprietors. *Muhammad Khan v. Emperor*.

28 Cr. L. J. 790 :
104 I. C. 30 : 28 P. L. R. 577 :
A. I. R. 1927 Lah. 672.

—S. 13—Public place.

Public place does not mean place exposed to public view. *Moula v. Emperor*.

21 Cr. L. J. 512 :
56 I. C. 672 : 104 P. L. R. 1910 :
A. I. R. 1920 Lah. 104.

—S. 13—"Public place".

The expression 'public place' must be interpreted in connection with the expressions 'public street' and 'public thoroughfare' with which it is joined. A place may be a public place though it is the private property of an individual, but where a place is owned privately and has not been in any way dedicated to the use of the public, the question whether it is a public place depends on the character of the place itself and the use actually made of it. *Vithu v. Emperor*.

14 Cr. L. J. 670 :
21 I. C. 910 : 9 N. L. R. 164.

PUBLIC GAMBLING ACT (III OF 1867)

———S. 13—'Public place.'

The outskirts of a railway station, that is, those parts to which the public have no right of access, do not constitute a public place. *Badr-ud-Din v. Emperor*.

21 Cr. L. J. 691 (a) :
57 I. C. 931 : A. I. R. 1920 Lah. 262.

———S. 13—Public place..

The words "public place" signify a place to which the public resort as a matter of fact, whether of right or with the permission of a private owner. *Gajju v. Emperor*.

19 Cr. L. J. 917 (b) :
47 I. C. 433 : 14 N. L. R. 137 :
A. I. R. 1917 Nag. 154.

———S. 13—Public place—Meaning of.

Unenclosed grove, few paces away from public pathway—No interference with access of public—Accused found gambling in such place—Accused having no connection with grove—Grove, held public place. *Ballu Singh v. Emperor*.

39 Cr. L. J. 441 :
174 I. C. 556 : 1938 A. L. J. 102 :
10 R. A. 597 (1) : 1938 A. W. N. 118 :
I. L. R. 1938 All. 348 :
A. I. R. 1938 All. 209.

———S. 13—Public place.

A public place is a place to which the public have a right of access and the question of ownership is immaterial. The verandah of a shop is not a 'public place' if the public have no right of access to it, even though the shop is in a public situation. *Lala v. Emperor*.

31 Cr. L. J. 1118 :
126 I. C. 702 : 7 O. W. N. 621 :
A. I. R. 1930 Oudh 394.

———S. 13—Public place.

When the public have access to a place without their access being refused or interfered with, that place is a public place whether the public have a right to go there or not. *Sukhnandan Singh v. Emperor*.

23 Cr. L. J. 67 :
65 I. C. 419 : 20 A. L. J. 80 :
44 All. 265 : A. I. R. 1922 All. 542.

———S. 13—Public place.

The word 'place' in S. 13 is used in conjunction with 'street' and 'thoroughfare' and is not intended to apply to a private place which might be open to a public view. *Babu Ram v. Emperor*.

28 Cr. L. J. 666 :
103 I. C. 202 : 49 All. 913 :
25 A. L. J. 578.

———S. 13—Ring game—Game of chance.

The element of chance in a game consisting of throwing a ring over a pin is so strong that the game cannot be held to be a mere game of skill. Such a game is punishable under S. 13. *Ahmad Khan v. Emperor*.

12 Cr. L. J. 612 :
12 I. C. 988 : 34 All. 96 :
8 A. L. J. 1262.

———S. 13—Public place.

A serai taken on rent by a Municipality and

PUBLIC NUISANCE

used as a stand for hackney carriages, which is resorted to by the public, is a public place. *Nura v. Emperor*.

26 Cr. L. J. 1455 (a) :
89 I. C. 975 : 1 Lah. Cas. 288 :
A. I. R. 1926 Lah. 149.

PUBLIC JUSTICE

———Offence against illegal action under S 115, Cr. P. C.—Interference by High Court.

A sanction to prosecute for an offence against public justice may be given to a public officer, and the grant of such sanction is not limited to a party to the suit. Therefore, where the District Judge revoked such sanction given to the District Magistrate, on the ground that sanction could not be given to a party: *Held*, that the Judge acted illegally in the exercise of his jurisdiction within S. 115, Cr. P. C., 1908, and that the High Court could interfere. *Ram Prasad Malla v. Raghubar Malla*.

10 Cr. L. J. 454 :
4 I. C. 6 : 37 Cal. 13 :
13 C. W. N. 1038.

PUNJAB LAWS ACT (IV OF 1872)

———Ss 43, 50, 51—Kine slaughter—Regulation of.

Prohibition against kine slaughter under S. 43, Punjab Laws Act, and the rules thereunder is not confined to slaughter for commercial purposes but extends to slaughter for religious purposes as well. *Emperor v. Barkal*.

27 Cr. L. J. 888 :
96 I. C. 152 : 27 P. L. R. 791 :
7 Lah. 507 : A. I. R. 1926 Lah. 447.

———Ss. 47, 50-B—Possession of buoy for crossing river not a punishable offence.

No rules having been framed by the Local Government under S. 47 or S. 50-B, Punjab Laws Act, constituting the manufacture of rafts or buoys or their use in crossing rivers an offence in the Lahore district, the possession of a buoy in this part of the Province for use in crossing a river is not a punishable offence. *Emperor v. Sohan Singh*.

13 Cr. L. J. 185 :
13 I. C. 1001 : 18 P. R. 1911 Cr.

PUBLIC NUISANCE

———Annoyance, proof of.

In order to establish a charge of committing a nuisance in a public place to the annoyance of residents or passengers in the locality, it is necessary to prove that somebody was annoyed. But annoyance to one person is sufficient. When a public servant, like a Municipal employee, whose duty it is to look after the cleanliness of the streets, sees anybody easing himself in a public place or street, he is sure to be annoyed. *Lallu Ram v. Emperor*.

25 Cr. L. J. 332 :
77 I. C. 188 : 21 A. L. J. 772 :
A. I. R. 1924 All. 194.

———Killing of cows by Muhammadans.

Under certain limitations, the slaughtering of kine by Muhammadans is not illegal. It is

PUBLIC PROSECUTION

the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with. *Shahbaz Khan v. Umrao Puri*. 7 Cr. L. J. 381 : 28 A. W. N. 64 : 30 All. 181 : 5 A. L. J. 147.

What is.

To obstruct by erection of a bund the right of the public to cross the bed of a river easily and on foot, constitutes public nuisance. *Zaffer Nawab v. Emperor*. 2 Cr. L. J. 762 : I. L. R. 32 Cal. 930.

PUBLIC PLACE**Place of public resort.**

A legal right of access by the public is not necessary to constitute a public place. A public place is one where the public go, no matter whether they have a right to go or not. *Emperor v. Govindarajulu*. 16 Cr. L. J. 704 : 30 I. C. 752 : 2 L. W. 937 : 1915 M. W. N. 841 : A. I. R. 1916 Mad. 474.

PUBLIC PROSECUTION**Duties.**

All persons said to have witnessed a murder, should be produced before the Committing Magistrate, though it is not necessary for a Public Prosecutor to tender in the Sessions Court any witness who, he may have reason to believe, will give false evidence. Where an eye-witness is not produced before the Committing Magistrate, the natural presumption is that he would not support the case for the Prosecution. *Kaimi v. Emperor*. 17 Cr. L. J. 267 : 34 I. C. 987 : 12 P. R. 1916 Cr. : 39 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 408.

Duty of.

It is the duty of the Public Prosecutor in a murder case to place before the Trial Court the testimony of all available eye-witnesses. *Ram Ranjan Roy v. Emperor*. 16 Cr. L. J. 170 :

PUBLIC PROSECUTOR**Duty of.**

There should be on the part of a Public Prosecutor no unseemly eagerness for grasping at conviction. He has to perform his duties with calmness and impartiality and has to aid the Court in discovering the truth. *A. W. Chandekar v. Emperor*. 26 Cr. L. J. 163 : 83 I. C. 723 : 7 N. L. J. 155 : A. I. R. 1924 Nag. 243.

PUBLIC RIGHT**What is.**

A class or community residing in a particular locality may come within the term "public" and the right enjoyed by them is a public right. The number of persons claiming the right and the nature of right itself will no doubt be the criteria on which conclusions may be arrived. The best criterion will be to see whether the right is vested in such a large number of persons as to make them unascertainable and to make them a community or class. *Harnandan Lal v. Rampalak Mahato*. 40 Cr. L. J. 837 : 184 I. C. 47 : 18 Pat. 76 : 20 P. L. T. 748 : 6 B. R. 6 : 12 R. P. 212 : A. I. R. 1939 Pat. 460.

What is.

Where in a village of 200 houses, some persons claim a right to irrigate their fields with the water channel, the right claimed is not a public right. *Harnandan Lal v. Rampalak Mahato*. 40 Cr. L. J. 837 : 184 I. C. 47 : 18 Pat. 76 : 20 P. L. T. 748 : 6 B. R. 6 : 12 R. P. 212 : A. I. R. 1939 Pat. 460.

PUBLIC SPEECH**Right to express opinions in public—Election—Election speech—Limits.**

Every man has a right to express his opinions in public, and in general, he should be entitled to the support of the Public and magistracy in the expression of those opinions. Occasions do however arise, when in the interests of peace private rights have to be encroached upon by those responsible for public order. The Police cannot always have a number of men posted wherever persons are expressing opinions which may call upon them to the wrath of the people among whom they are speaking. This is particularly the case during

PUNISHMENT

co-owners. The act must be the concerted act, at one given moment, of all the joint owners. *Abdul Wahid Khan v. Abdullah Khan*.

24 Cr. L. J. 817 :

74 I. C. 849 : 21 A. L. J. 529 :

45 All. 656 : A. I. R. 1924 All. 1.

—————**Public way—Dedication.**

To show that a way is a public way, it must be proved that it has been dedicated to the public generally. A dedication to a limited section of the public is void and of no avail. A general dedication has to be inferred from the conduct of the owners of the soil and from uninterrupted user of the way by the general public. *Abdul Wahid Khan v. Abdullah Khan*.

24 Cr. L. J. 817 :

74 I. C. 849 : 21 A. L. J. 529 :

45 All. 656 : A. I. R. 1924 All. 1.

PUNISHMENT

—————**Adequacy of for offences by or against public servants—Test.**

The punishment in the case of offences by or relating to the public servants and particularly those of obtaining or giving bribes by or to the public servants ought to be deterrent as their object is to check repetition of the offences not only by the actual culprits but also by the other public servants. *Emperor v. Mahadeo Ganesh Mulherkar*.

26 Cr. L. J. 821 :

86 I. C. 469 : A. I. R. 1925 Nag. 321.

—————**Anticipating punishment.**

It is bad in law to impose a daily fine in anticipation of the commission of an offence. *Pancham Sao v. Emperor*.

25 Cr. L. J. 1357 :

82 I. C. 717 : 6 Pat. L. T. 204 :

A. I. R. 1925 Pat. 322.

—————**Anticipatory punishment—Legality of.**

The infliction of a daily fine until the accused complies with the order passed against him is illegal, as no person can be punished for a thing he has not done but may possibly do in the future. *Baburao v. Municipal Committee*.

24 Cr. L. J. 318 :

72 I. C. 78 : A. I. R. 1924 Nag. 66.

—————**Deterrent, when should be inflicted.**

The theory of deterrent punishments should not be loosely put into practice and the principles upon which alone deterrent penalties should, as a rule, be inflicted, should be clearly comprehended. *Gossain Misser v. Emperor*.

22 Cr. L. J. 679 :

63 I. C. 615 : 2 P. L. T. 596 :

1922 Pat. 14 : A. I. R. 1922 Pat. 267.

—————**Fine, levy of—Capacity to pay.**

However serious may be the offence of which an accused person is convicted, a fine should not be imposed which it is wholly impossible for him to pay without ruining himself and inflicting great hardship upon his family. If the offence is of an aggravated type, a sentence of imprisonment is more suitable than a fine. *Abdulla v. Emperor*.

24 Cr. L. J. 278 :

71 I. C. 998 : 5 L. L. J. 217 :

A. I. R. 1924 Lah. 81.

PUNJAB COLONIZATION OF GOVERNMENT LANDS ACT (V OF 1912)

—————**Offences under Ss. 147, 225, Penal Code—Separate sentences—Propriety of—Offences not distinct—Separate sentences, legality of.**

Having regard to the provisions of S. 71, Penal Code, and S. 35, Cr. P. C., a person convicted of offences under S. 147 and under S. 225, Penal Code, would not be liable to separate punishment for each offence where the common object of the unlawful assembly of which the accused was a member, was the commission of the offence punishable under S. 225, Penal Code. *Sarat Chandra Ghosh v. Emperor*.

24 Cr. L. J. 851 :

74 I. C. 1043 : 37 C. L. J. 171 :

A. I. R. 1923 Cal. 408.

—————**Punishment.**

In awarding punishment, the long imprisonment already inflicted may be considered. *Emperor v. Ismail Hasam*.

1 Cr. L. J. 282.

—————**Propriety of.**

In case of a petty offence, sentence should not be altogether disproportionate even though the accused is a previous convict. *Nga Po Hnyin v. Emperor*.

12 Cr. L. J. 243 (b) :

- 10 I. C. 772 : 4 Bur. L. T. 68.

—————**Reduction of—Propriety of.**

Wounds inflicted with a *dah*—Sentence—Application for compromise and the complainant's treatment as an out-door patient, no considerations of reduction for sentence. *Emperor v. Mya Din*.

12 Cr. L. J. 243 (a) :

10 I. C. 773 : 4 Bur. L. T. 69.

PUNJAB ALIENATION OF LAND ACT (XIII OF 1900)

—————**Scope.**

There is nothing illegal or opposed to public policy in one agriculturist taking the land of another agriculturist on mortgage undertaking in exchange to pay off the debts due by the mortgagor to a non-agriculturist. *Wasinda Ram v. Bahadar Khan*.

36 Cr. L. J. 20 :

152 I. C. 224 : 35 P. L. R. 361 :

7 R. L. 268 : A. I. R. 1934 Lah. 434.

PUNJAB BORSTAL ACT (XI OF 1925)

—————**Benefit of Act.**

A boy who is entitled to the benefit of the provisions of the Punjab Borstal Act, should not be deprived of it merely because by accident or force of circumstances he is associated with habitual criminals. *Vaina v. Emperor*.

29 Cr. L. J. 350 :

108 I. C. 169 : A. I. R. 1928 Lah. 496.

PUNJAB COLONIZATION OF GOVERNMENT LANDS ACT (V OF 1912)

—————**S. 33—Scope.**

S. 33 was intended to punish persons for doing certain positive acts enumerated therein. It does not include within its scope an

PUNJAB DISTRICT BOARD NOTIFICATION REGULATION 8

omission to do a certain act, even if that omission may not be justifiable. S. 33 not being retrospective, cannot be invoked for punishing a person for an alleged act or omission which took place before the date on which the Act came into force. *Miran Bakhsh v. Emperor*.

15 Cr. L. J. 146 :
2 I. C. 722 : 33 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 97.

PUNJAB CONSPIRACY (SPECIAL TRIBUNALS) ACT (IV OF 1930)

———*Jurisdiction of Courts under.*

There is nothing in Act IV of 1930 by which exclusive jurisdiction was conferred on the Special Tribunal. Where two Courts have concurrent jurisdiction and one Court has taken up the case, the jurisdiction of the other Court is not ousted by the first Court taking seisin of the case. *Dhanwantri Durga Das v. Emperor*.

35 Cr. L. J. 171 :
146 I. C. 843 : 34 P. L. R. 672 :
14 Lah. 820 : 6 R. L. 278 :
A. I. R. 1933 Lah. 852.

PUNJAB DISTRICT BOARDS ACT (XX OF 1883)

———S. 57—*Anticipatory punishment of fine.*

An order for payment of an additional fine for future continuing breach is *ultra vires*. The District Board must bring a fresh complaint. *In re: Fazla*.

36 Cr. L. J. 105 (1) :
152 I. C. 166 : 7 R. L. 260 :
A. I. R. 1934 Lah. 428 (1).

———S. 57.

Map signed by Executive Engineer and Sub-Divisional Officer while transferring land to District Board—Presumption of accuracy arises under Evidence Act, S. 83—Blue print, secondary evidence under S. 63, Evidence Act. *Prabhu Ram v. Emperor*.

38 Cr. L. J. 438 :
167 I. C. 573 : 17 Lah. 843 :
39 P. L. R. 143 : 9 R. L. 526 :
A. I. R. 1937 Lah. 155.

———As amended by Act (XI of 1922), S. 58-B—*Applicability.*

S. 58-B has no application to a case where the demand of the District Board is based upon a contract. *Narain Singh v. District Board of Ludhiana*.

29 Cr. L. J. 779 :
110 I. C. 811 : 9 L. L. J. 541 :
29 P. L. R. 252 :
A. I. R. 1928 Lah. 109.

PUNJAB DISTRICT BOARD NOTIFICATION REGULATION 8

———*Future continuing fine.*

Imposition of future continuing fine under Regulation 8, District Board Notification, at the time of adjudication is illegal as it is an adjudication in respect of an offence

PUNJAB EXCISE ACT, 1914

which had not been committed when the order was passed. *Prabhu Ram v. Emperor*.

38 Cr. L. J. 438 :
167 I. C. 573 : 17 Lah. 843 :
39 P. L. R. 143 : 9 R. L. 526 :
A. I. R. 1937 Lah. 155.

PUNJAB EXCISE ACT, 1914

———*Sale of denatured spirit—Rules for.*

R 50, by Local Government—Form L 17—Licensee is not bound to put labels on bottles of methylated spirit, when they are in transit—Bottles arriving in morning—They may be entered in register any time during day. *Billa Ram Piara Ram v. Emperor*.

39 Cr. L. J. 435 :
175 I. C. 133 : 10 R. Rang. 462 :
A. I. R. 1938 Rang. 97.

———Ss. 8, 58—*Rules made by various local Governments—Similarity of.*

In the absence of notification, the rules framed by the Punjab Government delegating its powers under S. 8 of the Punjab Excise Act, and the rules framed under Ss. 58 and 59 of the Act, could not be applied to N.-W. F. Provinces, and the Local Government of N.-W. F. P. could not, therefore, be deemed to have delegated its powers merely because the Punjab Government had done so: *Held*, also that the appointment of the Excise Sub-Inspector by the Revenue Commissioner of N.-W. F. Province was, therefore illegal, the Revenue Commissioner having no power to do so. But though the appointment was illegal, the Excise Sub-Inspector was a "public servant" within the meaning of S. 21, Penal Code, as at the time of his appointment, he could only be appointed by the Local Government, he could only be dismissed by that authority and not by the actual authority which did appoint him without being empowered to do so. *Emperor v. Fazal Rahman*.

38 Cr. L. J. 1042 :
170 I. C. 772 : 10 R. Pesh. 23 :
A. I. R. 1937 Pesh. 52.

———S. 24 (3)—*Excise Manual, Vol. 1, S. 407—Whether overrides S. 24, Excise Act.*

S. 407 of Vol. 1, Excise Manual, does not override the provisions of S. 24 (3), Excise Act. It empowers a licence-holder to possess country liquor to any extent on the licensed premises, but does not entitle him to possess more than the ordinary prescribed amount of one seer elsewhere. *Emperor v. Puran Singh*.

24 Cr. L. J. 667 :
73 I. C. 699 : 4 Lah. 10 :
4 P. W. R. 1923 Cr. : 5 L. L. J. 412 :
A. I. R. 1924 Lah. 73.

———S. 50—*Raid Report.*

An accused is not entitled to see the document called - the "Raid Report" submitted under S. 50. *Ghulam Nabi v. Emperor*.

30 Cr. L. J. 760 :
117 I. C. 377 : I. R. 1929 Lah. 649 :
A. I. R. 1929 Lah. 429,

PUNJAB EXCISE ACT, 1914

———Ss. 58, 59, 65, 78—*Incorrect entries in registers—Offence.*

The mere making of an incorrect entry in the registers kept under rules framed under Ss. 58 and 59, Punjab Excise Act, is not an offence in itself. It is only wilful contravention of any regulation made under S. 58 or 59 which is punishable under S. 65. *Sundar Das v. Emperor.*

23 Cr. L. J. 376 (b) :
67 I. C. 200 (b) : 3 L. L. J. 195 :
A. I. R. 1921 Lah. 105.

———S. 58 (2) (d)—*Miscellaneous.*

Rules under—Rules by Local Government of N.-W. F. P.—R. 3, permitting transport of foreign liquor, free of restrictions—Restrictions placed by Revenue Commissioner by Notification No. 4-Exe. of January 5, 1917, held *ultra vires*. *Billa Ram Piara Ram v. Emperor.*

39 Cr. L. J. 435 :
175 I. C. 133 : 10 R. Rang. 462 :
A. I. R. 1938 Rang. 97.

———S. 61—*Anaesthesia, whether preparation of cocaine.*

Anaesthesia resembles cocaine only in its property of producing local insensibility of the sensory nerves but is otherwise in no way akin to cocaine. Its possession and sale constitute no offence. *Bishan Das v. Emperor.*

18 Cr. L. J. 934 :
42 I. C. 166 : 32 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 148.

———S. 61—*Offence—Proof.*

Before a person can be convicted under S. 61 (1) (a), the prosecution must prove that the liquor which was in the possession of the accused was illicit. *Kunda Singh v. Emperor.*

28 Cr. L. J. 661 :
103 I. C. 197 : A. I. R. 1928 Lah. 191.

———S. 61—*Possession of illicit liquor—Joint possession, proof of.*

When it is sought to establish that possession and control of a place are with some members of the family other than the managing member, there must be good and clear evidence of the fact before the Court can arrive at such a conclusion. *Tara v. Emperor.*

22 Cr. L. J. 432 :
61 I. C. 720.

———S. 61—*Illegal possession of liquor—Husband and wife.*

Where liquor and apparatus for manufacturing it are found in a house which is in the joint occupation of a husband and wife, but which belongs to the husband, the latter alone must be regarded as being in possession of the articles. *Bishna v. Emperor.*

22 Cr. L. J. 141 :
59 I. C. 653 : 9 P. W. R. 1921 Cr. :
A. I. R. 1920 Lah. 210.

———S. 61—*Illegal possession of liquor—Joint possession—Who is liable.*

The mere fact of a person being a joint owner of a house and field in which illicit liquor and distilling apparatus are found, without anything further to connect him with the illicit

PUNJAB EXCISE ACT, 1914

distillation, is not sufficient to warrant his conviction. *Mihan Singh v. Emperor.*

22 Cr. L. J. 30 :
59 I. C. 142 : 15 P. L. R. 1921 :
3 P. W. R. 1921 Cr. : A. I. R. 1921 Lah. 214.

———S. 61—*Benefit of S. 562, Cr. P. C.*

Ordinarily a person convicted under S. 61 (1) is not entitled to the benefit of S. 562, Cr. P. C. *Emperor v. Piara Singh.*

27 Cr. L. J. 561 :
94 I. C. 129 : 7 Lah. 32 :
27 P. L. R. 221 : A. I. R. 1926 Lah. 166.

———S. 61—*Separate sentence for importing and possessing cocaine—Legality of.*

Where postal packets containing cocaine are taken delivery of by the consignee and he is immediately arrested, he cannot be separately sentenced both for importing and for possessing cocaine. *Ram Tikaya v. Emperor.*

28 Cr. L. J. 468 :
101 I. C. 596 : 8 Lah. 100 :
9 L. L. J. 213 : 28 P. L. R. 495 :
A. I. R. 1927 Lah. 191.

———Ss. 61, 75 (1)—*Jurisdiction.*

A Magistrate has no jurisdiction to take action under S. 61 read with S. 75 (1), where there is on the record no complaint or report by an Excise Officer. *Harnam Singh v. Emperor.*

17 Cr. L. J. 151 :
33 I. C. 631 : 18 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 295.

———S. 61 (1)—*Sentence.*

In an offence under the Excise Act, it is necessary to impose a sentence which would have a deterrent effect, and a mere sentence of fine will not do. *Emperor v. Piara Singh.*

27 Cr. L. J. 561 :
94 I. C. 129 : 27 P. L. R. 221 :
7 Lah. 32 : A. I. R. 1926 Lah. 166.

———S. 61 (1)—*Sentence.*

In convictions for manufacturing liquor contrary to law and being in possession of it, deterrent sentences are absolutely necessary. *Emperor v. Budha.*

22 Cr. L. J. 258 :
60 I. C. 658.

———S. 61 (1)—*Sentence.*

So far the question of sentence is concerned, there is distinction between the case of a manufacturer or seller of an excisable article and that of a person who possesses it for his own use. In case of the latter, maximum punishment is not called for. *Kher Singh v. Emperor.*

30 Cr. L. J. 15 :
112 I. C. 783 : 30 P. L. R. 638 :
10 Lah. 524 : I. R. 1929 Lah. 85 :
A. I. R. 1929 Lah. 29.

———S. 61 (1) (a)—*Absence of evidence of quantity of cocaine—Court should interpret in favour of accused.*

In a prosecution for possession of illicit cocaine, if there is no evidence to show how much cocaine was in the possession of the accused, the Court must presume that there

PUNJAB EXCISE ACT, 1914

was only a small quantity and award a light sentence. *Mehtab Din v. Emperor*.

33 Cr. L. J. 114 :
135 I. C. 40 : 32 P. L. R. 778 :
I. R. 1932 Lah. 24 :
A. I. R. 1932 Lah. 10.

———S. 61 (1) (a). —

Unlawful possession of liquor—Liquor discovered from place accessible to public, offence not proved. *Bhali v. Emperor*.

26 Cr. L. J. 720 :
86 I. C. 160 : 26 P. L. R. 10 :
A. I. R. 1925 Lah. 437.

———S. 61 (1) (a)—Joint possession.

Where a house is in possession of three brothers living together as members of a family, and if illicit liquor is found therein, the presumption is that it is in possession of the eldest of them, who is to be regarded as house master. *Bara Singh v. Emperor*.

39 Cr. L. J. 232 :
172 I. C. 864 : 10 R. L. 380 :
39 P. L. R. 133.

———S. 61 (1) (a)—“Imported”, meaning of.

An article does not cease to be “imported” by the consignee simply because it has been interrupted in transit by the Custom officials acting under and in accordance with their Statutory powers. *Ram Tikaya v. Emperor*.

28 Cr. L. J. 468 :
101 I. C. 596 : 8 Lah. 100 :
9 L. L. J. 213 : 28 P. L. R. 495 :
A. I. R. 1927 Lah. 191.

———S. 61 (1) (a)—Liquor Lahan, whether liquor.

Lahan has been declared to be liquor and just as liquor cannot be strengthened, so it cannot be dissolved into its component parts and there can be no such thing as illicit lahan, this being the term used for describing the material while in the process of manufacture. *Kunda Singh v. Emperor*.

28 Cr. C. J. 661 :
103 I. C. 197 : A. I. R. 1928 Lah. 191.

———S. 61 (1) (a).

Accused and three other persons were found sitting round a fair quantity of cocaine in a house. The cocaine as well as a pair of scissors and paper was lying on the ground before them. Accused was the lessee of the house and was living in it at the time, while the other persons were not inmates of the house: Held, that the accused alone was, under the circumstances, in possession of the cocaine and was, therefore, guilty under S. 61 (1) (a). *Nanwan v. Emperor*.

26 Cr. L. J. 729 (a) :
86 I. C. 217 : 26 P. L. R. 9 :
A. I. R. 1925 Lah. 519.

———S. 61 (1) (a)—Offence under—Liability.

Illicit liquor found in house possessed by father and son, father being head of family, father alone held liable. *Emperor v. Binjha*.

31 Cr. L. J. 352 :
122 I. C. 108 : 11 Lah. 305 :
31 P. L. R. 452 : A. I. R. 1930 Lah. 884.

PUNJAB EXCISE ACT, 1914

———S. 61 (1) (a)—Offence under—Liability of persons—Nature of.

Seven persons found sitting in hotel around a table on which were found some tumblers with some liquor and others empty—All accused convicted as collectively responsible for possession of liquor on table—Collective responsibility held could not be enforced without finding out whether each accused was in individual possession of liquor. *Duni Chand v. Emperor*.

41 Cr. L. J. 341 :
186 I. C. 581 : 41 P. L. R. 707 :
12 R. L. 421 : A. I. R. 1940 Lah. 36.

———S. 61 (1) (a)—Rectified spirit.

The expression “rectified spirit” includes absolute alcohol of a foreign origin and a person in possession of such alcohol beyond the quantity permitted, is guilty of an offence under S. 61 (1) (a). *Emperor v. Narain Das*.

27 Cr. L. J. 1311 :
98 I. C. 255 : 7 Lah. 341 :
27 P. L. R. 502 : 8 L. L. J. 613 :
A. I. R. 1926 Lah. 517.

———S. 61 (1) (a)—Offence under—What is.

A person who is in possession of liquor for the use of guests at a marriage party on behalf of a liquor contractor, who has not taken one pass under Punjab Government Notification No. 840, is guilty of an offence under S. 61 (1) (a), inasmuch as the possession of the liquor by contractor himself would not, under the circumstances, be legal. *Gokal Chand v. Emperor*.

18 Cr. L. J. 521 :
39 I. C. 489 : 16 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 244.

———S. 61 (1) (a)—Joint possession.

Where illicit liquor is found in a house which is occupied by two brothers, the presumption is that the elder brother was in possession of the liquor. *Mehr Singh v. Emperor*.

22 Cr. L. J. 272 :
60 I. C. 672.

———S. 61 (1) (a), (2) (a)—Possession and sale of liquor—What is.

Accused No. 1, a licensee for liquor, brought a certain quantity of liquor to the house of accused No. 2 who was his father. On a purchaser asking for liquor, accused No. 2 called to accused No. 1 to bring the liquor. The price for the liquor was handed over to accused No. 2: Held, that accused No. 2 was not guilty. *Kishen Singh v. Emperor*.

24 Cr. L. J. 381 :
72 I. C. 381 : 8 P. W. R. 1923 Cr. :
A. I. R. 1924 Lah. 233.

———S. 61 (1) (c)—Sentence.

In awarding sentences in excise cases, the consideration that illicit distillation results in not only a loss of excise revenue but also in drunkenness and crime, is of very great importance, but in view of the demoralising influence of a sojourn in jail on the character of a person who is otherwise law-abiding, a heavy sentence of fine is preferable to a sentence of imprisonment in

PUNJAB GOVERNMENT NOTIFICATION

most cases of a first conviction. *Lehna Singh v. Emperor.* 17 Cr. L. J. 282 :

34 I. C. 1002 : 63 P. L. R. 1916 :
26 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 345.

—S. 61 (2) (a)—Offence under—When constitutes.

Father having licensed shop for sale of liquor at G—His son having grocer's shop at N, some 12 miles from G, but having no licence to sell liquor—One H ordering liquor at son's shop to be delivered at N—Son bringing liquor and putting it in H's car at N—Payment made to father personally at N—Son held acted as agent for H and that there was no sale at N but at G. *Mithu Lal v. Emperor.* 39 Cr. L. J. 762 :

176 I. C. 648 : 40 P. L. R. 226 :
11 R. L. 222 : A. I. R. 1938 Lah. 529.

—S. 61 (2) (b)—Hemp growing spontaneously in garden—Owner's liability.

Mere neglect in not recognising hemp plants in one's garden and having them weeded out, does not amount to cultivating hemp plants within the meaning of S. 61 (2) (b). *Hans Raj v. Emperor.*

29 Cr. L. J. 693 :
110 I. C. 325 : A. I. R. 1928 Lah. 861.

—S. 75—Complaint by Police Officer, whether cognizable.

Inasmuch as all Inspectors and Sub-Inspectors of Police have, by a notification under S. 2, Punjab Excise Act, been invested with the powers of an Excise Officer of the First Class, a Court is competent to take cognizance of a complaint of an offence under that Act made by a Police Inspector. *Nihal Singh v. Emperor.* 24 Cr. L. J. 183 :

71 I. C. 599 : 6 P. W. R. 1923 Cr. :
A. I. R. 1922 Lah. 220.

—S. 78—Forfeiture of liquor.

An order directing forfeiture of liquor and empty bottles found in the shop is illegal and cannot be passed under S. 78. *Sundar Das v. Emperor.*

23 Cr. L. J. 376 (b) :
67 I. C. 200 : 3 L. L. J. 195 :
A. I. R. 1921 Lah. 105.

PUNJAB GOVERNMENT NOTIFICATION

—Powers of—Successors of—Naib-Tahsildars to sanction prosecution.

- By Punjab Government Notification No. 1536, dated the 8th November 1889, all Naib-Tahsildars are *ex-officio* created Magistrates of the Third Class, and where an offence specified in S. 195 of the Cr. P. C. is committed in a proceeding before a Naib-Tahsildar, his successor has jurisdiction to make a complaint in respect of such offence under S. 476 of the Code. *Behram v. Emperor.*

27 Cr. L. J. 776 :
95 I. C. 312 : 7 Lah. 108 :
27 P. L. R. 314 : A. I. R. 1926 Lah. 305.

PUNJAB LAND REVENUE ACT (XVII OF 1887)

—S. 28—Rules by Financial Commissioner, r. 20, Sub-cl. (1)—“Same” in “pay the same” refers to all land revenue.

The word “same” in the expression “pay the same” in Sub-cl. (1) of r. 20 of the Rules framed by the Financial Commissioner under S. 28, Punjab Land Revenue Act, refers to all the land revenue and not merely to the land revenue which has been collected by the *lambardar*. *Advocate-General, N.-W. F. P. v. Mirajan Shah Mir Azam.*

39 Cr. L. J. 741 :
176 I. C. 406 : 11 R. Pesh. 7 (2) :
A. I. R. 1938 Pesh. 25.

PUNJAB LAWS ACT (IV OF 1872)

—Rules under—Rules 19 and 44—Lambardar—Chaukidar—Duty to give intimation of absence of bad characters from village.

The headmen of a village were convicted under Rule 44 of the Rules framed under the Punjab Laws Act for not giving intimation, as required by r. 19, of the absence at night of a notorious bad character from his village. It appeared that the *chaukidar* of the village had given timely intimation: Held, that the conviction was illegal, for when information was duly given, the duty imposed by law, which was a collective duty and not an individual duty imposed on each headman and watchman was discharged. *Emperor v. Mula.*

1 Cr. L. J. 108 :
5 P. L. R. 83 Sc., 20 P. R. Cr. of 1903.

—S. 51—Re-publishing amended rules.

Under S. 51, Punjab Laws Act, rules are only required to be re-published when they have been amended or altered and the obligation cast upon the Local Government to re-publish the rules is directory and not mandatory. *Emperor v. Barkat.*

27 Cr. L. J. 888 :
96 I. C. 152 : 7 Lah. 507 :
27 P. L. R. 791 : A. I. R. 1926 Lah. 447.

PUNJAB MILITARY TRANSPORT ANIMALS ACT (PUNJAB ACT I OF 1903)

—Ss. 27, 29, 30 and Rules VIII, XI, XII and XIII, thereunder—Prosecution under.

Before owners of animals can be made criminally liable under S. 29 (b), Punjab Act I of 1903, for failing to produce animals at an inspection, the Prosecution must show clearly:—I.—Not only that the inspection was of a kind at which owners could legally be required to produce their animals, but also that owners had notice that the inspection was of this particular kind: II.—That the notice was properly drawn up and duly served in strict compliance with the provisions of S. 27 of the Act, and the rules framed thereunder: III.—That animals of a particular age and description were registered, and that copies of the entries were given to the owners as required by Rule XI, and IV.—That the

PUNJAB MUNICIPAL ACT (XX OF 1891)

Commissioner's previous sanction to prosecute as required under S. 80 of the Act, and the rules thereunder had been obtained. *Mangal Singh v. Emperor.*

8 Cr. L. J. 243 :
3 P. W. R. Cr. 66 :
12 P. R. Cr. 1908.

PUNJAB MINOR CANALS ACT (III OF 1905)

—S. 15—*Powers of Collector.*

S. 10 does not authorise a Collector to enter upon the property of private individuals and to set fire to plants or trees growing thereon in order to facilitate the deposit of soil or silt excavated from the canal bed. *Ranjha Mal v. Emperor.*

28 Cr. L. J. 993 :
105 I. C. 817 : 9 L. L. J. 424 :
29 P. L. R. 284 : A. I. R. 1927 Lah. 706.

PUNJAB MOTOR VEHICLES RULES

—R. 23—*Carrying load—Limitation as to load, whether applies to private lorry.*

Unless the wording of the rules is beyond doubt, the manufacturers' specifications regarding maximum load to be carried, cannot be read as part of the rules made by the Punjab Government. When the rule-making authority has deliberately made a distinction between private lorries and public lorries and has specified that public lorries shall not carry more than a specified amount of weight, owner of a private lorry carrying a load in excess of its carrying capacity cannot be convicted under R. 23 of the Punjab Motor Vehicles Rules read with S. 16, Motor Vehicles Act, 1914. *Gurandilla v. Emperor.*

39 Cr. L. J. 970 :
177 I. C. 975 : 40 P. L. R. 942 :
11 R. L. 381 : A. I. R. 1938 Lah. 691.

—R. 49—*Inspection of vehicles.*

Rule 49 does not directly place on the lorry owner the duty of producing the lorry for inspection, and so no offence can be charged against him for not producing the lorry. *Brahm Nath v. Emperor.*

38 Cr. L. J. 762 :
169 I. C. 426 : 39 P. L. R. 130 :
10 R. L. 11 : A. I. R. 1937 Lah. 23.

PUNJAB MUNICIPAL ACT (XX OF 1891)

—Ss. 26, 122, 169—*Disobedience of order—Order ultra vires when there is no urgency.*

The petitioner was required by a notice under S. 122, issued under the authority of the President of the Simla Municipal Committee, purporting to be under S. 26, to make certain drainage improvements in a house which had remained in its present condition for many years. It did not appear whether the notice was issued in pursuance of any resolution of the Committee or was even reported to the Committee as required by Proviso (b) to S. 26, or that the Committee had in any way delegated its powers to the

PUNJAB MUNICIPAL ACT (XX OF 1891)

President: *Held*, that the notice was invalid and the petitioner could not be punished for its disobedience for there was no proof that the matter was urgent. *Puran Mal v. Emperor.*

2 Cr. L. J. 371 :
6 P. L. R. 364 : 26 P. R. 1905.

—Ss. 42, 52, 54, 201—*Octroi duties.*

Extension of Octroi limits—Goods outside the former limits—Objection to the power of levying tax—Duty of Magistrate to enquire into—Magistrate not to decide whether an arrear is due—Distinction between 'due' and 'claimable'—Rebates when allowed—Municipal Accounts Code S. 72. *Kanhya Lal v. Emperor.*

11 Cr. L. J. 87 :
4 I. C. 951 : 109 P. L. R. 1909 :
23 P. W. R. 1909 Cr. : 2 P. R. 1910 Cr.

—S. 92 (4)—*Scope.*

Bye-law framed by Municipality not mentioning these provisions and not forbidding erection within six weeks—Erection of building within six weeks does not constitute infringement of bye-law—Provisions of S. 92 (4) cannot be read into a bye-law. *Emperor v. Dina Nath.*

11 Cr. L. J. 63 :
4 I. C. 861 : 13 P. R. 1909 Cr.

—S. 92, Clause (6)—*Sanctionary buildings.*

S. 92, Cl. (6) does not make it obligatory to complete the building within a year or even to commence *each separate part* of the building within that period. All that is necessary is that *some part* of the building should be commenced within a year of the date of sanction. The rest may be commenced and finished at the convenience of the person, who has been given the requisite sanction. *Banwari Lal v. Emperor.*

3 Cr. L. J. 344 :
61 P. R. Cr. 1905 : 7 P. L. R. 127.

—S. 94—*Erecting building.*

The erection of a new partition wall amounts to "erecting a building" within the meaning of S. 94. *Basant Ram v. Emperor.*

6 Cr. L. J. 342 :
13 P. R. Cr. 1907 : 2 P. W. R. Cr. 113 :
9 P. L. R. 93.

—S. 95—*Scope.*

S. 95 does not authorize a Municipality to cancel by a summary notice permission granted by it to a person to occupy a part of public street. *Emperor v. Karim Bakish.*

1 Cr. L. J. 506 :
5 P. L. R. 248 :
11 P. R. Cr. of 1904.

—S. 95.

Encroachment upon Municipal land is not punishable under S. 95 without direct proof. *Muhammad Yusuf v. Emperor.*

8 Cr. L. J. 459 :
3 P. W. R. Cr. 88.

—Ss. 121 and 169—*Police—Validity of.*

Notice under S. 121 issued and signed by the Secretary, Municipal Committee, is invalid. *Emperor v. Muhammad Yasin.*

4 Cr. L. J. 430 :
1 P. W. R. Cr. 26.

PUNJAB MUNICIPAL ACT (XX OF 1891)

—S. 128—*Retaining wall or bank on a hill station—Municipal Committee's power directing its renewal—Renewal falls within "repairs."*

Where the owner or occupier of a house on a hill station builds a retaining wall or bank which is bulging and dangerous, the Municipal Committee can, under S. 128, compel him to build a new wall of specified dimensions and character in its stead, as the word "renewal" can come within the purview of the word *repairs* used in the said section. *Devi Saran v. Emperor*. 8 Cr. L. J. 258 : 3 P. W. R. Cr. 79 : 13 P. R. Cr. 1908.

—Ss. 128 and 169.

Non-compliance with a notice issued by a Municipal Committee, under S. 128 requiring only removal of a ruinous shed without option of repairing the same, is not punishable under S. 169 of the said Act. *Hazuri Mal v. Emperor*. 8 Cr. L. J. 490 : 18 P. R. Cr. 1908 : 3 P. W. R. Cr. 94.

—S. 143 (H) (II)—*Appointment of agent of house-owner.*

Under Bye-law XVIII, framed under S. 143, (h) (ii) the appointment of an agent by a non-resident house-owner of Simla must be notified to the Engineer-Secretary of the Municipal Committee. No person can be recognised as an agent unless and until his appointment is so notified. Failure to notify such appointment, renders the owner liable to the penalty provided in Cl. (4) of the Bye-law. *Emperor v. Beja Ram*. 13 Cr. L. J. 193 : 14 I. C. 193 : 21 P. R. 1911 Cr.

—S. 164—*Encroachment.*

The placing of *moras* on a public road is an obstruction of a public street though the road at the spot may be broad enough to allow vehicles to pass even with *moras* set there. *Emperor v. Ghasi Ram*. 3 Cr. L. J. 130 : 6 P. L. R. 651 : 45 P. R. Cr. 1905.

—S. 169—*Unauthorised prosecution—Effect of.*

Municipality—Removal of building—Disobedience of illegal order—Resolution passed at meeting presided over by Assistant Commissioner who was not member of Committee—Conviction set aside. *Emperor v. Chanda*. 2 Cr. L. J. 703 : 6 P. L. R. 482 : 46 P. R. Cr. 1905.

—S. 201—*Recovery of dues.*

Claims for arrears of rent, which are not for any arrears of tax, fee or for money claimable under the Punjab Municipal Act cannot be realized through the agency of a Magistrate under S. 201. *Hira Lal v. Emperor*. 10 Cr. L. J. 353 : 3 I. C. 638 : 9 P. W. R. 1909 Cr.

—S. 204—*Complaint—What is.*

A petition presented to the District Magistrate and acted upon by him, is a complaint within the meaning of S. 204 though it may not be addressed to him. *Malo v. Emperor*. 11 Cr. L. J. 596 : 8 I. C. 223 : 28 P. L. R. 1910.

PUNJAB MUNICIPAL ACT (III OF 1911)

—S. 204—*Discretion of Magistrate.*

The discretion of a Magistrate, for the time being in charge of a District, which he is entitled to exercise under S. 204, is not necessarily fettered by the manner in which his predecessors have in the past exercised that discretion. *Malo v. Emperor*. 11 Cr. L. J. 596 : 8 I. C. 223 : 28 P. L. R. 1910.

PUNJAB MUNICIPAL ACT (XX OF 1898)

—Ss. 92, 95—*Scope.*

S. 92 refers to buildings erected on private property and S. 95 to buildings which encroach or project into a street, and where a building extends on to a street, written permission of the Committee is necessary. *Emperor v. Billu Mal*. 1 Cr. L. J. 1102 : 27 P. R. Cr. of 1904.

—Ss. 164 and 169—*Encroachment on public street.*

Before a person can be convicted of an offence under Ss. 164 or 169, it must be fully established by the Municipality concerned that the ground encroached upon by the accused and claimed by him as his own is a public street. *Emperor v. Karim Bakhsh*. 1 Cr. L. J. 506 : 5 P. L. R. 248 : 11 P. R. Cr. of 1904.

PUNJAB MUNICIPAL ACT (III OF 1911)

—S. 3 (2)—*Building—Meaning of.*

A wooden shed mounted on wheels and intended to be a permanent fixture to the site is a "building." The fact that its construction permits it to be moved from one part of that site to another, does not render inapplicable to it the description "any hut or shed." *Nandu Mal v. Municipal Committee, Simla*. 26 Cr. L. J. 539 : 85 I. C. 379 : 5 Lah. 543 : A. I. R. 1925 Lah. 252.

—Ss. 3 (10), 188—*Delhi Municipality—Bye-law "Occupier," definition of, in Act and bye-laws conflicting—Ultra vires.*

A bye-law must conform with the provisions of the enactment under which it purports to be made. The definition of "occupier" as given in the bye-laws of the Delhi Municipality framed under S. 188, Punjab Municipal Act, is *ultra vires* so far as it is inconsistent with the definition of that term given in S. 3 (10) of the Act itself. A bye-law which makes the owner of a building responsible, in a case where he is not in actual occupation of the building, for the use of the building in a particular manner by his tenant, where he has no legal power to control the acts of his tenant with regard to the use of the premises leased, is manifestly unjust to the owner and hence unreasonable. A bye-law which is unreasonable is *ultra vires*. *Joti Pershad v. Emperor*. 22 Cr. L. J. 737 : 64 I. C. 129 : 2 Lah. 239 : A. I. R. 1921 Lah. 134.

PUNJAB MUNICIPAL ACT (III OF 1911)

—Ss. 3, (13), (A), 172—*Encroachment on street—Conviction for—Legality of.*

The accused applied to a Municipal Committee for permission to build a house on a piece of land belonging to him and over which the public had no right of way. Permission was refused but accused commenced building on the land as the refusal was not communicated to him within the prescribed period. He was obstructed by certain persons who were owners of houses abutting on the land upon which he proposed to build his house. Accused thereupon instituted a suit in the Civil Court against those persons for declaration of title and that the land was not a "lane." The suit was decreed and an appeal against this decree was also dismissed. Subsequently, the Municipal Committee prosecuted the accused under S. 172, for having built an immovable encroachment upon the ground level of a street and the accused was convicted: *Held*, that in the face of the decree of the Civil Court, it was not competent for the Municipal Committee to prosecute the accused under S. 172 without first adopting the proper procedure for declaring the land in dispute a "public street." *Imam Din v. Emperor.*

26 Cr. L. J. 366 :

84 I. C. 718 : 6 L. L. J. 525 :

26 P. L. R. 47 : A. I. R. 1925 Lah. 238.

—Ss. 13 (A), 175, 219—*Removal of obstruction to street, when justified.*

Where, the petitioner was convicted under S. 219 Act and ordered to demolish a latrine situated in a street close to his house and it appeared that the latrine had been in existence for 65 years during which time, the Municipal Committee treated it as private property: *Held*, that the conviction could not stand. *Shahab-ud-Din v. Emperor.*

19 Cr. L. J. 254 :

44 I. C. 46 : 15 P. W. R. 1918 Cr. :

60 P. L. R. 1918 : A. I. R. 1918 L. 328.

—Ss. 33, 152, 228—*Powers under—Powers under S. 152, whether can be delegated—Authority to prosecute, form and contents of.*

A Municipal Committee cannot delegate its powers under S. 152 to its President. An authority conferred by Municipal Committee on any person to conduct prosecutions on behalf of the Committee must, by virtue of the Explanation to S. 228, be in writing and contain full and complete particulars of the person to be prosecuted. *Gulzar Jan v. Emperor.*

24 Cr. L. J. 769 :

74 I. C. 433 : 4 Lah. 120 :

5 L. L. J. 522 : A. I. R. 1924 Lah. 80.

—S. 37—*Resolution prohibiting certain area for prostitution, legality of:*

A resolution of a Municipal Committee directing notices to issue, prohibiting a particular area to be used for prostitution without fixing any time within which the order should be carried out, is defective and inoperative, and the defect is not cured by S. 37, Punjab Municipal Act. *Rahto v. Emperor.*

25 Cr. L. J. 634 :

81 I. C. 122 : A. I. R. 1925 Lah. 146.

PUNJAB MUNICIPAL ACT (III OF 1911)

—Ss. 37, 152, 214—*Brothel—What is.*

A brothel is a place resorted to by persons of both sexes for the purpose of prostitution who are strangers to the occupaney. Accused lived in a house belonging to herself, together with her brother and her brother's wife and the latter practised prostitution in the house: *Held*, that the house could not be described as a brothel within the meaning of S. 152. *Rahto v. Emperor.*

25 Cr. L. J. 634 :

81 I. C. 122 : A. I. R. 1925 Lah. 146.

—S. 78—*Propriety of conviction—Cartman passing Oetroi barrier without paying tax—Accused subsequently helping cartman in resisting demand—Assault—Acquittal—Conviction under S. 78—Propriety of.*

A cart driver was alleged to have passed the Oetroi barrier without stopping to have the load on his cart examined or pay the terminal-tax. An Oetroi peon wanted him to stop. The cart driver did not obey and drove on. The peon followed him. At a distance of about 150 yards from the Oetroi barrier, the accused re-inforced the cartman in resisting the Oetroi peon who was alleged to have been subjected to an assault. That assault formed the subject of a separate prosecution, which ended in an acquittal. But the accused were convicted under S. 78, Punjab Municipal Act: *Held*, that the assault was clearly a transaction separate from the offence alleged to have been committed by the cartman. The offence having become a *fait accompli*, the alleged assault by the accused on the Oetroi peon could not relate back to that offence, and hence their conviction under S. 78 of the Municipal Act was illegal. *Nasrulla Beg v. Emperor.*

39 Cr. L. J. 199 :

172 I. C. 846 : 38 P. L. R. 636 :

10 R. L. 372.

—S. 81, as amended in 1933—*Rent not recoverable.*

Any rent which is recoverable under S. 81, must be one which is claimable by the committee under the act. Where the rent claimed is not recoverable under the Municipal Act but under a contract apart from the Act, it cannot be recovered by the procedure prescribed under S. 81. *Dil Jan v. Municipal Committee, Peshawar.*

40 Cr. L. J. 851 (a) :

184 I. C. 16 : 12 R. Pesh. 24 :

A. I. R. 1939 Pesh. 40.

—S. 81 (as amended by Act III of 1933)—*Recovery of dues—Scope—Sum recoverable.*

The operation of S. 81 is controlled by the words "claimable by a Committee under this Act". It is not any sum that can be described as rent or fee which can be recovered under the summary provisions of the section but only a sum that is claimable by the Committee under the express provisions of the Act. *Guranditta Mal v. Emperor.*

39 Cr. L. J. 286 :

173 I. C. 211 : 10 R. L. 418 :

A. I. R. 1938 Lah. 29.

PUNJAB MUNICIPAL ACT (III OF 1911)

—S. 81—Applicability.

S. 81 cannot be applied to a case where money is claimed by Municipality by way of rent and not as claimable under the Act. *Jamna Das v. Notified Area Committee of Shahdara.*

34 Cr. L. J. 369 (1) :
142 I. C. 516 : 34 P. L. R. 429 :
I. R. 1933 Lah. 223 (2) :
A. I. R. 1933 Lah. 394.

—S. 81—Judicial notice.

Ss. 81 and 195, were extended to the Notified Area of Karnal by Notification No. 11832, dated May 20, 1918 (p. 104 of Part I-A of the *Punjab Gazette*). The Courts must take judicial notice of this Notification. *Hari Ram v. Emperor.*

37 Cr. L. J. 556 :
162 I. C. 201 : 38 P. L. R. 4 :
8 R. L. 861 : A. I. R. 1936 Lah. 144.

—S. 81—Money recovered under—Magistrate has no power to go behind the issue of notice of extension of notification.

Notification extending Ss. 195 and 81 to Notified Area of Karnal—Recovery of money under S. 81 by Magistrate—Magistrate has no power to determine, if proper notice was given or not. *Hari Ram v. Emperor.*

37 Cr. L. J. 556 :
162 I. C. 201 : 38 P. L. R. 4 :
8 R. L. 861 : A. I. R. 1936 Lah. 144.

—S. 81—Recovery of dues—Or. P. C. (Act V of 1898), S. 439—Farming of tax collection—Recovery of amount due from farmer.

Where a Municipal Committee has farmed out the collection of any toll or tax, the amount due from the farmer to the Committee can only be recovered by suit and cannot be recovered under S. 81. Where an order is made by a Magistrate under S. 81 in a case to which that section has no application, the High Court has power to set aside the order in revision. *Maya Das v. Municipal Committee, Ghinot.*

28 Cr. L. J. 230 :
99 I. C. 1030 : A. I. R. 1927 Lah. 161.

—S. 81—Recovery of dues.

Proprietors of flour mill sending bags of flour through terminal post with their servant—Servant paying less terminal tax by misrepresenting weight—Bags weighed at Railway Station—Fraud discovered—Servant prosecuted and imprisoned—Municipal Committee claiming deficiency from proprietor, and on refusal, applying under S. 81 for recovery of money by attachment and sale—Magistrate issuing warrant—Claim held *intra vires* and Magistrate's function held ministerial only. *Mian Mohammad v. Municipal Committee, Lyallpur.*

39 Cr. L. J. 872 :
177 I. C. 413 : I. L. R. 1938 Lah. 251 :
40 P. L. R. 1025 : 11 R. L. 316 :
A. I. R. 1938 Lah. 627.

—S. 81—Recovery of dues.

A Municipal Committee cannot avail of the penal provisions of S. 81 for recovery of a

PUNJAB MUNICIPAL ACT (III OF 1911) -

sum due under a contract. *Mana Ram v. Emperor.*

27 Cr. L. J. 912 :
96 I. C. 224 : 27 P. L. R. 840 :
7 Lah. 568 : A. I. R. 1926 Lah. 518.

—S. 81—Scope.

Committee granting permission to construct projections unconditionally. They cannot levy fees or taxes for occupation later. *Teh Zamini* cannot be recovery by summary process under S. 81. *Durga Prasad v. Emperor.*

35 Cr. L. J. 439 :
147 I. C. 604 : 14 Lah. 664 :
34 P. L. R. 944 : 6 R. L. 406 :
A. I. R. 1934 Lah. 84 (2).

—S. 81—Scope.

S. 81 cannot be invoked for the purpose of realising money due to a Municipal Corporation on a contract. *Punjab Singh v. Emperor.*

32 Cr. L. J. 693 (1) :
131 I. C. 337 (2).

—S. 114—Notice—Option of demolishing or repairing building.

It is incumbent upon the Municipal Committee to give in the Notice under S. 114 an option to the owner of the building of either demolishing the building or causing it to be repaired. The option of demolition or repairs rests with the owner of the building, and not with the Municipality. *Mian Musharaff Shah v. Emperor.*

41 Cr. L. J. 549 :
188 I. C. 119 : 12 R. Pesh. 43 :
A. I. R. 1940 Pesh. 16.

—Ss. 114, 221—Notice to demolish building or repair.

A notice under S. 114 must specify the portion of the building which, in the opinion of the Committee, is in a dangerous condition, and should also mention the nature of the repairs required to be made. *Abdul Aziz v. Emperor.*

17 Cr. L. J. 105 :
32 I. C. 841 : 9 P. R. 1916 Cr. :
11 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 400.

—S. 121 (5)—Offence under—What is.

Licence to run engine granted on conditions—Failure to comply with conditions—Breach of licence—Offence constituted, and licensee liable for prosecution. *Gujjar Mal v. Municipal Committee, Ferozepore City.*

38 Cr. L. J. 128 :
166 I. C. 80 (1) : 9 R. L. 336 (1) :
A. I. R. 1936 Lah. 1011.

—S. 152—Brothel and house of public prostitute—Distinction.

In view of the distinction drawn by the Legislature itself in S. 152 between a brothel and the house of a public prostitute, the latter does not become a brothel within the meaning of S. 153 merely because the owner plies the trade of a prostitute therein. *Kanku v. Mathra Das.*

19 Cr. L. J. 449 (a) :
45 I. C. 113 : 12 P. W. R. 1918 Cr. :
55 P. L. R. 1918 :
A. I. R. 1918 Lah. 249.

PUNJAB MUNICIPAL ACT (III OF 1911)

—S. 152—Notice—Sufficiency of.

The requirements of S. 152 relating to notice or not sufficiently complied with by the promulgation of a general notice. To be binding, the notice must be served personally on the person sought to be bound. *Allah Rakhi v. Emperor*.

30 Cr. L. J. 574 :
116 I. C. 191 : I. R. 1929 Lah. 463 :
A. I. R. 1930 Lah. 62.

—S. 152 (1)—Brothels—Regulation of.

Notice declaring certain areas as prohibited for prostitution, given before amendment—No new public notice after amendment is necessary. *Emperor v. Mst. Nawab Begum*.

36 Cr. L. J. 1396 :
158 I. C. 527 : 8 R. L. 273.

—S. 153—Breach of notice—Punishment.

Under S. 153 punishment can be awarded for a breach of notice that has already taken place and punishment to take effect in future in the event of any future breaches are not warranted by law. *Isha v. Emperor*.

27 Cr. L. J. 465 :
93 I. C. 689 : 8 L. L. J. 80 :
7 Lah. 168 : 27 P. L. R. 188 :
A. I. R. 1926 Lah. 248.

—S. 153—Brothels—Proper order.

A Magistrate has no power under S. 153 to order a person who is using his premises as a brothel to vacate the premises altogether. The proper order to be passed under the section is one directing such person to discontinue using the premises as a brothel. *H. Bharucha v. Municipal Committee, Lahore*.

29 Cr. L. J. 250 :
107 I. C. 391 : 9 Lah. 394 :
A. I. R. 1928 Lah. 278.

—S. 153—House used as brothel—Proper order.

A Magistrate passed an order upon a charge under S. 153 to the effect that if the accused vacated the house by a certain date mentioned therein, well and good, otherwise, she would be fined Rs. 20: *Held*, that the order of the Magistrate was bad as it contravened the provisions of S. 153. *Municipal Committee of Lahore v. Radha Rani*.

17 Cr. L. J. 46 :
32 I. C. 334 : 10 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 220.

—S. 153—Offence under—When constitutes.

No offence can be said to be committed under S. 153 until the owner or tenant fails to comply within five days with the Magistrate's order to discontinue the use of the house as a brothel, and as no offence can be said to be committed by the owner of a brothel at the time when the complaint is made to the Magistrate, the Magistrate has no jurisdiction to hold a summary trial under S. 260, Cr. P. C. *Kanku v. Mathra Das*.

19 Cr. L. J. 449 (a) :
45 I. C. 113 : 12 P. W. R. 1918 Cr. :
55 P. L. R. 1918 : A. I. R. 1918 Lah. 249.

—S. 155—Applicability.

S. 155 contemplates only recent and temporary

PUNJAB MUNICIPAL ACT (III OF 1911)

breach of the rules and a person prosecuted thereunder can successfully plead that he has been using the premises for the purpose objected to for a long period. *Allah Bakhsh v. Emperor*.

25 Cr. L. J. 415 :
77 I. C. 495 : A. I. R. 1924 Lah. 670.

—Ss. 172, 195, 219—Encroachments upon public street—“Notice within reasonable time” to remove them—Encroachment not recent.

Where the Municipal Committee of Amritsar filed a complaint under Ss. 172, 195 and 219 against the petitioner, alleging that he had erected certain *chhappars* which encroached upon a public street and had failed to remove them in spite of a notice given by the Committee, it being found as a fact that the alleged obstructions had been in existence for many years: *Held* that S. 195 was inapplicable as it could not be said that the Committee had delivered the notice to the petitioner “within reasonable time” within the meaning of the section. *Kirpa Ram v. Municipal Committee*.

16 Cr. L. J. 350 :
28 I. C. 734 : 2 P. R. 1915 Cr. :
18 P. L. R. 1916 : A. I. R. 1914 Lah. 554.

—Ss. 172, 195, 219—Encroachment on Municipal land—Refusal to remove—Composition, whether can be accepted.

Under S. 219, a Magistrate can either dismiss the complaint if he finds that the facts alleged by the Municipal Committee have not been established, or he can impose a fine up to Rs. 50 if the orders of the Committee lawfully issued have not been complied with. A Magistrate has no jurisdiction to accept a penalty for a projection which has been constructed without the permission of the Municipal Committee. It is only in cases of buildings constructed without the permission of the Committee on one's own land that a composition can be accepted under S. 195. For a case falling under S. 172, no composition is provided for. *Municipal Committee, Multan v. Moti Ram*.

25 Cr. L. J. 373 :
77 I. C. 421 : A. I. R. 1923 Lah. 686.

—S. 173—Offence under—When constitutes.

The essence of an offence under S. 173 is the placing of goods on a street without the permission of the Municipal Committee, but where such permission is not necessary, the Committee having farmed out its rights to a third person, no offence under the section can be committed. *Sant Ram v. Emperor*.

20 Cr. L. J. 516 :
51 I. C. 676 : 22 P. R. 1919 Cr. :
A. I. R. 1919 Lah. 110.

—S. 173—Offence under—When constitutes.

Structure made with permission of Municipality years ago—Continuance after expiry of period without payment—Offence is not committed—Remedy of Municipal Committee by civil suit. *Uttam Singh v. Municipal Committee, Rawalpindi*.

36 Cr. L. J. 710 :
155 I. C. 384 : 35 P. L. R. 601 :
7 R. L. 703 : A. I. R. 1934 Lah. 733 (2).

PUNJAB MUNICIPAL ACT (III OF 1911)

—S. 175—*Notice to remove structure—Failure to render compensation, effect of.*

A notice under S. 175 calling upon a person to remove a structure unaccompanied with the tender of compensation is bad. *Ghasita v. Emperor.*

24 Cr. L. J. 701 :
73 I. C. 813 : 4 Lah. 158 :
A. I. R. 1924 Lah. 89.

—S. 188 (q)—*Penalty for breach.*

Bye-law (4) under S. 188 (q) provides no penalty for its breach—Persons committing breach cannot be convicted and fined—Ss. 121 and 219 do not apply to such a case. *Jodha Mal Budhu Mal v. Municipal Committee, Pind Dadan Khan.*

A. I. R. 1935 Lah. 943.

—Ss. 193, 195, 199, 225 — *Sanctioning buildings—Building with sanction—Conviction.*

A Magistrate while convicting an accused person under Ss. 195—199 is not competent to direct that the building in respect of which the accused has been convicted should not be pulled down, as the Municipal Committee has power under S. 195 to issue a notice requiring the building to be demolished, the remedy of the person aggrieved by the notice being to appeal to the Commissioner under S. 225. *Emperor v. Jasarat Mal.*

28 Cr. L. J. 208 :
99 I. C. 944 : 8 L. L. J. 564 :
27 P. L. R. 786 : 8 Lah. 103 :

28 P. L. R. 494 : A. I. R. 1927 Lah. 58.

—Ss. 195, 3 — *“Erection,” what is—Repairs.*

S. 195 lays down penalties “should a building be begun, erected or re-erected without sanction.” Repairing the walls of a shed and putting thereon an iron corrugated roof *prima facie* does not come within the words “begun, erected or re-erected.” The term “erection” implies causing to stand upright nor does it amount to material alteration. *New Delhi Municipal Committee v. Rambai.*

37 Cr. L. J. 935 (b) :

164 I. C. 368 : 9 R. L. 109 :
38 P. L. R. 886 : A. I. R. 1936 Lah. 702.

—Ss. 195, 225 — *Notice to demolish—Remedy.*

A Municipal Committee has power under S. 195 to require a building to be demolished and it is not open to a Magistrate to interfere with the exercise of this power, the remedy of the party being to appeal to the Commissioner under S. 225. *Emperor v. Jasrat Mal.*

28 Cr. L. J. 48 :

99 I. C. 80 : 8 L. L. J. 562 :
27 P. L. R. 784 : A. I. R. 1927 Lah. 69.

—S. 197 (a)—*Scope—Committee's power to prohibit sale of fruits or vegetables except at particular places.*

All that S. 197 (a) empowers a Municipal Committee to do, is to require licensees to be taken for manufacture, sale, etc., of articles of food and drink and to prohibit manufacture or sale in premises for which no license is taken. It does not authorise the Committee to frame any bye-law prohibiting the sale of fresh fruits and vegetables except at a particular place. A bye-law framed under the said section before

PUNJAB MUNICIPAL ACT (III OF 1911)

its amendment in 1923, prohibiting a person from selling wholesale or by auction any fruits or vegetables except at vegetable markets, cannot remain in force after the amendment. *Mula Mal v. Emperor.*

31 Cr. L. J. 49 :
120 I. C. 188 : 11 Lah. 24 :
A. I. R. 1929 Lah. 607.

—As amended in 1923, S. 197 (a) (d)—*Sale of fruits—Sale of fruits at place other than that fixed by bye-law under old Act—Offence—Power of Municipality to frame such bye-law under Act of 1923.*

A person who, after the coming into force of the Punjab Municipal Act of 1923, sells fruits and vegetables at a place other than the particular place fixed for the purpose by a bye-law framed by a Municipality under S. 197 (d) of the Punjab Municipal Act of 1911, cannot be prosecuted for an offence under S. 197, Punjab Municipal Act of 1923 inasmuch as S. 197 (d) of the earlier Act has been repealed and S. 197 of the new Act does not authorise a Municipality to frame bye-laws prohibiting the sale of fresh fruits and vegetables at any place other than a specified one. *Ghanya Lal v. Municipal Committee, Montgomery.*

29 Cr. L. J. 1032 :
112 I. C. 360 : A. I. R. 1928 Lah. 540.

—S. 198 — *Excavation made on one's own land, whether can be prohibited—Prosecution, duty of, to prove nature and dimensions of excavation.*

The object of the Legislature in enacting S. 198, the Punjab Municipal Act, was to empower the Committees mentioned in the section to regulate or prohibit the making of excavations, etc., in order to preserve the soil or to prevent landslips, etc. No excavation made on a private estate for making charcoal can be assumed to be such that its prevention should be considered to be necessary for any of the purposes mentioned in S. 198. To render its prevention necessary, the prosecution should prove its nature and dimensions. *Jangi v. Emperor.*

30 Cr. L. J. 836 :
117 I. C. 801 : I. R. 1929 Lah. 689 :
A. I. R. 1929 Lah. 845.

—S. 219—*Encroachment.*

Non-compliance with notice to remove—Prosecution—Order imposing fine after date of conviction is bad. *Charagh Din v. Emperor.*

36 Cr. L. J. 298 :
153 I. C. 198 (2) : 35 P. L. R. 355 :
7 R. L. 397 : A. I. R. 1934 Lah. 447.

—S. 219—*Interpretation.*

Effecting crude repairs to existing walls does not constitute ‘erection’ or ‘re-erection’ of a building and is no offence under S. 219. *Allah Dad v. Emperor.*

34 Cr. L. J. 452 :
142 I. C. 869 : 33 P. L. R. 1041 :
I. R. 1933 Lah. 286 (2) :
A. I. R. 1933 Lah. 85.

—S. 219—*Jurisdiction—Jurisdiction of Magistrate to order demolition.*

A Magistrate is competent to convict and

PUNJAB MUNICIPAL ACT (III OF 1911)

sentence an accused for constructing a building overhanging a Municipal street, under S. 219 (2) but is not authorised to pass an order for demolition of the building, nor can he pass a sentence of daily fine. *Emperor v. Mohan Lal*.

16 Cr. L. J. 605 :
30 I. C. 157 : 119 P. L. R. 1915 :
36 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 147.

———S. 219—Scope.

Conviction under S. 219 without complaint is improper. *Gobind Ram v. Emperor*.

31 P. L. R. 967 :
A. I. R. 1931 Lah. 98 (1).

———S. 211—Order vague and indefinite—Disobedience of—Liability for.

A person cannot be convicted of an offence under S. 221 for disobedience of an order passed by a Municipality when the order alleged to have been disobeyed was vague and indefinite. *Pirithi Singh v. Emperor*.

15 Cr. L. J. 191 :
22 I. C. 767 : 5 P. L. R. 1914 :
2 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 129.

———S. 228—Prosecution—General power to file complaints.

Under S. 228 it is open to a Municipal Committee to give a general authority to make complaints without specifying the names or particulars of the persons to be prosecuted. *Emperor v. Muhammad Shafi*.

28 Cr. L. J. 1002 :
105 I. C. 826 : 8 Lah. 613 :
28 P. L. R. 637 : A. I. R. 1928 Lah. 27.

———S. 228—Prosecutions.

The provisions of S. 228 are mandatory. A conviction is not maintainable on the complaint of an unauthorised person. *Firm Shiv Das Mal-Gurandilla Mal v. Emperor*.

150 I. C. 693 :
36 P. L. R. 180 : 7 R. L. 13 :
A. I. R. 1934 Lah. 972.

———S. 228—Unauthorised complaint—Effect on jurisdiction—Explanation—Notice by Committee requiring performance of certain things.

Where a Municipal Committee directed a notice to be issued to the accused requiring him to do certain specified things, and ordered that in case of non-compliance, proceedings under Ss. 219 should be instituted against him "by the Darogha, Safai," in accordance with which the Conservancy Darogha filed on non-compliance a complaint against the accused and obtained a conviction; Held, that as the complaint was not made by a person duly authorized in accordance with the terms of S. 228, all the proceedings were without jurisdiction and bad for want of a proper complaint. *Emperor v. Dharma Shah*.

17 Cr. L. J. 199 :
34 I. C. 311 : 8 P. R. 1916 Cr. :
13 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 358.

PUNJAB RELIEF OF INDEBTEDNESS ACT (VII OF 1934)

———S. 240—Rules under, rr. 5 (ii), 5 (iii)—"Court"—Deputy Commissioner acting under rules, whether "Court."

A Deputy Commissioner, acting under r. 5 (ii) or r. 5 (iii) of the rules made under S. 240 is a "Court," and his sanction, under S. 195, Cr. P. C., is necessary before a Court can take cognizance of a complaint in respect of a false statement made on oath before him. *Karim Ullah v. Emperor*.

22 Cr. L. J. 525 :
62 I. C. 413.

PUNJAB OPIUM SMOKING ACT (VI OF 1923)

———S. 5—Presumption.

Different tenants occupying different storeys of building—*Chandu* found in one storey—Presumption under S. 5 does not apply to tenants occupying other storeys. *Ali Mohammad v. Emperor*.

38 Cr. L. J. 389 :
167 I. C. 443 : 39 P. L. R. 58 :
9 R. L. 496 : A. I. R. 1936 Lah. 913.

PUNJAB PURE FOOD ACT (VIII OF 1929)

———S. 12—Scope.

Where a *halwai* who does not sell *ghee* as such but sells sweetmeats, is found in possession of *ghee* below standard, he comes under S. 12, Punjab Pure Food Act. *Dewan Singh v. Emperor*.

38 Cr. L. J. 1026 :
171 I. C. 16 : 39 P. L. R. 459 :
10 R. L. 175 : A. I. R. 1937 Lah. 702.

———S. 13 (1) (a)—Conviction under—Legality of.

Commission Agent found in possession of adulterated *ghee* in his shop—*Ghee* purchased by him from certain person on behalf of others—No evidence that he was selling *ghee*, cannot be convicted under S. 13 (1) (a). *Behari Lal v. Emperor*.

40 Cr. L. J. 311 :
179 I. C. 1006 : 40 P. L. R. 919 :
11 R. L. 657 : A. I. R. 1939 Lah. 14.

PUNJAB RELIEF OF INDEBTEDNESS ACT (VII OF 1934)

———S. 22—Scope—Order of Board fining party for contempt of Court.

S. 22 refers only to orders passed in pursuance of the Act and does not alter Cr. P. C. If, therefore, a Conciliation Board constituted under the Act, takes proceedings against a party under S. 480, Cr. P. C., for contempt of Court and fines such party under S. 228, Penal Code, its order is open to revision. S. 480 of that Code allows an appeal from an order under S. 480 to the Court to which such decrees or orders are ordinarily appealable. As ordinarily there is no appeal, this section, therefore, has no application. But S. 480 of the Code, enables the High Court to exercise any of the powers conferred on a Court

RAILWAYS ACT (IX OF 1890)

of Appeal and hence the order can be revised. *Budhu v. Emperor*.

39 Cr. L. J. 658 :
175 I. C. 797 : 40 P. L. R. 218 :
11 R. L. 147 : A. I. R. 1938 Lah. 366.

Q

QUASHING OF SENTENCE

See Criminal trial.

QUASHING PROCEEDINGS

See Cr. P. C., 1898, Ss. 489, S. 501-a.

R

RAILWAY

——— *Passenger with ticket—Entry on Railway line.*

Entry of a passenger with a ticket on to the platform, does not entitle the person to enter on any part of the Railway premises. *In re : Mullapudi Rangayya*.

36 Cr. L. J. 128 :
152 I. C. 615 (1) : 40 L. W. 664 :
1934 M. W. N. 1320 :
7 R. M. 262 (1) : A. I. R. 1935 Mad. 3.

RAILWAYS ACT

——— *Passenger, who is.*

A person who is a ticket-holder is regarded as a 'passenger' even before he has actually boarded the train. *Hari Sarup v. Emperor*.

11 Cr. L. J. 451 :
71 I. C. 355 : 31 P. W. R. 1910 Cr.

RAILWAYS ACT (IX OF 1890)

——— *Power of Magistrate to inquire about heirs of deceased Railway servant—Penal Code (Act XLV of 1860), S. 193—Conviction for perjury.*

A person giving false evidence in proceedings by a Magistrate enquiring into true heirs of a deceased Railway servant, cannot be legally convicted for an offence of perjury under S. 193, Penal Code, as the Magistrate has no authority to administer an oath. *Allahwarayo v. Emperor*.

17 Cr. L. J. 368 :
35 I. C. 672 : 10 S. L. R. 64 :
A. I. R. 1916 Sind 34.

——— *R. 1, Order VII—Duty of Guard.*

Under r. 1, Order VII, the Guard of a train standing in a Railway Station is responsible for the pair of points immediately leading to the line occupied by his train and for no other points. *Emperor v. Weir*.

11 Cr. L. J. 568 :
8 I. C. 134 : 12 Bom. L. R. 930.

——— *Ss. 1 (b), 122—Scope—Playing cards in Railway staff quarters 'Staff quarters', whether 'Railway'.*

Place occupied as quarters by the Railway employees is not a part of a 'Railway' within S. 1 (b), Railways Act, and a person who commits an offence in such a place cannot be convicted of an offence under S. 122, Railways Act. The fact that the place happens to be

RAILWAYS ACT (IX OF 1890)

between two lines makes no difference. A conviction under S. 122, Railways Act, cannot be sustained where there is no evidence to prove that the entry complained of was unlawful in the inception. *Lodia v. Emperor*.

28 Cr. L. J. 648 :
103 I. C. 104 : 50 All. 34 :
I. L. T. 40 All. 69 :
A. I. R. 1927 All. 646.

——— *Ss. 3 (4), 7, 122 (2), 138—Ejection of Railway employee from his quarter.*

S. 122 (2), Railways Act, cannot be applied to eject a Railway employee from the staff quarters occupied by him while under employment. Staff quarters or any building of a residential character cannot be deemed to be part of a Railway "within the meaning of S. 3 (4)." Possession of the staff quarters lawfully obtained by a Railway employee, can be lawfully determined only by steps taken under S. 138 and the fact of his dismissal does not, by itself, put an end to his right of possession. *Margam Aiyar v. S. J. Mercer*.

15 Cr. L. J. 225 :
23 I. C. 177 : 1914 M. W. N. 124 :
A. I. R. 1914 Mad. 196.

——— *S. 3 (7)—'Employed,' meaning of.*

A person who in pursuance of an agreement between himself and a Railway Administration by which he uses certain premises belonging to the Administration provides meals for passengers by that Railway can be said to be employed by the Railway. *S. L. Kapoor v. Emperor*.

38 Cr. L. J. 793 :
169 I. C. 649 : 10 R. L. 30 :
A. I. R. 1937 Lah. 547.

——— *Ss. 3 (7), 138—'Railway servant', who is—Agreement permitting a person to perform service of providing meals for passengers—Person having no free hand in service—Whether Railway servant—Termination of his service—Liability to dispossession of premises occupied by him.*

By an agreement, a Railway which had taken upon itself the duty of providing meals for Hindu passengers, permitted the petitioner to perform that service on their behalf, paying him "no remuneration in money and receiving from him no consideration." His remuneration was the profit which accrued from the service of meals, and instead of the Railway taking that profit and paying him a wage or commission, they allowed him to take it all directly. But the petitioner had not got a free hand in the performance of this service. He was both overlooked and directed in the performance of his work: *Held*, that he was a servant. The termination of his service by the Railway under a clause of the agreement amounted to his discharge within the meaning of S. 138, and he was liable to dispossession of the premises which he was occupying. *S. L. Kapoor v. Emperor*.

38 Cr. L. J. 793 :
169 I. C. 649 : 10 R. L. 30 :
A. I. R. 1937 Lah. 547.

RAILWAYS ACT (IX OF 1890)

———Ss. 3 (7), 148—'Railway servant'.

A Sleeper Passing Officer of a Railway is a "Railway servant". *Joseph v. Lamondy*.

26 Cr. L. J. 190 :
83 I. C. 894 : 3 Bur. L. J. 147 :
A. I. R. 1924 Rang. 373.

———S. 7—Scope of—City of Bombay Municipal Act, S. 394 (i) (d).

The Agent of the Great Indian Peninsula Railway Co., was charged under S. 394 (i) (d) of the City of Bombay Municipal Act with having used certain premises for the purpose of storing certain timber without a licence from the Municipal Commissioner. It was found as a fact on evidence that it was necessary for the convenient making, maintaining, altering or repairing the Railway that the Railway Company should be at liberty to store Railway sleepers on the premises in question: *Held*, that the Statutory powers given to the Railway Company by S. 7, Railways Act, precluded the necessity of obtaining a licence from the Municipal Commissioner. *Municipal Commissioner of Bombay v. G. I. P. Railway Co.*

10 Cr. L. J. 543 :
4 I. C. 281 : 11 Bom. L. R. 1181.

———Ss. 42, 45, 47, 109—Power of Railway Company to reserve compartments—Rule under S. 47, validity of—"Preference," meaning of—Jurisdiction of ordinary Courts in dealing with matters relating to preference—Railway Administration, power of, to reserve accommodation for particular class.

A rule lawfully made under S. 47, providing for special accommodation or for the special convenience of a particular individual or of a particular class of individuals and for the general convenience of the travelling public is within the four corners of the Act. The "preference" forbidden by Ss. 42 and 43, refers to goods traffic and rates charged from traders and does not apply to passengers and, inasmuch as a special Tribunal is appointed for the decision of questions thereunder, the ordinary Civil and Criminal Tribunals have no jurisdiction to deal with questions of preference. *Brijbasi Lal v. Emperor*.

21 Cr. L. J. 294 :
55 I. C. 342 : 42 All. 327 :
18 A. L. J. 254 :
2 U. P. L. R. All. 65 :
A. I. R. 1920 All. 106.

———S. 42 (2)—Powers and duties of Railway Company—Reservation of accommodation for particular class of passengers, legality of—Undue preference, what amounts to.

The management of a Railway is vested in the Railway Company and ordinarily they should be deemed to have the power, unless expressly curtailed by law, to make such arrangements as they consider necessary for the convenience of their customers and in their own interests. The reservation of a compartment for a particular class of passengers is not *per se* illegal or *ultra vires* of the Company, but it might, under particular circumstances, amount to undue preference

RAILWAYS ACT (IX OF 1890)

under S. 42 (2). So long as it does not contravene any express provision of the law, a Railway Company has an absolute right to regulate its own traffic in its own way, its own interest being the best security that its strict legal right to do so will not be abused. What is or is not undue preference, depends on the facts of each particular case. *Bhopendra Kumar v. Emperor*.

25 Cr. L. J. 1012 :
81 I. C. 788 : 28 C. W. N. 388 :
39 C. L. J. 107 : 51 Cal. 168 :
A. I. R. 1924 Cal. 687.

———Ss. 42 (2), 47 (1), (b), 109—Reservation of a compartment for a class, legality of.

A Railway Company has the right to regulate its own traffic in its own way, and is competent to reserve accommodation for a passenger or class of passengers, and such reservation is not forbidden by S. 42 (2) as being an undue or unreasonable preference in favour of a particular description of traffic. S. 109 of the Act contemplates such reservation for possible and actual passengers. *In re: Komaran*.

23 Cr. L. J. 296 :
66 I. C. 520 : 1922 M. W. N. 34 :
15 L. W. 207 : 30 M. L. T. 134 :
42 M. L. J. 21 : 45 Mad. 215 :
A. I. R. 1922 Mad. 35.

———S. 47—Infringement of offences.

Rules under S. 47—Any one infringing Rules is punishable. R. 17, infringement of—Person need not be Railway servant. *Sobhraj Ramchand v. Emperor*.

36 Cr. L. J. 1345 :
[158 I. C. 212 : 29 S. L. R. 27 :
8 R. S. 42 :
A. I. R. 1935 Sind 91.

———S. 47 and rules thereunder—Scope of—Criminal offences, if created.

Neither S. 47 nor the rules made by a Railway Company under that section create any criminal offence. The section merely gives to the Company power to frame rules and to enforce them by imposing fines on its own officers. *In re: Basanta Kumar*.

5 Cr. L. J. 463 :
11 C. W. N. 583.

———Ss. 47, 101—Duty of Railway servants to obey rules—G. I. P. Ry. Time Table, Part II, O. VII Rules.

The Rules in Order VII, G. I. P. Ry. Time Table, Part II, although not made under S. 47, Railway Act, are absolutely within the power of the G. I. P. Ry. Co. to impose, so long as they are not inconsistent with the Railways Act or with the General Rules made under that Act. The servants of the G. I. P. Ry. Co. are bound to obey the Rules in Order VII. *Emperor v. Weir*.

11 Cr. L. J. 568 :
8 I. C. 134 : 12 Bom. L. R. 930.

———Ss. 47, 101 (c)—Rules under S. 47, rr. 87, 87 (a)—Duty of driver—Accident Message by Guard for assistance—Endangering safety of persons by rash and negligent act.

Where, under rr. 87 and 87 (a) rules framed

RAILWAYS ACT (IX OF 1890)

under the Railways Act, the Guard of a train sends a message asking for assistance, it is the duty of the driver to ascertain the terms of the message, and his omission to do so would make him liable under S. 101 (c). *Local Government v. Khairat Ali*.

21 Cr. L. J. 204 :
54 I. C. 988 : A. I. R. 1920 Nag. 18.

—S. 47 (2)—Scope of.

The wording of S. 17 (2) would seem to show that it was not intended that the rules framed under Sub-s. (1) should be enforced by penalty in a Criminal Court, and no by-law properly made under Cl. (g) of Sub-s. (1) would have reference to a trespass by a member of the general public upon Railway lines as contemplated by S. 122. *Mohan Malik v. Emperor*.

15 Cr. L. J. 468 :
24 I. C. 348 : 4 P. R. 1914 Cr. :
155 P. L. R. 1914 :
A. I. R. 1914 Lah. 358.

—Ss. 63, 93, 108, 109—Reasonable and probable cause—Overcrowding in trains—Passengers, right of—Pulling Alarm Signal.

Accused, a passenger by Railway train, complained to the Station Staff that the compartment in which he was travelling contained more than the maximum number of passengers allowed by the rules made under S. 63 but his complaint was unheeded; after the train left the station, he felt a sensation of suffocation and pulled the communicating chain and stopped the train in order to complain to the guard. He was convicted under S. 108 for having, without reasonable and sufficient cause, pulled the communicating chain and so stopped the train: *Held*, that the accused was justified in pulling the communicating chain and stopping the train. *Iswar v. Emperor*.

23 Cr. L. J. 257 :
66 I. C. 321 : 3 P. L. T. 195 :
1922 Pat. 63 : 1 Pat. 260 :
A. I. R. 1922 Pat. 8.

—Ss. 63, 93, 108, 121—'Reasonable and probable cause,' what is—Pulling alarm chain—Overcrowding of passengers, whether, sufficient cause.

Where forty-five passengers got into a Railway compartment, the utmost capacity of which allowed by law was for thirty passengers, and one of the passengers pulled the alarm chain in order to remove the overcrowding: *Held*, that the passenger had sufficient and reasonable cause and could not be convicted under S. 108 of the Railways Act. In a case where a person without sufficient and reasonable cause pulls the emergency chain, he renders himself liable for prosecution under S. 108 only and not under S. 121 for preventing the running of the train and thus obstructing or impeding a Railway servant in the discharge of his duty. *Popallal Bhaichand Shah v. Emperor*.

31 Cr. L. J. 850 :
125 I. C. 443 : 54 Bom. 326 :
32 Bom. L. R. 111 :
A. I. R. 1930 Bom. 160.

RAILWAYS ACT (IX OF 1890)

—S. 68—Travel by Higher Class without ticket therefor.

A passenger cannot travel by a higher class merely because there is no accommodation in the class for which he holds a ticket. *In re: B. G. Horniman*.

34 Cr. L. J. 239 :
141 I. C. 794 : 34 Bom. L. R. 1666 :
I. R. 1933 Bom. 159 :
A. I. R. 1933 Bom. 59.

—Ss. 68, 69—Travelling without ticket, whether offence—Intent to defraud.

The main and primary purpose of Ss. 68 and 69 is to prevent persons from travelling in fraud of the Company without having paid the necessary fare and the obligation to show the ticket, when required, is subsidiary only to such primary purpose. S. 68 prohibits travelling without a pass or ticket, but so to travel without intent to defraud is not a criminal offence. Railway servants are public servants and they must act within the four corners of their Statutory powers. Ticket collectors and checkers are expected to conduct themselves with restraint and self-control. *Mohammad Hosain v. Farley*.

18 Cr. L. J. 647 :
40 I. C. 295 : 44 Cal. 279 : 25 C. L. J. 610 :
A. I. R. 1917 Cal. 105.

—Ss. 68, 112—Offence under, essence of—Knowledge of breach of Railway rules, if evidence of intent to cheat—Rules, posting of, on Stations.

The fact that a passenger is travelling by a Railway train and on being called upon, produces a ticket bearing date of a previous day and throwing away another in his possession, cannot lead to an inference of dishonest intention so as to justify a conviction under S. 112. Where there is nothing on a ticket intimating to its holder that, under the Railway rules, it is only available for a particular train, or on a particular day, his knowledge of the Railway rules cannot be inferred from the fact that the rules have been posted on the Railway Stations, unless and until it is proved that the attention of the particular traveller was drawn to them. *Manindro Nath Mitter v. Bengal Nagpur Railway Co.*

17 Cr. L. J. 361 :
35 I. C. 665 : A. I. R. 1916 Cal. 880.

—Ss. 68, 112—"Travelling without ticket"—Fraudulent intent.

The essence of an offence under S. 112 is dishonest or fraudulent intention, the intention to defraud the Railway Administration of its just dues. Merely travelling without a ticket is not an offence under the section. Travelling with a false and entirely irrelevant ticket with fraudulent or dishonest intention is an offence under S. 112 (a). *Kuloda Prasad Mujumdar v. Emperor*.

4 Cr. L. J. 439 :
11 C. W. N. 100 : 5 C. L. J. 47.

RAILWAYS ACT (IX OF 1890)

—Ss. 84, 101—Investigation by officer below Inspector - Irregularity.

Investigation into the cause of an accident by an officer below the rank of an Inspector is a mere irregularity, and will not vitiate a trial if the accused has not been prejudiced thereby. *Shivbhat Manjunathbhat Hattangadi v. Emperor*. 29 Cr. L. J. 551 :

109 I. C. 487 : 30 Bom. L. R. 392 :
52 Bom. 238 : A. I. R. 1928 Bom. 162.

—Ss. 84, 101—General Rules and Orders under S. 84, r. 26—Scope of—Accident Report by Railway Police—Validity.

The proviso to r. 26, General Rules and Orders, made under S. 84, Railways Act, prohibits only the making of an investigation by the Railway Police after a magisterial inquiry has been commenced or ordered. It does not prevent the Police, if they have completed their investigation, from making a report to a Magistrate in regard to the offence under S. 173, Cr. P. C. *Shivbhat Manjunathbhat Hattangadi v. Emperor*. 29 Cr. L. J. 551 :

109 I. C. 487 : 30 Bom. L. R. 392 :
52 Bom. 238 : A. I. R. 1928 Bom. 162.

—S. 100—Illegality of conviction.

Where the Magistrate proceeded against an accused as if the case was under the first part of S. 100, Railways Act, a conviction under the latter part of that section is illegal. *In re : Trousdell*. 11 Cr. L. J. 191 :

4 I. C. 1115 : 5 M. L. T. 294.

—S. 101—Accident.

Driver applying r. 131 to important bridges—He cannot be convicted merely because Engineering Department considers small bridges as major bridges. *E. C. D'Cruz v. Emperor*. 34 Cr. L. J. 576 :

143 I. C. 220 : I. R. 1933 Pat. 192.
A. I. R. 1933 Pat. 94.

—S. 101—Breach of general rules.

Conditional Line Clear—Collision—Remote Cause—Contributory negligence Penal Code (Act XLV of 1860), S. 804-A—Causing death by negligence. *Shanker Balkrishna v. Emperor*. 1 Cr. L. J. 634 :

8 C. W. N. 645 : I. L. R. 31 Cal. 78.

—S. 101—Conviction under.

Danger caused by disobedience of railway rules—Duty and responsibility of Station Master—Consequences of Disobedience Rules. *Emperor v. Po Gyi*. 9 Cr. L. J. 348 :

4 L. B. R. 353.

—S. 101—Conviction under—Railway—Rash or negligent act—Act endangering safety of person.

Under S. 101 the offence consists in (1) disobeying rules or doing any rash or negligent act, and (2) thereby endangering the safety of any person. It is not sufficient to show that the act of the accused or any omission on his part was likely to endanger the safety of any person. It must be proved affirmatively that it did in point of fact so endanger any person's safety. *Emperor v. Ganesh Das*. 11 Cr. L. J. 362 :

6 I. C. 483 : 8 P. L. R. 1910.

RAILWAYS ACT (IX OF 1890)

—S. 101—'Endangering,' meaning of—Shunting train to wrong line—Facts, consideration of.

In every case where a travelling railway train is unexpectedly shunted on to a wrong line by an erroneous laying of the points in a station yard, the safety of persons in the train or about the yard is endangered within the meaning of that term in S. 101 and if the error in the points is due to such disobedience as is referred to in the enactment, an offence punishable thereunder is committed. *Local Government v. Har Pershad*. 18 Cr. L. J. 822 :

41 I. C. 646 : 13 N. L. R. 90 :
A. I. R. 1916 Nag. 26.

—S. 101.

Danger caused by disobedience of Railway rules—Duty and responsibility of Station Master—Consequences of disobedience of rules—Collision. *Emperor v. M. N. Aichalaramayya*. 9 Cr. L. J. 352 :

4 L. B. R. 350.

—S. 101—Endangering safety of passengers—Conviction under—Breach of rule.

To support a conviction under S. 101, it is not enough to prove that the accused was guilty of a breach of a rule, it is necessary further to prove that the breach of the rule by the accused endangered the safety of passengers. *Parbhu Dayal v. Emperor*. 25 Cr. L. J. 1093 :

81 I. C. 917 : 27 O. C. 363 :
A. I. R. 1924 Oudh 250.

—S. 101—Endangering safety of persons—Duty of person in control—Setting signals—Negligence.

Omitting to set the points which would prevent a train, after the signal has been given that the line is clear, from running into another train, is an act which endangers the safety of persons on either of the two trains within the meaning of S. 101. When an order has been given to set the points but the slide indicates that the points have not been set in accordance with the orders given, the person responsible for seeing that the orders are carried out, must look into the matter and set it right before the arrival of the train. Failure to do so amounts to grave neglect, and the longer the interval that elapses the greater the neglect. *Emperor v. Sheo Baran Singh*. 25 Cr. L. J. 993 :

81 I. C. 705 : 22 A. L. J. 20 :
A. I. R. 1924 All. 438.

—S. 101—'Endangering the safety of human life'—Offence—Whether driving a train without a "Line Clear" amounts to.

The petitioner, a Railway fireman, started a goods train without having been given "Line Clear" and drove it some four miles down the line. Another goods train was coming on the same line from the opposite direction. However, by the precaution taken by the petitioner and the driver of the other train the two trains were brought to a standstill at a distance of some 300 yards from each other

RAILWAYS ACT (IX OF 1890)

thus no loss or injury was caused: *Held*, that the safety of the persons on the two trains was endangered by the act of the petitioner and that he was rightly convicted. *Fazal Din v. Emperor*.

5 Cr. L. J. 81 :

13 P. R. Cr. 1906 : 59 P. L. R. 1907.

————S. 101—*Evidence of fireman, value of.*

Prosecution of driver for breach of r. 101—Evidence of fireman should not be summarily rejected. *E. C. D'Cruz v. Emperor*.

34 Cr. L. J. 576 :

143 I. C. 220 : I. R. 1933 Pat. 192 :

A. I. R. 1933 Pat. 94.

————S. 101—*Liability of Station Master—Endangering human life by failure to comply with rules is necessary for offence.*

A Station Master of a wayside station, after receiving an "all right" signal allowed a goods train to pass over the loop line even though the main line was clear. On the day in question before the goods train was allowed to run on to the loop line, Point No. 2 on this line was not properly adjusted with the result that the train ran into a blind siding and collided with two trucks there. As a result of the collision, considerable damage was done and the driver and certain persons on the goods train sustained simple injuries: *Held*, that in allowing the goods train on to the loop line the Station Master did nothing to endanger the safety of any person. *Bhagwan Das v. Emperor*.

38 Cr. L. J. 227 :

166 I. C. 455 : 9 R. A. 421 :

1936 A. L. J. 951 : 1936 A. W. N. 877 :

I. L. R. 1937 All. 133 :

A. I. R. 1936 All. 745.

————S. 101—*Negligence — Offence — Negligence of Station Master—Collision—Endangering safety.*

Where in consequence of the omission of a Station Master to take down the line-clear signal, a mixed train was run into the station and a collision took place in which one waggon was derailed, but as the train was moving slowly, no person was injured: *Held*, that the omission on the part of the Station Master was an offence. *Joy Gopal Banerjee v. Emperor*.

5 Cr. L. J. 16 :

11 C. W. N. 173.

————S. 101—*Offence under—Actual danger, necessity of.*

S. 101 does not provide for cases in which the disobedience of a rule is merely *likely* or *calculated* to endanger the safety of any person. In order to sustain a conviction under the section, it must be affirmatively proved that the disobedience of the rules by the railway servant *actually* and *in point of fact* endangered the safety of some person. *Ba Lin v. Emperor*.

15 Cr. L. J. 17 :

22 I. C. 161 : 7 L. B. R. 72 :

7 Bur. L. T. 101 : A. I. R. 1914 L. Bur. 137.

————S. 101 — *Responsibility of Station Master—Danger caused by disobedience of Railway rules.*

RAILWAYS ACT (IX OF 1890)

A, an Assistant Station Master, allowed the signal to be given for a train to run through his station without satisfying himself, as required by the rule made under the Railways Act, that all the prescribed precautions had been taken by the *jemadar* subordinate to him. The train was switched off the main line on to a line on which some waggons were standing and collided with them. A was tried under S. 101, for having, when on duty, endangered the safety of persons travelling in the train by disobeying general rules. He was convicted, and fined Rs. 30, the Magistrate remarking that he considered his offence merely technical and that the collision was practically the result of the acts and omissions of the *jemadar*: *Held*, that the Magistrate's view of the relative responsibility of A, and the *jemadar* was in view of their relative positions, radically wrong, and that A was the more guilty of the two. *Emperor v. A. G. Dass*.

7 Cr. L. J. 417 :

4 L. B. R. 139.

————S. 101—*Scope of.*

An engine driver of a Railway train is not bound to stop a train merely because wayfarers shout to him. *E. C. D'Cruz v. Emperor*.

34 Cr. L. J. 576 :

143 I. C. 220 : I. R. 1933 Pat. 192 :

A. I. R. 1933 Pat. 94.

————S. 101, Sub-ss. (a) (b) (c)—*Miscellaneous—“General Rules and Regulations” applied to all Railways in India, r. 86.*

When the Guard of a train is charged under S. 101 (b), Railways Act, the burden of proof, that he did not place the requisite number of detonators, as required by General Rule 86, read with Rule 9 of the G. I. P. Ry. Working Instructions, is upon the prosecution. The evidence of a District Traffic Superintendent that, under the circumstances of a case, a guard sufficiently complied with the said General Rule 86 (read with the G. I. P. Ry. Rule 9) when, instead of placing all the detonators as required thereby, he placed only one, cannot affect the interpretation of a rule which must be interpreted according to the ordinary rules of interpretation. But the opinion of such a witness will have to be taken into consideration when deciding the question of punishment. *K. Bezanji v. Emperor*.

14 Cr. L. J. 676 :

21 I. C. 996.

————S. 101 (B)—*Rules framed under Act, r. 12—Station Master, failure of, to send porter to set and lock points—Derailment of train—Offence.*

Under r. 12 of the rules framed under the Railways Act, it was the duty of the accused, a Station Master, when he became aware of the fact of a train approaching his station, to send the passed porter to the facing points with instruction for him to set and lock the points for the line on which the train was approaching. The accused failed to do this and the signals being down to allow the train

RAILWAYS ACT (IX OF 1890)

to pass into the station, the engine-driver did not stop the train although there was no porter at the points signalling him to pass on. As the points were not properly locked, some of the carriages of the train were derailed but nobody was hurt: *Held*, that the failure of the accused to send the passed porter to set and lock the points was the direct cause of the derailment, and that although nobody was hurt as a consequence of the derailment, the derailment had caused danger to persons travelling in the train, and the accused was guilty under S. 101. *Bishan Sarup v. Emperor*.

26 Cr. L. J. 685 :
86 I. C. 61 : 26 P. L. R. 44 :
6 Lah. 324 : A. I. R. 1925 Lah. 423.

———S. 101, Rule 100—Shunting permitted on main line after giving line clear—Risk of accident—Danger to passengers—Waggon derailed in shunting—Collision.

The accused, a Station Master at K, gave orders to the driver of a goods train to detach his engine and shunt nine waggons, which were standing on the loop line, to a dead end siding in order to make room for the Down Mail. In the course of the shunting, one of the waggons got derailed at the points where the siding joined the main line. At this time the distant and home danger signals were up against the advancing of the Up Passenger from B. Under these conditions, the Up Passengers left B, and ran to K. The driver could have pulled up the train at the first danger signal but he disregarded both danger signals and the train dashed into the derailed waggon causing some injury to two of the passengers and the guard: *Held*, that the object of r. 100, being to lessen the risk of accidents through shunting on a through line after line clear has been given, the disregard of the rule enhanced the danger to passengers, and that the risk thus entailed rendered the rule-breaker liable to punishment, even though no accident might have occurred. *Emperor v. Ramchandra Hari*.

14 Cr. L. J. 460 :
20 I. C. 620 : 37 Bom. 685 :
15 Bom. L. R. 702.

———S. 107—False declaration of goods—Fireworks declared as locks—Explosion of fireworks causing death of a coolie.

The accused sent two boxes to the East Indian Railway at Delhi Station, containing fireworks declaring them to contain iron locks with the result that in loading, one of the boxes exploded, killing one coolie, and seriously injuring another, and for this, he was convicted under S. 304-A and 338, Penal Code: *Held*, that the conviction was right, though if no injury had been done to any person, the accused could have been guilty only of an offence under S. 107 for making a false declaration. In cases of this kind, it is no defence that the deceased was guilty of contributory negligence. *Kamr-ud-Din v. Emperor*.

2 Cr. L. J. 207 :
6 P. L. R. 112 : 22 P. R. Cr. 1905.

———S. 108—Communication cord, object of—Valuables left at platform whether reasonable and sufficient cause.

RAILWAYS ACT (IX OF 1890)

S. 108 is intended for the protection of the personal safety of passengers. The mere fact of a person leaving his coat containing valuables on the platform is not a reasonable and sufficient cause to pull the communication cord. *Emperor v. Kaikobad Sorabji*.

27 Cr. L. J. 730 :
95 I. C. 58 : 28 Bom. L. R. 486 :
A. I. R. 1926 Bom. 288.

———S. 108—Reasonable and sufficient cause, what is—Accident taking place in running train through fault of passenger—It cannot be said that there was no reasonable and sufficient cause.

"Reasonable and sufficient cause" is a question of fact to be determined according to the circumstances of each particular case. No hard and fast rule can be laid down. It cannot be held that if an accident takes place through the fault or neglect of a passenger himself, he is not entitled to pull the alarm signal if there is a reasonable and sufficient cause for doing so. While a passenger was standing near the door of the compartment, his *thali* and gold *kantha* worth about Rs. 125 fell down. He pulled the chain and the train stopped: *Held*, that there was reasonable and sufficient cause. *Gauri Shanker Sahay v. Emperor*.

38 Cr. L. J. 77 :
165 I. C. 815 : 17 P. L. T. 569 :
3 B. R. 83 : 9 R. P. 218 :
A. I. R. 1936 Pat. 499.

———S. 108—'Sufficient cause,' test of—Pulling of communication cord—Comparative risk—Fault of Railway—Nature of train.

Risk of danger or loss and discomfort to the other passengers on a train is an element that has to be considered in deciding whether there was reasonable and sufficient cause for pulling a communication cord of a Railway train; but it is only one of the elements and it must be considered in relation to the risk arising from the circumstances to the person pulling the cord. Another element of great importance is whether the necessity or occasion for pulling the cord has arisen from the fault of the Railway Administration or of the passenger. A third matter to be considered is the importance of the line and the train. *Ashrafi Lal v. Emperor*.

28 Cr. L. J. 967 :
105 I. C. 679 : 25 A. L. J. 975 :
A. I. R. 1927 All. 647.

———S. 108—Sufficient cause, what is—Stopping train—Sufficient cause—Account-books thrown out of train.

A person who pulls the alarm signal and stops a running train, to recover his account-books concerning hundreds of his debtors thrown out of the window by another person, is not guilty of any offence under S. 108, Railways Act. *Arjan Das v. Emperor*.

28 Cr. L. J. 603 :
102 I. C. 779 : 8 Lah. 196 :
28 P. L. R. 485 :
A. I. R. 1927 Lah. 476.

RAILWAYS ACT (IX OF 1890)

———S. 109—'Passenger.'

The word 'passenger' in S. 109, Railways Act, includes a class of passengers as also possible travellers. *Bhendra Kumar v. Emperor*.

25 Cr. L. J. 1012 :
81 I. C. 788 : 28 C. W. N. 388 :
39 C. L. J. 107 : 51 Cal. 168 :
A. I. R. 1924 Cal. 687.

———S. 109—Penalty under.

A person who enters a compartment of a Railway carriage reserved by a Railway Administration for the use of passengers of a particular class to which he does not belong, and refuses to leave when required to do so by a Railway servant, renders himself liable to the penalty provided by S. 109. *Brijbasi Lal v. Emperor*.

21 Cr. L. J. 294 :
55 I. C. 342 : 2 U. P. L. R. All. 65 :
18 A. L. J. 254 : 42 All. 327 :
A. I. R. 1920 All. 106.

———S. 109—Right of Railway Company to reserve compartments—Reservation, nature of.

By virtue of S. 109, a Railway Company has a general power of reserving compartments for the use of passengers who have already booked their seats, or for prospective passengers who the Company anticipate will travel and the Company are entitled to reserve either individual seats or whole compartments. But such powers ought not to be exercised so as to give an undue preference or to cause an undue prejudice to any particular passenger traffic, whether individual or collective. *Emperor v. Narayan Krishna Gogate*.

24 Cr. L. J. 297 :
73 I. C. 25 : 25 Bom. L. R. 26 :
47 Bom. 465 : A. I. R. 1923 Bom. 14.

———Ss. 109, 120—Resisting an attempt by a Railway servant to put into carriage more passengers—Offence.

If a person objects to the coming in of more passengers and stands against the door, he commits an offence falling under Ss. 109 (2) and 120 (c), and is liable to removal not only from the carriage but also from the Railway by any Railway servant: the latter does not commit any offence, if he removes such a person, and in doing so, does not use more force or violence than is actually necessary for the purpose. *Hari Sarup v. Emperor*.

11 Cr. L. J. 451 :
7 I. C. 355 : 31 P. W. R. 1910 Cr.

———S. 112—Abetment.

Season ticket in name of one person used by his brother—Ticket not taken without consent or knowledge—Person is guilty of abetment of offence under S. 112, committed by brother. *Akbaralli Haji-Mahedalli v. Emperor*.

34 Cr. L. J. 1257 :
146 I. C. 162 : 35 Bom. L. R. 875 :
6 R. B. 136 : A. I. R. 1933 Bom. 412.

———S. 112—Fine—Railway fare.

The reference in S. 112 to the amount of the single fare does not mean that the payment of such fare may be ordered in addition

RAILWAYS ACT (IX OF 1890)

to the fine but that the total fine imposed shall not exceed Rs. 100 plus the fare referred to. *Emperor v. Abdul*.

1 Cr. L. J. 532 :
17 C. P. L. R. 32.

———S. 112—Intent to defraud—Guilty, plea of, meaning of.

Petitioner was charged under S. 112 with entering a Railway carriage without a ticket with intent to defraud the Railway. He pleaded guilty to entering the carriage but said that as the train was about to start he had no time to purchase a ticket: Held, that the conviction was bad, as the petitioner's plea amounted to a denial of having intended to defraud. *Banwari Lal v. Emperor*.

21 Cr. L. J. 665 :
57 I. C. 825 : A. I. R. 1920 All. 203.

———S. 112—Entering a Railway carriage.

A mere entry into a Railway carriage without proper ticket, in the absence of proof of an intent to defraud, does not constitute an offence under S. 112. *Emperor v. Ata-Ullah*.

2 Cr. L. J. 419 :
27 P. R. Cr. 1905 : 6 P. L. R. 450.

———S. 112—Unlawful entry, upon Railway premises—Offence, essence of.

The essence of the offence under S. 122, is unlawful entry. Mere unlawful entry makes the offender liable to a fine of Rs. 20 but if after the unlawful entry he refuses to leave the Railway, on being requested to do so, his offence becomes aggravated and he renders himself liable to a fine of Rs. 50. If the original entry is lawful, a subsequent refusal to leave, on being requested to do so, would not make the original entry unlawful or bring it under clause (2) of S. 122, which is but an aggravated form of the offence under clause (1). *Durrel v. Kumud Kanta Chakrabarty*.

19 Cr. L. J. 878 :
47 I. C. 74 : 22 C. W. N. 575 :
A. I. R. 1919 Cal. 718.

———S. 112—'Unlawful entry', what is—Intending passenger entering platform without ticket—Offence.

Unless a person has made an "unlawful" entry upon Railway premises, he cannot be brought within S. 122 (2). The word "unlawful" in S. 122 means contrary to the law laid down in the Act. An intending passenger who enters upon a Railway platform in anticipation of purchasing a ticket, enters lawfully upon the platform. If the Railway staff, however, orders him to leave the platform, his refusal to do so would possibly make him a trespasser, and he could be expelled by force, but he cannot be held to have committed an offence under S. 122. *Mewa Lal Jha v. Emperor*.

26 Cr. L. J. 1162 :
88 I. C. 522 : 6 P. L. T. 437 :
A. I. R. 1925 Pat. 535.

———S. 112 (b)—Ticket used not relevant to journey.

Under S. 112 (b) it is only necessary that the accused should have tried to deceive

RAILWAYS ACT (IX OF 1890)

officials of Railway Administration by passing off a used ticket in such a way as to make it appear that he had a proper ticket for his journey, it is not necessary that the used ticket should be relevant to the journey which the passenger wished to undertake. *Devikishen Das v. Emperor*. 30 Cr. L. J. 3 : 112 I. C. 771 : I. R. 1929 Sind 24 : 23 S. L. R. 39 : A. I. R. 1928 Sind 191.

—S. 113—Judicial proceedings—Revision.

A proceeding under S. 113, is a judicial proceeding, and the High Court has the power to revise any order passed by a Magistrate under S. 113 (4). *In re : B. G. Horniman*. 34 Cr. L. J. 239 : 141 I. C. 794 : 34 Bom. L. R. 1666 : I. R. 1933 Bom. 159 : A. I. R. 1933 Bom. 59.

—S. 113—Power of Magistrate to impose fine or imprisonment.

On an application under S. 113, Sub-s. (4), the Magistrate has no power to fine the respondent or to order a sentence of imprisonment in default of such fine. All that the Magistrate can do is to direct the respondent to pay the fare and excess charge referred to in S. (3) of S. 113 and then proceed to recover it as if it were a fine. *Ma Kalay Ma v. Emperor*. 30 Cr. L. J. 57 : 113 I. C. 73 : 6 Rang. 619 : I. R. 1929 Rang. 25 : A. I. R. 1929 Rang. 11.

—S. 113—Travelling without ticket—Denial by accused—Procedure.

Where a person is charged under S. 113 for travelling without a ticket and he denies that he travelled by train, the proper method of dealing with the case is to hold an inquiry and take evidence as to his liability to pay, and how much is payable by him. An order imposing a penalty without any such inquiry is bad in law. *Station Master, Ranaghat v. Habul Sheikh*. 21 Cr. L. J. 321 (a) : 55 I. C. 593 : 24 C. W. N. 195 : A. I. R. 1920 Cal. 261.

—S. 113—Scope of.

The words 'shall be recovered as if it were a fine' in S. 113 only authorize the recovery of the amount by attachment and sale of movable property. Imprisonment in default of payment, cannot be inflicted. *Emperor v. Bulakhi*. 10 Cr. L. J. 519 : 4 I. C. 236 : 5 N. L. R. 151.

—S. 113—Scope of.

The intention to defraud is not necessary to enable the Railway Administration to proceed under S. 113. The section provides a summary remedy to recover the charge incurred by a passenger together with a penalty and not for the prosecution for an offence. *In re : B. G. Horniman*. 34 Cr. L. J. 239 : 141 I. C. 794 : 34 Bom. L. R. 1666 : I. R. 1933 Bom. 159 : A. I. R. 1933 Bom. 59.

—S. 113—Travelling without ticket—Penalty.

A person travelling without a pass or ticket is liable under S. 113 to pay on demand by any

RAILWAYS ACT (IX OF 1890)

Railway servant an excess charge, which is somewhat in the nature of a penalty. *Muhammad Hosain v. Farley*. 18 Cr. L. J. 647 : 40 I. C. 295 : 44 Cal. 279 : 25 C. L. J. 610 : A. I. R. 1917 Cal. 105.

—S. 114—Applicability of.

S. 114 does not apply to purchasers or transferees of tickets, it only applies to transferors of used tickets. *Devikishendus v. Emperor*. 30 Cr. L. J. 3 : 112 I. C. 771 : I. R. 1929 Sind 24 : 23 S. L. R. 39 : A. I. R. 1928 Sind 191.

—S. 114—Scope of.

S. 114 applies to purchasers and transferees of tickets and not to the transferors alone. *Emperor v. Kodumal Ochiram*. (F. B.) 36 Cr. L. J. 827 : 155 I. C. 697 : 7 R. S. 198 : A. I. R. 1935 Sind 90.

—S. 118—Offence under.

Compartment can be reserved for ice-vendor. Public cannot insist on travelling in it. Offence under S. 118 is committed for breach of rule. *Durga Prasad v. Emperor*. 37 Cr. L. J. 388 : 161 I. C. 17 : 1936 A. L. J. 117 : 1936 A. W. N. 196 : A. I. R. 1936 All. 439.

—S. 118—'Passenger,' meaning of.

The word 'passenger' in S. 118 is used in a restricted sense to denote a person who, without the permission of a Railway servant, enters any carriage of a Railway for the purpose of travelling therein as a passenger. *Ladhu Ramji v. Emperor*. 14 Cr. L. J. 654 : 21 I. C. 894 : 15 Bom. L. R. 996.

—S. 118 (2)—Passenger.

A person who without authority travels on the foot board of a railway carriage when the train is in motion, is deemed to be a passenger and is guilty of an offence under S. 118 (2). *Emperor v. Nur Muhammad*. 2 Cr. L. J. 711 : 6 P. L. R. 507 : 31 P. R. 1905 Cr.

—S. 120—Applicability of.

The word 'person' in S. 120, includes an employee of the Railway and the section does apply to Railway servants. *Emperor v. K. Appalswamy*. 35 Cr. L. J. 205 (1) : 146 I. C. 937 (1) : 14 P. L. T. 652 : 6 R. P. 310 (1) : A. I. R. 1934 Pat. 52 (1).

—S. 120—Applicability.

S. 120 does not apply to Railway servants who cannot be convicted for an offence under that section. *Mulchand v. Emperor*. 30 Cr. L. J. 879 : 118 I. C. 197 : 23 S. L. R. 409 : I. R. 1929 Sind 165 : A. I. R. 1929 Sind 249.

—S. 120—Ejecting passengers.

There is no provision in the Railways Act for ejecting passengers except in certain cir-

RAILWAYS ACT (IX OF 1890)

circumstances, such as are specified in S. 120. *Muhammad Hosain v. Farley*.

18 Cr. L. J. 647 :
40 I. C. 295 : 25 C. L. J. 610 :
44 Cal. 279 : A. I. R. 1917 Cal. 105.

-----S. 120 — Scope — Assistant Station Master abusing passenger—Offence.

S. 120 is not intended to include any act done by a Railway servant acting as such. The offences specified in S. 120, if committed by Railway servants, can well be dealt with by departmental action. Therefore, an Assistant Station Master who, while on duty, abuses a passenger, cannot be convicted under S. 120. *Gurunath Shankar Godkhindi v. Emperor*.

38 Cr. L. J. 962 :
170 I. C. 575 : 39 Bom. L. R. 610 :
I. L. R. 1937 Bom. 666 : 10 R. B. 138 :
A. I. R. 1937 Bom. 357.

-----S. 120—Scope of—Applicability to Railway Officials—'Person', meaning of—Removing passengers from compartments in which they are entitled to travel—Offence.

The word 'person' in S. 120 includes Railway officials. The section applies to acts mentioned therein even if they are committed by Railway servants. A Railway guard removes two *gosha* ladies from a First Class compartment in which they are entitled to travel and forces them to occupy another compartment, is guilty of an offence under S. 120. *Cuffly v. Muhammadali Muhammad Ibrahim Sahib*.

19 Cr. L. J. 313 :
44 I. C. 329 : A. I. R. 1919 Mad. 971.

-----Ss. 120, 121—Obstructing Railway servant—Abuse, whether obstruction—Travelling without ticket—Removal from carriage.

Travelling without a ticket is not one of the circumstances mentioned in S. 120, as justifying the removal of a person from a Railway carriage by a Railway servant. The complainant, a Station Master, removed the accused from a Railway carriage as the latter was travelling without a ticket. Accused used abusive language towards the Station Master and was convicted of an offence under S. 121: *Held*, (1) that abuse or insult did not necessarily constitute obstruction or impediment to a Railway servant in the discharge of his duties and the accused could not be convicted of an offence under S. 121. *Radha Kishen v. Emperor*.

23 Cr. L. J. 622 :
68 I. C. 846 : A. I. R. 1922 Lah. 71.

-----S. 120 (b)—Using abusive language—Actual words.

When an accused person is put on his trial for an offence under S. 120 (b), it is necessary to put the actual words used by the accused before the Court in order to enable it to determine whether the accused used abusive language. The evidence for the prosecution should also make it clear that the place of occurrence came within the definition of a Railway or part of a Railway. *Budha Singh v. Emperor*.

26 Cr. L. J. 417 :
85 I. C. 33 : 6 L. L. J. 469 :
A. I. R. 1925 Lah. 151.

RAILWAYS ACT (IX OF 1890)

-----S. 120 (b)—Nuisance, what is—Using delivery shed as market place.

A person who persists in selling fish in small quantities within the delivery shed of a Railway, not arranged and prepared for the purpose of a fish market, and thereby obstructs the transaction of the business for which the shed and its courtyard are intended, is guilty of committing a nuisance under S. 120 (b). *Deoki Sha v. Emperor*.

22 Cr. L. J. 604 :
62 I. C. 876 : 33 C. L. J. 293 :
25 C. W. N. 603 : 48 Cal. 1042 :
A. I. R. 1921 Cal. 537.

-----S. 121—'Obstructing, a Railway servant.'

Before a person can be convicted of wilfully obstructing or impeding a Railway servant in the discharge of his duties within the meaning of S. 121, Railways Act, it must be shown that the obstruction or resistance was offered to such Railway servant in the discharge of the duties as authorized by law. *Jowanda Mal v. Emperor*.

27 Cr. L. J. 1 :
91 I. C. 33 : 6 Lah. 467 : 7 L. L. J. 622 :
A. I. R. 1925 Lah. 650.

-----S. 121—'Railway servant' — Station Master, power of, to assign duties temporarily to Station staff—Signaller delegated to collect tickets, obstruction to—Offence—Railway Board Act (IV of 1905), rules under, rr. 229, 231, 244, effect of.

Rules 229, 231 and 244 of the rules framed under the Indian Railway Board Act, gives sufficient authority to a Station Master to appoint one of the Station staff temporarily to do the duties of a particular post in the station, and when the person so appointed temporarily performs that duty, he is a Railway servant acting in the discharge of the duty, and obstruction to him is punishable under S. 121, Railways Act. *In re : Chitralal Bheemanna*.

21 Cr. L. J. 62 :
54 I. C. 414 : 37 M. L. J. 656 :
10 L. W. 669 : 1920 M. W. N. 156 :
43 Mad. 348 : 27 M. L. T. 321 :
A. I. R. 1920 Mad. 154.

-----S. 121—'Service', meaning of.

The expression "service" of a Railway in S. 121, includes collecting tickets and fares from passengers. *In re : Chitralal Bheemanna*.

21 Cr. L. J. 62 :
54 I. C. 414 : 37 M. L. J. 656 :
10 L. W. 669 : 1920 M. W. N. 156 :
43 Mad. 348 : 27 M. L. T. 321 :
A. I. R. 1920 Mad. 154.

-----S. 122—Complaint by Railway authorities, if necessary.

An accused who is found guilty of an offence under S. 121, cannot be acquitted on the ground that the prosecution was not on the complaint of the Railway authorities as required under S. 132. *Public Prosecutor v. Moturu Appalanarasayya*.

41 Cr. L. J. 393 :
187 I. C. 118 : 1939 M. W. N. 876 :
12 R. M. 692 : A. I. R. 1940 Mad. 268.

RAILWAYS ACT (IX OF 1890)

———S. 122—*Crossing Railway-line.*

Crossing Railway-line to enter platform is an offence. *In re : Modali Lakshmi Narasimham Sarma.*

34 Cr. L. J. 291 (1) :
142 I. C. 202 (2) : I. R. 1933 Mad. 212 (2) :
A. I. R. 1933 Mad. 272 (1).

———S. 122—*Entry, when amounts to trespass.*

Entry is unlawful if it constitutes actionable trespass—Actionable trespass is entry without express or implied permission of authorities. *Emperor v. Chandai.*

35 Cr. L. J. 165 (2) :
146 I. C. 684 : 6 R. A. 318 :
1933 A. L. J. 1432 :
A. I. R. 1933 All. 891.

———S. 122—*Free entry.*

Railway platform to which general public have free access without tickets—Permission of Railway authorities is implied and entry is not unlawful. *Emperor v. Chandai.*

35 Cr. L. J. 165 (2) :
146 I. C. 684 : 1933 A. L. J. 1432 :
6 R. A. 318 : A. I. R. 1933 All. 891.

———S. 122—*Intention.*

Intention of person entering on Railway is of no account in determining whether entry is unlawful. *Emperor v. Chandai.*

35 Cr. L. J. 165 (2) :
146 I. C. 684 : 1933 A. L. J. 1432 :
6 R. A. 318 : A. I. R. 1933 All. 891.

———S. 122—*Scope of — Original entry lawful—Breaking open lock of waggon—Offence.*

Accused, a *dalal*, entered the Railway goods shed line to take delivery of a consignment on behalf of the consignee, and without the permission of the goods clerk, broke the seal of a waggon. It was found that *dalals* were allowed to enter the goods shed without express permission from a Railway servant: *Held*, (1) that the accused could not be convicted under S. 122 (1); (2) that as the accused never refused to leave the Railway on being requested to do so, he could not be convicted under Sub-s. (2) of S. 122. S. 122 (1) makes an unlawful entry punishable and Sub-s. (2) provides for cases where the original entry was lawful as well as unlawful. *Bashir Ahmad v. Emperor.*

20 Cr. L. J. 96 :
48 I. C. 896 : 15 N. L. R. 34 :
A. I. R. 1918 Nag. 49.

———S. 122—*'Railway'—Meaning of.*

The expression "railway" in S. 122 does not include a Railway carriage, and the section does not, therefore, apply to the case of a passenger travelling in a Railway carriage. *Muhammad Hosain v. Farley.*

18 Cr. L. J. 647 :
40 I. C. 295 : 25 C. L. J. 610 :
44 Cal. 279 :
A. I. R. 1917 Cal. 105.

———S. 122—*'Unlawful,' meaning of—Trespass on Railway line—Offence.*

The word unlawful, as used in S. 122; means

RAILWAYS ACT (IX OF 1890)

without the leave of the Railway Administration, and a person is clearly guilty of the offence specified in the first part of the section, if he enters upon the Railway line without obtaining such leave. *Mohan Malik v. Emperor.*

15 Cr. L. J. 468 :
24 I. C. 348 : 4 P. R. 1914 Cr.
155 P. L. R. 1914 :
A. I. R. 1914 Lah. 358.

———S. 125—*Cattle straying on Railway—Offence.*

The owner of cattle straying upon a Railway in consequence of the negligence of their keeper, cannot be convicted of an offence under S. 125 of the Railways Act. *Gur Prashad v. Emperor.*

12 Cr. L. J. 614 :
12 I. C. 990 : 34 All. 91 :
8 A. L. J. 1249.

———S. 125 (2)—*Right of public to cross Railway line at places other than level-crossings.*

There is no provision in law by which the public is forbidden to cross Railway lines or drive animals across them at places other than level crossings, and a person driving cattle across Railway line at such places cannot be convicted under S. 125 (2). *Emperor v. Madho.*

31 Cr. L. J. 1015 :
126 I. C. 497 : 7 O. W. N. 461 :
A. I. R. 1930 Oudh 250.

———S. 126—*Offence under.*

Maliciously wrecking or attempting to wreck train—Offender under 12. His understanding and knowledge. *Emperor v. Kana Vaja.*

1 Cr. L. J. 493.

———Ss. 126 (a), 130—*Jurisdiction.*

Where a person is prosecuted under S. 130 read with S. 126 (a), the offence is not one triable exclusively by a Court of Session; a Magistrate has jurisdiction to try it, and to try it summarily. *Emperor v. Dhondya Duddy.*

20 Cr. L. J. 699 :
52 I. C. 667 : 21 Bom. L. R. 768 :
48 Bom. 888 : A. I. R. 1919 Bom. 173.

———S. 127—*Penal Code (Act XLV of 1860), S. 147—Rioting and throwing stones at train—Separate offences.*

The accused assembled at a Railway Station with the object of preventing people by force and violence from proceeding to a particular place by a train, and force and violence was used towards the passengers in the prosecution of the common object. As soon as the train started, the accused began to throw stones at the train. They were convicted of separate offences under S. 147, Penal Code, and 127 Railways Act, and separate sentences were awarded for each offence: *Held*, (1) that the throwing of stones at the train was a distinct offence by itself which had no connection with the offence of rioting, and the conviction of the accused for separate offences under S. 147, Penal Code, and S. 127 of the Railways Act, was perfectly legal. *Allah Ditta v. Emperor.*

25 Cr. L. J. 435 :
77 I. C. 723 : A. I. R. 1924 Lah. 585.

RAILWAYS ACT (IX OF 1890)

———Ss. 127, 130, 133 — *Jurisdiction—Offences committed by person made liable under S. 130 though ordinarily protected by Ss. 82, 83, Penal Code—Trial by Special Magistrate under S. 29-B, Cr. P. C.,—Necessity of.*

In the absence of any express provision relating to trial of offenders under S. 130, by any particular class of Magistrates, the provisions of S. 133 of that Act, cannot be invoked so as to confer jurisdiction upon a Magistrate to try an offence of this nature, when no such jurisdiction is conferred upon him by Seh. II, Cr. P. C., more so when S. 29-B of that Code provides for an adequate machinery for trial of such offences. *Emperor v. Wali Mahammad.*

38 Cr. L. J. 83 :
165 I. C. 642 : 30 S. L. R. 9 :
9 R. S. 106 : A. I. R. 1936 Sind 185.

———S. 128—*Offence under.*

Excessive over-crowding—Pulling communication cord, and sitting before engine—Offence comes under S. 128—Fact that it was in way of protest against Railway Administration in public interest should be taken into consideration in awarding sentence. *Emperor v. Ram Chander Mulsaddi.*

32 Cr. L. J. 547 :
8 O. W. N. 99 :
130 I. C. 384 :
A. I. R. 1931 Oudh 85.

———S. 130—*Offence by a child—Jurisdiction.*

An offence under S. 130, Railways Act, committed by a child is not triable by a First Class Magistrate, but can only be tried by a District Magistrate. *Emperor v. Jannat.*

29 Cr. L. J. 733 :
110 I. C. 589 : 29 P. L. R. 536 :
A. I. R. 1928 Lah. 909.

———S. 130—*Offence of throwing stones at Railway train.*

The offence of throwing stones at a railway train committed by boys of eight and five years old, would ordinarily be protected under Ss. 82 and 83, Penal Code, and would not be punishable as an offence under S. 127, Railways Act, or under any provision of the Penal Code. But such act would be deemed to be an offence under the special provisions of S. 130, Railways Act, and punishable under that section. *Emperor v. Wali Mahammad.*

38 Cr. L. J. 83 :
165 I. C. 642 : 30 S. L. R. 9 :
9 R. S. 106 : A. I. R. 1936 Sind 185.

———S. 130—*Scope of.*

S. 130 enacts an offence distinct from the offence in Ss. 126 to 129. A minor who is entitled to the benefit of S. 82 or 83, Penal Code, does not commit an offence when he is guilty of any of the acts or omissions referred to in Ss. 126 to 129, Railways Act. It is S. 130 of the latter Act which, by excluding the operation of these exceptions, creates the offence. *Emperor v. Dhondya Duddy.*

20 Cr. L. J. 699 :
52 I. C. 667 : 21 Bom. L. R. 768 :
43 Bom. 888 : A. I. R. 1919 Bom. 173.

RANGOON POLICE ACT (IV OF 1899)

———S. 145—*Scope.*

S. 145 (2), Railways Act, contemplates prosecutions for offences under that enactment, that is to say, private prosecutions undertaken by the Railway Administration in which the Public Prosecutor, does not appear as distinguished from public prosecutions undertaken or taken over by the State, and in particular prosecutions under the Penal Code. *Bengal Nagpur Railway Co. v. Makbul.*

27 Cr. L. J. 313 (b) :
92 I. C. 697 : 1926 Pat. 74 :
7 P. L. T. 343 : A. I. R. 1925 Pat. 755.

RANGOON APPELLATE SIDE RULES

———R. 12—*Scope of.*

R. 12 of the Appellate Side Rules (Rangoon High Court) allows a Judge to refer only such questions of law as actually arise in the case. *Hlin Gyaw v. Emperor.*

28 Cr. L. J. 433 :
101 I. C. 465 : 5 Rang. 26 :
6 Bur. L. J. 32 : A. I. R. 1927 Rang. 113.

RANGOON POLICE ACT (IV OF 1899)

———S. 19—*Sanction, necessity of.*

Where it is alleged that a Sub-Inspector of the Rangoon Police Force committed an offence whilst acting or purporting to act in the discharge of his official duty, S. 197, Cr. P. C., applies and sanction of the Local Government is required for prosecuting him. *Maung Hla Maung v. Emperor.*

36 Cr. L. J. 957 :
156 I. C. 574 : 8 R. Rang. 15 :
A. I. R. 1935 Rang. 165.

———S. 30—*Scope of.*

To be simply found on road is no offence. *Ebrahim v. Emperor.*

34 Cr. L. J. 1253 (1) :
146 I. C. 233 : 6 R. Rang. 84 :
A. I. R. 1933 Rang. 74.

———Ss. 30, 31-A—*Appealable case.*

A was tried at a summary trial under S. 30 and was sentenced to three months' rigorous imprisonment and further ordered to give security for good behaviour under S. 31-A : Held, that the addition of order for security rendered the case appealable. *Kathan v. King-Emperor.*

9 Cr. L. J. 368 :
4 L. B. R. 359.

———S. 30, Cl. (c)—*Summary trial—Record must show ingredients of offence charged.*

Where an accused person was charged under S. 30 (c) for "being found between sunset and sunrise with his face covered and being unable to give a satisfactory account of himself" and where the record was silent as to what account, if any, the accused at the time of his arrest gave of himself and as to any reason there may be for considering such account to be unsatisfactory : Held, that the record omitted a most essential ingredient of the offence of which the accused

RANGOON PORT ACT (IV OF 1905)

was convicted and that this omission was fatal. The record in summary trials, however brief, should show the necessary ingredients of the offence charged. *Kel Foon v. Emperor*.

12 Cr. L. J. 280 :
10 I. C. 921 : 4 Bur. L. T. 117.

—S. 30-D.

Scope of S. 30 (d) stated, *Ebrahim v. Emperor*.

34 Cr. L. J. 1253 (1) :
146 I. C. 233 : 6 R. Rang. 84 :
A. I. R. 1933 Rang. 74.

—S. 31—Evidence.

To support a conviction under S. 31, Rangoon Police Act, for having in one's possession rice reasonably suspected to be stolen from a boat in the river, there should be some evidence that information was received that the paddy bags in the boat had been bled. *Mishreetin v. Crown*.

1 Cr. L. J. 661 :
10 Bur. L. R. 116.

—S. 41 (6)—Acquittal, nature of.

The acquittal on the charge under S. 41 (10), is equivalent to an acquittal on a charge of rioting under S. 147, Penal Code. *Nga Myat Thuang v. Emperor*.

37 Cr. L. J. 189 :
159 I. C. 967 : 8 R. Rang. 300 :
A. I. R. 1935 Rang. 436.

RANGOON PORT ACT (IV OF 1905)

—Ss. 65, 4 (12)—Bye-law promulgated in Notification No. 1, dated January 4, 1923, alleged to be made under S. 65—Whether comes under powers conferred by Sub-s. (1), S. 65—Traffic Manager, acting under bye-law—Order must be in writing—Authority to exclude "wharves" only—'Wharves' whether include pontoons, jetties, etc.—Definition of wharves published in Notification No. 1 of January 4, 1923, whether ultra vires—Person using public landing-places—Whether offence under Penal Code (Act XLV of 1860), S. 447.

It would require a very wide construction of the provisions of S. 65, Rangoon Port Act, to bring bye-law promulgated in Notification No. 1, dated January 4, 1923, and alleged to be made under S. 65 within the powers conferred by any of the clauses of Sub-s. (1) of that section. This bye-law merely authorises the Traffic Manager by an order in writing signed by him personally, to exclude persons of a certain category from the wharves, the authority conferred upon him by the bye-law in question is to exclude for the wharves only. The expression wharf is defined in Cl. (12), S. 4, Rangoon Port Act, and it does not include pontoons, jetties and other premises belonging to the Port Commissioner. It is also defined in Cl. (e), bye-law No. 1 of the bye-laws published in Notification No. 1, dated January 4, 1923, but in so far as this second definition differs from or alters or amplifies the definition contained in S. 4 of the Act, it is plainly ultra vires. Furthermore, the bye-law authorises the Traffic Manager to exclude those

RECEIVER

persons only whom he considers to be undesirable. From the terms of the bye-law itself, it is plain that it contemplates and intends that the Traffic Manager shall personally be satisfied that the person against whom it is proposed to issue an order is an "undesirable" before he issues an order under the bye-law. The Commissioners for the Port of Rangoon are not the absolute owners of the property vested in them, but are in possession thereof subject to the provisions of the Rangoon Port Act and consequently, the Port Commissioners have no right, apart from the provisions of the Rangoon Port Act, and the bye-laws legally made thereunder, to exclude any member of the public from using public landing places. *Satharaju v. Emperor*.

37 Cr. L. J. 829 :
163 I. C. 235 : 9 R. Rang. 4.
A. I. R. 1936 Rang. 232.

RANGOON RENT ACT (II OF 1920, AS AMENDED BY ACT 1 OF 1922)

—Ss. 14, 14-A, 15—Right to recover excess rent from tenant—Landlord and tenant—Tenant—Standard rent, certification of, whether necessary.

The landlord's remedy under the proviso to Sub-s. (2) of S. 14-A, Rangoon Rent Act, to cover from his tenant rent recovered by the latter from his sub-tenant in excess of the standard rent, cannot be exercised unless and until the Controller has granted a certificate certifying the standard rent of the premises leased by the landlord. *Bahadar v. Jadawjee Mehta*.

25 Cr. L. J. 482 :
77 I. C. 882 : 2 Bur. L. J. 235 :
1 Rang. 687 : A. I. R. 1924 Rang. 172.

RAPE

—Attempt to commit rape—Assault to outrage modesty.

The conviction of having committed rape cannot be maintained, where is the first report to the Police the girl merely stated that the accused seized her by the arm and asked her to have connection with him. But where evidence proves that the accused stripped her nearly naked and was lying upon her when her cries attracted people to the spot, he commits an offence under Ss. 376-511 and not merely under S. 354, Penal Code. *Khadam v. Emperor*.

11 Cr. L. J. 611 :
8 I. C. 257 : 42 P. W. R. 1910 Cr.

—Rape.

Accused convicted of rape—Acquitted—Cannot be convicted of adultery without complaint by the husband. *Nga Po Thaw v. Emperor*.

14 Cr. L. J. 284 :
19 I. C. 716 : 1912 U. B. R. 155.

RECEIVER

—Proceedings against, without Court's leave.

Objection not taken—Final order, validity of—Defect curable even at late stage by

REFERENCE

obtaining leave. *Saliranjana Bonerjee v. Corporation of Calcutta.* 31 Cr. L. J. 423 : 122 I. C. 546 : 51 C. L. J. 481 : A. I. R. 1929 Cal. 514.

—————*Prosecution of—Sanction of Court.*

The sanction of the Court appointing a Receiver is not necessary in order to proceed against him for a breach of the ordinary Criminal Law of the country, e. g., defamation. *Nagendra Nath v. Jogendra Nath.* 13 Cr. L. J. 491 : 15 I. C. 491.

—————*Right of.*

A Receiver appointed under S. 146, Cr. P. C., has the right to take possession of lands which have accreted to the original subject-matter of dispute. *Shaik Madhu v. Shaik Sabar Ali.* 11 Cr. L. J. 288 : 6 I. C. 177 : 14 C. W. N. 681.

—————*Receiver.*

Contempt—Obstruction of Receiver in discharge of duty—Stranger in possession not to obstruct Receiver but to apply to Court for redress of grievance—Costs against person obstructing Receiver. *P. Roy Chowdhury v. Mr. Nolini Prokosh Sen* 15 Cr. L. J. 65 : 22 I. C. 417 : 18 C. W. N. 289.

RECORD OF RIGHTS

—————*Presumption of correctness.*

It is well settled that the presumption of correctness which attaches to the finally published Record of Rights, relates only to possession at the time when the Record is prepared, and even if such presumption can be made in a criminal trial, it is clear that where there has been an interval of ten or twelve years between the preparation of the Record and the occurrence, any presumption arising for the record is obviously of the weakest possible description. *Nayan Mandal v. Emperor.* 31 Cr. L. J. 918 : 125 I. C. 746 : 34 C. W. N. 170 : A. I. R. 1930 Cal. 134.

—————*Right to erect dam for irrigation, scope and extent.*

An entry in the Record of Rights recognising a right to erect a dam across a channel for purposes of irrigation implies that the person in whose favour the right is recorded is entitled to keep the dam standing for a reasonable period, that is, until sufficient water has entered his reservoirs to enable him to irrigate the area concerned. *Ragho Prasad v. Emperor.* 30 Cr. L. J. 896 : 118 I. C. 333 : I. R. 1928 Pat. 525 : A. I. R. 1929 Pat. 180.

REFERENCE

—————*Discretion of trial Judge—Disagreement with verdict of Jury—Reference to High Court, when necessary.*

S. 30, Cr. P. C., gives a discretion to the Judge in the matter of reference and it is only when he disagrees with the verdict of the Jury and is clearly of opinion that it is necessary for

REFORMATORY SCHOOLS ACT (VIII OF 1897)

the ends of justice to submit the case to the High Court that he shall so submit it. If he is not clearly of that opinion, his failure to submit the case is not a subject for interference by the High Court on appeal. *Bajit Mian v. Emperor.* 29 Cr. L. J. 81 : 106 I. C. 673 : 6 Pat. 817 : 9 P. L. T. 191 : A. I. R. 1928 Pat. 120.

—————*Right of superior Magistrate to Subordinate Magistrate—Local enquiry.*

Where a Deputy Magistrate referred a case to his subordinate without pointing out how any local enquiry is necessary and merely because there was a criminal trespass case : *Held*, that the First Class Magistrate had no right to refer the case to his subordinate. *In re : Ramaswami Nayakar.* 8 Cr. L. J. 150 : 3 M. L. T. 402.

REFORMATORY SCHOOLS ACT (VIII OF 1897)

—————*Boy of 14 years guilty of murder—Accused not depraved:*

The accused found guilty of murder was a boy brought up in a comfortable home, a boy apparently of intellectual attainments above the average, but of a haughty and imperious disposition which had not been properly controlled, a boy who has been accustomed to treat the coolies with whom he inevitably came in frequent contact, as if they were beings of another order and bound to execute all the wishes without demur or question. Unaccustomed to having his desires thwarted and unfortunately having a lethal weapon in his hands at the time, he lost control of himself and used it with a fatal effect killing a cooly boy : *Held*, that the discipline of a Reformatory School may well prove salutary to such a youth, whereas it would have been ineffective in the case of a depraved youth. *Daljit Singh v. Emperor.* 39 Cr. L. J. 92 : 172 I. C. 204 : 10 R. N. 177 : A. I. R. 1937 Nag. 274.

—————*Period of detention—Cr. P. C., S. 399—Detention in Reformatory School—Period to be definite.*

A, a lad of thirteen years was convicted of theft. The Magistrate imposed upon him rigorous imprisonment for two months but directed that, instead of suffering the imprisonment, A should be detained in a Reformatory School for five years "or until he attains the age of eighteen years" : *Held*, that the words "or until he attains the age of eighteen years" should be deleted from the Magistrate's order as the period of detention should be an exact or definite period. *Emperor v. Rama Sudama Mahar.* 14 Cr. L. J. 256 : 19 I. C. 512 : 15 Bom. L. R. 306.

—————*S. 4—Order for detention, when can be made—Youthful offender, who is.*

An order for detention in a Reformatory School can only be made in the case of a youthful offender, i. e., a boy, below the age

REFORMATORY SCHOOLS ACT (VIII OF 1897)

of 15 years, as technically, under S. 4, Reformatory Schools Act, a boy ceases to be a youthful offender, when he reaches that age. *Hamid v. Emperor*.

24 Cr. L. J. 918 :
75 I. C. 294 : 2 Bur. L. J. 96 :
A. I. R. 1923 Rang. 16.

—S. 4 (a)—Juvenile offender—Sentence.

The provisions of the Reformatory Schools Act are applicable to the case of a youthful offender convicted of murder and sentenced to transportation for life. Ordinarily, however, a youthful offender convicted of murder should not be sent to a Reformatory School. *Rama v. Emperor*.

9 Cr. L. J. 99 :
4 N. L. R. 180.

—Illegality of order—Legal sentence.

Where a boy under 12 years was convicted of stabbing a companion with a knife, a sentence to pay a fine of Rs. 100 or in default of payment, to go to the Reformatory School for 3 years is illegal. Before such an order is passed, the offender must have been sentenced to transportation or imprisonment and not to mere fine. *Nga Po Tok v. Emperor*.

12 Cr. L. J. 244 :
10 I. C. 773 : 4 Bur. L. T. 69.

—S. 8 and rules—Punishment, nature of.

The period of detention in a Reformatory School to which a youthful offender over 13 years of age should be sentenced, should be such that he will not leave the school until he has attained the age of 18 years. *San Hlaing v. Emperor*.

2 Cr. L. J. 738 :
3 L. B. R. 46.

—S. 8—Revision—Cr. P. C., S. 439 (1).

The High Court has power to pass an order under S. 8, Reformatory Schools Act in revision. *Emperor v. Lakshman Narain*.

29 Cr. L. J. 1016 :
112 I. C. 344 : 30 Bom. L. R. 952 :
A. I. R. 1928 Bom. 348.

—S. 8—Scope of—Cr. P. C., Ss. 29-B, 28 and Sch. II—S. 8, whether prohibits trial by any Magistrate—Jurisdiction conferred under S. 28 and Sch. II, Cr. P. C., if taken away by S. 29-B, Cr. P. C.

S. 8 does not enact that a Magistrate cannot try a juvenile offender. It says that certain Magistrates who are not specially empowered may not exercise the power of sending juvenile offender to a Reformatory School. Similarly, S. 29-B, Cr. P. C., was not intended to take away the jurisdiction already conferred on Magistrate under S. 28, and Cl. 8, Sch. II, Cr. P. C. It was intended to extend to certain Magistrates the power to try juvenile offenders for certain offences which would otherwise have been triable exclusively by the Court of Session. *Onkar Nath v. Emperor*.

37 Cr. L. J. 1073 :
165 I. C. 148 : 1936 A. L. J. 957 :
1936 A. W. N. 735 : 9 R. A. 227 :
A. I. R. 1936 All. 675.

—Ss. 8, 9, 16—Legal order—Revision.

An order under the Reformatory Schools Act

REFORMATORY SCHOOLS ACT (VIII OF 1897)

cannot be made in respect of a youthful offender unless and until a definite sentence of imprisonment is passed against him. Where no definite sentence of imprisonment is passed but only an order for detention in the Reformatory Schools, the order is invalid and must be set aside. A High Court should not, in such a case, pass a definite sentence of imprisonment to legalize the proceedings, so as to justify the retention of the offender in the Reformatory School, where it appears that the Magistrate would not pass a sentence of imprisonment. *Emperor v. Bakhtawar*.

12 Cr. L. J. 56 :
8 I. C. 1166 : 34 P. R. 1910 Cr.

—S. 8 (1)—Scope.

Before any steps can be taken under the Reformatory Schools Act under S. 8 (1), conviction and sentence should have been recorded, allowing the accused an opportunity of appealing. An appeal does not lie where there is no order of conviction. *Nawab Dhun Gul v. Emperor*.

149 I. C. 1128 :
6 R. Pesh. 74 : 36 P. L. R. 79 :
A. I. R. 1934 Pesh. 29 (2).

—S. 9 (1) (2)—Procedure.

A second class Magistrate not empowered to act under S. 8 should, after convicting the accused, submit the case to the District Magistrate for passing sentence under S. 9 (2) and not to the Joint Magistrate to whom the second class Magistrate may be immediately subordinate. *Kanakuyya v. Emperor*.

16 Cr. L. J. 32 :
26 I. C. 366 : A. I. R. 1915 Mad. 841.

—S. 11—Inquiry as to age—Finding—Period of detention, determination of.

An enquiry as to the age of a youthful offender should be held before sending an accused to a Reformatory School. There must be a clear finding as to the age of the offender by the Court. The Court must also find that the youthful offender to be sent to the Reformatory School is a fit and proper person to be an inmate of the school. The period of detention in the Reformatory School must also be fixed. *Emperor v. Sein Choung*.

26 Cr. L. J. 852 (b) :
86 I. C. 708 : 3 Rang. 218 :
A. I. R. 1925 Rang. 302.

—S. 16—Finality of Magistrate's order—Revision.

The finding of a Subordinate Court as to the age of a youthful offender, ordered by it to be detained in Reformatory School, is final, and the High Court has no power to revise it. *Emperor v. Amir Bhikan*.

1 Cr. L. J. 609 :
6 Bom. L. R. 550.

—S. 16—Power of Appellate Court to alter sentence—Detention in lieu of imprisonment—Appeal.

Under S. 16 an order substituting detention in a Reformatory for imprisonment cannot be interfered with in appeal, but this does

REFORMATORY SCHOOLS ACT (VIII OF 1897)

not preclude an Appellate Court from altering the sentence of imprisonment to one of whipping. When the order of imprisonment is altered to one of whipping, the order of detention in a Reformatory falls to the ground. *Imperator v. Rajabali*. 13 Cr. L. J. 44 : 13 I. C. 284 : 5 S. L. R. 173.

———S. 16—*Scope of—Appellate Court—Jurisdiction of, to test the legality of a conviction passed against a youthful offender.*

S. 16 does not relieve an Appellate Court of the duty of finding whether a conviction or sentence passed against a youthful offender is legally maintainable. It only precludes a Court of Appeal from altering or revising any order passed by the original Court with respect to the age of such offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment. *Ram Singh v. Emperor*. 6 Cr. L. J. 129 : 2 P. W. R. Cr. 120 : 18 P. R. Cr. 1907 : 55 P. L. R. 1908.

———S. 16—*Scope of.*

S. 16 does not prevent interference by the Sessions Judge with a sentence of imprisonment though an order of detention has been substituted for the imprisonment. *Azimuddin v. Emperor*. 32 Cr. L. J. 1268 : 134 I. C. 864 : 27 N. L. R. 242 : I. R. 1931 Nag. 192 : A. I. R. 1931 Nag. 179.

———S. 31—*Applicability of.*

S. 31 cannot be applied when the accused is sentenced to a whipping. *Emperor v. Ha Taw*. 2 Cr. L. J. 720 : 11 Bur. L. R. 279 : 3 L. B. R. 30.

———S. 31—*Punishment.*

For the application of S. 31 the accused should receive a sentence of four years' rigorous imprisonment because it is only then that he could be sent to the Reformatory School. *Larkhur v. Emperor*. 36 Cr. L. J. 368 : 153 I. C. 582 : 4 A. W. N. 669 : 7 R. A. 521 : A. I. R. 1934 All. 976.

———S. 31—*Scope.*

S. 31 extends very considerably the provision of S. 502, Cr. P. C., which although later in date is a reproduction of earlier legislation, and read with the definition of youthful offenders enables practically any Court in the case of an offender under 15 to deliver him to his parents with or without sureties for his future good behaviour. *Abdul Aziz v. Emperor*. 17 Cr. L. J. 524 : 36 I. C. 492 : 14 A. L. J. 1158 : A. I. R. 1917 All. 420.

———S. 31 (1)—*Illegality of order for transportation for life, applicability of, to girls—Girl of eleven—Murder.*

S. 31 applies to girls as well as boys. A girl of eleven who caused the death of a child of three, should be delivered to her father on his executing a bond to be responsible for her good

REGISTRATION ACT (XVI OF 1908)

behaviour for twelve months. *Parbati v. Emperor*. 23 Cr. L. J. 145 : 65 I. C. 609 : 24 O. C. 305 : A. I. R. 1921 Oudh 190 (2).

REGISTRAR, CO-OPERATIVE SOCIETIES ACT, 1912

———S. 43 (1)—*Registrar, if Court.*

The Registrar to whom a dispute touching a debt due to a society by a member is referred, has power to administer oaths, to require the attendance of all parties concerned and of witnesses and to require the production of all books and documents relating to the matter in dispute, and the Registrar is required to give a decision in writing and when it is given, the decision may be enforced on application to the Civil Court having jurisdiction over the subject-matter of the decision as if it were a decree of Court. *In re : Thadi Subbi Reddi*. 32 Cr. L. J. 219 : 129 I. C. 72 : 59 M. L. J. 229 : 32 L. W. 273 : 1930 M. W. N. 689 : I. R. 1931 Mad. 216 : A. I. R. 1930 Mad. 869.

REGISTRATION ACT (III OF 1877)

———S. 82—*Prosecution under, legality of—Time for ordering prosecution.*

On the Petitioner denying the execution of a document in favour of A, before the Sub-Registrar, that officer refused to register the document. Thereupon A lodged a complaint against the petitioner for cheating under S. 417, I. P. C., which was dismissed under S. 203, Cr. P. C., on the 26th March 1906. On the 27th April 1906, A appealed to the Special Sub-Registrar who rejected the appeal for not having been preferred within the prescribed period of 30 days from the Sub-Registrar's refusal to register, but at the same time submitted a report to the District Registrar which ultimately led to an enquiry with the result that a proceeding was drawn up against the petitioner under S. 82, Registration Act : *Held*, that under the circumstances the Petitioner should not be prosecuted under S. 82, Registration Act. *Sakanbari Debi v. Adaitya Ganguli*. 6 Cr. L. J. 365 : 12 C. W. N. 47.

———S. 82 (c) and (d)—*Offence under.*

Registration—Personating a party to a deed before a Registration Officer—Intent—Offence committed—Abetment by other parties—Forgery. *Emperor v. Tun Aung Gyaw*. 4 Cr. L. J. 483 : 3 L. B. R. 222.

REGISTRATION ACT (XVI OF 1908)

———Ss. 34, 35, 82, 83—*Power of Registration Officer to enquire into truth or falsity of recital—False recital—Offence—Permission, whether necessary for prosecution.*

The proceeding or enquiry referred to in S. 82, must be a proceeding or enquiry prescribed by the Registration Act. All that a Registering Officer is required to enquire into

REGISTRATION ACT (XVI OF 1908)

is as to whether the document presented before him for registration was or was not executed by the person by whom it purports to have been executed. The Registration Act nowhere prescribes any enquiry by the Registration Officer as regards the truth or falsity of any recital in a deed. No permission under S. 83, Registration Act, is necessary for a complainant to institute a charge under S. 82 of the Act. *Gobindia v. Emperor*.

25 Cr. L. J. 636 :
81 I. C. 124 : 5 P. L. T. 372 :
1924 Pat. 199 : 2 P. L. R. 162 Cr. :
A. I. R. 1924 Pat. 754.

—Ss. 35 (2), 82—*Offence under, nature of—Enquiry under S. 35 (2)—Persons telling lie—Intention not to benefit himself or cheat any one—Offences, nature of.*

In an enquiry under S. 35 (2), a person made an untrue statement without any intention to benefit himself and cheat any one. The reason which prompted him to give vent to this half truth was to save his sisters from the trouble of turning up before the Sub-Registrar: *Held*, that though it was an offence making him liable under S. 82, yet it was certainly not a serious one. *Abdul Ghafur v. Emperor*.

37 Cr. L. J. 1151 :
165 I. C. 415 : 40 C. W. N. 1059 :
9 R. C. 396 : A. I. R. 1936 Cal. 418.

—Ss. 73, 82—*Order by Sub-Registrar for prosecution, validity of.*

An application was made to a Registrar to register a document. The executant did not appear and the Registrar refused to register it. The applicants filed a notice under S. 73, Registration Act. The matter was referred by the Registrar to the Sub-Registrar. The latter came to the conclusion that the document was forged and ordered the petitioners to be prosecuted under S. 82, Registration Act, and S. 471, Penal Code: *Held*, (1) that the order for prosecution under S. 82, Registration Act, was illegal inasmuch as the provisions of S. 74, Registration Act, are mandatory and the District Registrar had no jurisdiction to refer the matter to the Sub-Registrar; (2) that the part of the order relating to prosecution under S. 471, Penal Code, was, however, valid. *Hirday Narain Singh v. Emperor*.

30 Cr. L. J. 1101 :
119 I. C. 888 : 10 P. L. T. 889 :
I. R. 1929 Pat. 616 :
A. I. R. 1929 Pat. 500.

—Ss. 73, 82 (a), 83—*Power of High Court to interfere—District Registrar, refusal by, to sanction prosecution—Remedy, proper.*

A deed of mortgage and a sale-deed were presented to a Sub-Registrar for registration, the alleged executant of the deeds denied that he had executed them, and registration was refused, an application was then made to the District Registrar under S. 73, who ordered an inquiry to be made by the Special Sub-Registrar, and this officer found that the documents had been duly executed by the alleged executant and directed registration thereof; he also found that the executant

REGISTRATION ACT (XVI OF 1908)

had made false statements and applied to the District Registrar for sanction to prosecute him under S. 82 (a), the District Registrar, after a full inquiry, reversed the order of the Special Sub-Registrar directing registration, and refused to sanction prosecution of the executant: *Held*, that the High Court had no jurisdiction to interfere as the District Registrar had acted as a Revenue Court, and that the proper remedy was to obtain a reversal of the order by the Board of Revenue or by a decree of a Civil Court. *Hari Bax Ram v. Chhedi Panir*.

23 Cr. L. J. 415 :
67 I. C. 511 : A. I. R. 1923 Pat. 155.

—S. 81—*Procedure.*

Offences under Ss. 81 and 82 are offences committed against registering authorities—Hence person wishing to take advantage of provision must follow procedure laid down in the Act. *Mohammad Mehdi v. Emperor*. (F. B.)

36 Cr. L. J. 137 :
152 I. C. 667 : 1934 A. L. J. 965 :
4 A. W. N. 524 : 7 R. A. 365 :
A. I. R. 1934 All. 963.

—S. 82—*Abetment.*

Non-specification in charge—Failure of justice not occasioned—Conviction for abetment is not illegal. *Moutajaddi v. Emperor*.

34 Cr. L. J. 526 (2) :
143 I. C. 15 : I. R. 1933 Cal. 342 :
A. I. R. 1933 Cal. 481.

—S. 82—*Offence under, nature of—Fraudulent or dishonest intention—Sanction to prosecute—Identifying witness, statement by, nature of—Penalty.*

A fraudulent or dishonest intention is not essential for an offence under S. 82, nor is sanction necessary to prosecute for such an offence. A witness who purports to identify the executant of a document before a Registering Officer must be in a position to depose without the possibility of error to the identity of the person he is identifying. Merely identifying a person as so-and-so, on the strength of having been told that he was so-and-so by some other person and with no actual knowledge of the facts, would make the witness liable to the penalties of S. 82. *Nilkanth Rao Sadaful v. Emperor*.

23 Cr. L. J. 303 :
66 I. C. 527 : A. I. R. 1922 Nag. 86.

—S. 82—*Thumb impression—Similarity of thumb impression, how far sufficient for conviction.*

The identity of a person as the executant or presenter of a document for registration, though not conclusively proved by similarity of the thumb impression taken at the time of presentation, is sufficient for conviction when supported also by other evidence in the case. *In re : Singri Bhima*.

16 Cr. L. J. 228 :
27 I. C. 900 : A. I. R. 1916 Mad. 234.

REGISTRATION ACT (XVI OF 1908)

———Ss. 82, 83—'May', meaning of—Offences under the Act—Prosecution by private person, legality of.

A prosecution for an offence under the Registration Act coming to the knowledge of a Registering Officer in his official capacity cannot be commenced by a private person without the permission mentioned in S. 83 of the Act. The use of the word 'may,' by itself, gives no indication of the intention of the Legislature. Where there are a number of persons by any one of whom an act can be performed, the Legislature uses the word 'may' simply to show that it is open to any one of such persons to perform that act. *Nga Pan Gaing v. Emperor*. 28 Cr. L. J. 145 : 99 I. C. 401 : 4 Rang. 437 : 5 Bur. L. J. 156 : A. I. R. 1927 Rang. 61.

———Ss. 82, 83—Permission, necessity of.

All that is required before a prosecution under the Registration Act can be commenced, is that permission should be given by a Registration Officer mentioned in S. 83. *Hnsain Khan v. Emperor*. 18 Cr. L. J. 546 : 39 I. C. 690 : 15 A. L. J. 136 : 39 All. 293 : A. I. R. 1917 All. 410.

———Ss. 82, 83—Prosecution without sanction, legality.

S. 83 is no bar to a prosecution by a private person for an offence under S. 82 without the sanction of the Registration Authorities. *In re : Palani Goundan*. 22 Cr. L. J. 566 : 62 I. C. 582 : 40 M. L. J. 211 : 13 L. W. 195 : 29 M. L. T. 141 : 1921 M. W. N. 144 : A. I. R. 1921 Mad. 140.

———Ss. 82, 83—Prosecution—Sanction, whether necessary.

The permission of the Registering Officer under S. 83 is not a necessary condition precedent to the initiation of a prosecution by a private individual against a person for an offence under S. 82 of the Act. *Indrani Bahu v. Rani Badi Dulaiya*. 26 Cr. L. J. 1025 : 87 I. C. 913 : 21 N. L. R. 167 : A. I. R. 1925 Nag. 344.

———Ss. 82, 83—Prosecution—Sanction, necessity of.

A prosecution for an offence under S. 82 cannot be started without the previous sanction of any of the officers mentioned in S. 83. A sanction granted to a person who afterwards compromised the matter with the accused, does not enure for a fresh complaint by another person. The complaint should be dealt with as if no permission under S. 83 was obtained. *Hussain Khan v. Emperor*. 17 Cr. L. J. 465 : 36 I. C. 145 : 14 A. L. J. 412 : 38 All. 354 : A. I. R. 1916 All. 64.

———Ss. 82, 83—Subsequent trial—Trial without permission of proper authority—Acquittal—Second trial with permission of proper authority.

REGISTRATION ACT (XVI OF 1908)

No prosecution for any offence specified in S. 82 can be commenced without the permission of one or other of the officers referred to in S. 83. But an acquittal for want of sanction does not bar a second trial. *Mohan Lal v. Emperor*.

22 Cr. L. J. 750 (a) : 64 I. C. 142 : 19 A. L. J. 813 : A. I. R. 1921 All. 205.

———S. 82 (c)—Essentials—Mere assumption of fictitious name, whether offence.

In order to establish an offence under S. 82 (c), it is not enough to prove merely the assumption of a fictitious name. It is essential to prove further that the assumed name was used as a means of falsely representing another individual. *Emperor v. Rungammal*. 159 I. C. 155 (1) : 1935 M. W. N. 1162 : 42 L. W. 662 : 8 R. M. 455 (1) : A. I. R. 1935 Mad. 913.

———S. 82 (c)—Thumb impression—Putting thumb impression as that of another person—Offence—Finger print.

The opinion of a finger print expert must have the same value as the opinion of any other expert such as a medical officer. In each case the evidence is only a guide to the Court to direct its attention to Judge of its value. The registration of a document is a proceeding under the Act and the giving of a thumb-impression under r. 53 of the Rules under the Registration Act, in the case of an illiterate person forms an 'act in a proceeding under the Act.' Therefore, the putting of the thumb impression in the Thumb Impression Register as that of another person is an offence under the latter part of S. 82 (c) of the Registration Act. *Basgit Singh v. Emperor*. 28 Cr. L. J. 850 : 104 I. C. 626 : 6 Pat. 305 : A. I. R. 1928 Pat. 129.

———S. 83—Sanction, necessity of.

For prosecution under S. 83, previous sanction of Registration Authorities is absolutely essential—Neither subsequent sanctions nor Ss. 532 or 537, Cr. P. C., will cure want of previous sanction. *Mohammad Mehdi v. Emperor*. (F. B.) 36 Cr. L. J. 137 : 152 I. C. 667 : 7 R. A. 365 : 1934 A. L. J. 965 : 4 A. W. N. 524 : A. I. R. 1934 All. 963.

———S. 83—Scope of—Prosecution by private person—Sanction necessity of—'May be commenced,' meaning of.

The permission of the officers specified in S. 83 is not a preliminary requisite for the institution of proceedings by a private person for offences under the Act. The words 'may be commenced' in the section are not prohibitory and do not preclude complaints by private persons. *In re : Piramu Nadathi*. 18 Cr. L. J. 416 : 38 I. C. 976 : 21 M. L. T. 118 : 5 L. W. 414 : 40 Mad. 880 : A. I. R. 1918 Mad. 439.

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

———S. 83—*Applicability.*

S. 83, deals only with a prosecution for any offence under the Act "coming to the knowledge of a Registering Officer in his official capacity," and it provides in effect that where an offence comes to the knowledge of the Registering Officer in his official capacity, a prosecution may be commenced by or with the permission of the officers mentioned in the section. But the section has no application whatever to cases in which offences are committed under the Act, when these offences do not come to the knowledge of the Registering Officer. *Emperor v. Yesa Nana Didwagh.*

38 Cr. L. J. 714 :
169 I. C. 41 : 9 R. B. 421 :
39 Bom. L. R. 85 :
I. L. R. 1937 Bom. 359 :
A. I. R. 1937 Bom. 191.

———S. 83—*Scope of*

S. 83 is not prohibitory either in terms or in intention. On the contrary, it is an enabling section and provides that a prosecution for any offence which comes to the knowledge of a Registering Officer in his official capacity may be commenced by or with the permission of specified Registration Officers. Consequently, sanction of Registration Officer may or may not be obtained for prosecution of offences coming to his knowledge in his official capacity. *Emperor v. Yesa Nana Didwagh.*

38 Cr. L. J. 714 :
169 I. C. 41 : 9 R. B. 421 :
39 Bom. L. R. 85 :
I. L. R. 1937 Bom. 359 :
A. I. R. 1937 Bom. 191.

REGULATION XI OF 1816

———S. 10—*Punishment of putting in stocks.*

In determining the question whether the punishment of putting in stocks shall be inflicted on any particular class of people, the test is whether that class would at the present day regard themselves degraded by the infliction of such punishment. A sentence of putting in stocks is unwarranted by law in the case of *Shanars*, who have improved in social status and regard being put in stocks as a degrading form of punishment. *In re : Madasamy Nadan.*

17 Cr. L. J. 4 :
32 I. C. 131 : A. I. R. 1917 Mad. 739.

RELIGIOUS ENDOWMENT

———*Trustee.*

A trustee has authority over an *archaka* or *pujari*, even if his post is hereditary. *Perumal Konan v. Tirumalai.*

34 Cr. L. J. 88 :
140 I. C. 900 : 37 L. W. 143 :
1932 M. W. N. 1079 :
I. R. 1933 Mad. 63 :
A. I. R. 1933 Mad. 245.

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

———Ss. 14, 18—*Sanction to institute suit, when required.*

Under the Religious Endowments Act (XX of

REPEALING AND AMENDING ACT (XX OF 1937)

1863) sanction to institute a suit is required under S. 18 if the proposed action is against trustees, managers or superintendents of a religious endowment in their capacity as such trustees, managers or superintendents. The Act makes no other provision for the bringing of suits. *Amin Miran v. Medan Hunsain.*

11 Cr. L. J. 192 :
4 I. C. 1118 : 5 M. L. T. 210.

REMAND

See also (i) Cr. P. C., 1898, Ss. 160, 344, 428.

(ii) Criminal trial.

———*Case failing owing to absence of sufficient evidence—Acquittal, not remand to be ordered.*

Where the case originally made out against an accused has failed through the absence of sufficient evidence, the accused should be acquitted and no order of remand for the purpose of allowing the prosecution to supply deficiencies in their original case should be passed. *Suresh Chandra De v. Emperor.*

40 Cr. L. J. 56 (a) :
178 I. C. 415 : 11 R. C. 356 :
A. I. R. 1938 Cal. 782.

———*Duties of Magistrate.*

Duty of Magistrate in matter of remand of accused to police custody stated—If accused wishes, he should allow time for counsel to appear and argue. *Jahangiri Lal v. Emperor.*

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58 :
A. I. R. 1935 Lah. 230.

REMAND OF APPEAL

———*Jurisdiction of Appellate Court—Practice.*

A Sessions Judge has no authority under any section of the Cr. P. C., to remand a case on appeal on finding that the judgment of the Lower Court is not as satisfactory as it should have been. In such a case, it is his duty as Sessions Judge to go into the facts fully and dispose of the appeal. He cannot devolve this duty on the Lower Court. *Tara Chand Singh v. Emperor.*

3 Cr. L. J. 119 :
I. L. R. 32 Cal. 1069.

REPEALING AND AMENDING ACT (XX OF 1937)

———S. 4—*Scope of—Words 'applied' and 'incorporated', meanings of.*

The words "applied" and "incorporated" not having been defined by the General Clauses Act or by the Act in which they have been used, they should be deemed to have been used in their ordinary sense and there is no reason to hold that the application of an enactment necessarily means the

RESTRICTION OF HABITUAL OFFENDERS ACT (V OF 1918)

application of an earlier enactment to the later. *In re : Swami Arungiri Natha.*

- 40 Cr. L. J. 224 ;
179 I. C. 605 : 1938 M. W. N. 1105 (2) :
1938, 2 M. L. J. 863 :
48 L. W. 813 : 11 R. M. 603 :
I. L. R. 1939 Mad. 87 :
A. I. R. 1939 Mad. 21.

REPORT OF A POLICE OFFICER

———'Police report', what is.

The expressions "report of a Police Officer" and "Police report" mentioned, respectively, in S. 4, Sub-s. (1), Cl. (h), and S. 190, Sub-s. (1), Cl. (b), Cr. P. C., do not refer exclusively to reports under Chap. XIV of the Code. These expressions refer to and include any report by a Police Officer, whether in a cognizable or a non-cognizable case and it is not necessary for a Magistrate receiving such a report to treat the reporting officer as a complainant under S. 200 of the Code. *Emperor v. Nga Po Thin.*

- 1 Cr. L. J. 193 :
10 Bur. L. R. 36 : 2 L. B. R. 146.

RESTRICTION OF HABITUAL OFFENDERS ACT (V OF 1918)

———Ss. 4, 7—Order of restriction, validity of.

Where proceedings were started against a person under S. 110, Cr. P. C., and at the very close of the case, without even calling upon him to show cause to the contrary, the Magistrate passed an order of restriction against him under the Punjab Restriction of Habitual Offenders Act: *Held*, that the Magistrate had no jurisdiction to make the order. *Kanwar v. Emperor.*

- 22 Cr. L. J. 144 :
59 I. C. 656 : 3 U. P. L. R. 3 :
7 P. W. R. 1921 Cr. : 3 L. L. J. 286 :
A. I. R. 1921 Lah. 163.

———S. 7—Order of restriction—Cr. P. C., S. 118.

An order of restriction under S. 7 Restriction of Habitual Offenders (Punjab Act), cannot be made against a person against whom an order has been made under S. 118, Cr. P. C. *Bhana v. Emperor.*

- 20 Cr. L. J. 352 (b) :
50 I. C. 882 : 2 P. W. R. 1919 Cr. :
34 P. L. R. 1919 :
A. I. R. 1919 Lah. 87.

———S. 7—Proceedings under, nature of—Evidence required for action—Changing order of restriction into one for security for good behaviour under S. 110, Cr. P. C., legality of.

The procedure to be followed in proceedings under the Restriction of Habitual Offenders Act, is the same as that prescribed for action under S. 110, Cr. P. C., and the evidence required to justify the passing of an order

RE-TRIAL

under both provisions of the law is also the same. Therefore, it is not illegal on the part of a District Magistrate to change on appeal an order under the former Act into one under S. 110, Cr. P. C. *Khuda Yar v. Emperor.*

- 29 Cr. L. J. 689 :
110 I. C. 321 : A. I. R. 1928 Lah. 851.

———S. 7—Ground for restricting suspect to a particular area.

The mere fact that a person was suspected of offences on one or two isolated occasions is not sufficient to justify his being restricted to a particular area under the Restriction of Habitual Offenders (Punjab) Act. *Ahman v. Emperor.*

- 30 Cr. L. J. 973 :
118 I. C. 912 : I. R. 1929 Lah. 832 :
A. I. R. 1929 Lah. 803.

———Ss. 7, 16—Confinement, local limits of—Rules thereunder.

A person can only be restricted under the Restriction of Habitual Offenders (Punjab) Act, to the area of the village or such larger area as the Court may fix, and it is not competent to the Magistrate to confine such a person to his house between specified hours. *Muhammad v. Emperor.*

- 28 Cr. L. J. 176 :
99 I. C. 608 : 8 Lah. 267 :
28 P. L. R. 440 :
A. I. R. 1927 Lah. 124.

———S. 8—Order of restriction.

An order of restriction for a period exceeding one year passed under the provisions of the Restriction of Habitual Offenders (Punjab) Act, does not stand in need of any confirmation by the Sessions Judge. *Emperor v. Suhela.*

- 22 Cr. L. J. 108 :
59 I. C. 412 : 1 Lah. 614 :
17 P. L. R. 1921 : 5 P. W. R. 1921 Cr. :
A. I. R. 1921 Lah. 380.

RE-TRIAL

———Discharge after full enquiry—Evidence—Magistrate's personal knowledge and personal inspection of spot not evidence—Cr. P. C. (Act V of 1898), Ss. 253, 435 and 439.

Where there is a body of evidence which, if believed, justifies conviction, it is far better as a rule to draw up a charge and dispose of the case finally. But if a competent Magistrate after hearing all the evidence for the prosecution and thoroughly discussing it, does dismiss the charge, a High Court should not set aside the order of dismissal and direct further enquiry unless new and cogent evidence is forthcoming. A Magistrate commits serious irregularities: (1) if he bases any of his findings on his own personal knowledge, and (2) if he treats his own name, made after the examination of a spot as evidence in the case instead of having any facts brought to light by that examination duly brought on the record by the testimony of witnesses subject to cross-examination, rebuttal and explanation. *Radhi v. Phul Chand.*

- 11 Cr. L. J. 110 :
4 I. C. 990 : 18 P. W. R. 1909 Cr.

REVIEW

———Order for, when to be made.

The only cases in which applications at the instance of private parties against orders of acquittals should be entertained, are those in which there has been a failure of justice through want of jurisdiction, or a failure to understand the law applicable to the case, or perhaps in personal cases such as those under Ss. 504 or 497, Penal Code. But in any case the power of reversing acquittals is one that will only be used sparingly. *Nga Po Pyaw v. Nga Po Nwe.*

18 Cr. L. J. 970 :
42 I. C. 330 : 3 U. B. R. 1917, 19 :
A. I. R. 1917 U. Bur. 7.

REVIEW

———By a Magistrate of his own order.

It is not open to a Magistrate dismissing an appeal as time-barred to review his own order and re-admit the appeal. *Emperor v. Raghunath Ramchandra.*

1 Cr. L. J. 329 :
6 Bom. L. R. 360.

———Competency of.

A Court of competent jurisdiction may decide a case rightly or wrongly; and it is not open to the same Judges much less to other Judges of co-ordinate jurisdiction to review that decision. *Shahu v. Emperor.* (F. B.)

36 Cr. L. J. 831 :
155 I. C. 736 : 7 R. S. 206 :
A. I. R. 1935 Sind 84.

———Interference—Power of Criminal Court to review its own judgment.

A Criminal Court cannot review its own judgment. Where an order passed by a Bench of the Chief Court is clearly within jurisdiction, it cannot be interfered with on review, either by the same or any other Bench of the Court. *Hira v. Emperor.*

10 Cr. L. J. 314 :
3 I. C. 580 : 8 P. R. 1909 Cr. :
17 P. W. R. 1909 Cr.

———Jurisdiction.

The Cr. P. C. contains no provision giving jurisdiction to a Court to review an order passed under it. *In re: Gopal.*

7 Cr. L. J. 120 :
10 Bom. L. R. 95 : 32 Bom. 203 :
3 M. L. T. 170.

———Of final orders.

A Criminal Court has no right or authority to review final orders passed by it under S. 145, Cr. P. C. *Parbati Churn Roy v. Sajjad Ahmad Chowdhry.*

7 Cr. L. J. 401 :
12 C. W. N. 605 : 35 Cal. 350.

———Power of a Judge.

Power of a Judge to review a criminal judgment and expunge damaging remarks against a witness. *In re: Malik Umar Hayat Khan.*

11 Cr. L. J. 178 :
5 I. C. 611 : 2 P. W. R. 1910 Cr.

REVIEW

———Power of High Court—Criminal Revision Petition—Dismissal for default.

The High Court has no power to review an order made by it in the exercise of its criminal revisional jurisdiction, even where the revision petition has been dismissed for default. In cases of criminal revision, no distinction can be made between an order passed without hearing the petitioner and one in which he is heard. *Ranga Row v. Emperor.*

13 Cr. L. J. 710 :
16 I. C. 518 : 23 M. L. J. 371 :
12 M. L. T. 350 : 1912 M. W. N. 982.

———Power of High Court—Order under Legal Practitioners Act.

Although there is no express provision for a review of an order made under the Legal Practitioners Act, there is inherent power in the High Court to restore a Pleader whose name has been struck off the rolls. *In the matter of: H, a Vakil, Banda.* (F. B.)

156 I. C. 243 : 7 R. A. 1064 (1) :
4 A. W. R. 1404 :
A. I. R. 1935 All. 321.

———Power of High Court.

High Court can review its order on the criminal side if the order has not yet been sealed. *Kallu v. Emperor.*

1 Cr. L. J. 710 :
24 A. W. N. 195 : 1 A. L. J. 495 :
I. L. R. 27 All. 92.

———Retrial.

Where on an examination of the record of a case, as it stands, the evidence of the complainant and his witnesses seems to point to the fact that there has been a miscarriage of justice in a serious case and the judgment of the Sessions Judge does not satisfactorily review the evidence, the High Court will direct a retrial. *Nand Ram v. Khazan.*

22 Cr. L. J. 337 :
61 I. C. 161 : 19 A. L. J. 589 :
A. I. R. 1921 All. 266.

———Sanction to prosecute—O. P. C.—S. 114, O. XLVII, r. 1—Public Prosecutor of Calcutta—Order granting leave to appeal, whether may be received at instance of Public Prosecutor.

Where the High Court, in a proceeding under Clause 10, Letters Patent, has granted sanction to the Public Prosecutor to prosecute an Attorney for alleged perjury, the High Court cannot, under Clause 39, Letters Patent, grant leave to the Attorney to appeal to the Privy Council against the order of the High Court. Where such a sanction was granted to the Public Prosecutor, and under some misconception the High Court granted leave to the Attorney to appeal to the Privy Council: *Held*, that the order granting leave was clearly an order affecting the authority which the Public Prosecutor had under the sanction to prosecute the Attorney, and an application for review of the order of the High Court was maintainable at the instance of the Public Prosecutor. *Mr. Hume v. Poresch Chandra Ghosh.*

15 Cr. L. J. 52 (b) :
22 I. C. 324 : 41 Cal. 734 :
19 C. W. N. 593 : A. I. R. 1914 Cal. 557.

REVISION

—Acquittal, revision against.

In a case where an acquittal has proceeded solely on a mistaken view of law, the High Court has power to interfere in revision, although there has been no appeal by the Local Government. *Nanhi Bahu v. Dhunde*.

10 Cr. L. J. 417 :
3 I. C. 908 : 6 A. L. J. 758.

—Revision.

Acquittal in Sessions case tried with aid of Assessors—Revision Petition to High Court against order of acquittal—Power of High Court to interfere in revision—Sessions Judge and Assessors concurring—Important witnesses disbelieved—Sessions Judge, power of, to stop prosecution—Revision by private person. *In re ; Natasa Padayachi*.

16 Cr. L. J. 558 (b) :
29 I. C. 830 : 17 M. L. T. 457 :
28 M. L. J. 690 : 1915 M. W. N. 411.

—Acquittal by trial Court.

Acquittal should not, except in exceptional circumstances, be interfered with *suo motu* by an Appellate Court without a full investigation of the facts. There should be a certain integrity about acquittals which prevent them from being lightly interfered with. *Roshan Lal v. S. Z. Ahmed*.

37 Cr. L. J. 1081 :
164 I. C. 996 : 40 C. W. N. 931 :
9 R. C. 327.

—Acquittal—Criminal cases.

The High Courts, though not going so far as to say that an order of acquittal cannot, under any circumstances, be interfered with on revision, have uniformly discouraged such action as being not contemplated by the Cr. P. C. *Emperor v. Chuhra*.

4 Cr. L. J. 37 :
7 P. L. R. 271.

—Acquittal.

Although the High Court has the power in revision in the case of an acquittal to order a retrial, it is a jurisdiction which should be exercised only in exceptional cases and with caution. *Nand Ram v. Khazan*.

22 Cr. L. J. 337 :
61 I. C. 161 : 19 A. L. J. 589 :
A. I. R. 1921 All. 266.

—Acquittal, if can be interfered with.

The High Court has no power to interfere in revision with the order of acquittal. *Kushala v. Emperor*.

39 Cr. L. J. 621 :
175 I. C. 548 : 40 P. L. R. 61 :
10 R. L. 743 : A. I. R. 1938 Lah. 339.

—Acquittal.

Revision of an order of acquittal may be allowed when the order of acquittal is based on an erroneous view of the law. *Harbans Kaur v. Lahari Ram*.

40 Cr. L. J. 131 :
178 I. C. 791 : 11 R. L. 499 :
A. I. R. 1938 Lah. 739.

—Acquittal—Magistrate misreading evidence of witness.

REVISION

A single mistake on the part of the Magistrate of misreading the evidence of a witness would not justify the use of the extraordinary power which the High Court has in revision of setting aside an order of acquittal. *Ragho Singh v. Rambirich Singh*. 39 Cr. L. J. 968 : 177 I. C. 999 : 11 R. P. 203 : 5 B. R. 21 : A. I. R. 1939 Pat. 28.

—Acquittal.

A District Magistrate has no authority to set aside an order of acquittal by a subordinate Magistrate in revision or to act otherwise than as provided by S. 438, Cr. P. C. A High Court can take action of its own motion and set aside an order of acquittal and direct a retrial. *Rohiti Singh v. Makhdam Kalwar*.

23 Cr. L. J. 271 :
66 I. C. 335 : 9 O. L. J. 54 :
A. I. R. 1922 Oudh 145.

—Acquittal.

Power of High Court to interfere with order of acquittal at the instance of a private complainant. *Kangali Sardar v. Bama Charan Bhattacharjee*.

12 Cr. L. J. 609 :
12 I. C. 985 : 38 Cal. 786.

—Alteration of findings.

It is not proper for the High Court to alter the findings of the trial Magistrate when it cannot be shown that he has made any grievous error in his estimation of the evidence. *Ghan Toon v. Ma Ti*.

37 Cr. L. J. 6 :
159 I. C. 81 : 8 R. Rang. 245 (2) :
A. I. R. 1935 Rang. 359.

—Application for—Principle.

The correct principle in dealing with an application for revision as regards facts, is to refuse when there is evidence on the record which is adequate, and which, if believed, justifies the conviction, and that where two Courts have agreed on the facts, the mere fact that the High Court might have come or would have come to a different conclusion on the facts would not, except in rarest cases, justify its interference. *Swami Dayal v. Emperor*.

7 Cr. L. J. 353 :
3 P. W. R. 30 Cr. : 8 P. R. 1908 Cr. :
9 P. L. R. 448.

—Circumstantial evidence—High Court's power to go into evidence on revision side—Evidence.

It is not legal to convict only on circumstantial evidence connecting the accused with commission of the crime, especially when it can be explained otherwise. In this case the Chief Court discussed the evidence, reversed concurrent findings on facts of both the Courts below and acquitted the accused. *Abdul Ghafur v. Emperor*.

11 Cr. L. J. 425 :
6 I. C. 957 : 25 P. W. R. 1910 Cr.

—Compounding, power to allow.

A High Court in revision may grant permission to compound an offence and allow a case to be compromised. Where in a case under S. 325, Penal Code, the complainant and the accused were willing to compromise,

REVISION

it was no sufficient reason to refuse composition on the ground that a third party, the master of the complainant, who had received no injury from the accused, has refused or was not willing to agree to the composition. *Lalla v. Emperor*.

15 Cr. L. J. 567 :
24 I. C. 975 : 17 O. C. 92 :
A. I. R. 1914 Oudh 167.

—————Concurrent findings set aside.

Where the materials on the record were insufficient to hold for certainty that the accused had himself made away with Government money in any of the cases brought against him for cheating, the Chief Court on the revision side upset the concurrent finding of both the lower Courts and acquitted him. *Shib Das v. Emperor*.

11 Cr. L. J. 97 :
4 I. C. 978 : 13 P. W. R. 1909 Cr. :
106 P. L. R. 1909.

—————Concurrent findings of facts set aside.

Where the complainant was an enemy of the accused and other circumstances also made the case against the accused doubtful, he was acquitted despite the concurrent findings of the lower Courts. *Rattu Ram v. Emperor*.

15 Cr. L. J. 591 :
25 I. C. 343 : 168 P. L. R. 1914 :
28 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 66.

—————Concurrent findings of fact — Interference.

Normally a Court of Revision will not interfere with concurrent findings of fact, but where the Courts below have not really approached the case with either a clear appreciation of the issues involved or a clear understanding of the principles of criminal law, the interference is proper. *K. V. Ramaswami Naick v. Rangaswami Chettiar*.

39 Cr. L. J. 144 :
172 I. C. 501 : 1937 M. W. N. 733 :
10 R. M. 457 : 47 L. W. 140 :
A. I. R. 1937 Mad. 968.

—————Conviction, illegality of—Evidence, unreliable—Conviction, legality of—Cr. P. C., S. 439.

Where the persons who restored the stolen property to its owner deposed that it was recovered from the petitioner, and he was consequently convicted under S. 457, Penal Code, but no name of any burglar was given in the first report to the Police, and their evidence was not reliable according to the circumstances of the case: *Held*, that the lower Courts were not justified in convicting the petitioner. *Machhia v. Emperor*.

16 Cr. L. J. 737 :
31 I. C. 337 : 28 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 386.

—————Conviction, set aside.

Where the record disclosed no legal evidence in support of a conviction, the conviction was set aside on revision. *Bishan Datt v. Emperor*.

2 Cr. L. J. 22 :
2 A. L. J. 53.

REVISION

—————Conversion.

Conviction under S. 199, Penal Code, whether can be converted to one under S. 182. *Ismail v. Emperor*.

15 Cr. L. J. 603 (b) :
25 I. C. 515 : 23 P. R. 1914 Cr. :
278 P. L. R. 1914.

—————Concurrent findings of facts.

Where a lower Appellate Court has fallen into a material error as to facts, the Chief Court will interfere in revision. *Prabhu Dyal v. Emperor*.

13 Cr. L. J. 774 :
17 I. C. 406 : 224 P. L. R. 1912 :
38 P. W. R. 1912 Cr.

Death of applicant after filing revision—High Court can take action *suo motu*. *Fariduddin Khan v. Emperor*.

37 Cr. L. J. 562 (1) :
162 I. C. 338 : 1936 A. L. J. 253 :
1936 A. W. R. 273 : 8 R. A. 861 :
A. I. R. 1936 All. 313.

—————Decision on merits, necessity of.

A High Court, having once admitted a case in revision and having fixed a date for the hearing thereof, ought to dispose of it on the merits after hearing the applicant for revision. *Sheo Singh v. Emperor*.

15 Cr. L. J. 721 :
26 I. C. 69 : 1 O. L. J. 541 :
A. I. R. 1914 Oudh 305.

—————Delay in applying.

Unexplained delay in applying for revision of an order passed to the prejudice of the applicant is a reason for the High Court, in the exercise of its discretion, declining to interfere. *Emperor v. Jagan Nath*.

2 Cr. L. J. 154 :
25 A. W. N. 65 : 27 All. 486.

—————Discharge, setting aside of.

The Sessions Court as well as the High Court should be very slow to interfere in revision to set aside an order of discharge. *Akberally Tayaballi v. Ali Mohammad Abdul Husain*.

40 Cr. L. J. 951 :
184 I. C. 282 : 41 Bom. L. R. 749 :
12 R. B. 159 : A. I. R. 1939 Bom. 372.

—————Discretion.

The revisional powers of the Chief Court against orders of acquittal are not confined to points of law but extend in exceptional cases to questions of fact also, though the Court in doing so cannot then and there convict but can only order a new trial. The Chief Court should revise orders of acquittal wherever justice requires that it should do so, the exercise of revisional jurisdiction is not affected by the fact that no appeal has been filed by Government against the order of acquittal. *Viru Mal v. Saddu*.

8 Cr. L. J. 462 :
3 P. W. R. Cr. 53 : 9 P. L. R. 507.

—————Dismissal—Second petition.

Once a criminal revision petition is dismissed on the merits by a High Court, the rules of equity, justice and good conscience require that no other petition on the same matter should lie. *In re : Kanakasabhai*.

16 Cr. L. J. 697 :
30 I. C. 745 : 1915 M. W. N. 786 :
A. I. R. 1916 Mad. 516.

REVISION

—————*Charge of mala fides against Magistrate—Charge upon belief—Duty of Counsel.*

A charge upon belief of *mala fides* against a Magistrate, the grounds for which are not stated, should not be introduced in an application for revision. When charges of this character are made in Court by Counsel, it is his duty to see upon what the charges are based before he makes them, even if his observations are based upon the affidavit of his client. *Pratt, T. R. v. Emperor.*

21 Cr. L. J. 577 :
57 I. C. 97 : 24 C. W. N. 410 :
31 C. L. J. 188 : 47 Cal. 647 :
A. I. R. 1920 Cal. 349.

—————*Evidence, consideration of.*

For purposes of revision, a High Court is not a Court of Appeal, but it is its duty to endeavour to weigh the evidence and to see whether the case has been fairly considered from the point of view of the defendant. If the evidence for the defence is equally good as that for the prosecution, a High Court may quash the order in revision. *Angnoo Singh v. Emperor.*

24 Cr. L. J. 257 :
71 I. C. 865 : 20 A. L. J. 881 :
45 All. 109 : A. I. R. 1923 All. 35.

—————*Duty of Magistrate.*

Magistrates should remember that there is a revisional authority over them and should indicate with reasonable fullness the materials on which they conclude that there was an emergency to justify the passing of *ex parte* orders affecting the liberty of person. *S. S. Venkata Ramana Aiyar v. Emperor.*

19 Cr. L. J. 56 :
43 I. C. 88 : 6 L. W. 456 :
22 M. L. T. 323 : 1917 M. W. N. 721 :
A. I. R. 1919 Mad. 1004.

—————*Enhancement of sentence—Application by private complainant.*

Where a private complainant applies in revision for changing the conviction of the accused from S. 323 to S. 325, I. P. C., and for enhancement of the sentence, the High Court should refuse to entertain such an application where Government has not seen fit to move. But where the High Court considers the sentence imposed to be glaringly inadequate in the case of one of the accused at least, and that the judgment of the trial Magistrate very weak and illogical in its final conclusions, then its interference is called for. *Shankar v. Rama.*

41 Cr. L. J. 793 :
189 I. C. 731 : 1940 N. L. J. 389 :
13 R. N. 74 : A. I. R. 1941 Nag. 276.

—————*Enhancement of sentence—Conviction treated as conclusive.*

It has been the invariable practice of the Bombay High Court, in cases that come up before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis. *Emperor v. Chinto Bhairava.*

7 Cr. L. J. 119 :
10 Bom. L. R. 93 : 32 Bom. 162.

REVISION

—————*Expunging damaging remarks.*

Damaging remarks cannot be made against the character of a witness without sufficient trustworthy proof on the record and without further hearing his explanation to the suspicions raised against him. The High Court can, on the Revision Side, expunge such remarks from the judgment of a Subordinate Court when there is nothing to justify them. *Naba v. Emperor.*

12 Cr. L. J. 393 :
11 I. C. 577 : 12 P. W. R. 1911 Cr. :
193 P. L. R. 1911.

—————*Revision—Expunging of objectionable remarks.*

In passing orders, the Magistrate should use more decorum and more restraint in choosing words. But where the language used, in reference to a party although objectionable, is not so harsh or uncalled for as to be corrected judicially, the High Court would not interfere and expunge the objectionable part of it in revision. *Penumalsa Ranga Rozu v. Kandregula Srinivasa Jagannatha Rao.*

39 Cr. L. J. 922 :
177 I. C. 584 : 1938 M. W. N. 252 :
47 L. W. 340 : 1938, 1 M. L. J. 453 :
11 R. M. 346 : A. I. R. 1938 Mad. 654.

—————*Expunging of remarks.*

Observations prejudicial to character of person, not connected with case—High Court can expunge remarks. *Bhagal Singh v. Emperor.*

36 Cr. L. J. 383 (1) :
153 I. C. 262 : 35 P. L. R. 373 :
7 P. L. 425 (1).

—————*Failure to issue process—Interference.*

Where it appears from the records that there are no sufficient grounds for issuing notice to an accused person, the High Court will not be justified in interfering in revision merely because the Magistrate who had cognizance of the matter, failed to give reasons for not issuing the process; but if it is found from the records that the Magistrate had not good grounds for not issuing process, the High Court can interfere in revision. *In re : Venkatasubba Pillai.*

39 Cr. L. J. 984 :
177 I. C. 957 : 11 R. M. 396 : 48 L. W. 801 :
1938, 2 M. L. J. 372 :
1938 M. W. N. 973 :
A. I. R. 1938 Mad. 879.

—————*Findings of fact—Jurisdiction of High Court to interfere.*

As a matter of practice, the High Court does not ordinarily interfere with the conclusions of the lower Appellate Court on questions of fact, but there cannot be any question as to the competency of the High Court to interfere with a finding of fact when the occasion requires it. *Ram Prosad v. Emperor.*

13 Cr. L. J. 897 :
17 I. C. 993 : 16 C. L. J. 455 :
17 C. W. N. 379.

—————*Findings of facts.*

As a rule, the findings of fact of the lower Court are accepted by the High Court

REVISION

in revision cases, but there are exceptions to this. *Hari Bhumali v. Emperor*.

2 Cr. L. J. 836 :
9 C. W. N. 974.

—Findings of fact—High Court, power of.

A Court of Revision should not usually go behind the facts as found by the Trial Court and the Court of Appeal. Unless on the face of it the decisions are perverse, it is most inadvisable to go behind their findings. *Bhola v. Emperor*.

23 Cr. L. J. 86 :
65 I. C. 438 : 20 A. L. J. 49 :
A. I. R. 1922 All. 86.

—Finding of facts—Interference.

As a rule, the High Court will not, in criminal revision, go into the facts of the case or go behind the finding of facts arrived at by the lower Courts; but in a case which depends wholly on circumstantial evidence, the question whether the circumstances taken as a whole amount to conclusive proof of the guilt of the accused or not, has often to be considered even by a Court of Revision. *Basudeo Mandar v. Emperor*.

30 Cr. L. J. 835 :
117 I. C. 879 : I. R. 1929 Pat. 479 :
A. I. R. 1929 Pat. 112.

—Finding of facts—Interference.

In criminal revision, the High Court does not ordinarily consider questions of fact, except where the matter has been before only one Court below. *Sheo Singh v. Emperor*.

15 Cr. L. J. 721 :
26 I. C. 69 : 1 O. L. J. 541 :
A. I. R. 1914 Oudh 305.

—Finding of fact.

Where that finding of fact is not passed upon the evidence on the record and is proved to be wrong from the record itself, then it is open to the applicant even in revision to challenge that finding of fact. *Munoo Lal v. Emperor*.

36 Cr. L. J. 477 :
154 I. C. 258 : 7 R. O. 459 :
1935 O. W. N. 126 :
A. I. R. 1935 Oudh 241.

—Duty of High Court.

In an application for revision, the main question which the High Court has to consider is whether substantial justice has been done, whether it should interfere in the interests of justice, though in an appeal, the applicants would be entitled to demand an adjudication upon all questions of fact or law which they wish to raise. *Kewal Singh v. Emperor*.

37 Cr. L. J. 1022 (a) :
164 I. C. 701 : 9 R. A. 184 (a).

—Finding of facts.

High Court will not ordinarily, in revision, go behind the finding of facts of the lower Courts, but where they are inadequate and the construction of a document on which the question of guilt or innocence largely

REVISION

depends erroneous, the High Court has power to go fully into the facts. *Karim Bakish v. Emperor*.

2 Cr. L. J. 67 :
12 P. R. Cr. 1905 : 6 P. L. R. 278.

—Grounds for.

In a case under S. 211, Penal Code, two principles must be kept in view : (1) that failure on the part of a complainant to establish the truth of his allegation does not, by any means, justify the inference that the complaint was false, and (2) that to secure a conviction, it must be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence. *Ram Prosad v. Emperor*.

13 Cr. L. J. 897 :
17 I. C. 993 : 16 C. L. J. 453 :
17 C. W. N. 379.

—Ground for.

The trying Magistrate refused to allow the complainant to put certain questions to a prosecution witness on the ground that his answering the questions might incriminate him in another pending case in which he was an accused person: *Held*, that this was a fit case for interference in revision at an interlocutory stage. *Imperator v. Teju*.

10 Cr. L. J. 237 :
2 S. L. R. 25.

—Ground for.

The misreading of documents and the fundamental errors in principle is a ground for revision. *Emperor v. Bal Gangadhar Tilak*.

1 Cr. L. J. 305 :
6 Bom. L. R. 324 :
I. L. R. 28 Bom. 479.

—Ground, new, whether can be urged before High Court.

The object of requiring an application for revision to be presented first to the District Magistrate or to the Sessions Judge is, that the High Court in dealing with the matter may have before it a reasoned opinion of two Courts on the points at issue, and this object will be largely defeated if applicants are allowed to take in the High Court points which they did not press before the lower Appellate Court. *Bhure Mal v. Emperor*.

24 Cr. L. J. 689 :
73 I. C. 801 : 45 All. 526 :
A. I. R. 1923 All. 606.

—High Court and Sessions Court, concurrent jurisdiction of—Practice.

It is not usual for a High Court to entertain application in revision made to it directly from a conviction under S. 24, Cattle Trespass Act, without going to the Court of Session which has concurrent powers of revision. But after they have been admitted, they must be disposed of on the merits. *Chokat Ahir v. Suraj Singh*.

41 Cr. L. J. 257 :
186 I. C. 182 : 6 B. R. 301 :
21 P. L. T. 627 : 12 R. P. 474 :
A. I. R. 1940 Pat. 299.

REVISION

———*High Court, powers.*

A High Court cannot, even in revision, convert an acquittal, even what has been called a "partial acquittal" into a conviction. *Khudu v. Emperor*.

40 Cr. L. J. 375 (b) :
180 I. C. 418 : 32 S. L. R. 18 :
11 R. S. 173 : A. I. R. 1939 Sind 57.

———*Finding of facts—Interference.*

The High Court in revision will interfere with finding of facts only on the clearest and strongest grounds as when, for instance, there is no evidence to justify the finding of the lower Court or when it appears to the Court that the proceedings are so defective that the conscience of the Court is touched or there has clearly been a miscarriage of justice. *Emperor v. Ali Muhammad*.

38 Cr. L. J. 117 :
165 I. C. 950 : 9 R. S. 114 :
30 S. L. R. 368 : A. I. R. 1936 Sind 243.

———*Power of High Court.*

S. 439, Cr. P. C., does not authorize the High Court to direct a subordinate Court to refrain from trying an accused person against whom it has issued process. *Jharu Lal v. Madan Das*.

24 Cr. L. J. 809 :
74 I. C. 713 : 2 Pat. 257 :
A. I. R. 1923 Pat. 410.

———*Revision.*

In a revision from acquittal an applicant is not permitted to take the High Court through the evidence. *Emperor v. Alma Ram*.

36 Cr. L. J. 490 :
154 I. C. 315 : 7 R. A. 734 :
4 A. W. R. 246 :
A. I. R. 1934 All. 846.

———*Finding of facts.*

Though it is very unusual to interfere on revision on facts, but where the evidence is found insufficient, a conviction should not be allowed to stand. *Lehna v. Emperor*.

14 Cr. L. J. 148 :
19 I. C. 148 : 12 P. W. R. 1913 Cr. :
66 P. L. R. 1913.

———*Interference in—Principles.*

Though the High Court has a wide power of interference in revision to prevent injustice, it will not deal with questions of fact or of law as would a Court of first appeal. To justify the interference of the Court in revision, it must be shown, first, that the Judge below has committed some error of law: and secondly, that the accused has been materially prejudiced by that error. This Court may also exercise its revisional power even as regards findings of fact, in cases where the lower Court has totally misconceived the evidence and come to an obviously wrong conclusion. *Mohanlal Bhanatal Goela v. Emperor*.

39 Cr. L. J. 123 :
172 I. C. 374 : 10 R. S. 149 :
32 S. L. R. 87 : A. I. R. 1937 Sind 293.

———*Interference.*

It is out of the functions of a revisional

REVISION

Court to allow a witness applying for revision of an order sanctioning his prosecution for making contradictory statements, to start a wholly fresh theory in that Court, though that theory may be the correct explanation and may have been omitted for any reason. Such a reason may be duly considered in the trying Court but a Court of Revision should not interfere at that stage of the proceedings. *Valias Lalji Ramji v. Sutar Arjan Punja*.

7 Cr. L. J. 136.

———*Interference on facts.*

The orders of Criminal Courts should not be interfered with in revision upon facts save in rare cases and for very exceptional reasons. *Girdhari Lal v. Emperor*.

12 Cr. L. J. 217 :
10 I. C. 156 : 11 P. R. 1911 Cr. :
32 P. W. R. 1911 Cr. : 146 P. L. R. 1911.

———*Interference.*

The Chief Court will not interfere in revision in a case where the Sessions Judge passes on the accused a heavier sentence than he would have passed had he agreed with the verdict of the Jury. *Emperor v. Chit Maung*.

11 Cr. L. J. 657 :
8 I. C. 455 : 3 Bur L. T. 77.

———*Interference with charge.*

Existence of facts justifying framing of charge—Magistrate must be left to exercise discretion and continue trial—Revisional Court cannot interfere because Magistrate has not done, as revisional Court would have done. *U. Nyo Sein v. Emperor*.

36 Cr. L. J. 1293 :
158 I. C. 33 (2) : 8 R. Rang. 141 :
A. I. R. 1935 Rang. 292.

———*Interference with order under S. 203, Cr. P. C.*

Magistrate dismissing complaint under S. 203, Cr. P. C., after local enquiries and satisfying himself that complaint was not true—Complainant not examined and his statement not recorded—Interference in revision by High Court, held was not called for. *Ram Gir v. Rani Saran Singh*.

36 Cr. L. J. 1035 :
156 I. C. 948 : 1935 A. L. J. 972 :
8 R. A. 64 : 1935 A. W. N. 936 :
A. I. R. 1935 All. 883.

———*Interference with pending cases.*

The power of interference in pending cases is to be exercised with great care, and is generally exercised not only when the error is patent on the face of the record, but also when grave injustice would result unless prompt redress were given. *Murtiza Khan v. Emperor*.

A. I. R. 1934 Nag. 138.

———*Revision.*

Judgment of single Judge with Jury exercising original Criminal jurisdiction—Power of Chief Court to revise such judgment. *Press v. Emperor*.

9 Cr. L. J. 378 :
1 I. C. 747 : 4 P. R. 1909 Cr. :
10 P. W. R. 1909 : 41 P. L. R. 1909.

REVISION

———*Courts, inferior and superior.*

The Court of a District Magistrate is for the purposes of revision, a Court inferior to that of the Sessions Judge. *Harkaran Singh v. Harnam Singh*. 17 Cr. L. J. 223 :

34 I. C. 335 : 3 O. L. J. 38 :
19 O. C. 108 : A. I. R. 1916 Oudh 136.

———*Limitation.*

Limitation for an application for revision being a matter of practice and not prescribed by Statute, where an application for revision is admitted out of time when it was found that an appeal preferred was incompetent and the mistake in procedure was a *bona fide* one, the application should not be dismissed solely on the ground of limitation. *Mahbub v. Emperor*.

38 Cr. L. J. 262 :
166 I. C. 690 : 19 N. L. J. 244 :
9 R. N. 139 : A. I. R. 1936 Nag. 266.

———*Notice.*

Revision of an order under S. 203, Cr. P. C.—Notice to opposite party not necessary. *Goda Hussain v. Janki*.

11 Cr. L. J. 629 :
8 I. C. 371 : 13 O. C. 289.

———*Revision.*

Object of criminal acts is a question of fact—Concurrent findings of lower Courts should not be disturbed. *Baldeo Narayan Chaudhary v. Emperor*.

37 Cr. L. J. 309 (1) :
160 I. C. 443 : 16 P. L. T. 891 :
2 B. R. 210 : 8 R. P. 364 :
A. I. R. 1936 Pat. 38.

———*Order under S. 45, Punjab Laws Act, not revisable.*

The proceedings of a District Magistrate requiring Foreign vagrants to leave his district under S. 45, Punjab Laws Act, 1872, are not judicial proceedings and are, therefore, even if illegal, not open to revision by the Chief Court. *Sundar v. Emperor*.

6 Cr. L. J. 379 :
9 P. R. 1907 Cr. : 2 P. W. R. 96 Cr. :
9 P. L. R. 109.

———*Order of Income-tax Collector—High Court cannot revise order of Income-tax Collector passed under S. 476, Cr. P. C.—“Court,” meaning of—Income-tax Collector, whether a Revenue Court.*

The High Court is not empowered to revise the order of an Income-tax Collector passed under S. 476, Cr. P. C., as he is not an inferior Criminal or Civil Court. The High Court has no authority to revise the order of a Revenue Court. An Income-tax Collector, when engaged in hearing objections to an assessment under the Income-tax Act is a Revenue Court within the meaning of S. 476, Cr. P. C., and is, consequently, empowered to order prosecution under the section for an offence committed before him and punishable under S. 193, Penal Code. *Per Crouch, A. J. G.*—An Income-tax Collector is not a Court within the meaning of S. 476, Cr. P. C. and criminal pro-

REVISION

ceedings instituted on a prosecution ordered by him under S. 476, Cr. P. C., ought to be quashed. *Emperor v. Daumal*.

10 Cr. L. J. 395 :
3 I. C. 886 : 3 S. L. R. 66.

———*Order of Magistrate ambiguous—Interference.*

Accused charged under Ss. 323 and 427, Penal Code—Magistrate's order ambiguous in mentioning whether accused were guilty of both offences or only of one—Sessions Judge interpreting that order as finding guilty under one : *Held*, interference in revision not called for. *Munna Lal v. Emperor*.

36 Cr. L. J. 1102 (2) :
157 I. C. 123 : 1935 A. L. J. 952.
1935 A. W. N. 931 : 8 R. A. 103 :
A. I. R. 1935 All. 630.

———*Oudh Chief Court—Direct revision in Chief Court.*

The Oudh Chief Court is precluded from entertaining an application for revision, by reason of the practice of the Court, where the applicant has not gone in revision to the Sessions Judge from an appellate order of the District Magistrate confirming the conviction and sentence passed on the accused. *Raja Ram v. Emperor*.

38 Cr. L. J. 1024 :
171 I. C. 167 : 10 R. O. 92 :
1937 O. L. R. 523 : 1937 O. W. N. 1044.

———*Finding of facts.*

In cases of regular appeal the ordinary rule is that no Court of Appeal will lightly substitute its own view of evidence for the view of the Court, which had the advantage of seeing and hearing the witnesses. An application in revision is on a lower plane than a regular appeal, and unless the petitioner can show some plain reasons against the order of discharge, he can have no chance of succeeding. *Mustafa v. Motilal*.

10 Cr. L. J. 160 :
2 I. C. 825.

———*Petition for.*

Petition for revision against order for compensation does not abate on petitioner's death. *Prem Singh v. Bhola*.

9 Cr. L. J. 103 :
24 P. R. Cr. 1908.

———*Power to go into evidence.*

Where the Appellate Court dismisses the appeal and its order betrays little or no indication that it has examined the evidence or brought an independent judgment to bear on main points it becomes necessary to examine the case in greater detail than would ordinarily be justified on revision. *Mohammad Shah v. Emperor*.

6 Cr. L. J. 137 :
2 P. W. R. Cr. 51.

———*Powers of Chief Court—Cr. P. C.—Ss. 110 to 118, 130.*

The Chief Court is competent, at any stage of a criminal case, to interfere in order to exercise its powers of revision particularly where the case is of an exceptional nature. So where the proceedings of a Magistrate under

REVISION

S. 110, Cr. P. C., are defective on one or more of the following grounds, the Chief Court would quash them at once; (1) The accused has already been twice acquitted on similar facts and evidence; (2) The original order is only initialled and not signed by the Magistrate, and neither the amount of security and the period for which it is required, nor the full particulars of the bad livelihood are mentioned therein. *Natha Singh v. Emperor*.

11 Cr. L. J. 387 :
6 I. C. 624 : 17 P. W. R. 1910 Cr.

———Power of Chief Court.

An order inflicting a fine, under S. 283, Cantonment Code, for breach of the conditions of a licence is a judicial order, and therefore, open to revision by the Chief Court. A fine cannot be inflicted under S. 283 for breach of the conditions of licence, where the licence only provides for suspension or cancellation in case of such breach. S. 283 cannot be applied to such a case. *Mangi Ram v. Emperor*.

11 Cr. L. J. 17 :
4 I. C. 611 : 9 P. R. 1909 Cr. :
30 P. W. R. 1909 Cr.

———Power of Chief Court.

The Chief Court has power to convert a finding of acquittal into one of conviction on revision. *Bhola v. Emperor*.

1 Cr. L. J. 942 :
5 P. L. R. 599 : 12 P. R. 1904 Cr.

———Revision.

Power of Chief Court to interfere in respect of a warrant issued by a Political Agent. *Giyan Chand v. Mehram*.

9 Cr. L. J. 3 :
1 I. C. 198 : 3 P. R. 1909 :
36 P. W. R. 1908 Cr.

———Power of High Court.

A High Court has no power to send for the record of a case which in intention and in fact has been begun and continued under Chap. XII of the Cr. P. C. *Shohrat Singh v. Daryao Singh*.

13 Cr. L. J. 495 :
15 I. C. 495.

———Power of High Court to examine evidence.

Ordinarily it is not usual for the High Court to interfere in revision with a decision of the lower Court when that decision is based upon a consideration of the evidence on the record, but where the evidence is that of accomplices and that lower Appellate Court has not given due weight to this factor and has upheld the conviction of the applicants upon the tainted evidence of accomplices, the conviction cannot be upheld by the High Court in revision. *Jagdish Prasad v. Emperor*.

37 Cr. L. J. 951 :
164 I. C. 428 (2) : 9 R. O. 63 :
1936 O. L. R. 454 :
1936 O. W. N. 829 :
A. I. R. 1936 Oudh 401.

———Power of High Court.

Per *Mukarji, J.*—High Court should not sift evidence and conclude as to commission of

REVISION

offence where Magistrate has not pronounced opinion and no appeal has been heard. *Emperor v. Bansgopal*. (F. B.)

34 Cr. L. J. 1030 :
145 I. C. 680 : 6 R. A. 141 :
1933 A. L. J. 875 :
A. I. R. 1933 All. 669.

———Power of High Court.

The High Court will, on its revisional side, interfere only as a Court of last resort under very exceptional circumstances. *Martand Rao v. Emperor*.

19 Cr. L. J. 900 :
47 I. C. 96 : A. I. R. 1918 Nag. 173.

———Revision.

Power of High Court to interfere with the discretion of District Magistrate in directing security for good behaviour. *Gur Bakhsh Singh v. Emperor*.

12 Cr. L. J. 542 :
12 I. C. 518.

———Power of High Court.

When an illegal order is passed and action taken which involves matter coming within the purview of law and justice, and within the scope of authority of the Courts, such authority cannot be ousted by the mere *ipse dixit* of the officer that he was not acting as a Judicial Officer, but in his executive capacity and the High Court can interfere on revision side. *Shiv Nath v. Emperor*.

7 Cr. L. J. 202 :
3 P. W. R. 1 Cr. : 4 P. R. 1908 Cr. :
86 P. L. R. 1908.

———Powers of High Court.

Where on the allegations made by the complainant, no offence has been committed, the High Court in revision can quash the charges against the accused. *Wasinda Ram v. Bahadur Khan*.

36 Cr. L. J. 20 :
152 I. C. 224 : 35 P. L. R. 361 :
7 R. L. 268 : A. I. R. 1934 Lah. 434.

———Interference with sentence of non-appealing accused.

In exercise of its revisional jurisdiction, the High Court can, on the appeal of one accused, deal with the sentences passed on the other co-accused who have not appealed. *Chari v. Emperor*.

12 Cr. L. J. 250 :
10 I. C. 792 : 4 Bur. L. T. 87.

———Limitation.

An application for revision to the High Court ought to be made at the earliest possible moment. But the rule is not inflexible, and the High Court has reserved to itself the power, when exceptional circumstances are proved, to depart from it. The usual practice of the Calcutta High Court is to allow 60 days' time to an accused person for making an application for revision, counted from the date of the conviction or the order complained of. But the time which is occupied in prosecuting with diligence, his application to the Sessions Judge for a reference to the High Court, and obtaining his decision, should not be included in counting the 60 days but should be added to the 60 days just in the same way

REVISION

as the time necessary for obtaining copies of judgments, decrees and orders. *Raj Chandra Bhuiya v. Emperor.*

18 Cr. L. J. 694 :
40 I. C. 694 : 25 C. L. J. 564 :
A. I. R. 1917 Cal. 680.

—————*Finding of facts.*

It is not the practice of the Judicial Commissioner's Court to entertain objections to finding of facts on the merits thereof, in revision, in the absence of the most exceptional grounds. *Ramrao v. Emperor.*

18 Cr. L. J. 993 :
42 I. C. 721 : 13 N. L. R. 169 :
A. I. R. 1917 Nag. 203.

—————*Grounds.*

Matters which are not urged before the first Court of Revision, may be urged in moving the High Court. *Maniruddin Sarkar v. Abdul Rauf.*

13 Cr. L. J. 482 :
15 I. C. 482 : 40 Cal. 41.

—————*Hearing an appeal.*

In hearing a petition for revision against an order of conviction passed after unjustifiable order for retrial, seriously prejudicial to the accused, the Chief Court will proceed to try the case as an appeal, *i.e.*, will go into all the facts of the case to satisfy itself as to the guilt or innocence of the accused. *Hira v. Emperor.*

10 Cr. L. J. 314 :
3 I. C. 580 : 8 P. R. 1909 Cr. :
17 P. W. R. 1909 Cr.

—————*Finding of facts.*

Inasmuch as a criminal revision is not a second appeal on questions of fact, it is the practice of the High Courts to accept facts as found unless there is anything on face of the record against that course being adopted or the accused have been prejudiced by the action and procedure of the Courts below. *Suryabhan v. Emperor.*

24 Cr. L. J. 203 :
71 I. C. 667 : A. I. R. 1923 Nag. 155.

—————*Powers of High Court.*

Ordinarily the High Court would be loath to pass any order which would curtail any privileges granted to accused persons by an order of the Court below, but where the accused are emphatic, that they do not desire the privileges afforded them, and have stated so even before the order in the lower Court was passed and have reiterated the same before the High Court, the order of the lower Court can be set aside. *Sheoram v. Emperor.*

38 Cr. L. J. 1058 :
171 I. C. 262 : 10 Rang. 102 :
I. L. R. 1937 Nag. 541 :
A. I. R. 1937 Nag. 285.

—————*Quashing proceedings.*

Power of High Court to quash illegal proceedings started without complaint. *Abdulla v. O. Clarke.*

9 Cr. L. J. 154 :
1 I. C. 99 : 3 P. W. R. 1909 Cr.

REVISION

—————*Quashing proceedings.*

The High Court can, in exercise of its revisional jurisdiction, quash proceedings pending before a Magistrate or a Sessions Judge, but such power should be grudgingly used, and only when on the very face of the proceedings, there has been some grave irregularity or error of law. *Crown v. Salamatrai.*

9 Cr. L. J. 270 :
1 S. L. R. 30.

—————*Questions of fact.*

High Court sitting in revision cannot allow the applicant to introduce before it questions of fact which, as they were not disputed, by implication, were admitted in the lower Court. *Nebhandas Hollaram v. Emperor.*

41 Cr. L. J. 246 :
185 I. C. 832 : 1940 Kar. 91 :
12 R. S. 192 :
A. I. R. 1939 Sind 337.

—————*Retrial, when ordered.*

In the exercise of its revisional powers, a retrial is ordered by the High Court only in cases where non-compliance with the provisions of the Cr. P. C., has prejudiced the accused. The High Court is not bound to set aside a trial on a technical point on the revision side if no injustice has resulted. *Gurdas Singh v. Emperor.*

40 Cr. L. J. 186 :
179 I. C. 249 : 40 P. L. R. 589 :
11 R. L. 547 (1) : A. I. R. 1938 Lah. 832.

—————*Sanction to prosecute—Order of Magistrate.*

The High Court has power to interfere in revision in a case where the Magistrate sanctions a prosecution under the above circumstances, even if the order was passed under S. 476, Cr. P. C. *Muhammad Usman v. Emperor.*

7 Cr. L. J. 3 :
4 A. L. J. 811 : 28 A. W. N. 22.

—————*Security order.*

An order binding down a person to be of good behaviour should not be interfered with in revision unless it is obvious that a miscarriage of justice has taken place. *Bakaram v. Emperor.*

23 Cr. L. J. 741 :
69 I. C. 629 : A. I. R. 1923 Nag. 53.

—————*Sentence.*

As a rule, the High Court is reluctant in interfering in the sentence passed by the trial Court. *Gul Zaman Mir Zaman v. Emperor.*

41 Cr. L. J. 132 :
185 I. C. 208 : 12 R. Pesh. 33 :
A. I. R. 1939 Pesh. 47.

—————*Sessions Judge dismissing summarily—Interference.*

The fact that a Sessions Judge dismisses an application for revision summarily without hearing Counsel, is no ground for interfering with his order. *Sukhpal Lal v. Emperor.*

26 Cr. L. J. 1452 :
89 I. C. 972 : A. I. R. 1926 Oudh 63.

REVISION

———*Setting aside conviction.*

The applicant was convicted by a Magistrate under S. 109, read with S. 325, Penal Code. On 11th April 1910, the Sessions Judge on appeal, altered the conviction to one under S. 323 read with S. 114 of the Code but maintained the sentence passed by the Magistrate. The Sessions Judge at the end of his judgment recorded: "that no application for permission to compound has been made nor has it been stated that the complainant is willing to compound." On 18th April, 1910, the present application for revision was made on the ground that the complainant was willing to compound the offence but no opportunity was given by the Judge for the purpose. Simultaneously with this an application was put in by the complainant stating that the dispute had been compromised and asking the Court to allow the offence to be compounded: *Held*, that the Court had power to pass any order that may be just and proper, and the offence having been compounded, the conviction should be set aside. *Ram Sarup v. Emperor.*

11 Cr. L. J. 496 :
7 I. C. 539 : 13 O. C. 161.

———*Evidence, examination of.*

When the evidence against an accused person is weak, suspicious and inconclusive, the Chief Court, on revision side, can examine and discuss the evidence on the record, upset the concurrent findings on fact of both the lower Courts and set aside the conviction. *Bhagwan Singh v. Emperor.*

6 Cr. L. J. 263 :
2 P. W. R. 67 Cr.

———*Power of High Court.*

S. 439 (1), Cr. P. C., refers to a case where the trial has ended in a complete acquittal, not to a case where the trial has ended in a conviction but the Court has wrongly applied the law or has wrongly found some fact not proved, and has, in consequence, held that the conviction should be under some section of the Code other than the section properly applicable. The sub-section cannot be held to limit the powers of a Court of Appeal. It only limits the powers of a High Court when acting, not as a Court of Appeal but as a Court of Revision. *Kambam Bali Reddy v. Emperor.*

15 Cr. L. J. 180 :
22 I. C. 756 : 37 Mad. 149 :
A. I. R. 1914 Mad. 258.

———*Summary dismissal, setting aside of.*

Where on the facts, the case is one in which the appeal ought not to have been summarily dismissed, the High Court may set aside that order of summary dismissal. *Manmatha Nath Sirkar v. Union Board of Dhatrigram.*

37 Cr. L. J. 904 :
164 I. C. 270 : 40 C. W. N. 128 :
9 R. C. 187.

———*Summary trial—Interference by High Court, when proper.*

Ordinarily the High Court should not interfere in revision in a case tried summarily

RIOTING

in which a relatively small fine has been imposed, but where there has been such confusion in the minds of the Magistrates and in consequence in the mind of the accused as to the offence with which the accused has been tried and charged, it should do so. *Choithram Menghraj v. Emperor.*

39 Cr. L. J. 474 :
174 I. C. 685 : 10 R. S. 259 :
32 S. L. R. 684 :
A. I. R. 1938 Sind 70.

———*Reference by S. B. to D. B.*

There is no provision in the Code or in the rules of the High Court under which a reference can be made by a single Judge to a Division Bench for the expression of an opinion on a point of law only. *Aghore Dulla v. Emperor.*

32 Cr. L. J. 1197 :
134 I. C. 619 : 12 P. L. T. 601 :
11 Pat. 143 : I. R. 1931 Pat. 475 :
A. I. R. 1931 Pat. 379.

RIGHT OF PROSECUTION

———*Public servant.*

The right to prosecute any person, or body of persons, by whom one may have been injured is a common right which can only be limited by special legislation; and in considering whether the right has been taken away, it must be seen that it is taken away by express words, or by necessary implication. *Maung Saw Maung v. Ma Me Shwe.*

40 Cr. L. J. 648 :
182 I. C. 262 : 1939 Rang. 117 :
11 R. Rang. 519 : A. I. R. 1939 Rang. 202.

RIOTING

———*Conviction under S. 326, Penal Code.*

Where one party in possession of land on which they have grown crops, which they are entitled to harvest and remove, resist a forcible attempt by another party for removing the said crops, the first party cannot be convicted of rioting under S. 148, Penal Code. One of the accused in this case was armed with a *garansa* with which he inflicted grievous hurt on one of the complainant's party: *Held*, that there was no justification for his using the *garansa*, that he exceeded his right of private defence, and that he was rightly convicted under S. 326, Penal Code. *Jhalku Tewari v. Emperor.*

14 Cr. L. J. 590 :
21 I. C. 382 : 17 C. W. N. 1081.

———*Duty of Appellate Court.*

Where a charge, as drawn up by the Magistrate, alleges several alternative common objects of the unlawful assembly, it is incumbent on the Appellate Court to determine whether it is sustainable, and if so, which of the common objects stated has been made out. *Manaruddi v. Emperor.*

8 Cr. L. J. 203 :
35 Cal. 718.

———*Procedure — Description by specific name, whether legal — Further particulars — Court's discretion — Common object.*

In cases of rioting, the common object should be stated in the charge, but an omission to do so under Ss. 143 and 147,

SALT ACT (XII OF 1882)

Penal Code, would not vitiate a conviction if there was evidence on the record to show it. But, as a matter of law, it is otherwise with a charge under S. 149, Penal Code. There is no specific name of the offence and the fact that any offence is committed in prosecution of the common object is of the essence of the case, and there could be no conviction for any offence committed with a different common object. It is, therefore, obligatory to set out the common object in a charge under S. 149, unless it has been already specified in the main charge under S. 147. *Kudrutullah v. Emperor*.

13 Cr. L. J. 218 :
14 I. C. 214 : 39 Cal. 781.

———*Right of proprietors of market.*

The proprietors of a market have the right to direct that any particular kinds of things should not be sold there by a person who is not a permanent shopkeeper. *Raj Kumar Chuckerbutty v. Emperor*.

4 Cr. L. J. 406 :
11 C. W. N. 28.

RULE OF THE ROAD

There is a duty on every user of the road to make a reasonable use of it for the purposes of passing along it, and to allow others to do so also. *Emperor v. Homnarain Sukhailal Kachhi*.

35 Cr. L. J. 696 :
148 I. C. 541 : 6 R. N. 186 :
A. I. R. 1934 Nag. 65.

———*Compliance with.*

Motorists are not the only persons who owe a duty of care; others also have a responsibility and must conform to the ordinary usages of the road. *Emperor v. Homnarain Sukhailal Kachhi*.

35 Cr. L. J. 696 :
148 I. C. 541 : 6 R. N. 186 :
A. I. R. 1934 Nag. 65.

S**SALE OF GOODS ACT (III OF 1930)**

———*Applicability of.*

It is doubtful whether the Sale of Goods Act, is applicable to such things as gas, water and electricity. *Rash Behari Shaw (Handa) v. Emperor*.

38 Cr. L. J. 545 :
168 I. C. 657 : 9 R. C. 853 :
41 C. W. N. 225 :
A. I. R. 1936 Cal. 753.

SALT ACT (XII OF 1882)

———*Abetment—Penal Code (Act XLV of 1860), Ss. 5, 117—Abetment of offence under Salt Act—Punishment under S. 117, Penal Code, legality of.*

A person cannot be punished under S. 117, Penal Code, for abetment of an act, which is an offence under the Salt Act and not a separate offence under the Penal Code, inasmuch as S. 9, Salt Act, prescribes specific punishment for the abetment of such an offence under the Salt Act. S. 9, Salt Act,

SANCTION TO PROSECUTE

embraces all abetments whether aggravated or mitigated in their nature. *Emperor v. Mohan Lal Sakesena*.

32 Cr. L. J. 104 :
128 I. C. 221 : 7 O. W. N. 895 :
6 Luck. 266 : I. R. 1931 Oudh 29 :
A. I. R. 1930 Oudh 497.

———*S. 9—Offence under, essence of.*

The essence of the offence under r. 9 of the Notification is that duty has not been paid in the State where the salt was obtained. It cannot be presumed that duty was in fact not paid and the prosecution has to prove it. *Emperor v. Amir Hussain*.

36 Cr. L. J. 463 :
153 I. C. 951 : 36 P. L. R. 248 :
7 R. L. 481 : A. I. R. 1934 Lah. 967.

———*S. 9 (a)—Offence under.*

A person guilty of abetment of an offence under S. 9 (a) of the Salt Act, may be convicted and sentenced under S. 117 of the Penal Code. *Joti Prasad Gupta v. Emperor*.

33 Cr. L. J. 236 :
136 I. C. 91 : 53 All. 642 :
I. R. 1932 All. 139 :
A. I. R. 1932 All. 18.

———*Ss. 15, 18—Search—Procedure—Manufacture of saltpetre in unlicensed place.*

S. 15, Salt Act, is confined to the search of a place in which an article is manufactured under a licence or any rule made under the Act. Where salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place, the search of the place must be conducted under S. 18 and not under S. 15, Salt Act. *Ram Din v. Emperor*.

25 Cr. L. J. 463 :
77 I. C. 815 : A. I. R. 1924 All. 437.

———*S. 27—Importation of salt, what is.*

There is nothing in S. 27, Salt Act, to warrant the contention that importation into a part of the territories mentioned in S. 1 is to be taken as meaning only importation from outside those territories and not importation from one part of the territories into another part. Therefore, where a rule framed under S. 27, Salt Act, prohibits the importation of salt into a particular District, the rule is infringed by bringing salt into that District from another District in the same Province. *Sita Ram v. Emperor*.

23 Cr. L. J. 732 :
69 I. C. 460 : A. I. R. 1924 Lah. 160.

SANCTION TO PROSECUTE

———*Doubtful conviction—Cr. P. C., S. 195—Sanction to party to suit pending appeal to higher Court.*

In a suit for pre-emption, a sale-deed was produced on behalf of the defendants to show that part of the consideration consisted for certain promissory notes executed by the vendor. The promissory notes were found by the Subordinate Judge to be forgeries put forward with the object of increasing the pre-emption price and the plaintiff's suit was decreed, and on the application of the

SANCTION TO PROSECUTE

plaintiff the Subordinate Judge granted sanction to prosecute the defendants and certain witnesses examined on their behalf. On appeal the District Judge declined to revoke the sanction although he was of opinion that the evidence on which the Subordinate Judge relied as likely to secure a conviction was unsatisfactory. On an application for stay of the proceedings for sanction pending an appeal preferred by the defendants in the High Court against the decree of the Subordinate Judge: *Held*, that it was neither necessary nor desirable to grant sanction to one of the parties to pursue a doubtful criminal prosecution pending the decision of the appeal which had been ordered to be expedited and the hearing of which was probably being delayed by these proceedings. *Jadu Lal v. J. R. Lewis.* 5 Cr. L. J. 480 : 11 C. W. N. 712.

—————*Duty of Courts of fact to express opinion.*

It is desirable that Courts of fact should express themselves unequivocally on the question whether it is expedient in the interest of justice that an inquiry under S. 476 should be made, otherwise the High Court may have to look into the facts for itself and form its own opinion as to whether a prosecution is desirable or not. *Nand Kumar Sinha v. Emperor.* 39 Cr. L. J. 103 : 172 I. C. 237 : 4 B. R. 141 : 10 R. P. 316 : A. I. R. 1937 Pat. 534.

—————*Penal Code, S. 211—Inquiry necessary before granting sanction—Police Report—Examination of witnesses not essential—Discretion—Cr. P. C., Ss. 201, 202, 203.*

Before granting any sanction for prosecution under S. 211, Penal Code, the Magistrate ought to observe all the formalities prescribed in Ss. 201-203, Cr. P. C. In other words, he should examine the complainant, and then afterwards he might refer the matter to the Police, and when the Police report is received by him then he may determine whether the claim is true or false. There is nothing in the Cr. P. C. which compels a Magistrate in express terms to examine any or all witnesses whom the complainant wishes to adduce, before dismissing a complaint and granting sanction under S. 211, Penal Code. *In re : Rechappa Tippanna.* 11 Cr. L. J. 338 : 5 I. C. 971 : 12 Bom. L. R. 229.

—————*Grant of.*

Sanction to prosecute a witness who has made a false statement should not be granted when he has corrected himself in the cross-examination. *Hukam Chand v. Emperor.* 29 Cr. L. J. 679 : 110 I. C. 231 : A. I. R. 1928 Lah. 862.

—————*Jurisdiction—Power of revoking it.*

Sessions Judge has jurisdiction to entertain an application to revoke sanction granted by the District Magistrate in his appellate capacity. *Ram Kishen v. Mehram.* 8 Cr. L. J. 457 : 3 P. W. R. Cr. 64.

SANCTION TO PROSECUTE

—————*Limitation—Second sanction.*

There can be no second sanction for a prosecution and any subsequent order purporting to be a second sanction must be taken to be nothing more than a repetition of the first, and the same period of limitation, therefore, will apply running from the date of the first sanction. *Durga Proshad Pattak v. Lachman Bania.* 14 Cr. L. J. 213 : 19 I. C. 309 : 40 Cal. 584.

—————*Offence committed during trial—Matter settled in appeal on statement of referee—Power of trial Court to make complaint.*

The mere fact, that in the Appellate Court the parties agreed to compromise the matter, or to get it decided by a reference to arbitration, or in accordance with the statement of a referee, cannot take away the jurisdiction vested in the trial Court to make a complaint under S. 476, Cr. P. C., provided that the Court is satisfied that "it is expedient in the interests of justice that such a complaint should be made." *Narain Das v. Emperor.* 28 Cr. L. J. 549 : 102 I. C. 485 : 25 A. L. J. 559 : 49 All. 792 : A. I. R. 1927 All. 555.

—————*Offences during course of one transaction.*

If in course of one transaction a number of offences are committed, some requiring sanction for prosecution of some authority or the other and others not requiring such sanction, it is not necessary that the prosecution of those offences which do not require such sanction should depend upon the obtaining of the sanction for prosecution for those offences which require such sanction. *Sheo Ahir v. Emperor.* 40 Cr. L. J. 71 : 178 I. C. 487 : 19 P. L. T. 665 : 5 B. R. 104 : 11 R. P. 261 : 17 Pat. 680 : A. I. R. 1938 Pat. 548.

—————*Offence under S. 211, I. P. C.—Private person, if can make complaint of offence.*

Where an offence under S. 211, Penal Code, is not committed in or in relation to any Court, a complaint of such an offence can be made by a private individual. *Raji v. Allaudin M. Samo.* 40 Cr. L. J. 461 : 180 I. C. 650 : 11 R. S. 183 : 1939 Kar. 388 : A. I. R. 1939 Sind 65.

—————*Proper complaint.*

Where the order of the Government sanctioning the prosecution for sedition contained merely a request to depute a certain officer of the Special Branch, C. I. D. not below the rank of Inspector, to file the complaint and the Inspector deputed by the Superintendent, Special Branch, C. I. D., files the complaint, it cannot be said that the prosecution is not properly filed because the

SANCTION TO PROSECUTE

Inspector is not deputed by the Deputy-Inspector himself. *In re : S. S. Balliwala.*

39 Cr. L. J. 938 :
177 I. C. 747 : 1938 M. W. N. 529 :
48 L. W. 170 : 11 R. M. 375 :
1938, 2 M. L. J. 416 :
A. I. R. 1938 Mad. 758.

———Perjury—Contradictory statements.

In the case of a prosecution in the alternative based on two contradictory statements, every possible presumption must be in favour of the reconciliation of these statements. *Emperor v. Tikam Lakhi.*

15 Cr. L. J. 488 :
24 I. C. 576 : 7 S. L. R. 108 :
A. I. R. 1914 Sind 116.

———Refusal—Delay in applying for reversal—Effect.

Where sanction to prosecute has been refused, and there is considerable delay on the part of the complainant in applying to have the order of refusal set aside under S. 195, Cr. P. C., a Court is not competent to make an order under S. 476 of the Code. *Pirithi Mal v. Emperor.*

12 Cr. L. J. 434 :
11 I. C. 618 : 19 P. W. R. 1911 Cr.

———Power of Judge to hear appeal.

A Judge gave sanction for the prosecution of the accused on a charge triable under S. 193, Penal Code. The accused was tried for that offence and convicted of it. The appeal against the conviction came up before the same Judge in his capacity as Sessions Judge: *Held*, that the Judge was legally competent to hear and decide the appeal. *Emperor v. Gulam Ahmed Ali Sahib.*

14 Cr. L. J. 190 :
19 I. C. 190 : 15 Bom. L. R. 104.

———Revision—Interference.

Where a sanction to prosecute granted by a Munsif is revoked by a District Judge under S. 195 (6), Cr. P. C., the High Court can only interfere with the order of the District Judge either under S. 115, Cr. P. C., or under S. 107, Government of India Act, but such interference is not justified on the ground that the District Judge was wrong in revoking the sanction, because, in his opinion, the evidence was not strong enough for a successful criminal prosecution. *Jainuddin v. Keramatulla.*

24 Cr. L. J. 179 :
71 I. C. 595 : A. I. R. 1924 Cal. 641 (1).

———When can be granted.

Sanction to prosecute should not be granted if it appears that it is not to be used *bona fide* for the purpose of obtaining a conviction, the object being to enforce payment of a decree. *Donald Graham and Co. v. Ghanshamdas Kewalram.*

13 Cr. L. J. 537 :
15 I. C. 805 : 5 S. L. R. 237.

———When can be granted.

Where on a genuine promissory note a plaintiff sues a wrong person of the same name, but not dishonestly and intentionally,

SEA CUSTOMS ACT (VIII OF 1878)

a sanction to prosecute him under Ss. 193 and 209, Penal Code, cannot be granted. *Subramania Pillay v. Nachiappa Chetty.*

16 Cr. L. J. 154 :
27 I. C. 218 : 8 Bur. L. T. 79 :
A. I. R. 1915 L. Bur. 59.

———Who can grant.

The words "or of some other Court to which such Court is subordinate" as used in S. 195, Cr. P. C., and read with Sub-s. (7) of that section do not cover and include the High Court where the case has been tried in any Court other than that of a District, and Sessions Judge or an Additional District and Sessions Judge. Under S. 195 (c), Cr. P. C., it is either Court of first instance or the Court to which it is immediately subordinate in the sense given in Sub-s. (7) of that section that can grant sanction. The High Court is not empowered to grant sanction by virtue merely of having heard the appeal in the case. *Fazal Ilahi v. Mohan Lal.*

24 Cr. L. J. 383 :
72 I. C. 383 : 10 P. W. R. 1923 Cr. :
A. I. R. 1922 Lah. 346.

SCHEDULED DISTRICTS ACT (XIV OF 1874)

———S. 6—Power of High Court.

S. 4 combined with r. 44 of the rules made under the Act, empowers that High Court to entertain the appeal of an accused person convicted by the Agent of Mewas Estates in West Khandesh and, if necessary, to resort to the provisions of S. 428, Cr. P. C., for the purpose of obtaining any additional evidence that may be necessary. *Emperor v. Khalpa Ranchod.*

17 Cr. L. J. 533 :
36 I. C. 581 : 18 Bom. L. R. 789 :
A. I. R. 1916 Bom. 313.

SEA CUSTOMS ACT (VIII OF 1878)

———S. 19—Scope of—Notification under—"Books issued"—Meaning of.

The meanings given to the word "issue" is "that which proceeds from any source." The phrase "books issued by M. N. Roy" in the notification of Governor-General in Council issued under S. 19, Sea Customs Act, would include books written by him as well as books published by him. *Haripada Sen Gupta v. Emperor.*

38 Cr. L. J. 691 :
169 I. C. 60 : 9 R. C. 889 :
I. L. R. 1937, 1 Cal. 774 :
A. I. R. 1937 Cal. 49.

———S. 30 (b)—"Of the kind and quality," meaning of.

The words "of the kind and quality" used in Cl. (b) of S. 30, must be deemed also to cover the goods themselves. *Mohanlal Bhanalal Goela v. Emperor.*

39 Cr. L. J. 123 :
172 I. C. 374 : 10 R. S. 149 :
32 S. L. R. 87 :
A. I. R. 1937 Sind 293.

SEARCH—ILLEGALITY

———S. 32—Scope of—Reference in S. 32 to delivery of goods detained, whether excludes application of S. 415, Penal Code (Act XLV of 1860).

The fact that S. 32, Sea Customs Act, refers to the delivery of goods detained by the Collector, does not exclude the application of S. 415, Penal Code, in appropriate cases, when it is clear that the acts necessary to constitute an offence under that section, and to attract its application in fact exist. Whether, when they exist in circumstances which also attract the application of the Sea Customs Act, or whether it is wise to apply the Penal Code, in full force to such acts, is a matter of policy. *Mohanlal Bhanalal Goela v. Emperor*.
39 Cr. L. J. 123 :
172 I. C. 374 : 10 R. S. 149 :
32 S. L. R. 87 :
A. I. R. 1937 Sind 293.

———S. 79—'Plying'—Meaning of—Cargo Boat Rules of the Rangoon Port, Rule 1—Licence for cargo boats—Plying, meaning of.

The word 'ply' in rule 1 of the Cargo Boat Rules of the Rangoon Port does not necessarily mean to ply for hire, but it means to do an action repeatedly. The words in the rule "cargo boats which ply for the landing and shipping merchandise within the port" need not be restricted in meaning to both landing and shipping merchandise within the port. They mean boats which ply for the landing, and boats which ply for shipping, or both. *Mg Po Hla v. Emperor*.
12 Cr. L. J. 476 :
12 I. C. 84 : 4 Bur. L. T. 215.

———Ss. 85, 32, 30 (b)—Goods dealt with under S. 85 (b), whether in charge of Custom.

S. 85, Sea Customs Act, must be read as a whole and whereas in a small port the Customs Authorities themselves land and take charge of the goods, in the larger ports, this is done by the Port Trust as their agents for this purpose. But it cannot be said that the goods are any the less in charge of the Customs when they are dealt with under Cl. (b) instead of under Cl. (a). *Mohanlal Bhanalal Goela v. Emperor*.
39 Cr. L. J. 123 :
172 I. C. 374 : 10 R. S. 149 :
32 S. L. R. 87 : A. I. R. 1937 Sind 293.

———S. 167, Cl. 78—Obstruction—What amounts to.

Mere evasion or disobedience to a lawful order is not an obstruction to the officer who issues the order. Obstruction implies some actual resistance. Failure to stop when asked to stop by a Customs Officer who has the right to stop suspected smugglers is not an obstruction to the Customs Officer. *Pattanathan v. Emperor*.
38 Cr. L. J. 263 :
166 I. C. 656 : 44 L. W. 885 :
1936 M. W. N. 1339 (2) : 1937, 1 M. L. J. 178 :
9 R. M. 388 : A. I. R. 1937 Mad. 208.

SEARCH—ILLEGALITY

———Damages, liability for.

A person assisting a Police Officer lawfully

SEARCH

engaged in making a search is not liable in damages for an illegal search. *Asan Alliar v. Masilamani Nadar*.
20 Cr. L. J. 422 :
51 I. C. 198 : 36 M. L. J. 252 :
42 Mad. 446 : 1919 M. W. N. 452 :
25 M. L. T. 274 : A. I. R. 1919 Mad. 226.

SEARCH

———In presence of—8 superior Police Officers—Explosives Act (IV of 1884), R. 32 (1) (b) of Government Rules.

Where a search was conducted, not under the Cr. P. C., but under Rule 32 of the Government Rules under the Explosives Act, and at the search, Police Officers of superior rank were present, including the Superintendent of Police himself: *Held*, that the proceedings were legally conducted. *Lalit Ohandra v. Emperor*.
13 Cr. L. J. 433 :
15 I. C. 65 : 39 Cal. 119.

———Legality of.

The mere fact that the inhabitants of the locality whose signatures appear on the list prepared by the Police at the time of the search have not been examined in the case does not render the search itself illegal. If the list cannot be proved, the contents of the list can be proved by other evidence. *Bachna v. Emperor*.
28 Cr. L. J. 17 :
99 I. C. 49 : A. I. R. 1927 Lah. 149.

———Search list—Accused signing search list, effect of.

It is doubtful how far an admission by an accused by merely signing the search list containing an endorsement to the effect that a certain thing was found in his possession, could be legal proof in a criminal trial. The mere signing by the accused, who was not present at the search of this document, does not, at the most show more than that the particular thing was found at his house. *Suraj Narain Chhure v. Emperor*.
39 Cr. L. J. 925 :
175 I. C. 462 : 1938 A. L. J. 649 :
11 R. A. 201 : 1 L. R. 1938 All. 776 :
1938 A. W. R. 453 : A. I. R. 1938 All. 513.

———Search—Warrant for—When to be granted.

Search warrants are a species of process exceedingly arbitrary in character and inasmuch as they are resorted to only for very urgent and [satisfactory] reasons, the rules of law which pertain to them are of more than ordinary strictness. They are only to be granted in the cases expressly authorised by law and not generally in such cases until it has been shown before a responsible officer on oath that a crime has been committed and that the officer has reason to believe that the offender or the property which is the subject or the instrument of the crime is concealed in some specified house or place. *Walvekar v. Emperor*.
27 Cr. L. J. 920 :
96 I. C. 264 : 30 C. W. N. 713 :
53 Cal. 718 : A. I. R. 1926 Cal. 966

SECURITY FOR GOOD BEHAVIOUR

———*Warrant—Omission to affix seal—Irregularity—Signing outside the limits of jurisdiction—Illegal warrant.*

An omission to affix the seal of the Court on a search warrant issued under the Gambling Act, is a mere irregularity cured by S. 537, Cr. P. C. A search warrant signed by the Magistrate at a place outside the limits of his jurisdiction is illegal. A warrant, that is not a legal warrant, is no warrant for the purposes of the Gambling Act. *Girdhari Lal v. Emperor.*

11 Cr. L. J. 570 :
8 I. C. 137 : 85 P. L. R. 1910 :
23 P. R. 1910 Cr.

SECURITIES ACT (X OF 1920).

———*Government Promissory Note—Transfer of.*

Government promissory note can only be transferred by endorsement on the note itself. *R. E. Zekiel v. The Province of Bengal.*

41 Cr. L. J. 134 :
185 I. C. 214 : I. L. R. 1939, 2 Cal. 52 :
12 R. C. 350 : A. I. R. 1939 Cal. 746.

SECURITY FOR GOOD BEHAVIOUR.

———*Duty of Sessions Judge.*

The Sessions Judge, on receiving a record under S. 132 (2), should at once give notice to the person ordered to give security of the date on which the case will be taken up. If before the last mentioned date, the person ordered to give security does not object to the case being taken up by the Sessions Judge on the ground that he has appealed, or the Sessions Judge does not become aware that an appeal has been filed in the Court of the District Magistrate, the Sessions Judge should proceed to dispose of the case. If, on the other hand, the Sessions Judge is informed or becomes aware that an appeal has been filed, he should stay his hand until the appeal has been disposed of. *Pattu v. Emperor.*

11 Cr. L. J. 725 :
8 I. C. 879 : O. C. 354.

———*Right of appeal.*

A person ordered to give security for good behaviour by a Magistrate is entitled to appeal to the District Magistrate notwithstanding that the proceedings may have been laid before the Sessions Judge under S. 123, Cr. P. C. But the right of appeal is lost as soon as the Sessions Judge has passed orders on the case under Sub-s. (8), of S. 123. *Pattu v. Emperor.*

11 Cr. L. J. 725 :
8 I. C. 879 : 13 O. C. 354.

———*Habitual offender—Notice to show cause—"By habit" a thief.*

In an order drawn up under S. 112, Cr. P. C., it was stated that as it appeared to the Magistrate that the opposite party was "by general repute" (instead of "by habit" as required by S. 110) a thief, he was called upon to show cause why he should not give security: *Held*, that the inquiry provided for by Ss. 117 and 118,

SEDITION

Cr. P. C., was not strictly limited by the precise terms of the order drawn up under S. 112, and that as the opposite party was not misled or prejudiced by the terms of the order, no ground existed for granting him any relief. *Deputy Legal Remembrancer v. Kadir Mirza.* 13 Cr. L. J. 784 :
17 I. C. 416 : 17 C. W. N. 331.

SECURITY

———*Proceedings—Preventive sections—Habitual offender—Joint inquiry—Misjoinder—Cr. P. C., S. 117 (4), 110.*

The question whether a man is a habitual thief is a matter personal to one individual alone, and such questions in respect of more than one person should not be dealt with in the same inquiry. S. 117, Sub-s. 4, Cr. P. C., refers to cases such as those of persons who have been associated in an act rendering them liable to proceedings under Ss. 107 or 108, Cr. P. C., where the matter under enquiry is not solely applicable or personal to one individual, and is not applicable to proceedings under S. 110. *Emperor v. Po Twe.* 6 Cr. L. J. 284 :
4 L. B. R. 46.

SEDITION

———*Attempt to commit sedition.*

In a case of seditious libel, if the manuscript of the libel be proved to be in the handwriting of the accused, and it be also proved to have been printed and published, this is evidence to go to the Jury that it was published by the accused, although there be no evidence given to show that the printing and publication was by the direction of the accused. Where the accused sent some manuscript copies of certain seditious writings to the address of some persons with directions to the addressers to circulate the papers to others: *Held*, that the accused was guilty of an attempt to commit sedition. *Surendra Narayan v. Emperor.* 13 Cr. L. J. 679 :
16 I. C. 327 : 39 Cal. 522.

———*Author.*

There is no presumption as regards a printed book that the person whose name appears as the author is the author thereof. *Pitre v. Emperor.* 25 Cr. L. J. 150 :
76 I. C. 294 : 25 Bom. L. R. 97 :
47 Bom. 438 : A. I. R. 1923 Bom. 255.

———*Imputation of bribery.*

A newspaper article which imputes wholesale bribery to the ministerial officers of Courts and to the lower officers of the Police Force, and expresses doubts as to whether Government ever inquire into the truth of the grievances, so much is it occupied with investigations of boycott, dacoity and seditious matters, published at a time when the seeds of sedition are being sown broadcast and the minds of people are under excitement, cannot be

SENTENCE

taken to have been actuated by loyal motives. *Joy Chandra Sarkar v. Emperor.*

12 Cr. L. J. 348 :
10 I. C. 948 : 38 Cal. 214.

———*Intention to create enmity, absence of.*

Where in a newspaper article, both *Babus* and *Meahs* are inveighed against, as robbing the poor Mohamedan *raiyats*, and Christian Missionaries are referred to as illustrating their treatment of converts, it cannot be said that there was an intention to create enmity between them and any other subjects of the King, nor was it a deliberate attempt to incite one class against another. *Joy Chandra Sarkar v. Emperor.*

12 Cr. L. J. 348 :
10 I. C. 948 : 38 Cal. 214.

———*Single expression.*

One single expression that the people of Bengal are trodden under the feet of strangers, used in a newspaper article which is innocent in other respects, does not make the whole article seditious. *Joy Chandra Sarkar v. Emperor.*

12 Cr. L. J. 348 :
10 I. C. 948 : 38 Cal. 214.

SENTENCE

———*Abduction—Age.*

The fact that the accused is 55 years old does not justify a lenient sentence for an offence of abduction. In such cases the public interest requires that justice and not sentiment should prevail. [Sentence of one year's rigorous imprisonment raised to five years]. *Emperor v. Haji Khamoo.*

38 Cr. L. J. 114 :
165 I. C. 933 : 9 R. S. 113 :
A. I. R. 1936 Sind 233.

———*Accused child of 12—Rigorous imprisonment.*

Obiter.—A child of 12 years should not be awarded rigorous imprisonment in an ordinary Jail. But if it is found necessary to impose a punishment for a first offence, he should at least have the benefit of reform school. *Maulu v. Emperor.*

31 Cr. L. J. 264 :
121 I. C. 419 : 31 P. L. R. 217 :
11 Lah. 115 : A. I. R. 1929 Lah. 787.

———*Accused coming from respectable family.*

The mere fact that the accused comes of a respectable family cannot be a justification for imposing a lighter sentence or for releasing him under S. 562, Cr. P. C. *Emperor v. Surendra Chandra Das.*

31 Cr. L. J. 874 :
125 I. C. 572 : A. I. R. 1930 Pat. 216.

———*Sentence.*

Accused not leader of gang nor shown to be directly responsible for murder—Death sentence should be reduced. *Bishwnath v. Emperor.*

153 I. C. 978 :
1935 O. W. N. 145 : 7 R. O. 423 :
A. I. R. 1935 Oudh 190.

———*Accused of weak intellect.*

In the case of a person of weak intellect

SENTENCE

subject to fits and not possessed of a normal mind, a sentence of death is not appropriate. *Pancha v. Emperor.*

33 Cr. L. J. 714 :
139 I. C. 147 : I. R. 1932 All. 536 :
A. I. R. 1932 All. 233.

———*Anticipatory fine.*

Anticipatory fine on and from day of conviction cannot be imposed. *Bal Kishun Das Marwari v. Emperor.*

36 Cr. L. J. 1048 (2) :
156 I. C. 1001 : 14 Pat. 455 :
16 P. L. T. 154 : 8 R. P. 53 :
A. I. R. 1935 Pat. 208.

———*Appeal from—Forum of.*

Where different sentences are passed on different accused, each accused must be deemed to have been convicted in a separate case of his own; and the determination of the Court having jurisdiction to hear his appeal will depend on the extent of his individual sentence and not on the extent of the sentences of the other accused. *In re : Mitlor Moideen Hajee.*

24 Cr. L. J. 89 :
71 I. C. 217 : 43 M. L. J. 561 :
16 L. W. 764 : A. I. R. 1923 Mad. 95.

———*Assault on modesty of woman.*

Criminal assault on an innocent woman with intent to outrage her modesty publicly and in open daylight, merits a substantial sentence of imprisonment. *Emperor v. Mohammad Khan.*

35 Cr. L. J. 613 :
148 I. C. 96 : 35 P. L. R. 83 :
14 Lah. 800 : 6 R. L. 504 :
A. I. R. 1934 Lah. 36 (2).

———*Assault on Police constable.*

To assault a constable in uniform, purporting to act in the execution of his duty with due moderation, and to declare that he did not care for the authority of the Police constable, is not a matter which should be treated lightly. *Maroti Bansi Teli v. Emperor.*

40 Cr. L. J. 905 :
184 I. C. 231 : 1939 N. L. J. 101 :
I. L. R. 1939 Nag. 488 : 12 R. N. 101 :
A. I. R. 1939 Nag. 95.

———*Imprisonment till rising of Court, whether legal.*

Where the law lays down that for a certain offence the punishment shall be imprisonment, it means that the offender shall go to Jail, and imprisonment till the rising of the Court is a clear evasion of that intention. *In re : Assam Masaliarakath Kunhi Bava.*

30 Cr. L. J. 247 :
114 I. C. 234 : 1929 M. W. N. 114 :
I. R. 1929 Mad. 250 :
29 L. W. 673 : 56 M. L. J. 550 :
A. I. R. 1929 Mad. 226.

———*Cattle-lifting cases.*

Where cattle theft is very rife, a severe sentence should be passed for cattle-lifting. *Emperor v. Seda.*

28 Cr. L. J. 651 :
103 I. C. 107 : A. I. R. 1927 Lah. 893.

SENTENCE

———*Concurrent.*

Two independent and unconnected offences by same accused—Sentences passed in two, should not be concurrent. *N. N. Barjorjee v. Emperor.*

37 Cr. L. J. 217 :
159 I. C. 1065 : 8 R. Rang. 321 :
A. I. R. 1935 Rang. 456.

———*Considerations in awarding.*

A Court is not justified in introducing into its judgment reasons for giving a severe sentence which have no bearing on the gravity of the offence committed by the accused, and it should not be influenced by the conduct of the accused, such as that he falsely blamed the Court for having expressed its opinion and falsely blamed the District Magistrate for helping the prosecution. *Jawad Husain v. Emperor.*

28 Cr. L. J. 673 :
103 I. C. 401 : 1 Luck. 159 :
2 Luck. 503 : A. I. R. 1927 Oudh 296.

———*Considerations in awarding.*

A Court should weigh the sentence with reference to the crime committed and the circumstances of the case and cannot take into consideration the prayer of the accused that an appealable sentence should be passed. *Emperor v. Yar Muhammad.*

32 Cr. L. J. 1181 :
134 I. C. 536 : 58 Cal. 392 :
I. R. 1931 Cal. 840 :
A. I. R. 1931 Cal. 448.

———*Consideration in passing sentence.*

A sentence must be passed in a criminal trial which is considered proper in all circumstances of the case, regardless of the consideration whether it should be an appealable one. *The King v. Maung Saw Han.*

40 Cr. L. J. 248 :
179 I. C. 716 : 11 R. Rang. 343 :
A. I. R. 1939 Rang. 69.

———*Considerations.*

In awarding sentence, one need not take into consideration the moral indignation which may be felt on looking at the offence committed; all that is necessary to consider is, what sentence is likely to prevent the offender from committing the offence again and to prevent other persons similarly situated from committing similar offences. *Mohamed Kasim v. The King.*

39 Cr. L. J. 692 :
176 I. C. 150 : 11 R. Rang. 31 (2) :
A. I. R. 1938 Rang. 220.

———*Conduct of accused during trial.*

Magistrates when deciding on the question of sentence are justified in taking into consideration the conduct of an accused person in his own defence. Where an accused person is clearly guilty and has really no defence, but instead of pleading guilty and throwing himself on the mercy of the Court defends himself by throwing mud at witnesses who are persons of standing and honour, he is deserving of very little consideration. *Sanwaldas Kundandas v. Emperor.*

31 Cr. L. J. 753 :
125 I. C. 44 : A. I. R. 1929 Sind 253,

SENTENCE

———*Conviction with offence through conspiracy.*

Where a person's proved connection with the specific offence of cheating is only through the general conspiracy to cheat and he has already received a sentence of two years' rigorous imprisonment for his part in the general conspiracy, there should be no additional sentence on the cheating charge. *Solomon Ezekiel v. Emperor.*

41 Cr. L. J. 255 :
186 I. C. 171 : 69 C. L. J. 298 :
12 R. C. 465 : A. I. R. 1939 Cal. 376.

———*Criterion of severity.*

The point of severity of punishment must be looked at not from what sentences in particular instances the Courts have awarded but from what is possibly the maximum that the Court may award. *Ram Chand v. Emperor.*

30 Cr. L. J. 1129 :
120 I. C. 10 : I. R. 1929 Lah. 954 :
A. I. R. 1929 Lah. 284.

———*Dacoity cases.*

Offences of dacoity and robbery in respect of cultivators, which have come to be of common occurrence in a District should be severely punished. *Emperor v. Basa Meah.*

37 Cr. L. J. 416 :
161 I. C. 90 : 8 R. Rang. 451 :
A. I. R. 1936 Rang. 70.

———*Murder—Death sentence.*

When the accused's wife had been abducted with the help of the deceased and the abducted and her lover were living in the deceased's *haveli* from time to time, the extreme penalty of death is not called for. *Saraj v. Emperor.*

30 Cr. L. J. 1126 :
120 I. C. 6 : 11 L. L. J. 299 :
I. R. 1929 Lah. 950 :
A. I. R. 1929 Lah. 788.

———*Death penalty.*

The age and sex of the accused convicted of murder and the fact that she has recently been delivered in jail may be taken into account by the Local Government, but these circumstances will not have any weight with Court and the revolting crime of murdering a child for the sake of its ornaments should be punished by the penalty of death. *Jamunia v. Emperor.*

37 Cr. L. J. 1047 :
164 I. C. 964 : 9 R. N. 48 :
I. L. R. 1936 Nag. 78 :
A. I. R. 1936 Nag. 200.

———*Sentence.*

Defamation extremely malicious—Publication in cunning manner—Fine of Rs. 400, in default 6 months' imprisonment, not excessive. *J. G. G. Fernandez v. Emperor.*

37 Cr. L. J. 256 :
160 I. C. 215 : 8 R. Rang. 352 :
A. I. R. 1935 Rang. 484.

SENTENCE

—Duty of Court.

Where a Court awards the maximum sentence provided by the law for an offence, it should record its reasons for doing so. *Harnam Singh v. Emperor*.

27 Cr. L. J. 186 :
91 I. C. 1002 : 2 Lah. Cas. 161 :
A. I. R. 1926 Lah. 239.

—Duty of Judge.

It is necessary at all times, and not least when respect for the law is being undermined, that, whatever the attitude or the politics of any party, the Courts should, in all respects, scrupulously hold the scales even, observe the correct procedure, and that they should not by such sentences themselves still further undermine this respect for the law. Such sentences defeat their own object and usually produce an effect contrary to what perhaps they are intended to do. *Emperor v. Sakinabai Badruddin Lukmani*.

32 Cr. L. J. 283 :
129 I. C. 346 : 55 Bom. 220 :
32 Bom. L. R. 1506 :
I. R. 1931 Bom. 154 :
A. I. R. 1931 Bom. 70.

—Embezzlement, offence of—Remission of fine.

Where the main items found to have been embezzled have been recovered, it will be proper to remit the fines imposed on the accused under those heads of charges where no loss has accrued to the complainant. *Allah Ditta v. Emperor*.

36 Cr. L. J. 424 :
153 I. C. 887 : 35 P. L. R. 649 :
16 Lah. 44 : 7 R. L. 468 :
A. I. R. 1934 Lah. 677.

—Enhancement.

Where in a murder case the Sessions Judge finds the accused guilty of murder but sentences him to transportation for life or for a long term of imprisonment and an appeal from that decision is heard by the High Court a long time afterwards, the High Court even if it confirms the conviction of murder, should not open revision proceedings with a view to consider the desirability of enhancing the sentence to one of death. *Nga Chii Tin v. The King*.

40 Cr. L. J. 725 :
183 I. C. 145 : 12 R. Rang. 45 :
A. I. R. 1939 Rang. 225.

—Enhancement.

Although the sentence on an accused is inadequate, it ought not to be enhanced after the lapse of nine months. *Aiya Chalamaya v. Emperor*.

13 Cr. L. J. 121 :
13 I. C. 777 : 1912 M. W. N. 50.

—Enhancement.

It is not the practice of the Lahore High Court to enhance a sentence in revision after the accused has served it out. *Emperor v. Sardar Din*.

30 Cr. L. J. 2 :
112 I. C. 769 : I. R. 1929 Lah. 85 :
A. I. R. 1929 Lah. 194.

SENTENCE

—Enhancement—Appellate Court imposing fine—Interference.

The mere fact that a fine was imposed by the Appellate Court would not in law be an enhancement of sentence if the aggregate period of imprisonment which the accused would have to undergo is to any extent less than the period of the original sentence; but where such an alteration of the sentence has the effect of rendering it in the circumstances of the case excessive and inappropriate, the interference in revision of a superior Court may be called for. *Prabhu Dayal v. Emperor*.

38 Cr. L. J. 428 :
167 I. C. 723 : 38 P. L. R. 1051 :
9 R. L. 541 (1) : A. I. R. 1937 Lah. 195.

—Enhancement by High Court.

The power to enhance sentences should be sparingly exercised by the High Court and sentences should be enhanced only in cases where the failure to enhance the sentence would lead to a serious miscarriage of justice. *Uttam Singh Sochet Singh v. Emperor*.

39 Cr. L. J. 502 :
174 I. C. 949 : 10 R. L. 644 :
40 P. L. R. 982 : I. L. R. 1938 Lah. 347 :
A. I. R. 1938 Lah. 260.

—Enhancement.

Enhancing a sentence is not permissible when the convicted person has duly served the sentence before the application for enhancement is preferred. *Emperor v. Sada*.

11 Cr. L. J. 99 :
4 I. C. 980 : 14 P. W. R. 1909 Cr.

—Enhancement, ground for.

The mere fact that the High Court would itself, if it had been trying the case, have passed a heavier sentence is no reason for enhancing the sentence. *Emperor v. Inderchand Bachraj*.

36 Cr. L. J. 351 :
153 I. C. 525 : 7 R. B. 246 :
36 Bom. L. R. 954 :
A. I. R. 1934 Bom. 471.

—Enhancement—Powers of High Court—Procedure.

A sentence should not be materially enhanced where a long time has elapsed since the decision of the Court below was passed. The High Court has jurisdiction to enhance a sentence, howsoever the case comes to its notice. It is not necessary that Government should instruct the Government Pleader to move the High Court to enhance a sentence. The District Magistrates can bring to the notice of the High Court cases of inadequate sentence. *Emperor v. Rodger De Silva*.

12 Cr. L. J. 604 :
12 I. C. 980 : 13 Bom. L. R. 1185.

—Enhancement.

It is the part of the Crown, not of individuals, to ask Courts to enhance sentences passed upon criminal offenders. *Hanuprasad Prasad v. Mathura Prasad*.

35 Cr. L. J. 118 :
146 I. C. 577 : 10 O. W. N. 903 :
6 R. O. 145 (2) :
A. I. R. 1933 Oudh 421.

SENTENCE

—Enhancement.

It is not the practice of the High Court to enhance the sentence if it is otherwise substantial even if the superior Court might have originally awarded a higher sentence. *Marland v. Emperor*.

35 Cr. L. J. 1453 :
151 I. C. 924 : 7 R. L. 225 :
A. I. R. 1934 Lah. 89.

—Enhancement.

Where the discretion of the trial Court does not appear to have been judicially exercised and the trial Judge has thought that a very lenient sentence would be sufficient for hitting the mother-in-law by accident when he meant to hit the wife, the High Court would interfere and enhance the sentence. *In re : Subbia Goundan*.

37 Cr. L. J. 1153 :
165 I. C. 330 : 44 L. W. 348 :
1936 M. W. N. 895 :
9 R. M. 237 : A. I. R. 1936 Mad. 788.

—Enhancement.

The accused, who was a Police Officer of 26 years' standing, was convicted of an offence under S. 161. Penal Code, and sentenced to 2 months' simple imprisonment. The Court enhanced the sentence observing that the purity of the Police was a matter of such vital interest to the community that a case of corruption could not be passed over with a nominal sentence. *Emperor v. Abdul Khalak*.

10 Cr. L. J. 217 :
2 S. L. R. 1.

—Enhancement of—Previous conviction—Revision—Evidence as to previous convictions not allowed on revision.

The accused was convicted by a second class Magistrate of an offence under S. 454, Penal Code, and sentenced to two months' rigorous imprisonment. At the trial, previous convictions of the accused were not proved, the prosecution not being aware of them. The District Magistrate being subsequently informed of them, reported the case under S. 488, Cr. P. C., for the sentence to be enhanced. The Chief Court declined to interfere. *Emperor v. Maidhan*.

2 Cr. L. J. 228 :
6 P. L. R. 181 : 19 P. R. Cr. 1905.

—Enhancement.

The mere fact that the High Court as a Court of first instance would have passed a heavier sentence is not by itself a sufficient ground for enhancing a sentence. *Khana v. Emperor*.

29 Cr. L. J. 276 :
107 I. C. 759.

—Enhancement.

The application for enhancement of sentence in revision must be looked at askance where it is made by a complainant direct and is opposed by the Counsel for the Crown. It would only be in a very extraordinary case

SENTENCE

that the High Court would enhance the sentence. *Bhagolelal v. Emperor*.

41 Cr. L. J. 734 :
189 I. C. 382 : 13 R. N. 47 :
1940 N. L. J. 309 :
A. I. R. 1940 Nag. 249.

—Enhancement.

The High Court has power to enhance any sentence if it considers that the sentence passed in the lower Court is improper. Whether the High Court will interfere or not will depend on the facts of each case. *Mewa v. Emperor*.

36 Cr. L. J. 1001 :
156 I. C. 786 : 8 R. L. 24 :
A. I. R. 1935 Lah. 337.

—Enhancement.

The High Court will not enhance the sentence in any and every case in which an accused person may have been punished too leniently, but only where the punishment appears to be so grossly and entirely inadequate as to involve a failure of justice. *Emperor v. Dukalha*.

34 Cr. L. J. 271 :
141 I. C. 861 : 15 N. L. J. 46 :
A. I. R. 1933 Nag. 85.

—Enhancement—Trial Court accepting plea of guilty and sentencing.

Where a person on a plea of guilty was convicted and fined under S. 6 (c), Boilers Act, and no prosecution evidence was recorded as his plea was accepted, and a reference was made to the High Court to enhance the fine: *Held*, that as there was no evidence before the High Court by which the heinousness of the offence could be judged, the discretion of the trial Court in the matter of sentence would not be interfered with. *B. Biswas v. Emperor*.

38 Cr. L. J. 572 (a) :
168 I. C. 548 : 3 B. R. 448 :
9 R. P. 499 : 18 P. L. T. 468 :
A. I. R. 1937 Pat. 275.

—Enhancement, what is.

A sentence of fine in lieu of imprisonment should not be considered as enhancement unless there be evidence to the effect that the accused is unable to pay the fine or regards the sentence passed on appeal as more severe than the original sentence. *Satyawan Acharya v. Emperor*.

36 Cr. L. J. 335 :
153 I. C. 411 : 4 A. W. R. 488 :
7 R. A. 496 :
A. I. R. 1934 All. 1031.

—Extent.

A severe sentence should not be imposed where the accused did not appreciate fully that they were committing a breach of the law. *M. S. Adhikari v. Emperor*.

32 Cr. L. J. 723 :
131 I. C. 477 : 33 Bom. L. R. 325 :
I. R. 1931 Bom. 301 :
A. I. R. 1931 Bom. 202.

SENTENCE

-----Extent.

Accused old father and young son—Absence of personal motives—Sentence of transportation for life is sufficient. *Rameshwar v. Emperor*.

36 Cr. L. J. 534 :
154 I. C. 697 : 1935 O. W. N. 311 :
7 R. O. 488 : A. I. R. 1935 Oudh 281.

-----Extent.

Circumstances leading to conviction arising from same transaction—Accused cannot be punished twice. *W. G. Dutt v. Emperor*.

34 Cr. L. J. 1260 :
146 I. C. 208 : 6 R. N. 80 :
A. I. R. 1933 Nag. 177.

-----Extent.

Conviction for two offences arising out of same facts—Sentence of imprisonment in two cases exceeding seven years—Sentence of whipping, cannot be awarded. *Kwan Tone v. Emperor*.

36 Cr. L. J. 1050 :
156 I. C. 1015 : 8 R. Rang. 63 (1).

-----Extent.

It is a mistake where there are two criminal offences committed more or less arising out of the same circumstances that double sentences should be imposed. *Bhagu v. Emperor*.

33 Cr. L. J. 413 (1) :
137 I. C. 141 : 33 P. L. R. 449 :
I. R. 1932 Lah. 298 :
A. I. R. 1932 Lah. 365.

-----Extent.

Justice should be even-handed. Other things being equal, the same offence should receive the same punishment. *Udha Ram v. Emperor*.

33 Cr. L. J. 900 :
140 I. C. 23 : I. R. 1932 Sind 170 :
A. I. R. 1932 Sind 143.

-----Extent.

The Courts will not be justified in not inflicting extreme sentence on grounds which are purely matter of grace and clemency. *Emperor v. Nga Tha Hmwe*.

37 Cr. L. J. 267 :
160 I. C. 234 : 8 R. Rang. 355 :
A. I. R. 1935 Rang. 504.

-----Extent.

When offence falls under two Statutes, offender should not be punished with a more severe punishment than the Court which tries him can award for any of such offences. *Jethmal Parsram v. Emperor*.

33 Cr. L. J. 902 :
139 I. C. 777 : I. R. 1932 Sind 146 :
A. I. R. 1932 Sind 107.

-----Extent of.

Where the crime is unpremeditated and committed in hot blood in the course of a dispute, the sentence of death is uncalled for. *Nga Mye v. Emperor*.

37 Cr. L. J. 181 :
159 I. C. 902 : 8 R. Rang. 288 :
A. I. R. 1935 Rang. 427.

SENTENCE

-----Sentence.

Extenuating circumstance—Boy of eleven acting under influence of elder brother—Conviction under S. 332, Penal Code, may be set aside. *Kallan Khan v. Emperor*.

36 Cr. L. J. 356 :
153 I. C. 469 : 1935 A. L. J. 175 :
1935 A. W. R. 71 : 7 R. A. 505 :
A. I. R. 1935 All. 160.

-----Extenuating circumstances.

Deceased giving bread to accused's child—Death of the child soon after—Accused believing death to be caused by deceased, dealing violent blows at her—Accused belonging to tribe of aboriginals—Lesser penalty should be awarded. *Emperor v. Rameshwar Binjhia*.

35 Cr. L. J. 1128 :
150 I. C. 543 (2) : 7 R. P. 1 :
A. I. R. 1934 Pat. 356.

-----Extenuating circumstances.

People collecting together to resist encroachment—Absence of violence—Punishment—Leniency can be shown. *Mir Bayyan Khan v. Emperor*.

36 Cr. L. J. 933 :
156 I. C. 239 : 7 R. Pesh. 120 :
A. I. R. 1935 Pesh. 65 (2).

-----Extenuating circumstances.

Sentence of transportation for life is imposed only where there are some extenuating circumstances and where sentence of death is not necessary in the interests of the public at large. *Bhawani v. Emperor*.

34 Cr. L. J. 250 (1) :
141 I. C. 747 (1) : 9 O. W. N. 1161 :
I. R. 1933 Oudh 83 :
A. I. R. 1933 Oudh 52.

-----Extenuating circumstances.

The fact that the accused is only 20 years old is not sufficient to justify the Court in refraining from imposing the maximum penalty prescribed by law. *Motilal Mallik v. Emperor*.

36 Cr. L. J. 1220 :
157 I. C. 829 : 39 C. W. N. 199 :
A. I. R. 1935 Cal. 526.

-----Extenuating circumstances.

The proposition that youth is not in itself a sufficient ground for reducing the punishment for murder from death to transportation for life, is correct where a youth deliberately by himself sets out to kill another man. But where a youth is associated with older persons, it may be proper in certain cases to infer that he was influenced by the older and more mature persons and to inflict the lesser sentence. *Sikandar v. Emperor*.

32 Cr. L. J. 645 :
131 I. C. 122 : 32 P. L. R. 414 :
A. I. R. 1931 Lah. 536.

-----Extenuating circumstances.

These do not include characteristics of the offender unconnected with the crime. *Manohar Singh v. Emperor*.

37 Cr. L. J. 201 :
159 I. C. 830 : 8 R. Pesh. 88 :
A. I. R. 1935 Pesh. 170.

SENTENCE

———Sentence.

Extenuating circumstances—Though mere youth in itself is no judicial reason for inflicting lesser penalty, the fact of youth coupled with the fact that he may have come under influence of elders is an extenuating circumstance. *Manohar Singh v. Emperor*.

37 Cr. L. J. 201 :
159 I. C. 830 : 8 R. Pesh. 88 :
A. I. R. 1935 Pesh. 170.

———Extenuating circumstances.

Youth may be a circumstance to be taken into consideration in offences where the accused person is not fully able to understand the nature of his act or has been influenced by older persons, but not in a case where a youth deliberately commits a murder. *Bhawani v. Emperor*.

34 Cr. L. J. 250 (1) :
141 I. C. 747 (1) : 9 O. W. N. 1161 :
I. R. 1933 Oudh 83 :
A. I. R. 1933 Oudh 52.

———Factors for decision.

Ignorance of law though no excuse, may be taken into consideration in awarding sentence. *Rabindra Nath Dhar v. Emperor*.

34 Cr. L. J. 518 :
143 I. C. 113 : 56 C. L. J. 539 :
I. R. 1933 Cal. 336 :
A. I. R. 1933 Cal. 337.

———Factors for decision.

The fact that the amount involved is large and the offence has been committed by a member of a legal profession in which the litigating public must repose entire trust and confidence, and the fact that the accused has been a doyen of the bar aggravates rather than mitigates the offence. *M. N. Burjorjee v. Emperor*.

37 Cr. L. J. 190 :
159 I. C. 952 : 8 R. Rang. 301 :
A. I. R. 1935 Rang. 453.

———Factors for decision.

Where a heinous crime has been carefully planned and carried out in a treacherous and cruel manner, the accused's youth alone cannot be considered to be an adequate ground for mitigation of punishment. *Allah Bakhsh v. Emperor*.

35 Cr. L. J. 288 :
146 I. C. 1061 : 35 P. L. R. 115 :
6 R. L. 313 : A. I. R. 1933 Lah. 956.

———Sentence.

Facts which happened after the verdict of a Jury, cannot be utilised for inducing the High Court to alter or reduce the sentence passed by the trial Court. *Intaz Mandal v. Emperor*.

30 Cr. L. J. 484 :
115 I. C. 522 : 32 C. W. N. 1172 :
I. R. 1929 Cal. 378 :
A. I. R. 1929 Cal. 92.

———False defence, effect of.

A false defence of conspiracy between the Police and Crown witnesses to harass the accused has a tendency to aggravate the offence

SENTENCE

and is a factor which may affect the question of sentence. *Emperor v. Bindeshwari Singh*.

31 Cr. L. J. 630 :
124 I. C. 45 : A. I. R. 1930 All. 277.

———False defence, effect of.

False allegations against innocent and respectable persons, of criminal conspiracy to bring false charges, when used as a defence, aggravate greatly the original offence. *Emperor v. Narbada Prasad*.

31 Cr. L. J. 356 :
121 I. C. 819 : 51 All. 864 :
A. I. R. 1930 All. 38.

———Fine.

A fine should not be imposed on an accused person which it is wholly impossible for him to pay without ruining himself and inflicting great hardship on his family. *Dip Chand v. Emperor*.

27 Cr. L. J. 480 :
93 I. C. 704 : 8 L. L. J. 143 :
27 P. L. R. 199.

———Fine—Appropriation.

An accused who has been convicted and fined under different sections of the Penal Code, is entitled to ask that the amount paid should be appropriated by the Court towards fine inflicted on him under any particular section or sections. *Yakoob v. Emperor*.

32 Cr. L. J. 922 :
132 I. C. 475 : 24 S. L. R. 437 :
I. R. 1931 Sind 91 :
A. I. R. 1931 Sind 73.

———Fine, extent of.

Fine imposed on a co-accused should not be beyond his capacity to pay. *Allah Ditta v. Emperor*.

36 Cr. L. J. 424 :
153 I. C. 887 : 16 Lah. 44 :
35 P. L. R. 649 : 7 R. L. 468 :
A. I. R. 1934 Lah. 677.

———Fine—Imprisonment in default of fine.

Where a person who was sentenced to imprisonment and fine was released after undergoing his full term of imprisonment on offering security for fine payable by instalments, he cannot be re-committed to jail and imprisonment in default of fine cannot be inflicted on him. *Teja Singh v. Emperor*.

37 Cr. L. J. 503 (1) :
161 I. C. 886 : 37 P. L. R. 45 :
8 R. L. 810 (2) : A. I. R. 1936 Lah. 348.

———Fine in respect of offence not yet committed, legality of.

A fine in respect of an offence which has not yet taken place, cannot be imposed in anticipation of the commission of offence. *Haluman Sah v. The Motihari Municipality*.

38 Cr. L. J. 416 (a) :
167 I. C. 665 : 3 B. R. 297 :
9 R. P. 412 (1) : 18 P. L. T. 332 :
A. I. R. 1937 Pat. 352.

———Fine.

It is altogether inappropriate to add a fine to a substantial term of imprisonment except in

SENTENCE

very exceptional circumstances. *Islam v. Emperor*.
33 Cr. L. J. 31 (1):

134 I. C. 1136 : 53 C. L. J. 455 :
35 C. W. N. 519 : I. R. 1932 Cal. 48 :
A. I. R. 1931 Cal. 710 (2).

———Joint fine.

Sentence of a joint fine with terms of imprisonment in default passed on two accused in the case of each of them is plainly open to objection. *Safdar Khan v. Gaya Municipality*.

39 Cr. L. J. 531 (a) :
175 I. C. 176 : 10 R. P. 590 (1) :
4 B. R. 539 : 19 P. L. T. 748 :
A. I. R. 1938 Pat. 271.

———Fine.

Where a sentence was passed by a Special Magistrate A, forming a Special Court under S. 23, Ordinance 11 of 1931 and the Court came to an end in 1932, a person who succeeds A as Sub-Divisional Magistrate, not being A's successor as Special Magistrate, cannot execute by issue of a warrant of attachment a sentence of fine imposed by A. *Gadabendranath Panja v. Emperor*.

37 Cr. L. J. 524 (2) :
161 I. C. 979 : 40 C. W. N. 604 :
8 R. C. 554 : A. I. R. 1936 Cal. 149.

———Fine.

Whether a fine is severe or not depends to a large extent on the position and status of the person fined. *Jugal Kishore Dhar v. Emperor*.

33 Cr. L. J. 28 :
134 I. C. 1129 : 35 C. W. N. 436 :
I. R. 1932 Cal. 41 :
A. I. R. 1931 Cal. 633.

———First offenders of immature age—Sentence of imprisonment, undesirability of.

The Subordinate Courts should ordinarily avoid passing sentences of imprisonment for short terms especially on first offenders of immature age. *Tirath Ram v. Emperor*.

31 Cr. L. J. 1076 :
126 I. C. 578 : 31 P. L. R. 660 :
A. I. R. 1930 Lah. 424.

———Grievous hurt followed by death—Discretion of trial Court.

As regards the sentence, it is always difficult to assess the penalty when a man dies after being beaten or kicked. As soon as it is found that the offence does not amount to culpable homicide, it is best to leave the death entirely out of account, and look only to the injury. *Shanmuga Kodumban v. Emperor*.

31 Cr. L. J. 477 :
123 I. C. 43 : 1930 M. W. N. 74 :
I. R. 1930 Mad. 459.

———Crime inexplicable—Sentence.

Where there are features in the case which render the crime inexplicable although the guilt of the accused has been proved as the whole story has not been told, while passing sentence under such circumstances, it is better to err, if at all, upon the side of leniency. *Nga Myauk Nyo (a) Po Bein v. The King*.

39 Cr. L. J. 412 :
174 I. C. 338 : 10 R. Rang. 401 :
A. I. R. 1938 Rang. 56

SENTENCE

———Heavy fine, impropriety of.

The infliction of a heavy fine is not proper where the accused is not a man of means and the greatest sufferers will be the woman and children of his family. *Dhanu Raut v. Emperor*.

28 Cr. L. J. 865 :
104 I. C. 705 : 9 P. L. T. 217 :
A. I. R. 1928 Pat. 59.

———Ignorance of law, effect of.

Ignorance of law cannot be pleaded as a defence, where the law has been transgressed; but where there is a proviso to the law which if pleaded, would establish a sound defence, an accused may, under certain circumstances, plead that he was not aware of that proviso. *Ali Hossein v. Emperor*.

32 Cr. L. J. 206 :
128 I. C. 845 : I. R. 1931 Rang. 61 :
A. I. R. 1930 Rang. 349.

———Illegality.

An accused person was convicted after having been in custody for a week and was sentenced "to undergo the imprisonment he had already suffered." : *Held*, that the sentence was illegal. *Emperor v. Tha Hmun*.

7 Cr. L. J. 453 :
4 L. B. R. 152.

———Matters to be considered.

In determining to what extent in any particular case the punishment should approach to, or recede from, the maximum limits prescribed by the section, the trying Magistrate has to take into account several factors, *inter alia*, the antecedents of the prisoner, his character, state of life and the previous convictions, if any. *Baksho v. Emperor*.

31 Cr. L. J. 1046 :
126 I. C. 468 : 24 S. L. R. 252 :
A. I. R. 1930 Sind 211.

———Illegality.

Sentence of 14 years' transportation passed upon some of the accused in respect of a charge under S. 396 of the Penal Code is an illegal sentence. *Lal Behari Singh v. Emperor*.

35 Cr. L. J. 1066 :
150 I. C. 509 : 1934 O. L. R. 586 :
11 O. W. N. 831 : 7 R. O. 12 :
A. I. R. 1934 Oudh 354.

———Illegal sentence.

Where petitioners were sentenced to undergo one week's rigorous imprisonment in respect of an offence under S. 323, I. P. C., and on appeal the District Magistrate "reduced" the sentence to one of Rs. 50 or in default, one week's rigorous imprisonment, irrespective of the fact that they had already undergone several days' imprisonment : *Held*, that the order of the District Magistrate amounted to one enhancing the sentence and was illegal. *Mam Chand v. Emperor*.

17 Cr. L. J. 212 :
34 I. C. 324 : 5 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 130.

